

DRAFTING LEGISLATION IN HONG KONG

A GUIDE TO
Styles & Practices

LAW DRAFTING DIVISION
DEPARTMENT OF JUSTICE



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Foreword

The importance of legislative drafting cannot be over emphasized. I still recall vividly, during my private practice days, spending much time and energy in court and on paper over the interpretation of particular statutory provisions which were less than precise. Now as Secretary for Justice, I witness how the intricate instructions, policies and intentions of policy bureaux are expected by them to be transformed by law drafting counsel into a final product that is legally effective, precise and easy to understand.

The Law Draftsman and colleagues of the Law Drafting Division therefore deserve many rounds of applause for producing this essential Guide to Styles and Practices on Drafting Legislation in Hong Kong.

The Guide is comprehensive, systematic and user-friendly. The 15 chapters canvass almost all aspects of legislative drafting as well as extensive discussion on styles. It is written with impressive succinctness, using very short paragraphs to exemplify, and very pertinent examples to illustrate, the good practices. Major legislative parameters in the Hong Kong context are considered, ranging from the Basic Law to specific criminal statutes. Great care has been put in so that even terms unsuitable for the Chinese text have received special attention. Between these pages, there are gems of advice and tips coming from experienced law drafting colleagues' many years of collective wisdom.

This Guide will be extremely useful for all involved in law drafting. The parts on plain language and gender neutral drafting are both defining and enlightening. As a comprehensive platform for exchanging ideas on styles, the Guide will no doubt be an organic document destined to grow into an authoritative law drafting handbook in Hong Kong. Colleagues from policy bureaux will also find the Guide valuable, as it will help deepen their understanding of the drafting considerations, and so strengthen the overall communication and integrity in the legislating process.

At the end of the day, it is the community of Hong Kong who will benefit greatly from this commendable work.

Wong Yan Lung SC
Secretary for Justice
January 2012

Preface

This Guide is intended to explain, in broad and general terms, the drafting styles and techniques used by counsel in the Law Drafting Division of the Department of Justice (**LDD**) when drafting Government Bills and subsidiary legislation.¹ We hope the Guide will assist users of legislation in understanding how legislation is structured and the drafting practices followed by counsel.

We also hope that the Guide will assist anyone who drafts laws for non-government entities. In this way, we aim to promote uniformity in drafting practices within Hong Kong. We believe that a consistent drafting style is valuable to statute users in reducing the effort of reading legislation and in facilitating a clearer understanding of the law.

The drafting styles and techniques described in this Guide reflect the practices currently employed by LDD.² The Guide is not intended to be exhaustive. It sets out guidelines for good practice rather than rigid, prescriptive rules (except certain requirements, such as those relating to the language and form of Bills). While prescriptive rules can often be of value, it is impossible to devise rules to cover every possible scenario that a drafter may face. Also, it is important to leave the drafter with some flexibility to decide how best to achieve the legislative objective clearly and effectively in a given context.

The contents of this Guide are technical guidelines on drafting styles and practices and do not reflect or constitute legal advice. The examples set out in it are intended only to illustrate the particular drafting styles or techniques discussed. Although many of the examples are derived from actual enactments, they are obviously not intended to serve as a substitute for the official text.

The Guide may need to be revised from time to time in response to changes in technology, in drafting practices or for other reasons. In such cases, we will endeavour to publish an updated Guide as soon as practicable.

We hope that readers will find the Guide useful and would welcome their views. Comments in writing may be sent to: ldd@doj.gov.hk.

Law Drafting Division
Department of Justice
January 2012

¹ In Hong Kong, all Government Bills and items of subsidiary legislation are drafted by counsel of LDD.

² Needless to say, there remain in existing legislation examples of practices that are no longer recommended or used.

1

A Brief Overview of Hong Kong Legislation

This Chapter gives a brief overview of Hong Kong legislation—what it is and how it is made. It also sets out general information on the publication of legislation and where it may be found.

1.1 Legislation of Hong Kong

Legislation comprises Ordinances and subsidiary legislation

1.1.1 Hong Kong legislation consists of laws enacted by the Legislative Council (**LegCo**), which are known as “Ordinances” and laws made under powers delegated by LegCo under an Ordinance.¹ Ordinances are the “primary legislation” of Hong Kong. Laws made under delegated powers are generally known as “secondary legislation”. In Hong Kong, they are more commonly referred to as “subsidiary legislation”. The generic terms “enactment”² and “statute” encompass both Ordinances and instruments of subsidiary legislation.

Definitions of *Ordinance* and *subsidiary legislation*

1.1.2 The Interpretation and General Clauses Ordinance (Cap. 1) (**IGCO**) applies to all legislation except where the contrary intention appears. See section 2 of the IGCO (*application*). Section 3 (*interpretation of words and expressions*) defines “Ordinance”. (An abridged version of the IGCO is set out in Appendix 1.)

Ordinance (條例) means—

- (a) any Ordinance enacted by the Legislative Council;
- (b) any Ordinance adopted by virtue of Article 160 of the Basic Law as a law of the Hong Kong Special Administrative Region;
- (c) any subsidiary legislation made under any such Ordinance except any such subsidiary legislation which has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; and
- (d) any provision or provisions of any such Ordinance or subsidiary legislation;

¹ The National Laws listed in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (**BL**) also apply to Hong Kong.

² See the definition of **enactment** in section 3 of the IGCO.

1.1.3 Section 3 of the IGCO also provides a formal definition of **subsidiary legislation**. It also defines “subordinate legislation”, a term however that is not commonly used in Hong Kong.

subsidiary legislation and **subordinate legislation** (附屬法例、附屬法規、附屬立法) mean any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect;

Drafting of Government legislation

1.1.4 In Hong Kong all Government legislation is drafted by counsel of the Law Drafting Division (**LDD**), a Division within the Department of Justice. The head of the Department of Justice is the Secretary for Justice. The official title of the head of the LDD is “Law Draftsman”.

Statute Book

1.1.5 Legislation is also known as statute law, and the statute laws of a place are collectively and metaphorically referred to as the “Statute Book”. In Hong Kong, by convention, the Law Draftsman is the “keeper of the Statute Book”, a role which traditionally has associated with it the task of maintaining the integrity of the Statute Book.

1.2 Bills and Ordinances

Bill becomes Ordinance

1.2.1 Every Ordinance starts out as a “Bill”. A Bill must be passed by LegCo and signed by the Chief Executive before it can become law.

1.2.2 A Bill that is passed by LegCo and signed by the Chief Executive is published in the Gazette as an “Ordinance”.

1.2.3 The procedure for the presentation and passage of Bills through LegCo is governed by the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (**LegCo Rules**).

Public Bills and private Bills

1.2.4 There are two kinds of Bills—public Bills and private Bills. Generally speaking, public Bills, as the name suggests, deal with matters that affect the public

as a whole or a large segment of the public (e.g. a Bill to regulate the use of motor vehicles). Private Bills, on the other hand, generally deal with matters that are of concern only to particular persons or entities (e.g. a Bill to establish a private charitable foundation).³

New principal Bills and amending Bills

1.2.5 A Bill may enact an entirely new law or it may amend an existing law. A Bill enacting a new law is referred to as a “new principal Bill” and a Bill amending an existing law is referred to as an “amending Bill”. Similar terminology is used when the Bill is enacted and published as an Ordinance (i.e. “new principal Ordinance” and “amending Ordinance”).

Publication of Bills

1.2.6 A public Bill that is presented to LegCo is published in the Gazette under LegCo Rule 52(1) (*presentation and publication of bills*). A public Bill is published only once and it is published in Legal Supplement No. 3 of the Gazette.

1.2.7 LegCo Rule 51(6) (*notice of presentation of bills*) requires a private Bill to be published in two consecutive issues of the Gazette. Private Bills are published in Legal Supplement No. 6 of the Gazette.

Government Bills

1.2.8 A Government Bill is introduced into LegCo only after it is approved by the Executive Council (**ExCo**). The completed Bill is submitted to ExCo with a Memorandum (generally referred to as an “ExCo Memo”) for approval for introduction into LegCo.

Three readings of a Bill

1.2.9 After a Bill is introduced into LegCo, it passes through certain formal procedural stages, usually referred to as the “three readings” of a Bill (first reading, second reading and third reading). See LegCo Rules 51 to 69 for the procedure at each reading and LegCo Rule 76 (*Bills Committees*) for the functions of a Bills Committee formed to scrutinize a Bill.⁴

³ Section 2 of the Private Bills Ordinance (Cap. 69) defines a “private bill” as follows:
“**private bill** means a bill which—

(a) provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public; and
(b) is not a Government measure.”.

⁴ The special procedure applicable to Financial Bills is set out in LegCo Rules 67 to 70.

Committee stage amendments

1.2.10 A Bill may be amended during its passage through LegCo. Amendments proposed to be made to a Bill are commonly known as “committee stage amendments” (*CSAs*). See LegCo Rules 57 (*amendments to bills*) and 58 (*procedure in committee of the whole Council on a bill*) for rules on the admission of CSAs and the procedure relating to them. Any CSA that is passed by LegCo will become part of the Bill as passed by LegCo.

Stage at which Bill is passed

1.2.11 The stage at which a Bill is passed by LegCo is known as the “third reading”. If the Bill is passed, it is submitted to the Chief Executive for signature (see LegCo Rule 65 (*presentation of bill for signature of Chief Executive*)).⁵

LegCo’s database of Bills

1.2.12 LegCo maintains a database of Bills published since 2000 which may be accessed through its website (www.legco.gov.hk). Copies of the Bills, both in their introduced form and in their “as passed” form, may be downloaded without charge.

Publication in Gazette as Ordinance

1.2.13 After a Bill is signed by the Chief Executive, it is published in Legal Supplement No. 1 of the Gazette as an Ordinance. Under the IGCO, all Ordinances are required to be published in the Gazette.⁶

Numbering of Ordinances

1.2.14 An Ordinance (whether principal or amending) is numbered consecutively according to the order in the year in which it is signed and promulgated, beginning each year with the number 1. It is published in the Gazette under that number (*Example 1*). The first two Ordinances for 2011 were amending Ordinances and the third a new principal Ordinance.

Example 1

Chief Executive Election (Amendment) Ordinance 2011 (1 of 2011)
Legislative Council (Amendment) Ordinance 2011 (2 of 2011)
Motor Vehicle Idling (Fixed Penalty) Ordinance (3 of 2011)

⁵ Under Article 48(3) of the BL one of the powers and functions of the Chief Executive is “To sign bills passed by the Legislative Council and to promulgate laws”.

⁶ Section 20(1) of the IGCO—“an Ordinance shall be published in the Gazette”.

Publication of Ordinances in Loose-leaf Edition

1.2.15 A new principal Ordinance will eventually be published in the Loose-leaf Edition of the Laws of Hong Kong (***Loose-leaf Edition***) under section 2 (*publication of Ordinances, etc., in a loose-leaf edition*) of the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) (***Loose-leaf Ordinance***).⁷ It is published under the chapter number (***Cap. No.***) given to it under that section. The Ordinance is then normally cited by reference to its Cap. No. (*Example 2*). See also paragraph 13.2.1. A separate Cap. No. is not given to an amending Ordinance because its contents will be incorporated into the relevant principal Ordinance.

Example 2

Minimum Wage Ordinance (Cap. 608)⁸

Publication of Ordinances on BLIS

1.2.16 Principal Ordinances are also published in electronic form on the Bilingual Laws Information System (***BLIS***), which is an electronic database of the Ordinances and subsidiary legislation of Hong Kong (www.legislation.gov.hk).⁹ Amendments made by amending legislation are incorporated into the principal Ordinances.

1.3 Subsidiary Legislation

Enabling Ordinance and subsidiary legislation

1.3.1 As noted in paragraph 1.1.1, “subsidiary legislation” is the generic term commonly used in Hong Kong for legislation made under powers delegated by LegCo under an Ordinance. The Ordinance containing the enabling power for the subsidiary legislation is generally known as the enabling or empowering Ordinance or the parent Ordinance. The provision that delegates the power is variously referred to as the enabling provision, enabling authority or enabling power. The person who is authorized to make the subsidiary legislation is the delegate.

⁷ The Loose-leaf Edition of the Laws of Hong Kong is a consolidation of the Ordinances and subsidiary legislation of Hong Kong. It is updated approximately twice a year. The status of the legislation published in the Loose-leaf Edition is that it is presumed to be correct unless the contrary is proved (see section 3 of the Loose-leaf Ordinance).

⁸ Originally published in the Gazette as Ordinance number 15 of 2010.

⁹ The BLIS database is updated on a regular basis but the legislation published on BLIS does not have an official legal status.

New principal subsidiary legislation and amending subsidiary legislation

1.3.2 An instrument of subsidiary legislation may make an entirely new law or it may amend an existing law. The relevant instruments are generally referred to as “new principal subsidiary legislation” and “amending subsidiary legislation”.

Publication of subsidiary legislation in Gazette

1.3.3 Subsidiary legislation is also required to be published in the Gazette.¹⁰ For that purpose, it is published in Legal Supplement No. 2 of the Gazette.

Numbering of subsidiary legislation

1.3.4 Each item of subsidiary legislation, whether principal or amending, is given a Legal Notice number (**L.N. No.**) and is published in the Gazette under that number. The items are numbered consecutively, beginning each year with the number 1.

1.3.5 Thus the last instrument published as an item of subsidiary legislation in 2010 was “L.N. 176 of 2010” (Mutual Legal Assistance in Criminal Matters (Ireland) Order (Commencement) Notice) and the first instrument published in 2011 was “L.N. 1 of 2011” (Minimum Wage (Criteria for Approved Assessors) Notice).

Publication of subsidiary legislation in Loose-leaf Edition

1.3.6 An item of new principal subsidiary legislation is also published in the Loose-leaf Edition. The chapter number (**Cap. No.**) given to it is derived from the Cap. No. of the parent Ordinance and includes a letter of the alphabet, beginning with “A” for the first item of subsidiary legislation made under that Ordinance. For example, the Cap. No. of the first item of subsidiary legislation under Cap. 608 would be “Cap. 608 sub. leg. A” (*Example 3*), the second, “Cap. 608 sub. leg. B” and so on. After “Z” is reached, the next in sequence would be “AA”, “AB” and so on. An item of amending subsidiary legislation is not given a Cap. No. because its contents will be incorporated into the principal subsidiary legislation.

Example 3

Minimum Wage (Criteria for Approved Assessors) Notice (Cap. 608 sub. leg. A)

Publication of subsidiary legislation on BLIS

1.3.7 Principal subsidiary legislation is also published in electronic form on BLIS. Amendments made by amending legislation are incorporated into the principal subsidiary legislation.

¹⁰ Section 28(2) of the IGCO—“Subsidiary legislation shall be published in the Gazette.”.

2

Primary Legislation

This Chapter presents some introductory guidelines for drafting a Bill and general information relating to primary legislation.

2.1

Formal Requirements and Conventions for Bills

Language of Ordinances

2.1.1 All Bills are drafted in Chinese and English, the official languages of Hong Kong. This complies with the requirements on the language of Ordinances in section 4 of the Official Languages Ordinance (Cap. 5) (*enactment of Ordinances in both official languages*) and LegCo Rule 50(4) (*form of bills*).

Form of Bill—LegCo Rule 50

2.1.2 A Bill must comply with LegCo Rule 50, which sets out the requirements for the form of a Bill.

50. Form of Bills

(1) A bill for presentation to the Council shall conform with the requirements laid down in this Rule.

(2) The bill shall be given a short title corresponding with the title by which it is to be cited if it becomes law, and that short title shall remain unchanged throughout the passage of the bill.

(3) The bill shall be given a long title setting out the purposes of the bill in general terms.

(4) Subject to a direction given under section 4(3) of the Official Languages Ordinance (Cap. 5) by the Chief Executive in Council, bills shall be presented in the Chinese and English languages.

(5) The clauses of the bill shall be preceded by the enacting formula.

(6) The bill shall be divided into clauses numbered consecutively and having a descriptive section heading above each clause.

(7) An explanatory memorandum stating the contents and objects of the bill in non-technical language shall be attached to the bill.

(8) In the case of a bill which is a “private bill” as defined in the Private Bills Ordinance (Cap. 69), there shall be included in the bill the following clause:

“Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.”.

Law Draftsman’s certificate

2.1.3 LegCo Rule 51(1) (*notice of presentation of bills*) requires that a Bill presented by a Member¹ should be accompanied by a certificate signed by the Law Draftsman. In terms of LegCo Rule 51(2), the certificate is issued if the Law Draftsman is satisfied that the Bill conforms to LegCo Rule 50 and the general form of Hong Kong legislation.

One Bill, one subject

2.1.4 A Bill should deal with one general subject only.² Subjects that have no proper relation to each other should not be included in one Bill.³ However—

- (a) a Bill may contain consequential amendments to other enactments; and
- (b) amendments to related enactments may be combined in one Bill if there is a unifying theme.

Preliminary provisions

2.1.5 The usual preliminary provisions of a Bill for a new principal Ordinance are—

- Long title
- Enacting formula
- Short title and commencement clause (if any)

¹ This could be a Member’s Bill that is a private Bill or a public Bill.

² This was a formal requirement under paragraph 25(3) of the Hong Kong Royal Instructions 1917 to 1993 (Nos. 1 and 2), before 1 July 1997. It is now observed as a matter of convention.

³ There are exceptions such as Statute Law (Miscellaneous Provisions) Bills, introduced periodically by the Department of Justice (which usually propose minor or uncontroversial amendments to a number of unrelated enactments) and Bills to implement law reform measures.

2.1.6 If the Bill has a preamble, the preliminary provisions are—

- Long title
- Preamble
- Enacting formula
- Short title and commencement clause (if any)

Long title

2.1.7 A Bill begins with a long title. Under LegCo Rule 50(3) every Bill (whether principal or amending) must have a long title setting out the purposes of the Bill in general terms. The long title puts the reader on notice as to the purpose or subject of the legislation. It has to be wide enough to embrace the whole of the contents of the Bill and is usually drafted to be specific enough to give fair notice of the subject of the Bill. Generally, technical terms should not be used in a long title.

2.1.8 Traditionally, in Hong Kong, the long title is in the infinitive form. That is, “A Bill **to establish** the ABC Corporation ...” and not “A Bill establishing the ABC Corporation ...”.

Enacting formula

2.1.9 The enacting formula is the way of announcing the authority under which the law is enacted. It appears immediately after the long title (LegCo Rule 50(5)). The enacting formula for all Hong Kong Ordinances⁴ (except when there is a preamble) is—

Enacted by the Legislative Council of Hong Kong.

Preamble

2.1.10 Preambles are rarely used in Hong Kong Ordinances these days. A preamble is appropriate if an explanation of certain facts is necessary to provide a context in which to understand the legislation. It is best reserved for such exceptional cases.⁵ If the Bill includes a preamble, it appears after the long title and in the following form—

⁴ Before the Reunification, the enacting formula was prescribed by the Hong Kong Royal Instructions 1917 to 1993 (Nos. 1 and 2). Now there is no constitutionally prescribed enacting formula; the current enacting formula has been adopted since the Reunification.

⁵ For a recent Ordinance with a preamble, see the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591).

Preamble

WHEREAS—

(Recitals of the preamble)

NOW, THEREFORE, it is enacted by the Legislative Council as follows—

Short title

2.1.11 LegCo Rule 50(2) requires that a Bill should be given a short title. See Part 2 of this Chapter for more information on the short title.

Clauses of Bill

2.1.12 LegCo Rule 50(6) requires that a Bill should be divided into consecutively numbered “clauses”, each with a section heading. This is dealt with in more detail in Part 3 of this Chapter.

Saving clause for private Bills

2.1.13 LegCo Rule 50(8) requires that every private Bill (as defined by section 2 (*interpretation*) of the Private Bills Ordinance (Cap. 69) (**PBO**)) should contain the “saving” clause set out in that Rule. This is normally included as the last clause of the Bill.

Explanatory Memorandum

2.1.14 Rule 50(7) requires that every Bill should have an Explanatory Memorandum setting out the objects of the Bill and describing its contents in non-technical language. The Explanatory Memorandum is not part of the proposed legislative text and will not be published with the Ordinance after it is enacted. See Chapter 8 for guidelines on drafting the Explanatory Memorandum.

Table of Contents

2.1.15 See Chapter 4, Part 6 for information about a Table of Contents.

2.2 Preliminary Clauses of a Bill

What is a short title

2.2.1 The clause setting out the “short title” is usually the first clause of the Bill.

2.2.2 The short title is intended to serve as a label.⁶ It gives the Ordinance its name.

2.2.3 If the Bill expressly provides for the commencement of the Ordinance, the short title and commencement are dealt with in separate subclauses within one clause.

2.2.4 The short title of a new principal Ordinance does not include the year of publication of the Ordinance.⁷ For example, the short title of the Motor Vehicle Idling (Fixed Penalty) Ordinance (published in the Gazette in 2011) is “Motor Vehicle Idling (Fixed Penalty) Ordinance”. The year “2011” is not included in the short title.

Rules for short titles (new principal Bills)

2.2.5 Avoid using “The” as the first word of a short title.

2.2.6 Avoid beginning a short title with “Hong Kong”. This makes it easier for the user to find an Ordinance by subject matter.⁸ Generally, using “Hong Kong” in a short title is superfluous as there is no need to distinguish, in the Statute Book, Hong Kong legislation from other legislation. Naturally, if the short title is intended to reflect the name of a body and the name includes “Hong Kong” (as in many private Bills), its use in the title is acceptable.

2.2.7 If the Bill does not provide for commencement (i.e. it is intended to come into operation on publication in the Gazette), the first clause should set out only the short title. Its form is as follows—

Example 1

Short title

This Ordinance may be cited as the ABC Ordinance.

Rules for short titles (amending Bills)

2.2.8 The short titles of amending Bills are dealt with in Chapter 14.

⁶ “The short title has the characteristics of a label. It identifies, describes and gives a name to the Act. Its sole purpose is to enable facility of reference and the objective is therefore identification first and description second”. G.C. Thornton, *Legislative Drafting* 4th ed. (London, Dublin, Edinburgh: Butterworths, 2008), p. 200.

⁷ Appropriation Ordinances are an exception (e.g. the Appropriation Ordinance 2010 (8 of 2010)).

⁸ For example, it would be easier to find legislation relating to clubs, if the title began with “Clubs” rather than “Hong Kong clubs”.

Commencement—section 20 of IGCO

2.2.9 In providing for commencement in a Bill, it is important to keep in view section 20 of the IGCO (*commencement, etc., of Ordinance*).

Commencement on Gazettal

2.2.10 Under section 20 of the IGCO, if the Bill does not expressly provide for commencement, after it is enacted as an Ordinance it will come into operation on the date of publication in the Gazette.

Commencement on specified date

2.2.11 If the Ordinance is to commence on a date set out in the legislation itself, the form in *Example 2* should be used. The section heading is “Short title and commencement” because, as noted in paragraph 2.3.3, usually the short title and commencement are dealt with together in one clause, but in separate subclauses.

Example 2

Short title and commencement

- (1) This Ordinance may be cited as the ABC Ordinance.
- (2) This Ordinance comes into operation on 1 January 2012.

Commencement on appointed day

2.2.12 If the Ordinance is to come into operation on a day appointed by another person, the form of the commencement subclause should be—

Example 3

Short title and commencement

- (1) This Ordinance may be cited as the ABC Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the [appointing authority]⁹.

Mixed commencement provisions

2.2.13 Different arrangements for commencement at different times or different purposes can be made in the same clause as shown in *Examples 4* and *5*. Of course, these are not the only possible arrangements. The Examples can be adapted according to each case.

⁹ Section 20(3) of the IGCO allows different provisions of an Ordinance to be brought into operation on different days and for different purposes. It is not necessary to expressly state that different provisions can be brought into operation on different days or for different purposes.

Example 4**Short title and commencement**

- (1) This Ordinance may be cited as the ABC Ordinance.
- (2) Subject to subsection (3), this Ordinance comes into operation on a day to be appointed by the [appointing authority].
- (3) Sections 6 and 7 come into operation on [1 January 2012]/[the day on which this Ordinance is published in the Gazette].

Example 5**Short title and commencement**

- (1) This Ordinance may be cited as the ABC Ordinance.
- (2) This Ordinance, except Part 3, comes into operation on a day to be appointed by the [appointing authority].
- (3) Part 3 comes into operation on [1 January 2012]/[the day on which this Ordinance is published in the Gazette].

2.3 Organization—Basic Structure of a Bill

Read with Chapter 4 (Organizational Matters)

2.3.1 This Part should be read with Chapter 4, which gives more information about the organization of provisions in a principal enactment. The organization of an amending Bill is dealt with in Chapter 14.

Basic rule for organization

2.3.2 The basic general rule is to organize the subject matter of the Bill in a way that the reader will find most useful. Legislative propositions should be presented in logical sequence. Any form of organization that requires the reader to have an understanding of a later provision in order to understand an earlier provision should be avoided.

Divide into clauses—LegCo Rule 50(6)

2.3.3 LegCo Rule 50(6) requires a Bill to be divided into consecutively numbered clauses. That means the subject matter of the proposed legislation should be set out in clauses. Under that Rule, each clause has to be given a “descriptive section heading”, which should give a brief indication of the subject matter of the clause (see Chapter 4, Part 5 on the drafting of headings). Bear in mind that generally it is easier to write a heading for a short clause than for a long clause that has too much information. A clause is referred to as a “section” after enactment.

Keep clauses short

2.3.4 A clause should only deal with one legislative proposition. Short clauses break up text and make it more readable and easier to understand. Long, dense sections with no white space are not only visually unappealing but can also give the impression that they are difficult to understand.

Divide into subclauses

2.3.5 A long and detailed clause can be difficult for the reader to process. Dividing a complex clause into subclauses can present the concept more clearly and enable easier comprehension. Each subclause should deal only with one aspect of a proposition. A subclause is referred to as a “subsection” after enactment.

Further divisions—paragraphs and subparagraphs

2.3.6 If necessary, a subclause can be further divided into paragraphs. A paragraph can in turn be divided into subparagraphs, but further division should be avoided as it can make the text hard to read (see Chapter 4, Part 4 for rules on paragraphing).

Group into Parts, Divisions, Subdivisions

2.3.7 In a long Bill, clauses on a common subject matter can be grouped together into Parts. A Part can be further divided into Divisions, and a Division into Subdivisions. The value of dividing legislation into Parts and so on is that it lays bare the structure of the legislation making it easier for a reader to assimilate its contents. Normally a Bill for a new principal Ordinance is divided into Parts only if it has 10 or more clauses. The drafting template for legislation (see paragraph 15.1.1) in use now marks off each Part by a solid line at the end. The next Part begins on a new page.

Schedules

2.3.8 It may be convenient to set out ancillary or technical matters or matters of detail (as opposed to substantive matters) in one or more Schedules to the Bill. A Schedule is not a clause as such but has to be linked to the main part of the Bill by a clause. See Chapters 4 and 7 for more information on Schedules.

Forms of clauses

2.3.9 A clause without subclauses—

Example 6

- 3. ABC Corporation established**
The ABC Corporation is established.

2.3.10 A clause divided into subclauses, paragraphs and subparagraphs—**Example 7****4. Membership of Corporation**

- (1) The ABC Corporation consists of 3 members, appointed by [...].
- (2) A person is eligible for appointment as a member only if he or she—
 - (a) is ordinarily resident in Hong Kong; and
 - (b) is qualified as—
 - (i) a veterinary surgeon;
 - (ii) an animal psychologist; or
 - (iii) an animal trainer.

2.3.11 A clause with paragraphs but no subclauses—**Example 8****5. Functions of Corporation**

The functions of the ABC Corporation are—

- (a) to promote the welfare of dogs and cats;
- (b) to develop guidelines for the proper care of dogs and cats as household pets;
- (c) to encourage the adoption of abandoned dogs and cats; and
- (d) to organize seminars and conduct workshops on—
 - (i) the breeding of dogs and cats for commercial purposes; and
 - (ii) the prevention of rabies.

3

Subsidiary Legislation

This Chapter sets out certain principles and conventions that are followed when providing for and drafting subsidiary legislation.

3.1 Enabling Powers—General

Subsidiary legislation can only be made under enabling power

3.1.1 As stated in paragraph 1.1.1, subsidiary legislation is made under an enabling provision contained in the empowering Ordinance. Therefore, an item of subsidiary legislation can be properly made only after the appropriate enabling provision is enacted by LegCo.

General provisions to keep in view

3.1.2 It is useful to be familiar with the following—

- **Basic Law—**
 - ◆ **Article 56**—requires the Chief Executive to consult the Executive Council before making subsidiary legislation;
 - ◆ **Article 62(5)**—lists drafting subsidiary legislation among the powers and functions of the Government.
- **Interpretation and General Clauses Ordinance (Cap. 1)**¹—
 - ◆ **Section 28** (*general provisions with regard to power to make subsidiary legislation*);
 - ◆ **Section 28A** (*construction of power to make subsidiary legislation*);
 - ◆ **Section 29** (*fees and charges*)—power to impose fees and charges by subsidiary legislation;

¹ It should be noted that provisions in the IGCO apply “Save where the contrary intention appears” from the IGCO or “the context of any other Ordinance” (see section 2(1) of the IGCO (*application*)).

- ◆ **Section 29A** (*variation of certain fees and charges*)—power of the Financial Secretary to vary fees and charges provided for in subsidiary legislation made by the Chief Executive in Council);
- ◆ **Section 31** (*construction of subsidiary legislation*);
- ◆ **Section 32** (*exercise of statutory powers between enactment and commencement of Ordinance*);
- ◆ **Sections 34** (*placing of subsidiary legislation before Legislative Council*) and **35** (*approval of Legislative Council to subsidiary legislation*)—LegCo scrutiny of subsidiary legislation;
- ◆ **Section 36** (*effect of repeal on subsidiary legislation*);
- ◆ **Section 37A** (*amendment of subsidiary legislation by Ordinance*);
- ◆ **Section 38** (*presumption of lawful exercise of power*);
- ◆ **Section 40(2)(a)** (*construction of enabling words*).

Scope (vires)

3.1.3 In drafting the enabling provision, it has to be borne in mind that each provision of an item of subsidiary legislation must fall within the scope of the enabling power. Any provision that is outside power (*ultra vires*) can be challenged as being invalid.

Essential elements of enabling provision

3.1.4 Basically, the enabling provision should—

- (a) specify the delegate (the person or body who is to exercise the power);
- (b) name the kind of instrument by which the subsidiary legislation may be made; and
- (c) describe the purpose for which the subsidiary legislation is to be made.

Name instrument in enabling provision

3.1.5 Choose the instrument that is most appropriate for the purpose, taking into account both the purpose of the subsidiary legislation and the person or body that is being authorized to make it. A useful guide to nomenclature can be found in Thornton (1996) at p. 340. The following Table illustrates the Hong Kong practice.

Table 3.1. Table of instruments.

Instrument	Maker of Instrument	Subject Matter/Purpose/ Characteristics
Regulation	Normally, the executive, e.g. the Chief Executive in Council or a Bureau Secretary.	• Generally, in form, of the same character as an Ordinance. • The subject matter is ancillary to the provisions in the principal legislation. • Usually of general application.
Rules	• The Chief Justice. • Rules Committee of a court; • Administrative tribunals, e.g. Administrative Appeals Board (Cap. 442). • Professional bodies, e.g. The Law Society of Hong Kong (Cap. 159).	• To govern procedural aspects of judicial or administrative proceedings. • For professional bodies, also to govern matters such as professional conduct.
Bylaw	• Local authorities. • Statutory corporations, e.g. Hospital Authority (Cap. 113) and Airport Authority (Cap. 483). • Entities functionally similar to providers of utilities, e.g. Mass Transit Railway Corporation Limited (Caps. 556 and 577) and tunnel companies (Caps. 436 and 474).	• To regulate the proceedings of the association, corporation or other body (internal management). • The management of a utility or service or its use by persons and their conduct in relation to it. • Applicable within the physical area related to the utility or service.
Order	Characterized by the purpose rather than the maker of the instrument.	An order is the more appropriate instrument for short-term executive orders.
Notice	The makers can vary.	• This is now the recommended or most commonly used instrument for which “order” was also used in the past. • A “notice” is also appropriate for notifications and other forms of giving information about a decision already taken.²

² These notices are generally not instruments of subsidiary legislation.

Name only one kind of instrument

3.1.6 Only one kind of instrument should be named. That is, never say—

Not to be used

The [delegate] may make rules and regulations prescribing ...

The [delegate] may, by notice or order published in the Gazette, specify ...

Regulations, rules and bylaws

3.1.7 The following, or similar forms, are suitable for an enabling power to make regulations. They can also be adapted for rules and bylaws, substituting “rules” or “bylaws” for “regulations”. However, the general form in *Example 3* may not be suitable for rules and bylaws as they are usually made for a specific purpose or are localized in application.

Example 1

The [delegate] may make regulations—

- (a) regulating;
- (b) prescribing ...;

Example 2

The [delegate] may make regulations for all or any of the following purposes—

- (a) to regulate the conduct ...;
- (b) to specify the requirements ...;

Example 3

The [delegate] may make regulations for the better carrying out of the purposes of this Ordinance.

Orders and notices

3.1.8 In the past, “order” and “notice” were used interchangeably for the same purpose. For instance, both “The Secretary may by notice published in the Gazette amend the Schedule ...” and “The Secretary may by order published in the Gazette amend the Schedule ...” were used to the same effect.

3.1.9 For consistency, the current practice is to use “notice” as the name for such instruments, unless there is a good reason to use “order”.³ A notice is also used in enabling provisions for designations and declarations. Of course, if an existing enabling provision requires that something should be done by an “order”, the instrument should be named an “order” and not a “notice”.

3.1.10 The standard form, unless a different form suits the particular case, is—

Example 4

The [delegate] may, by notice published in the Gazette, [amend] ...⁴

3.1.11 A “notice” is always the appropriate instrument for notifying a decision already made.⁵ For example, “The Secretary must give notice of the appointment [...] in the Gazette” or “The Secretary may/must determine the types of [...] and notify them in the Gazette”.

Enabling power subject to conditions

3.1.12 Sometimes the intention may be to make the enabling power conditional. That is, the power may be exercised, for example, only after consulting, or obtaining the approval of, another specified person.

3.1.13 If so, the enabling provision can be drafted along the following lines—

Example 5

The [delegate] may, with the approval of [the approving person], make [name the kind of instrument] ...

Example 6

The [delegate] may, after consultation with the [the person to be consulted], make [name the kind of instrument] ...

Prior approval

3.1.14 If the intention is that approval should be obtained before the instrument is made, it is recommended that, for consistency, “with the approval of” and not “subject to the approval of” is used in the enabling provision as far as possible.

³ In existing legislation, “notice” is used more often than “order” for such instruments.

⁴ The effect is that publication is crucial for the subsidiary legislation to come into existence.

⁵ These instruments are generally not subsidiary legislation.

Subject to approval

3.1.15 Sometimes, the intention may be that subsidiary legislation is effective only after it is subjected to the approval of another authority, usually LegCo. This is dealt with in Part 3 of this Chapter.

Use of “prescribe”

3.1.16 When “prescribe” is used in an enabling provision, even if an instrument is not named, the definition of **prescribed** in section 3 of the IGCO (*interpretation of words and expressions*) may apply subject to contrary intention and context.

prescribed (訂明) and **provided** (訂定), when used in or with reference to any Ordinance, mean prescribed or provided by that Ordinance or by subsidiary legislation made under that Ordinance;

3.1.17 However, the best practice is to state the name of the kind of instrument in the enabling provision (e.g. “may prescribe by notice published in the Gazette” or “may make regulations prescribing ...”).

3.1.18 If the instrument is not intended to be subsidiary legislation, it is best to avoid using “prescribe”.⁶ The term “specify” can be used for both subsidiary legislation and instruments that are not subsidiary legislation.

Consultation under Article 56 of BL

3.1.19 Article 56 of the Basic Law of the Hong Kong Special Administrative Region (**BL**) requires the Chief Executive to consult ExCo before making subsidiary legislation.

3.1.20 The direct way to comply with the BL is to confer the power to make the instrument on the Chief Executive in Council as opposed to the Chief Executive. Certain pre-1997 Ordinances had conferred the power to make subsidiary legislation on the “Governor”, now adapted as the “Chief Executive”. To comply with Article 56, such subsidiary legislation is made by the Chief Executive in consultation with ExCo.

⁶ This is because “prescribe” is normally associated with subsidiary legislation.

3.2 Enabling Powers—Specific Matters

Differential treatment

3.2.1 Sometimes it may be necessary to allow the subsidiary legislation to be applied differently for different cases. The following are examples of enabling provisions that allow such differential treatment—

Example 7

A regulation under this section may—

- make different provisions for different circumstances or cases.
- provide for a particular case or class of case.
- apply differently according to ...
- be made to apply generally or only in specified circumstances.
- prescribe different fees or charges for different cases.
- prescribe different fees or charges by reference to persons or cases of different classes or descriptions.
- prescribe different fees or charges by reference to—
 - (a) the type or description of [...]; or
 - (b) the size or area ...

Subdelegation

3.2.2 As subsidiary legislation is made under delegated authority, if a provision in it further delegates any aspect of the enabling power, it can amount to subdelegation. Unauthorized subdelegation (i.e. subdelegation that is not authorized by the parent Ordinance) can affect the validity of the subsidiary legislation. This problem can be avoided by providing for subdelegation in the enabling provision. The following can be adapted to suit the particular case—

Example 8

A regulation under this section may—

- authorize any matter or thing to be determined, applied or regulated by any specified person.
- authorize/empower any specified person to determine/specify [...].
- authorize [specified person] to delegate [...].
- empower [subdelegate] to amend any Schedule to [the instrument of subsidiary legislation].

Offences

3.2.3 Section 28(1)(e) of the IGCO⁷ (*general provision with regard to power to make subsidiary legislation*) contains a general enabling provision to create offences in subsidiary legislation and to prescribe penalties subject to the limit specified in that section.⁸ Technically this makes it unnecessary to include a specific enabling provision for offences if the proposed penalties are within that limit. However, the common practice is to include an enabling provision in the parent Ordinance for offences and penalties. The following are suitable forms—

Example 9

- (xx) The regulations may prescribe offences for contraventions of the regulations, punishable by a fine, imprisonment or both.
- (xy) The maximum fine that may be prescribed for an offence is [level 3] and the maximum imprisonment is [2] years.

Example 10

- (xx) The regulations may prescribe offences for contraventions of the regulations, punishable by a fine.
- (xy) The maximum fine that may be prescribed for an offence is [level 3].

Fees

3.2.4 Section 29 of the IGCO (*fees and charges*) provides that where an Ordinance confers a power on a person to make subsidiary legislation, the subsidiary legislation may impose a fee or charge for anything in it or the Ordinance.

3.2.5 Despite the general power, the common practice is to include an Ordinance-specific provision to charge fees. The form and style of the provision will depend on its contents. It can be a separate subsection, e.g. “A regulation under subsection (1) may specify/prescribe fees and charges ...”. Alternatively, it can be included as a paragraph, among the specific powers.

⁷ Note that under section 2(1) of the IGCO, the provisions of the IGCO apply to legislation “save where the contrary intention appears”.

⁸ The penalty for an offence is limited to a fine not exceeding \$5,000 and a term of imprisonment not exceeding 6 months.

Variation of fees under section 29A of IGCO

3.2.6 Section 29A of the IGCO (*variation of certain fees and charges*) allows fees or charges prescribed by the Chief Executive in Council in subsidiary legislation to be varied by the Financial Secretary (defined in the IGCO to include the Secretary for Financial Services and the Treasury).

3.3 Provisions for Scrutiny by LegCo

Mechanisms for scrutiny

3.3.1 The mechanism by which LegCo exercises supervisory powers over subsidiary legislation depends on the provisions of the parent Ordinance. The most common types of scrutiny are the procedures commonly referred to as negative vetting and positive vetting.

Negative vetting

3.3.2 Negative vetting is the term used to describe the application of section 34 of the IGCO (*placing of subsidiary legislation before Legislative Council*) to subsidiary legislation. If the subsidiary legislation is intended to be subject to negative vetting, the enabling provision does not need to provide for it expressly.

Positive vetting

3.3.3 Positive vetting is the term used to describe the application of section 35 of the IGCO (*approval of Legislative Council to subsidiary legislation*) to subsidiary legislation. The parent Ordinance must expressly provide for the positive vetting option. The standard forms of the provision, which follow the language of section 35, are described in the following examples.

Example 11

[Name the kind of instrument] made under this section are subject to the approval of the Legislative Council.

Example 12

[Delegate] may, subject to the approval of the Legislative Council, make [name the kind of instrument] ...

3.3.4 The procedure in section 35 of the IGCO applies if the relevant provision requires the subsidiary legislation to be “subject to the approval of the Legislative Council ...” or contains “words to the like effect”. Although this allows the use of language that has the same effect as “subject to the approval”, it is recommended that, as far as possible, “subject to the approval of the Legislative Council” is used in the enabling provision. This would conform to the actual wording of section 35 and also promote uniformity.

3.4 Provisions to Clarify Status of Instrument

If status of instrument is not clear

3.4.1 A question that sometimes arises when delegating the power to make a statutory instrument is whether the instrument is subsidiary legislation, that is, a legislative instrument as opposed to an administrative or executive instrument. According to the definition of **subsidiary legislation**, an instrument having “legislative effect” is subsidiary legislation.⁹ If the instrument is not subsidiary legislation, it will be published in the Gazette as a Government Notice and not in the Legal Supplement.

3.4.2 If there can be doubt about the status of the instrument, an express provision can be included in the enabling Ordinance to clarify its status. The following forms can be used for clarification provisions.

- If the instrument is not subsidiary legislation—

Example 13

[Name the kind of instrument] made under section X is not subsidiary legislation.

- If the instrument is subsidiary legislation—

Example 14

[Name the kind of instrument] made under section X is subsidiary legislation.

⁹ See LC Papers Nos. CB(2) 696/04-05(02) and CB(2) 827/04-05(01) presented to the Administration of Justice and Legal Affairs Panel by the Department of Justice and the Administration’s paper LC Paper No. CB(2) 1558/10-11(02) presented to the LegCo Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation on criteria generally followed in determining the status of a statutory instrument.

3.5 Instruments of Subsidiary Legislation

Form—no equivalent of LegCo Rule 50

3.5.1 There is no equivalent of LegCo Rule 50 (*form of bills*) for subsidiary legislation. However, requirements as to form have been established by convention and practice. It is recommended that they are followed, to achieve consistency and to maintain the integrity of the Statute Book, unless there is a special reason to depart from them.

Regulations, orders and notices—nomenclature

3.5.2 A set of regulations is referred to in the title in the singular, as “Regulation” (e.g. Building (Minor Works) Regulation (not Regulations) and Antibiotics (Amendment) Regulation (not Regulations)). A whole provision of a regulation, order or notice is referred to as a “section”. The first division of a section is a “subsection”. A subsection is divided into “paragraphs”, a paragraph into “subparagraphs” and so on.¹⁰ In other words, the same nomenclature as for an Ordinance is used (see also paragraph 4.2.2).

Rules—nomenclature

3.5.3 A set of court rules and generally other rules of procedure are referred to in the title in the plural, as Rules (e.g. District Court Civil Procedure (Fees) Rules and Rules of the High Court (Amendment) Rules). An individual whole provision is referred to as a rule. That is, “rule 1”, “rule 2”, “rule 3” and so on. The first division of a rule is a subrule. The divisions of a subrule are paragraphs and the divisions of a paragraph are subparagraphs and so on.

Bylaws—nomenclature

3.5.4 A set of bylaws is referred to in the title in the singular, as a “Bylaw” (e.g. Tung Chung Cable Car Bylaw).¹¹ An individual whole provision is referred to as a “section”. The first division of a section is a “subsection”. The divisions of a subsection are paragraphs and the divisions of a paragraph are subparagraphs and so on.

¹⁰ Formerly, the title of a set of regulations was in the plural, “Regulations”. An individual whole provision was referred to as a “regulation” and the divisions of a regulation as a “subregulation”. Further divisions were referred to as paragraphs, subparagraphs and so on. This practice was discontinued in the mid-1980s and since then the title has been in the singular (“Regulation”). For provisions of a regulation, the same nomenclature as for primary legislation was adopted. However, in regulations that remain in the old form, the former references are still used in amending legislation.

¹¹ Under the earlier system of nomenclature, an individual whole provision of a set of bylaws was referred to as a “bylaw”. In bylaws that remain in the old form, the former references are still used.

Resolutions—nomenclature

3.5.5 The provisions that follow the enacting formula of a resolution are referred to as “paragraphs”.

Language of subsidiary legislation

3.5.6 Subsidiary legislation is drafted in Chinese and English.

Titles of subsidiary legislation

3.5.7 Under the current practice a citation¹² or a title is not formally given to an item of subsidiary legislation. It is cited by the title written at the top of the first page before the enacting words.

3.5.8 Generally, the substance of the short title of the empowering Ordinance should be used followed by a phrase in parentheses indicating the subject matter or purpose of the subsidiary legislation.

Example 15

Buildings Energy Efficiency (Registered Energy Assessors) Regulation

Empowering Ordinance—*Buildings Energy Efficiency Ordinance*
(Cap. 610)

3.5.9 As noted in paragraphs 3.5.2 to 3.5.4, the title is in the singular for a set of regulations or bylaws and an order or a notice. It is in the plural for a set of rules.

3.5.10 As a general rule, the title of an item of new principal subsidiary legislation does not include a reference to the year of publication. (See Chapter 14, Part 6 for titles of amending subsidiary legislation.)

Example 16

Residential Care Homes (Persons with Disabilities) Regulation¹³

Human Organ Transplant (Appeal Board) Regulation¹⁴

3.5.11 However, in certain items of subsidiary legislation that are not amending instruments, the year of publication is included in the title so that they can be distinguished from other subsidiary legislation on the same subject. Examples are—

¹² This is another way of referring to the title or the name of a statute.

¹³ L.N. 111 of 2011.

¹⁴ L.N. 144 of 2010.

- Declaration of Constituencies (District Councils) Order 2011 (L.N. 44 of 2011). (The inclusion of the year enables the Order to be distinguished from other Orders with the same title made in other years.)
- United Nations Sanctions (Liberia) Regulation 2011 (L.N. 47 of 2011) and United Nations Sanctions (Democratic Republic of the Congo) Regulation 2011 (L.N. 46 of 2011). (The year is included for the same reason.)

3.5.12 Similarly, a number can be included in the title of principal (as opposed to amending) subsidiary legislation to distinguish between two items with the same title made in the same year (e.g. United Nations Sanctions (Cote d'Ivoire) (No. 2) Regulation 2011 (Cap. 537 sub. leg. AV).

What is an enacting formula

3.5.13 All subsidiary legislation should contain enacting words to show the authority under which the subsidiary legislation is made (*enacting formula*).¹⁵ It appears directly under the title of the subsidiary legislation, enclosed in parentheses.

Enacting formula to follow language of enabling provision

3.5.14 As a rule, the enacting formula should, as far as possible, follow the precise wording of the provision that authorizes the subsidiary legislation. This is particularly relevant when the power is conferred subject to conditions. This focuses attention on the enabling power and helps to ensure that the circumstances or conditions necessary for its exercise are not overlooked (see also paragraphs 3.1.12 to 3.1.15).

3.5.15 Thus, if the provision empowers the making of subsidiary legislation “with the approval” of a person (as in section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53)),¹⁶ the enacting formula should be in the following form—

Example 17

(Made by the Secretary for Development under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive)

L.N. 149 of 2010

¹⁵ Note that a commencement notice does not have an enacting formula.

¹⁶ Section 3 of the Antiquities and Monuments Ordinance (Cap. 53):

“(1) Subject to section 4, the Authority may, after consultation with the Board and with the approval of the Chief Executive, ...”.

Contents of enacting formula

3.5.16 The enacting formula must—

- (a) specify the person making the subsidiary legislation; and
- (b) cite the enabling provision under which it is made (with the Cap. No. or Ordinance number¹⁷ of the parent Ordinance).

Example 18

(Made by the Chief Justice under section 72 of the Legal Practitioners Ordinance (Cap. 159))

L.N. 37 of 2011

Example 19

(Made by the Secretary for Labour and Welfare under section 24 of the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011))

L.N. 111 of 2011

Examples of enacting formulas

3.5.17 The following examples show how the different elements of enabling provisions are to be reflected in the enacting formula.

- If the power is subject to conditions, cite the conditions—

Example 20

(Made by the Securities and Futures Commission under section 145 of the Securities and Futures Ordinance (Cap. 571) after consultation with the Financial Secretary)

L.N. 29 of 2011

Example 21

(Made by the Hong Kong Institute of Certified Public Accountants under section 8 of the Professional Accountants Ordinance (Cap. 50) with the approval of the Chief Executive in Council)

L.N. 44 of 2010

¹⁷ If made under a new Ordinance that does not have a Cap. No. at the time the instrument is made.

- If the subsidiary legislation is made under more than one enabling provision, cite all of them¹⁸—

Example 22

(Made by the Secretary for Food and Health under section 7J of the Human Organ Transplant Ordinance (Cap. 465) and section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap. 1))

L.N. 144 of 2010

- If the enabling power is conferred on the Chief Executive alone, in view of Article 56 of the BL, it has to be exercised in consultation with ExCo—

Example 23

(Made by the Chief Executive under section 4(1B) of the Pensions (Increase) Ordinance (Cap. 305) after consultation with the Executive Council)

L.N. 105 of 2011

- If the power is conferred directly on the Chief Executive in Council—

Example 24

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60))

L.N. 43 of 2011

- If the subsidiary legislation is made under section 29A of the IGCO (the original section is mentioned to give a complete picture for users' convenience)—

Example 25**Building (Oil Storage Installations) (Amendment) Regulation 2011**

(Made by the Secretary for Financial Services and the Treasury under section 29A of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of¹⁹ section 38(1A) of the Buildings Ordinance (Cap. 123))

L.N. 4 of 2011

¹⁸ Note however that under section 28(1)(a) of the IGCO, when any subsidiary legislation purports to be made under a particular power or powers, it is also taken to be made under all the powers that enable the making of that subsidiary legislation.

¹⁹ The drafter can use “and” instead of “by virtue of”, if preferred.

- The enacting formula of a LegCo resolution—

Example 26

Resolution made and passed by the Legislative Council under section 48 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) on 30 June 2011.

L.N. 119 of 2011

Organization of subject matter

3.5.18 See Chapter 4 for organization of subject matter.

Explanatory Note

3.5.19 As a matter of drafting practice and convention, an Explanatory Note is added at the end of most items of subsidiary legislation. It serves the same purpose as an Explanatory Memorandum to a Bill. See Chapter 8 for guidelines on drafting an Explanatory Note.

3.5.20 An Explanatory Note is not included in a commencement notice. Nor are they included in routine LegCo resolutions. However, if a LegCo resolution is complicated or if it is considered that it would be helpful, an Explanatory Note can be added.

Table of Contents

3.5.21 A Table of Contents should be added unless the instrument is so short that it would not serve a useful purpose (see paragraphs 4.6.1 and 4.6.2 for more information).

Signature

3.5.22 Subsidiary legislation should be signed by or on behalf of the person making it.

3.5.23 The name, title and signature of the person making the subsidiary legislation, or the person signing on behalf of that person, (together with the date of signing) are added at the end of the instrument (but before the Explanatory Note).

3.5.24 If the power to make subsidiary legislation is to be exercised with the approval of or in consultation with another person (see paragraphs 3.1.15 to 3.1.18), it is not necessary for the person whose approval is required or who is required to be consulted to sign it to demonstrate that the conditions precedent to making the

subsidiary legislation have been fulfilled. In view of section 38 of the IGCO (*presumption of lawful exercise of power*), it is sufficient if only the person who makes the subsidiary legislation signs it.

3.5.25 If the power is conferred on the Chief Executive alone, the subsidiary legislation may be signed by a public officer specified in Schedule 6 to the IGCO (*public officers*).

3.5.26 If the power is conferred on the Chief Executive in Council, the subsidiary legislation may be signed by the Clerk to ExCo. See section 62(1)(b) of the IGCO (*signification of orders of Chief Executive and Chief Executive in Council*).

3.6 Commencement of Subsidiary Legislation

Section 28(3), (4) and (5) of IGCO

3.6.1 The commencement of subsidiary legislation is provided for in section 28(3), (4) and (5) of the IGCO (*general provision with regard to power to make subsidiary legislation*).

3.6.2 If no provision is made in subsidiary legislation for its commencement, it will come into operation on the date of its publication in the Gazette.²⁰

3.6.3 If it is to commence on a date other than the date of publication, a separate commencement provision should be included in the instrument.

Commencement on specified date

3.6.4 The commencement provision may specify the date/dates on which the subsidiary legislation is to come into operation (*Examples 27 and 28*).

Example 27

1. Commencement

This Regulation comes into operation on 1 February 2012.

²⁰ In selecting a specific commencement date, it is important to keep in mind section 34 of Cap. 1. The practice is to allow, wherever possible, the full negative vetting period under that section (28 days + 21 days) to run its course before bringing an item of subsidiary legislation into operation.

Example 28**1. Commencement**

This Regulation comes into operation on the day appointed for the commencement of section 24 of the Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011).

L.N. 111 of 2011

Commencement on appointed date

3.6.5 Instead of specifying a date of commencement, the commencement provision may empower a specified person to appoint a day on which it is to come into operation (*Example 29*).²¹

Example 29**1. Commencement**

This Regulation comes into operation on a day to be appointed by the [appointing authority] by notice published in the Gazette.

3.6.6 Section 28(4) of the IGCO allows the power to appoint a day to bring the subsidiary legislation into operation to be subdelegated.

3.6.7 Section 28(5) of the IGCO allows the commencement of different provisions on different days. However, note that unlike section 20(3) of the IGCO (*commencement, etc., of Ordinance*) (which is the corresponding provision for Ordinances), it does not expressly provide for the commencement of the same provision on different days for different purposes if commencement is to be on a day or days appointed by notice published in the Gazette.

Mixed commencement provisions

3.6.8 To make different arrangements, *Examples 4* and *5* in paragraph 2.2.13 can be used, suitably modified.

No retrospective commencement

3.6.9 Subsidiary legislation can only be made to commence retrospectively if it is authorized by the Ordinance under which it is made.

²¹ This form allows the appointment of a single date for all the provisions or different dates for different provisions.

3.7 Commencement Notices

What is a commencement notice

3.7.1 A commencement notice is a notice published in the Gazette appointing a day or days for the commencement of an Ordinance or an item of subsidiary legislation. (See section 20(3) of the IGCO for Ordinances and section 28(4) and (5) of the IGCO for subsidiary legislation.)

3.7.2 A commencement notice is treated as subsidiary legislation and is published as a legal notice and tabled in LegCo (see also footnote 20 to this Chapter).

Standard forms

3.7.3 If the power to appoint a commencement date is delegated or subdelegated to the Chief Executive (whether in primary legislation or in subsidiary legislation), in view of Article 56 of the BL, it is exercised in consultation with ExCo. (*Example 30* shows the form of a commencement notice made under such a provision.)

Example 30

ABC Ordinance (Commencement) Notice

Under section 1(2) of the ABC Ordinance (2 of 2012), I, after consultation with the Executive Council, appoint [specify date] as the day on which the Ordinance comes into operation.

Chief Executive

... January 2012

3.7.4 The standard provision for the commencement of an Ordinance on a day to be appointed by a designated authority is shown in *Example 31*. The commencement notice published under it to bring the Ordinance into operation on a single date should be in the form shown in *Example 32*.

Example 31

This Ordinance comes into operation on a day to be appointed by the [appointing authority] by notice published in the Gazette.

Example 32**XYZ Ordinance (Commencement) Notice**

Under section 1(2) of the XYZ Ordinance (5 of 2012), I appoint [specify date] as the day on which the Ordinance comes into operation.

Secretary for []

... January 2012

3.7.5 The standard provision for the commencement of a regulation on a day to be appointed by a designated authority should be in the form shown in *Example 33*. The commencement notice published under it to bring the regulation into operation on a single date should be in the form shown in *Example 34*. (The examples can be adapted for other kinds of subsidiary legislation instruments.)

Example 33

This Regulation comes into operation on a day to be appointed by the [appointing authority] by notice published in the Gazette.

Example 34**XYZ Regulation (Commencement) Notice**

Under section 1 of the XYZ Regulation (L.N. 10 of 2012), I appoint [specify date] as the day on which the Regulation comes into operation.

Secretary for []

... March 2012

3.7.6 *Example 35* shows the form to bring only a part of an enactment into operation. The year is added at the end of the title of a commencement notice that brings only a part of an enactment into operation or brings it into operation for a specified purpose only.

Example 35**ABC Ordinance (Commencement) Notice 2012**

Under section 1(2) of the ABC Ordinance (15 of 2012), I appoint [specify date] as the day on which the Ordinance (except sections 5 and 7) comes into operation.

Secretary for []

... June 2012

3.7.7 If more than one commencement notice is made in one year for the same enactment, in the second and subsequent notices the number is also added, starting with “No. 2” (*Example 36*). If a third commencement notice is made in respect of the same enactment in the following year, it would be treated as the first notice for that year, partially commencing the enactment (i.e. the year but not a number will be added to the title).

Example 36

ABC Ordinance (Commencement) (No. 2) Notice 2012

Under section 1(2) of the ABC Ordinance (Cap. No.), I appoint [specify date] as the day on which sections 5 and 7 of the Ordinance come into operation.

Secretary for []

... August 2012

3.7.8 If a commencement notice is to be signed by a person other than the person appointing the date—

Example 37

ABC Ordinance (Commencement) Notice

Under section 1(2) of the ABC Ordinance (Cap. No.), the Chief Executive, after consultation with the Executive Council, appoints [specify date] as the day on which the Ordinance comes into operation.

[Public officer specified in Schedule 6 to the IGCO]

... December 2012

3.8 Resolutions of the Legislative Council

3.8.1 If an item of subsidiary legislation is amended during the negative vetting process (i.e. by a resolution of LegCo under section 34 of the IGCO (*placing of subsidiary legislation before Legislative Council*)), the resolution with the amendments is published in the Gazette.²² The amendments should be set out in a Schedule to the resolution (see also paragraph 15.2.3).

²² Under section 34(4) of the IGCO, the period for scrutiny in section 34(2) (read with section 34(3)) can be extended by a resolution. Section 34(5) of the IGCO provides for the publication of resolutions passed under section 34.

3.8.2 If the enabling provision provides that the approval of LegCo is required for the subsidiary legislation to be effective (the positive vetting procedure under section 35 of the IGCO (*approval of Legislative Council to subsidiary legislation*)), the instrument has to be submitted to LegCo for approval before publication. The mechanism is as follows—

- 2 instruments are drafted—i.e. the actual resolution to be passed by LegCo (referred to as the “short form”) and the Gazette notice of the resolution (long form).
- When the subsidiary legislation is approved, it is published in the Gazette together with the long form.
- If the subsidiary legislation is approved by LegCo subject to amendments, the amendments will be reflected in the long form (generally, set out in a Schedule); the subsidiary legislation however will be published in the form in which it was originally made.

4

Organizational Matters

This Chapter describes the principles and practices that will help in organizing subject matter in principal legislation to achieve the objective of effective and accurate communication. It also sets out the guidelines for numbering provisions in an enactment.

4.1

Rules for Organization

General principles

4.1.1 The provisions of an enactment should be organized logically. This applies to both the enactment as a whole as well as to the individual units within it (Parts, Divisions, sections, etc.). The following guidelines may be helpful—

- General provisions normally come before specific provisions.
- More important provisions normally come before less important provisions.
- More frequently used provisions normally come before less frequently used provisions (i.e. the usual before the unusual).
- Permanent provisions normally come before temporary provisions.
- Provisions should where practicable follow a chronological sequence of events.

Principal vs subsidiary legislation

4.1.2 Subsidiary legislation is legislation that is made under powers delegated by LegCo (see paragraphs 1.3.1 and 3.1.1). The delegation of legislative power is a well-established and long-standing practice. The question of what should be included in the principal Ordinance and what should be dealt with by subsidiary legislation should be a matter for balanced consideration at the design stage of the legislative scheme.¹

¹ See LC Papers Nos. CB(2) 1558/10-11(01), CB(2) 1558/10-11(02), CB(2) 1974/10-11(01), CB(2) 1974/10-11(02) and CB(2) 2414/10-11(01) presented by the Administration to the LegCo Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation in April, June and July 2011.

4.1.3 Broadly and generally, the division is based on the distinction between matters of principle and detail or between substantial matters of policy and ancillary and technical matters relating to their implementation. From a technical point of view, using subsidiary legislation to deal with ancillary and technical matters results in a more clearly organized Ordinance.

4.1.4 Some reasons for the use of subsidiary legislation are—

- to deal with matters of a procedural, technical or operational nature;
- to deal with situations that would need to be dealt with expeditiously or urgently;
- to deal with matters that are likely to change frequently or would otherwise need a flexible approach; and
- to reduce the pressure on LegCo time.

Main provisions vs Schedules

4.1.5 In Ordinances, a Schedule is also a convenient device for dealing with matters of detail which could otherwise encumber the main provisions. The general practice is for matters of principle to be in the body of the enactment and supplemental or ancillary matters (e.g. technical or procedural matters, repeals, savings and transitional provisions or consequential amendments, texts of treaties or agreements, forms, etc.) to be included in Schedules.

4.1.6 A Schedule can also be used to set out provisions that are suitable for amendment by a delegated authority, under a power to amend included in the main body of the enactment.

4.1.7 In subsidiary legislation also, matters of detail, forms, fees, etc. can be separated from the main provisions and set out in Schedules.

4.1.8 See Chapter 7, Part 2 for more information on Schedules.

Sequence of provisions—Ordinances

4.1.9 Generally, provisions should be arranged in the following sequence in any principal Ordinance²—

- Long title
- Preamble (if any)
- Enacting formula
- Short title and commencement

² For the arrangement of clauses in an amending Ordinance, see Chapter 14.

- Purpose clause (if any)
- Interpretation provisions (definitions)
- Application provisions (if any)
- Other preliminary provisions (if any)
- Substantive and administrative provisions

Note: Generally, principal provisions should precede administrative provisions as it is always preferable to present what is important and at the heart of the proposals before machinery.³

- Miscellaneous and supplementary provisions

Note: These include enforcement provisions (e.g. penal provisions, powers of entry, search and seizure), immunity provisions, service provisions, delegation provisions and regulation-making provisions. (See also Thornton (1996), Chapters 15 and 16).

- Repeals of other enactments
- Savings and transitional provisions; consequential amendments to other enactments⁴
- Duration/Expiry

Note: It is advisable to place these provisions, as well as other provisions of a temporary nature, at the end of the legislation so that they will not hinder the flow of matters of permanent significance.

- Schedules
- Explanatory Memorandum

Order of arrangement—subsidiary legislation

4.1.10 For subsidiary legislation, the appropriate arrangement will depend mainly on the substance. For example, paragraphs 4.1.1 and 4.1.7 may not be relevant if the subsidiary legislation is a short notice or order. They may however be relevant if the subsidiary legislation is a substantial set of regulations, rules or bylaws. If so, the principles for the organization of provisions in an Ordinance should generally be followed.

³ See Thornton (1996) for a discussion on substantive and administrative provisions that establish statutory bodies (Chapter 12), set up licensing and registration systems (Chapter 13) and deal with validation, implementation of international conventions and tribunals (Chapter 14).

⁴ Repeals, savings and transitional and consequential amendments can be placed in Schedules as well.

4.1.11 The organization of subsidiary legislation differs from an Ordinance in the following technical aspects—

- The enacting formula is put in brackets directly under the title of the subsidiary legislation. The name, title and signature of the person making the subsidiary legislation, or the person signing on behalf of that person, (together with the date of signing) are added at the end of the instrument.
- There is no long title or preamble in subsidiary legislation.
- Subsidiary legislation is not formally given a citation. Its title is set out at the top of the first page before the enacting formula.
- Subsidiary legislation does not usually contain consequential amendments to other enactments.
- Instead of an Explanatory Memorandum, subsidiary legislation has an Explanatory Note.

Division into sections—principal legislation

4.1.12 The body of any principal legislation, whether primary or subsidiary, is divided into sections. Sections are numbered consecutively in Arabic numerals. A section as a whole should have a unity of purpose and a central theme. See also Chapter 2, Part 3 for basic rules to be followed when organizing provisions into sections. The principles in that Part apply to subsidiary legislation as well although the divisions may sometimes not be referred to as sections. See paragraphs 3.5.2 to 3.5.5 and 4.2.2 for the different nomenclature of certain instruments of subsidiary legislation.

4.1.13 As required by LegCo Rule 50, each clause of a Bill (and so each section) has to be consecutively numbered and given a heading. Although there is no such formal rule for subsidiary legislation, as a matter of drafting convention, each whole provision is given a heading. See Parts 2 and 5 of this Chapter for more information on the numbering of provisions and headings.

Division into subsections

4.1.14 If a section is long, the practice is to separate distinct propositions into subsections. (Again, see also Chapter 2, Part 3.) Those general principles apply to both primary legislation and subsidiary legislation.

No provisos

4.1.15 Provisos are often the cause of ambiguity and uncertainty and should not be used. If the use of the usual alternatives of “but”, “except that” etc. does not work in the context, a separate subsection or other division should be created.

Division into paragraphs and subparagraphs

4.1.16 If necessary a subsection can be divided into paragraphs and a paragraph into subparagraphs. Normally no further division should be made. See Part 4 of this Chapter for more information on paragraphing.

Grouping into Parts, Divisions and Subdivisions

4.1.17 Unless the principal legislation is short or seeks only to provide a straightforward scheme, it is common to group together sections sharing a common subject matter to form a “Part”.

4.1.18 Grouping sections into Parts enhances clarity of presentation and contributes to effective communication. It can indicate the close association of provisions that are related (e.g. provisions that apply to a specific class of persons or to specific circumstances) and also indicate their separation from provisions concerning unrelated topics (e.g. administrative provisions vs financial provisions). It also has the advantage of breaking up the text so that the legislation is not just one uninterrupted stream of sections. (See also Thornton (1996), p. 55.)

4.1.19 A Part can be divided into Divisions, and a Division into Subdivisions, for the same reasons that sections are grouped into Parts.

4.1.20 A Part, Division or Subdivision is given a number and a descriptive heading (see Parts 3 and 5 of this Chapter).

No arrangement under cross-headings

4.1.21 The practice of grouping provisions under cross-headings⁵ has now been discontinued. This is largely because of the inconvenience of referring to cross-headings in an amending exercise. The practice of arranging consequential amendments to different enactments under cross-headings has also been discontinued. In both cases, a Division or a Subdivision can be used in place of a cross-heading arrangement.

⁵ A cross-heading is a numberless centrally aligned heading under which a group of related provisions are arranged.

Schedules

4.1.22 A Bill or an item of subsidiary legislation may have one or more Schedules. A Schedule should however normally contain only ancillary or technical matters or matters of detail, as opposed to substantive matters.

4.2 Numbering of Provisions

Provisions of an Ordinance

4.2.1 The provisions of an Ordinance are numbered as shown in Table 4.1.

Table 4.1. Numbering of provisions in an Ordinance.

Unit/provision of Ordinance	Numbering system
Section	Identified by consecutive Arabic numerals, i.e.— 1. ... 2. ... 3. ...
Subsection	Identified by bracketed consecutive Arabic numerals, i.e.— (1) ... (2) ... (3) ...
Paragraph	Identified by bracketed consecutive alphabetical letters, i.e.— (a) ... (b) ... (c) ...
Subparagraph	Identified by bracketed consecutive small Roman numerals, i.e.— (i) ... (ii) ... (iii) ...
Sub-subparagraph	Identified by bracketed consecutive alphabetical letters in capitals, i.e.— (A) ... (B) ... (C) ...

Subsidiary legislation—current and earlier nomenclature

4.2.2 Table 4.2 shows the numbering of provisions in subsidiary legislation. As explained in Chapter 3, different kinds of subsidiary legislation use different nomenclature. Further, some older items of subsidiary legislation represent the earlier style (see footnotes 10 and 11 to Chapter 3).

Table 4.2. Numbering of provisions in subsidiary legislation.

Unit/provision of subsidiary legislation	Numbering system
Section (also regulation/rule/bylaw)	Identified by consecutive Arabic numerals, i.e.— 1. ... 2. ... 3. ...
Subsection (also subregulation/subrule)	Identified by bracketed consecutive Arabic numerals, i.e.— (1) ... (2) ... (3) ...
Paragraph	Identified by bracketed consecutive alphabetical letters, i.e.— (a) ... (b) ... (c) ...
Subparagraph	Identified by bracketed consecutive small Roman numerals, i.e.— (i) ... (ii) ... (iii) ...
Sub-subparagraph	Identified by bracketed consecutive alphabetical letters in capitals, i.e.— (A) ... (B) ... (C) ...

Numbering of new provisions

4.2.3 If a new provision is to be added after the final section of the enactment, or the final subsection of a section, the next Arabic numeral in numerical sequence is used. If a new provision is to be added after the final paragraph of a section or subsection or the final sub-subparagraph of a subparagraph the next letter in alphabetical sequence is used. If a new provision is to be added after the final subparagraph of a paragraph the next small Roman numeral in numerical sequence is used.

4.2.4 If a new provision is to be added between 2 existing provisions, letters of the alphabet are used to give the new provision a distinct number. Table 4.3 shows the system by which letters are added.

4.2.5 As a general rule a section should not have a number comprising more than 6 alphanumeric characters and any other level of provision should not have a number comprising more than 5 alphanumeric characters. Re-numbering should where possible be undertaken to avoid an excessively long number.

4.2.6 This numbering style applies to sections, subsections, paragraphs and subparagraphs. For sections and subsections the letter is in the upper case and for paragraphs and subparagraphs it is in the lower case. As mentioned in paragraph 4.1.16 normally no further subdivision should be made. However, if the enactment does contain sub-subparagraphs, the same numbering style applies but the letter is in the upper case. The same rules apply to subsidiary legislation that uses different nomenclature.

4.2.7 This system for numbering new provisions can be departed from if it is not compatible with the numbering of existing provisions in the vicinity of the new provision.

Table 4.3. Numbering of a new provision between 2 existing provisions.

Section No.			
7.			
			(add between 7. and 7AAA) 7AAAA 7AAAAAB 7AAAAAC ... 7AAAAAZ
			(add between 7. and 7AA) 7AAA 7AAAAB 7AAAAC ... 7AAAAZ 7AAAZA
			(add between 7. and 7A) 7AA 7AAB 7AAC ...
(add between 7. and 8.) 7A 7B 7C ... 7Z 7ZA	(add between 7A and 7B) 7AB 7AC 7AD ... 7AZ 7AZA	(add between 7AB and 7AC) 7ABA 7ABB 7ABC ... 7ABZ 7ABZA	(add between 7ABA and 7ABB) 7ABAB 7ABAC 7ABAD ... 7ABAZ 7ABAZA
8.			

4.3 Numbering of Parts, Schedules etc.

Parts, Divisions, Subdivisions and Schedules

4.3.1 In both principal and subsidiary legislation, Parts, Divisions, Subdivisions and Schedules are numbered using Arabic numerals. However there is no formal rule that requires numbering as there is for sections of an Ordinance.

Example 1

Part 5

Enforcement of Regulation

Division 1—Investigation of Suspected Ships

4.3.2 In an amending Bill or instrument, when adding a new Part, Division, Subdivision or Schedule, the same numbering system as that explained with reference to sections in paragraph 4.2.3 is used (e.g. Part 5A of the Air Pollution Control (Volatile Organic Compounds) Regulation (Cap. 311 sub. leg. W)).

4.3.3 In earlier legislation, Parts were numbered using Roman numerals, as PART I, PART II, PART III, PART IV, etc. (see the Employment Ordinance (Cap. 57)). When adding a new Part to such an Ordinance, usually the same numbering system is followed unless the existing numbers are also replaced by Arabic numerals. The numbering can also be changed under the Legislation Publication Ordinance (13 of 2011) to conform to the current system.

4.3.4 For more information on Schedules, see Chapter 7, Part 2.

4.4 Paragraphing

Object of paragraphing

4.4.1 The main aims of paragraphing are to avoid ambiguity and to help the reader to understand a complex or lengthy sentence. It is not simply to shorten the text by avoiding repetition, although it may be a beneficial by-product.

Introductory words

4.4.2 Paragraphs, subparagraphs and so on should always be preceded by introductory words.

4.4.3 The following form, which sets out an independent sentence as a paragraph without any introductory words, should not be used—

Not to be used

ABC Corporation established

1. (a) The ABC Corporation is established.
- (b) The ABC Corporation consists of 5 members appointed by the Chief Executive.

Paragraph appropriately and grammatically

4.4.4 A series of paragraphs in a section or subsection should follow accepted grammatical rules. In addition, for ease of comprehension, paragraphs should be confined to a particular subject or to one aspect of a subject. Unrelated subjects or unrelated aspects of a subject should not be included in one series of paragraphs.

4.4.5 The elements set out in paragraphs should be grammatically and logically parallel to each other. The paragraphs taken together should read as a coherent whole and as an intelligible grammatical sentence.

Conjunctions between paragraphs

4.4.6 In a series of paragraphs or subparagraphs, LDD's standard practice is to use a linking word such as "and" or "or" only in the penultimate paragraph or subparagraph. That is, a single "or" to indicate the disjunctive or a single "and" to indicate the conjunctive is used as appropriate at the end of the next-to-last item in a series of paragraphs or subparagraphs.

4.4.7 It should be clear whether the paragraphs or subparagraphs are intended to be cumulative, exclusive or otherwise. If necessary, consider using an expression such as "both of the following", "either of the following", "one of the following" "one or more of the following", "all of the following", "any of the following" or "all or any of the following" in the lead-in to make the meaning apparent to the reader. If such an expression is used it is not necessary to use a conjunction. If "as follows" or "the following" (without a determiner) is used in the lead-in, the drafter may use a conjunction if it helps to make the meaning clearer.

Bilingualism and paragraphing

4.4.8 LDD practice is that the breakdown of sections into subsections, paragraphs etc. should be identical in the Chinese text and the English text. If following this rule creates problems, the corresponding text may need to be modified to achieve an acceptable solution. Often the simple solution will be to create another subsection.

Sandwich clauses

4.4.9 A sandwich clause is one in which a series of paragraphs is enclosed or “sandwiched” by the opening and closing lines of the sentence (*Example 2*).

Example 2

If an applicant for registration satisfies the Commissioner that he or she—

- (a) has been resident in Hong Kong for at least X years;
- (b) holds a qualification referred to in section Y; and
- (c) has at least Z years post-qualification experience,

the Commissioner must register the applicant as ...

4.4.10 A sandwich clause should be used only if it is the structure best suited for the particular case. If an alternative structure that makes the text just as easy to read and understand is possible, a sandwich clause should not be used.

4.4.11 If a sandwich clause is used, the rules relating to paragraphing should be observed. Each paragraph should be capable of being read grammatically with the top and bottom sections (i.e. the top and bottom sections should fit seamlessly with each of the paragraphs).

Two series of paragraphs in one sentence

4.4.12 A sentence comprising 2 series of paragraphs or subparagraphs in one sentence is difficult to read and should not be used.

Not to be used⁶

Main clause ... —

(a) ...;

(b) ...;

continuation of clause ... —

(c) ...;

(d) ...

⁶ This structure should not be used whether or not the sentence ends with paragraph (d) and whether or not (c) and (d) are numbered as subparagraphs instead of paragraphs.

4.5 Headings

General

4.5.1 A heading serves as a signpost for the reader. It tells the reader what the legislative text that follows the heading is about. Taken together, the headings of Parts, Divisions, Subdivisions and sections can give the reader a good overview of what the enactment as a whole is about. So, it is important to keep the Table of Contents in mind when drafting a heading.

4.5.2 For headings of amending provisions, see Chapter 15.

Section headings

4.5.3 A section heading—

- should be descriptive but not attempt to be a comprehensive summary of the contents of the section;
- should indicate the broad scope of the provision, but be brief, accurate and to the point;
- need not be a complete grammatical sentence (it may be a phrase or verb-free);
- preferably should not contain articles or auxiliaries; and
- may be phrased as a question but without a question mark.

Some guidelines for drafting headings

4.5.4 The following may be useful to bear in mind when drafting headings—

- It is helpful for a Part or other higher-level heading to be expressed in a few keywords.
- It is rarely necessary for lower-level headings to repeat information that has been established by higher-level headings.
- Try to summarize rather than repeat the information found in the text.
- A heading should be a signpost to help the reader find information rather than a detailed map (too much detail can make the heading less eye catching and the information less accessible).
- Try to keep the heading short; ideally it should not exceed 2 lines.

4.6 Table of Contents

4.6.1 A Table of Contents is an important navigational tool to help users find their way around complex legislation. LDD practice is to include a Table of Contents in both primary and subsidiary legislation, including an amending Ordinance and amending subsidiary legislation, unless the legislation is so short that a Table of Contents would be pointless. The Table of Contents should appear at the beginning, before the legislative text.

4.6.2 The following applies to a Table of Contents—

- The Table of Contents should consist of a sequential table of section headings arranged under their Part headings, Division headings and Subdivision headings, if any.
- In an amending Bill or amending subsidiary legislation, if sections are added or substituted, the Table of Contents should show the section heading of both the amending provision and the added or substituted section as shown below.

Example 3

- 35. Section 64 substituted
 - 64. Offence of contravention of requirements of Ordinance
- 36. Section 64A added
 - 64A. Time limit for prosecutions

5

Interpretation Provisions

The purpose of using definitions or other interpretation provisions is to make legislation easier to read and understand and to enhance its clarity. Definitions can be used in many situations, including to give certainty to the meaning of a word or expression, to limit or extend its ordinary meaning or to avoid repetition. This Chapter sets out certain conventions observed in the drafting of definitions and other interpretation provisions and some related technical drafting issues.¹

5.1

Definitions of General Application

Definitions in IGCO

5.1.1 Under section 2 of the IGCO (*application*), the provisions of the IGCO apply in the absence of a contrary intention in a particular enactment. Section 3 of the IGCO (*interpretation of words and expressions*) contains definitions for the interpretation of words and expressions used in all legislation. Therefore, if a word or expression is intended to have the same meaning as in the IGCO, it is best not to define it again. If it is a key term for the purposes of the enactment, it may be helpful to draw the reader's attention to the definition in the IGCO by a note.

Section 31 of IGCO

5.1.2 Under section 31(1) of the IGCO (*construction of subsidiary legislation*), expressions used in subsidiary legislation made under an Ordinance have the same meaning as in that Ordinance. In view of this section, generally, expressions defined in an Ordinance are not defined again in subsidiary legislation made under it.

5.2

General Drafting Matters

Group together in general provision

5.2.1 Definitions of general application within the enactment should be grouped together in an "Interpretation"² provision, which should be one of the early clauses (usually the second or third clause).³ The standard form is as follows.

¹ See also Thornton (1996), pp. 144-154.

² This is the usual heading of the general interpretation provision.

Example 1**2. Interpretation**

In this Ordinance—

certificate (證明書) means ...

Definitions in Schedule

5.2.2 If the list of definitions is very long it can be placed in a Schedule. If that is done, a linking provision should be included at the beginning of the enactment.

Example 2 shows a suitable form.

Example 2**2. Interpretation**

Terms that are used in this Ordinance and defined in Schedule [1] have the meanings set out in that Schedule.

Stand-alone definitions

5.2.3 Stand-alone definitions can be used to highlight the importance of a concept. For example, if it is a key concept (see section 8 of the Race Discrimination Ordinance (Cap. 602) and section 2 of the Employees' Compensation Ordinance (Cap. 282)). They can be used if the definition is too long to be included in the general interpretation provision and has to take a narrative form or be split between subsections (see section 196 of the Copyright Ordinance (Cap. 528)).

Definitions specific to a Part etc.

5.2.4 Definitions that apply only to a particular Part, Division, Subdivision or section should be placed in that Part, Division, Subdivision or section in a suitable position.

Example 3

In this Part—

certificate (證明書) means ...

Index of definitions

5.2.5 In a long Bill with many definitions, an index of defined terms could be helpful to the reader. An index can be included in the body of the enactment (e.g. sections 199 and 239 of the Copyright Ordinance (Cap. 528)). Alternatively, the

³ In subsidiary legislation the "Interpretation" provision would be the first section if there is no commencement provision.

index can be published with the Bill for information and not as part of the law. Later it can be published editorially on BLIS and the Loose-leaf Edition and updated editorially to reflect any amendments to the legislation. (See the index of definitions of the Companies Bill, published in the Gazette on 14 January 2011.)

“Unless the context otherwise requires” no longer used

5.2.6 In the past, the expression “Unless the context otherwise requires ...” was used to qualify the opening words of an interpretation provision. This practice has now been discontinued because it is considered unnecessary and unhelpful to the reader. It is unnecessary because words and expressions are understood in their context even without this express qualification.⁴ It is unhelpful because it does not tell the reader in which provisions there is a contrary intention and also can create uncertainty about the meaning of the defined term.

Use a different defined term

5.2.7 The drafter should ensure that a defined term has the meaning given to it by the interpretation provision in the contexts in which it appears. If the defined term has a different meaning in a provision, it is preferable to use a different term or, if that is not possible, a definition specific to that provision. The provision-specific definition may be included either in the general interpretation provision (*Example 4*) or in the specific provision. In the latter case, it would be useful to indicate that the term has more than one definition (*Example 5*).

Example 4

road (道路)—

- (a) except in section 8, means ...;
- (b) in section 8, means ...

Example 5

road (道路)—

- (a) except in Part 5, means ...;
- (b) in Part 5, has the meaning given by section 32.

⁴ *Lisbeth Enterprises Ltd v Mandy Luk* (2006) 9 HKCFAR 131 per Bokhary PJ, “Section 2(1) contains an express statement to the effect that the definitions which it provides must give way to any different meaning that the context may require. It has become common to the point of being routine for definition sections to stipulate qualifications of that nature. But such qualifications are probably no more than what would be implied anyway.”.

Arrangement—alphabetical order or number of strokes

5.2.8 Definitions in the English text should be arranged in alphabetical order. Definitions in the Chinese text should generally be arranged according to the number of strokes in the first character.

5.2.9 Each defined term (whether appearing in the general interpretation provision or elsewhere) should have next to it, the equivalent term in Chinese or English within parentheses, as the case requires.

Example 6

editorial amendment (編輯修訂) means an amendment to an Ordinance made under section 12;

編輯修訂 (editorial amendment) 指根據第12條對某條例作出的修訂；

Terms unsuitable for Chinese text

5.2.10 Defined terms that include “relevant” (e.g. “relevant date”, “relevant person”) can cause difficulties for the Chinese text. The only practicable Chinese equivalent for “relevant” in the defined term is “有關”. This term is also adopted as the Chinese equivalent for “in question”, “concerned”, “the” etc., which are usually not defined. Therefore it is better to use an alternative (e.g. “prescribed”, “specified”, “regulated” or “controlled”) in the English text. (See also paragraph 5.2.21.)

Do not use “means and includes”

5.2.11 The form “means and includes” should not be used. The split forms “means ... and includes” or “means ... but does not include” may be used in appropriate circumstances (see Thornton (1996), p. 149). If “excludes” is used instead of “does not include” in conjunction with either “means” or “includes”, make sure that the sentence structure is grammatically correct.

Use of “includes”

5.2.12 The word “includes” standing by itself is useful to indicate that a definition is not exhaustive.

Additional guidelines

5.2.13 Drafters may also find the additional guidelines in the following paragraphs useful when drafting definitions.

5.2.14 As a general rule, it is not necessary to use a definition to explain the meaning of a term that is used only once. For example, if “drafter” is used only in one section (e.g. “This section does not apply to a drafter.”), instead of defining the term (e.g. “**drafter** means a person who drafts legislation”) the section can say “This section does not apply to a person who drafts legislation.”. Exceptions to the rule are the use of a definition to shorten an otherwise long section or the inclusion of a definition specific to a section if the defined term has a different meaning in that section.

5.2.15 Do not include a substantive provision in a definition (see Thornton (1996), p. 150).

5.2.16 Avoid defining more than one term in the same definition. Avoid “In this Ordinance—**A**, **B** and **C** mean X, Y and Z.”. Define A, B and C separately. This applies to a definition by reference as well. That is, avoid saying “In this Ordinance **A**, **B** and **C** have the meanings given to them by section 2(1) of ...”. If for some reason A, B and C are defined together, it may not be necessary to use “mean respectively” or “have the respective meanings ...” or a similar expression as usually this is self-evident.

5.2.17 If a term is used in only one Part, Division, Subdivision or section, define it in that Part, Division, Subdivision or section.

5.2.18 Be careful about using the defined term in the definition as it can give rise to circularity. This does not apply to a definition included to avoid repetition (e.g. “**application** means an application made under section X”) or a definition that is intended to narrow the meaning of term (e.g. “**meat** means meat that is sold for human consumption”).

5.2.19 Do not define a term in a way that is totally at odds with its commonly accepted or dictionary meaning.

5.2.20 Do not define a term by giving its ordinary or dictionary meaning. If the term is being used in its ordinary sense, then it should not be necessary to define it.

5.2.21 If possible use, in both Chinese and English texts, a descriptive term that contains a key word that gives a clue to the meaning of the defined term, instead of, for example, colourless terms like “relevant” or “prescribed” (unless the latter is used in the sense of prescribed by subsidiary legislation). See also paragraph 5.2.10.

5.2.22 Avoid defining a term in one provision for neighbouring provisions. That is, avoid saying in section A—

“In this section and section B—**X** means...”.

It is better to define **X** in section A, and to define **X** in section B by reference—

“In this section—**X** has the meaning given by section A”.

5.2.23 When the final draft of the legislation has been prepared, the interpretation clause should be checked carefully to ensure that each defined word is used in the draft. Words are sometimes used and defined at one stage of the drafting process and subsequently omitted.

5.3 Definition by Reference to Another Definition

Avoid unless necessary

5.3.1 Defining a term by reference to the meaning given to it in another enactment is best avoided as it is not helpful to the reader. However, this is a matter in which the drafter can use personal judgement. In some situations it may be the most appropriate option (e.g. if the definition incorporated by reference is in turn based on other defined terms). When incorporating by reference, follow the guidelines in this Part as far as possible. They apply to defining by reference to another enactment or to a provision in the same enactment.

Cite the exact provision

5.3.2 Wherever possible, identify the section, including the subsection number if the definition is in a subsection, containing the definition.

“has the meaning given by”

5.3.3 Use the expression “has the meaning given by” to define a term with reference to an existing definition in a particular provision. This applies regardless of how the term is defined in that provision (i.e. whether “means”, “includes”, “does not include/excludes” or “means ... but does not include/excludes” is used).

Example 7

In this Ordinance—

healthcare professional (醫護專業人員) has the meaning given by section 2(1) of the ABC Ordinance (Cap. No.).

“has the same meaning as in”

5.3.4 If it is not possible to cite the exact provision in the definition,⁵ use the expression “has the same meaning as in” and refer to the enactment or the part of enactment containing the definition. Obviously this can be used only if the term has a uniform meaning throughout the enactment or the part.

⁵ This could be because the meaning is not confined to a particular provision.

Example 8

In this Ordinance—

healthcare professional (醫護專業人員) has the same meaning as in the ABC Ordinance (Cap. No.).

“have the same meaning as in”

5.3.5 Use the expression “have the same meaning as in” to incorporate wholesale the definitions of another enactment.

Example 9

The words and expressions used in this [enactment] and defined in the ABC Ordinance (Cap. No.) have the same meaning as in the ABC Ordinance (Cap. No.).

“as defined by”

5.3.6 Use the expression “as defined by” to refer to the meaning given to the same term by a definition in another enactment or another provision.

Example 10

This Ordinance does not apply to a ship as defined by section X of the ABC Ordinance (Cap. No.).

Example 11

A person who is a **public officer** (as defined by section Y) is not eligible for appointment under this section.

Example 12

In this Ordinance—

bird (禽鳥) does not include a racing pigeon as defined by section 2(1) of the ABC Ordinance (Cap. No.);

medical certificate (醫學證明書) means a certificate given by a healthcare professional as defined by section 2(1) of the ABC Ordinance (Cap. No.).

“within the meaning of”

5.3.7 The expression “within the meaning of” can be used in a variety of situations that are not covered by paragraphs 5.3.3 to 5.3.6—

- (a) to refer to part of a definition—

Example 13

This section does not apply to a building within the meaning of paragraph (a) of the definition of **building** in section 2 of the ABC Ordinance (Cap. No.).

- (b) to refer to a meaning given in narrative form to a term. For example, if the concept of an article in transit is defined by section X of the ABC Ordinance (Cap. No.) as “... for the purposes of this Part an article is/is taken to be in transit if ...”—

Example 14

This section applies to an article that is in transit within the meaning of section X of the ABC Ordinance (Cap. No.).

- (c) to refer to a term the meaning of which is dependent on additional construction provisions or is subject to other provisions. For example—

“5. Meaning of owner

- (1) For the purposes of this Part, **owner** is to be construed in accordance with this section.”.

Example 15

A person who is an owner within the meaning of section 5 must ...

Referring to a definition

5.3.8 When referring to a definition, for example **arms**, say “the definition of **arms**” and not “the definition of the word **arms**”.

5.4 Types of Definitions

Different interpretative devices

5.4.1 A variety of interpretative devices are used in legislation to explain the meaning of terms used in an enactment.

Standard definitions

5.4.2 The most common type of definition is the standard definition, which usually takes the form “**X** means ...”, “**X** includes ...” etc.

Referential definitions

5.4.3 A definition is sometimes phrased in the referential form (e.g. “In this [section] a reference to **X** includes ...”).⁶ This should be avoided if it can be drafted as a standard definition (e.g. “In this section **X** means A or B”; or “In this section **X** includes ...”). For the reader, a standard definition would be much easier to understand. A referential definition can be used if it is the most suitable option in the particular case. Again, this is a matter for the drafter’s judgement.

5.4.4 Do not use a referential definition as an alternative to a substantive provision. For example—

Not to be used

- (1) A person who discharges waste into ... commits an offence.
- (2) In subsection (1) a reference to discharging waste includes allowing it to escape.

5.4.5 If a referential definition is used, follow the forms below—

- To extend the meaning of a term—“... a reference to **X** includes **Y**”.
- To restrict the meaning of a term—“... a reference to **X** does not include **Y**”.
- To give a different meaning to a term—“... a reference to **X** is a reference to **Y**”.

⁶ The drafter should also keep in mind section 5 of the IGCO (*grammatical variations and cognate expressions*) which says that a definition of a word or expression extends to the grammatical variations and cognate expressions of the word or expression.

Tag-definitions

5.4.6 Sometimes an internal definition, tagged to a concept or an expression within a provision (***tag-definition***), is included for better flow or to shorten the provision. A tag-definition should be placed within parentheses, close to the defined concept or expression, but after fully setting it out. That is, “an order made by a court of competent jurisdiction (***court order***)” and not “an order made by a court (***court order***) of competent jurisdiction”. Consider omitting the traditionally used (“In this section referred to as a ***court order***”), unless there can be ambiguity without it.

Signpost definitions

5.4.7 The standard practice is to include all the definitions in the general interpretation section. But sometimes this may not be possible. An example is where a narrative style is used to give a meaning to a term (e.g. section 35 of the Copyright Ordinance (Cap. 528) and sections 3, 4 and 5 of the Minimum Wage Ordinance (Cap. 608)). In such cases it would be helpful if a signpost definition is included in the general interpretation section. This would direct the reader to where the meaning of the term can be found.

5.4.8 The following is a suitable form for a signpost definition—

Example 16

2. Interpretation

In this Ordinance—

exempt student employment (獲豁免學生僱用)—see section 3;

hours worked (工作時數)—see section 4;

wage period (工資期)—see section 5;

Section 2 of the Minimum Wage Ordinance (Cap. 608)

5.5 Format of Definitions

Use bold italics

5.5.1 The defined term should be in bold italics. The Chinese or English equivalent within parentheses (see paragraph 5.2.9) should be neither bold nor italicized.

5.5.2 A reference to a definition in another provision of the enactment should be in bold italics. For example “For the purposes of paragraph (c) of the definition of ***associated corporation*** in section X,”.

5.5.3 A tag-definition should also be in bold italics. For example, "... an agreement for sale made in respect of immovable property (***first agreement***) ...".

5.5.4 Any reference to a definition in an Explanatory Memorandum or an Explanatory Note should be in bold italics (e.g. "clause 3 adds new definitions of ***pre-service course*** and ***pre-service training period***"). Any internal definition included for the purpose of the Explanatory Memorandum or Explanatory Note should be in bold italics (e.g. "This Bill amends the Immigration Ordinance (Cap. 115) (***the principal Ordinance***)").

6

Offences, Penalties and Defences

This Chapter presents some general guidelines to be followed when drafting offences, penalty provisions and defences to offences.

6.1 General Matters

Enforcing legislation

6.1.1 Most legislation has to be enforceable in order to be effective. The most common statutory enforcement mechanism is an offence and a criminal penalty.

Is an offence appropriate

6.1.2 Policy consideration should be given to the following when creating an offence—

- Is the behaviour in question sufficiently serious to be criminalized?
- Is the offence enforceable in practice?
- Is a non-criminal sanction more appropriate for the contravention?

Constitutional and BOR provisions

6.1.3 When creating an offence, certain constitutional and human rights aspects need always to be kept in view. For example—

- Article 39 of the BL and Article 5(1) in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383) (**BOR**) (liberty and security of person) (legal certainty).¹
- Article 87 of the BL and Article 11(1) of the BOR (rights of persons charged with or convicted of criminal offence) (presumption of innocence).²
- Article 11(6) of the BOR (protection against double jeopardy).
- Article 12 of the BOR (no retrospective criminal offences or penalties).

¹ “The expression ‘prescribed by law’ when used in a context such as art 39 of the Basic Law mandated the principle of legal certainty” (*Shum Kwok Sher v HKSAR* (2002) 5 HKCFAR 381).

² See *HKSAR v Ng Po On* [2008] 11 HKCFAR 91, *HKSAR v Lam Kwong Wai & Another* (2006) 9 HKCFAR 574, *HKSAR v Hung Chan Wa & Another* (2006) 9 HKCFAR 614 and *Lam Yuk Fai v HKSAR* (2006) 9 HKCFAR 281.

Fundamental principles of common law

6.1.4 The following principles of criminal law also need consideration from a policy perspective—

- At common law a person is presumed to be innocent until proved guilty. (This principle is now enshrined in Article 87 of the BL and Article 11(1) of the BOR.)
- The presumption at common law that favours the requirement of a mental element (*mens rea*) in an offence.

General provisions

6.1.5 The following are some useful provisions of general application—

- **Section 159G** of the Crimes Ordinance (Cap. 200) (*attempting to commit an offence*) and **section 159H** of that Ordinance (*application of procedural and other provisions to offences under section 159G*), which make it unnecessary to provide for attempts when formulating offences.
- **Section 89** of the Criminal Procedure Ordinance (Cap. 221) (**CPO**) (*aiders, abettors and accessories*), under which a person who aids or abets the commission of an offence is “guilty of the like offence”.
- **Section 101D** of the CPO (*acts constituting 2 or more offences*).
- **Section 101E** of the CPO (*liability of directors, etc.*), which is a general provision on the liability of directors and officers for offences committed by a company.
- Some definitions in **section 3** of the IGCO (*interpretation of words and expressions*) of expressions frequently used in relation to offences—“act”, “arrestable offence”, “committed for trial”, “contravene”, “export”, “import”, “magistrate”, “offence”, “person”, “police officer”, “public”, “publication”, “public place”, “road”, “sell”, “ship”, “street”, “summary conviction” and “triable summarily”.

6.2 Form and Style of Offences and Defences

Basic components of offence provisions

6.2.1 From a drafting point of view, the following are essential in a provision creating an offence³—

³ See also Thornton (1996), pp. 353-355.

- the prohibited act, omission or course of conduct must be stated with clarity and precision;
- the breach of the prohibited act, omission or course of conduct should be declared to be an offence; and
- a punishment should be specified.

Constituent elements of offence

6.2.2 An offence consists of the *actus reus* and *mens rea*⁴, or in more modern terms, the physical elements and the mental element⁵ (the second except in strict liability and absolute liability offences). In order to draft an offence provision, the drafter has to be instructed on the policy on the constituent elements of the offence.

Physical elements

6.2.3 The physical elements of an offence are conduct (an act or omission), the attendant circumstances or result.⁶ The *actus reus* includes all the elements of an offence except the accused's mental element.⁷ An offence may consist of all those physical elements or rarely of a set of circumstances or state of affairs without conduct. Usually, conduct and the result brought about by the conduct constitute an offence.⁸ The physical elements must be precisely defined so that a person knows what the prohibited or mandatory conduct is.

Mental elements

6.2.4 Some common statutory mental elements for offences are intention, knowledge and recklessness.⁹ Also, expressions such as “wilfully”, “dishonestly”, “fraudulently”, “with intent to deceive” and “falsely”, when used in an offence provision, denote a state of mind.

Forms of offence provisions

6.2.5 There are many different ways to draft an offence provision. The form that best suits a particular case is a matter for the drafter's judgement.

⁴ “... the *actus reus*, or the external element, and the state of mind the *mens rea* ...”, Smith and Hogan, *Criminal Law*, 12th ed. (USA: Oxford University Press, 2008), p. 42.

⁵ Sometimes also referred to as the “fault element”.

⁶ Sometimes also referred to as the “external elements” (conditions of liability that are external to the defendant).

⁷ Ibid, p.45, footnote 23, “It should be said that this is not the only possible definition of an *actus reus* However, it is thought that this is the most useful conception of the *actus reus* ...”.

⁸ Ibid, p. 45.

⁹ See *Sin Kam Wah & Another v HKSAR* (2005) 8 HKCFAR 192.

6.2.6 Examples 1 and 2 show the “declaratory” form.**Example 1**

- (1) A person who forges any declaration, Certificate of Compliance Registration, ... or any other document required by, under or for the purposes of this Ordinance commits an offence.
- (4) A person who commits an offence under this section is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

Section 48 of the Buildings Energy Efficiency Ordinance (Cap. 610)

Example 2

- (1) It is an offence for any person to commit, ... by means of any device, substance or weapon or otherwise, ... in an aerodrome ... any act of violence which—
 - (a) causes or is likely to cause death or serious personal injury; and
 - (b) endangers or is likely to endanger the safe operation of the aerodrome or the safety of persons in the aerodrome.
- (4) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for life.

Section 15 of the Aviation Security Ordinance (Cap. 494)

6.2.7 Examples 3 and 4 make use of a conditional clause. In Example 4 the condition follows the statement that an offence is committed.**Example 3**

- (6) If a person, knowing that the condition referred to in subsection (3) has been attached to a disclosure of information ..., contravenes that condition, the person commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Section 46 of the Deposit Protection Schemes Ordinance (Cap. 581)

Example 4

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement imposed on the person under section 9(3), (5), (9) or (10).
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

Section 10 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (15 of 2011)

6.2.8 Another is the “directory” form, which could be positively expressed (an obligation) as in *Example 5* or negatively expressed (a prohibition) as in *Example 6*.

Example 5

- (2) The owner of a building must ensure that at all times a Certificate of Compliance Registration is in force in respect of the building.
- (5) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6.

Section 12 of the Buildings Energy Efficiency Ordinance (Cap. 610)

Example 6

- (1) A person must not carry on a food distribution business unless the person is registered under this Part as a food distributor in respect of that business.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

Section 5 of the Food Safety Ordinance (5 of 2011)

Actor not specified in offence provision

6.2.9 Sometimes (mostly in regulatory offences), the offence provision is framed without specifying an actor, using the passive voice. This is appropriate when the action is more important than the actor, and the actor is not the one to be charged. The person who is liable in the event of a breach must however be specified (*Example 7*).

Example 7

- (1) A boiler must be provided with a safety device.
- (2) If subsection (1) is contravened, the owner of the boiler commits an offence.

Additional drafting guidelines

6.2.10 The following are some other recommended practices to be kept in view when drafting an offence provision—

- Separate sections, subsections or paragraphs should be used to create separate offences whenever possible.
- It is not user-friendly to group the statement of an offence in a separate section from the prohibited acts. For example, “A person who contravenes section 5, 6, 7 or 8 commits an offence”. This practice should generally be avoided, although sometimes it could be appropriate, depending on how the provisions are organized.¹⁰
- General offence provisions should not be used—

Not to be used

A person who contravenes any provision of this Ordinance/Regulation commits an offence ...

- This is because—
 - ◆ it is uncertain as to what constitutes an offence;
 - ◆ it may inadvertently criminalize minor infractions; and
 - ◆ it can have the effect of providing the same penalty for all breaches, irrespective of the gravity.

Application of offence provisions

6.2.11 Offences are often created with reference to a “person”. Sometimes, depending on the purpose of the legislation, they are directed at a specified category of person, such as “owner”, “employer” and “licensee”. Whichever description is used, it is important to consider who is intended to be subject to the offences. For example, whether the offences are to apply to only natural persons or both natural persons and artificial persons.

¹⁰ For example, if offences are set out in a separate Part with common defence provisions.

6.2.12 Another aspect to consider is whether express provisions are needed on the liability of directors and persons in a managerial capacity and the liability of complicit partners.

Offences without express mental element

6.2.13 Usually, as a matter of policy, offences created to enforce a regulatory scheme (regulatory offences) are framed without an express mental element (*mens rea*). Regulatory offences can be either strict liability or absolute liability offences. Given the common law presumption in favour of *mens rea*, the mere absence of an express mental element in a statutory offence may not necessarily result in a strict liability or an absolute liability offence.¹¹

Drafting strict liability or absolute liability offences¹²

6.2.14 If the intention is to create a strict liability or an absolute liability offence, the more common drafting approach is to simply leave out terminology that imports a mental element.¹³

6.2.15 The availability of a defence is relevant to the question whether an offence is one of strict liability or absolute liability. Often the policy is to provide a statutory due diligence defence¹⁴ for a regulatory offence. If no such defence is provided and the common law defence of honest and reasonable belief is not available,¹⁵ the offence may be construed as an absolute liability offence. Some issues that may need to be considered from a policy perspective in this context are—

- whether the type of offence is suitable to be framed without a mental element;
- whether an express statutory defence should be provided;
- whether the common law defence would be available if no statutory defence is provided; and
- if a statutory defence is provided, whether it can be construed as displacing the common law defence.

¹¹ See *Gammon (Hong Kong) Ltd v Attorney General* (1985) AC 1, *Uniglobe Telecom (Far East) Ltd v HKSAR* (1999) 2 HKCFAR 214 and *Hin Lin Yee v HKSAR* (2010) 13 HKCFAR 142 for criteria applied in the construction of statutory offences.

¹² See *So Wai Lun v HKSAR* (2006) 9 HKCFAR 530.

¹³ There are a few precedents in the laws of Hong Kong that expressly state that an offence is a strict liability offence.

¹⁴ Used here as a generic legal term of art to describe any defence the essence of which is that the person acted without negligence.

¹⁵ See *Hin Lin Yee v HKSAR* (2010) 13 HKCFAR 142.

Burden and standard of proof

6.2.16 When creating an offence, it is also important to consider, and obtain instructions on, the following—

- who has the burden of proving the various elements of the offence;
- the standard of proof.

Proof on balance of probabilities

6.2.17 Subject to BL and BOR implications, if the standard of proof is intended to be on a balance of probabilities (a legal or a persuasive burden of proof), “prove” is an appropriate expression to use. Alternatively, the standard of proof can be spelt out.

Evidential burden

6.2.18 *Example 8* shows a formulation that is appropriate for an evidential burden. (If the intention is that the burden of proof should be evidential, “prove” should not be used.)

Example 8

- (5) The presumption under subsection (3) or (4) is rebutted by a person charged with an offence under section ... if—
- (a) there is sufficient evidence to raise an issue that the offence was committed without the person’s consent or connivance and was not attributable to the person’s neglect; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Section 43Q of the Employment Ordinance (Cap. 57)

Use general defences cautiously

6.2.19 A defence provision applicable to more than one offence should be drafted with care. It may have different effects depending on the nature of the offences. For example, it can mitigate the effect of a strict liability offence when applied to such an offence. On the other hand, it may have the effect of reversing the burden of proof of an element of the offence when applied to an offence that requires the proof of a mental element.

Defences and negative averments

6.2.20 It is a policy decision whether to provide a special defence for a statutory offence. The defence could take various forms. Often they are in the form of a “negative averment” contemplated by section 94A of the CPO (*negative averments*)¹⁶ or a due diligence defence referred to in paragraph 6.2.15.

6.2.21 Although different forms can be used for drafting a separate defence provision, using the word “defence” is helpful because it makes the provision instantly recognizable.

Example 9

It is a defence for the person charged to ...

It is a defence to a charge under section [X] to ...

6.3 Classification of Offences

Two types of offences

6.3.1 Under section 14A of the CPO (*trial of offences*) there are 2 types of offences, namely summary offences and indictable offences.¹⁷

6.3.2 The classification is significant for drafting legislation and the mode of trial, type and severity of sentence, avenues of appeal and limitation periods for prosecution.

How to create indictable offences

6.3.3 In view of section 14A of the CPO, if an offence is intended to be tried on indictment, it must be expressly stated, by using the words “on indictment”.¹⁸ There are many examples of these offences in the laws of Hong Kong.

How to create summary offences

6.3.4 The formula “commits a summary offence” is rarely used today. This is because section 14A of the CPO provides that if an enactment creates an offence but

¹⁶ See *Lam Yuk Fai v HKSAR* (2006) HKCFAR 281, *HKSAR v Ng Po On* (2008) 11 HKCFAR 91, *Tong Yiu Wah v HKSAR* (2007) HKCFAR 324 and *Tse Mui Chun v HKSAR* (2003) 6 HKCFAR 601.

¹⁷ The Court of Final Appeal considered this section in *New Chuan Kong Investment Co Ltd & Another v Securities and Futures Commission* (1999) 2 HKCFAR 490 and held that it showed that in Hong Kong there were only 2 types of offences, namely summary offences and indictable offences.

¹⁸ This is recommended instead of “upon indictment”, which is also mentioned in section 14A of the CPO.

is silent about the procedure for its prosecution and enforcement, the offence is treated as a summary offence. So, the following creates a summary offence—

Example 10

(4) A person who contravenes subsection (2) commits an offence ...

Section 6 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)

Offences triable on indictment or summarily

6.3.5 Sometimes an offence is stated to be punishable summarily or on indictment, with different penalties specified for the 2 modes of procedure, as shown in the following example.

Example 11

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction, to a fine at level 6 and to imprisonment for 2 years; or
- (b) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years.

Section 20 of the Unsolicited Electronic Messages Ordinance (Cap. 593)

6.3.6 The above enables the prosecutor to proceed as for a summary offence or by way of indictment, whichever is considered to be more appropriate in the circumstances.¹⁹

6.4 Limitation Periods for Prosecutions

Indictable offences

6.4.1 Under the general law, there is no limitation period for prosecuting indictable offences.

¹⁹ According to the judgment in *New Chuan Kong Investment Co Ltd & Another v Securities and Futures Commission* (1999) 2 HKCFAR 490, the manner of trial did not determine whether the offence was a summary one or one which was indictable. Having regard to section 14A of the CPO, such a provision clearly creates an indictable offence which may be tried summarily (at p. 499).

Summary offences

6.4.2 For summary offences, section 26 of the Magistrates Ordinance (Cap. 227) (*MO*) (*limit of time for complaint or information*) specifies a time limit of 6 months from the commission of the offence for instituting proceedings. Section 26 of the MO applies in the absence of a contrary provision in a statute.²⁰

Provisions extending or restricting periods for prosecution

6.4.3 If asked to include a provision to restrict or extend the limitation period for prosecuting offences, it is important to consider whether the relevant legislation creates both indictable offences and summary offences, and if so, whether the intention is to apply the time limit to both types of offences.

If offence is triable on indictment or summarily

6.4.4 According to the judgment of the Court of Final Appeal in *New Chuan Kong Investment Co Ltd & Another v Securities and Futures Commission* (1999) 2 HKCFAR 490, a provision dealing with limits for prosecuting summary offences does not operate to limit the time for prosecuting an indictable offence, even though the indictable offence is triable summarily.

To extend period of limitation

6.4.5 The following example enlarges the period for prosecuting a summary offence so that proceedings can be instituted within 6 months after the discovery of the offence (as opposed to its commission).

Example 12

Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under this Ordinance within 6 months after the offence is discovered by, or comes to the notice of, the Director.

Section 56 of the Food Safety Ordinance (5 of 2011)

²⁰ Note that section 26A of the MO (*limitation of time in respect of certain summary offences concerning aviation*) provides an exception for summary offences under section 2A of the Civil Aviation Ordinance (Cap. 448).

6.5 Penalties

General provisions in CPO

6.5.1 The following provisions of the CPO contain general provisions regarding penalties—

- **Section 101F** (*penalties prescribed to be deemed maximum penalties*)—If a penalty is specified, the offence is punishable by a penalty not exceeding it. If the amount of the fine is not specified, a fine which is not excessive or unreasonable may be imposed.
- **Section 101G** (*statement of penalty at end of section*)—If the penalty is set out at the foot of the section, the offence is punishable by a penalty not exceeding that.
- **Section 101H** (*certain penalties may be cumulative*)—The use of “and” in a penalty provision means that the penalties may be imposed alternatively or cumulatively.
- **Section 101I** (*punishment of indictable offences*)—If no penalty is prescribed for an indictable offence, the default penalty is 7 years’ imprisonment and a fine.
- **Section 101J** (*amendment of penalty*)—If a penalty for an offence is amended between the commission of the offence and the conviction of the offender, the penalty at the time of the commission applies. If the new penalty is lighter, the new penalty applies.

Levels of fines

6.5.2 Under section 113B of the CPO (*levels of fines for offences*), if in an Ordinance a fine for an offence is specified by referring to a “level”, the applicable fine is the amount shown for that level in Schedule 8 to the CPO. Therefore, fines are specified in legislation with reference to a level except where the proposed fines fall outside the amounts corresponding to the levels specified in that Schedule.²¹ For example, if an offence is stated to be punishable with a “fine at level 3”, the maximum fine that can be imposed is the amount shown for level 3.

6.5.3 The amounts shown in Schedule 8 to the CPO can be amended under section 113B(3) of the CPO by the Chief Executive in Council, by regulation, to reflect the effect of inflation.

²¹ Schedule 8 to the CPO specifies amounts equivalent to level 1 (\$2,000), level 2 (\$5,000), level 3 (\$10,000), level 4 (\$25,000), level 5 (\$50,000) and level 6 (\$100,000).

Amendment of fines by resolution

6.5.4 Section 100A of the IGCO (*power to increase fines*) enables LegCo to amend an Ordinance by resolution so as to increase—

- (a) fines specified in the Ordinance; and
- (b) an amount of a fine specified in an Ordinance as an amount of a fine that may be prescribed in subsidiary legislation.

Form and style of penalty provision

6.5.5 A standard penalty provision is very simple in form and can be drafted in 2 steps—together with the statement of the offence (*Example 13*) or separately from the statement of the offence (*Example 14*).

Example 13

- (2) The owner of a building must ensure that at all times a Certificate of Compliance Registration is in force in respect of the building.
- (5) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6.

Section 12 of the Buildings Energy Efficiency Ordinance (Cap. 610)

Example 14

- (1) A person commits an offence if the person operates a money service without a licence.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

Section 29 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (15 of 2011)

6.5.6 It is not necessary to say “a fine *not exceeding ...*” in view of section 101F of the CPO.

6.5.7 It is sufficient to say “fine and imprisonment” instead of “fine or imprisonment or both fine and imprisonment” in view of section 101H of the CPO.

6.5.8 If the penalty consists of a fine and imprisonment, refer to the fine first.

Penalties for subsequent offences

6.5.9 If the policy is to prescribe a higher penalty for any conviction subsequent to the first conviction, the following is a suitable form—

Example 15

- (1) A person who, in any document ..., makes a statement that the person knows ..., commits an offence and is liable on conviction—
- (a) to a fine at level 6 and to imprisonment for 12 months on the first occasion on which the person is convicted of the offence; and
 - (b) to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion on which the person is convicted of the offence.

Section 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)

Penalties for continuing offences

6.5.10 *Example 16* shows a form that is suitable for providing a penalty for continuing offences.

Example 16

A person who, without reasonable excuse, contravenes section 95(1) commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of ... for every day during which the offence continues; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.

Section 101 of the Securities and Futures Ordinance (Cap. 571)

7

Final Provisions

This Chapter sets out the conventions and practices relating to the drafting of savings and transitional provisions and Schedules to enactments.

7.1 Savings and Transitional Provisions

Need for savings and transitionals

7.1.1 When the law is changed (either by a new enactment or an amending enactment), special attention should be given to how the change affects the existing circumstances and whether savings and transitional provisions¹ are needed as a consequence. Whether such provisions are required and how they are to be formulated are questions that will have to be determined in the context of the particular legislative proposal and having regard to the policy.

Subsidiary legislation—whether within power

7.1.2 Proposals for new or amending subsidiary legislation may also give rise to savings and transitional issues. If so, the question needs to be considered whether the proposed arrangements are within the scope of the empowering Ordinance.

Grandfathering arrangements

7.1.3 The term “grandfathering” refers to a specific type of savings and transitional provision that exempts from the effect of the new law, wholly or with limitations, persons or situations that would have been affected by the change in the law.²

Section 23 of IGCO

7.1.4 When providing savings and transitional arrangements, consider whether section 23 of the IGCO (*effect of repeal generally*) covers the situation.³ It may cover

¹ On the terms “savings” and “transitional”, see Thornton (1996), p. 383, “Both terms are loosely used with overlapping meanings; there is little or no advantage in seeking to pursue a watertight distinction between them.” On the function of a transitional provision, *ibid*, footnote 2, “A similar function is in some circumstances performed by an application provision.”

² A typical example is the exemption of existing practitioners from the new law when a profession is regulated by law for the first time.

³ Note that under section 2 of the IGCO, provisions of the IGCO apply subject to contrary intention.

many matters for which a savings or transitional provision might otherwise be needed. It may also be necessary to consider whether to include a provision stating that any enactment-specific arrangements are in addition to and not in derogation of section 23 of the IGCO.

Other relevant matters

7.1.5 The following may also be relevant to the question whether specific savings and transitional provisions are necessary—

- Sections 24 (*repealed Ordinance not revived*), 25 (*repeal and substitution*), 27 (*effect of expiry, etc. of Ordinance*) and 36 (*effect of repeal on subsidiary legislation*) of the IGCO;
- the presumption in favour of the prospective application of the law; and
- the principle that subsidiary legislation can apply retrospectively only if authorized by the parent Ordinance.

Amendment of penalty

7.1.6 It should be noted that under section 101J of the CPO (*amendment of penalty*) if a penalty for an offence is amended between the time a person commits an offence and is convicted of it, the person is liable to the penalty in force at the time of the offence. But if the amended penalty is a lighter penalty, the person is liable to the lighter penalty.

Inclusion in principal enactment

7.1.7 The best practice is to add savings and transitional provisions to the principal enactment. If added as substantive provisions to the amending instrument itself, they will not be incorporated into the principal enactment.⁴

When to include in amending enactment

7.1.8 However, sometimes adding them to the amending enactment may be the only practical way. This is the case if the provisions relate to amendments to several different enactments. (This situation is unlikely to arise in an instrument of amending subsidiary legislation.)

7.1.9 If the savings and transitional provisions appear only in the amending enactment and are not incorporated into the principal enactment, it may be

⁴ However, the practice is to add an editorial note to the relevant principal enactment in BLIS to draw attention to the savings and transitional provisions.

necessary to consider whether to include a provision that applies the definitions in the principal enactment to those provisions.

Specific guidelines for location

7.1.10 The best place within the enactment to set out the savings or transitional provisions is a matter for the drafter to decide, taking into account the number of provisions affected by them and the organization of the enactment. The following describes some of the common practices—

- If the savings and transitional provisions relate to amendments to a particular provision, they are best included in that section.⁵
- If the provisions relate to amendments to more than one section, they can be added at the end of the enactment or in a Schedule.⁶ They can also be included in a Part dealing with general or miscellaneous matters⁷ or in a separate Part altogether.⁸
- If they relate to amendments to a particular Part, Division or Subdivision, they can be included in that Part, Division or Subdivision.
- Depending on the extent of the transitional arrangements, sometimes the best arrangement is to have a dedicated Part or a Schedule for savings and transitional provisions.⁹
- If the enactment being amended already has one or more sections on savings and transitional arrangements, it may be appropriate to add the new provision either as a subsection to one of the existing sections or as a new section after one of those sections.

Headings of savings and transitional provisions

7.1.11 If the savings and transitional provisions are incorporated into the principal enactment, it would be helpful if the heading names the amending instrument that gives rise to them (e.g. Transitional and Savings Provisions—Copyright (Amendment) Ordinance [year]) or the particular subject matter to which they relate (see sections 60 to 64 of the Food Safety Ordinance (5 of 2011)).

⁵ For example, see sections 4(3), 5(5), 8(9), 21(10), 25A(4), 28A(3) and 48B(5) of the Companies Ordinance (Cap. 32).

⁶ See Schedule 3 to the Arbitration Ordinance (Cap. 609).

⁷ See sections 60 to 64 of the Food Safety Ordinance (5 of 2011), section 82 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (15 of 2011) and section 18 of the Minimum Wage Ordinance (Cap. 608).

⁸ See Part 7 of the Communications Authority Ordinance (17 of 2011) and Part 11 of the Buildings Energy Efficiency Ordinance (Cap. 610).

⁹ See clause 901 of, and Schedule 10 to, the Companies Bill published in the Gazette on 14 January 2011 and clause 160 of, and Schedule 15 to, the Lifts and Escalators Bill published in the Gazette on 21 April 2011.

Providing by subsidiary legislation

7.1.12 When an Ordinance amends several enactments or makes extensive amendments, it may be appropriate to include a power to make savings and transitional provisions by subsidiary legislation (see section 77 of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (15 of 2011)).¹⁰

Amending or repealing savings and transitional provisions

7.1.13 Unless it is clearly spent, an existing savings or transitional provision should not be repealed. Nor should an existing savings or transitional provision be amended for the purpose of converting it into a new savings or transitional provision, for example, by replacing a reference to the old amending enactment by a reference to the new amending enactment.

7.1.14 However, an existing savings or transitional provision may still require amendment with respect to its temporal application. For example, it is common for a transitional provision to refer to matters that occur “on or after the commencement of the X (Amendment) enactment”. When the principal enactment is amended again and a new transitional provision is required, then it may become necessary to amend the existing transitional provision so that in future it will not apply to matters that occur on or after the commencement of the new amending enactment. Alternatively, the new transitional provision could be worded to take into account the temporal application of the existing transitional provision.¹¹

7.2 Schedules

Use of Schedules

7.2.1 Schedules are used to better organize the contents of an enactment and present them more clearly. However matters of principle should be placed in the body of the enactment rather than in a Schedule. Matters of detail and material that form a separate instrument, such as a treaty or agreement, are generally better placed in a Schedule.

¹⁰ Other examples include section 97 of the Trade Marks Ordinance (Cap. 559), section 283 of the Copyright Ordinance (Cap. 528), section 11 of the Provision of Municipal Services (Reorganization) Ordinance (Cap. 552), section 45 of the Long-term Prison Sentences Review Ordinance (Cap. 524), Schedule 5 to the Occupational Safety and Health Ordinance (Cap. 509) and section 376 of the Securities and Futures Ordinance (Cap. 571).

¹¹ See sections 5(5) and 86(6) of the Companies (Amendment) Ordinance 2003 (28 of 2003) which add sections 8(10) and 233(7) to the Companies Ordinance (Cap. 32).

Wording to be consistent

7.2.2 A Schedule to an enactment is part of the enactment. Accordingly care must be taken to ensure consistency of wording between the main body of the enactment and the Schedule.

Linking the Schedule

7.2.3 A Schedule should be linked to the main body of the enactment by appropriate words included in the relevant provisions in the enactment¹² (see the underlined words in *Examples 1* and *2*).

Example 1

160. Transitional and savings provisions, and consequential or related amendments

- (1) The transitional and savings provisions specified in Schedule 15 have effect.
- (2) The enactments specified in Schedule 16 are amended as set out in that Schedule.

Lifts and Escalators Bill (published in the Gazette on 21 April 2011)

Example 2

3. Article 8 of Convention has force of law in Hong Kong

Article 8 of the Convention, as set out in the Schedule, has the force of law in Hong Kong.

International Organizations (Privileges and Immunities) (United Nations and Associated Personnel) Order (Cap. 558 sub. leg. C)

Schedule “to” and not “of”

7.2.4 Schedules should be referred to as Schedules **to** an enactment and not Schedules **of** an enactment and Schedule should be written with a capital S.

External and internal cross-references

7.2.5 See Chapter 13, Part 1 for guidelines on how to refer to the provisions of a Schedule and how to refer in a Schedule to other parts of the enactment and to provisions in the same Schedule.

¹² Bennion calls these words “inducing words” (see F.A.R. Bennion, *Bennion on Statutory Interpretation*, 5th ed. (London and Edinburgh: LexisNexis, 2008), p. 721).

Avoid excessive cross-referencing

7.2.6 A Schedule is meant to simplify the reading of an enactment. Therefore, do not force the reader to refer backwards and forwards from the body of the enactment to the Schedule.

Use Arabic numerals in numbering

7.2.7 If there is only one Schedule, it should be referred to as the Schedule. If there is more than one Schedule, they should be numbered Schedule 1, Schedule 2 and so on, using Arabic numerals. Formerly Schedules were numbered as the First Schedule, Second Schedule and so on. When amending a Schedule that uses the old numbering style or when inserting a new Schedule, the opportunity can be taken to bring the numbering in line with the current practice, taking care to correct any cross-references.¹³

Linking provisions to be cited

7.2.8 All the section numbers of the enactment in which a reference to a Schedule occurs should be set out at the top right-hand corner of the Schedule concerned as shown in *Example 3*.

<i>Example 3</i>	
	Schedule 1 [ss. 2, 54 & 56 & Sch. 3] Prescribed Products

Form depends on contents

7.2.9 A Schedule can take different forms (e.g. the same form as the body of the enactment, a column form or a list form). The form will depend on the contents. The drafter should choose the form that best suits the organization of the contents in the particular case.

Arrangement of contents

7.2.10 The most appropriate way to arrange the contents of a Schedule varies according to the nature of the material to be included. The matter is best left to the drafter's judgement. For example, the contents can be arranged—

- in numbered sections without section headings (Schedule 2 to the Race Discrimination Ordinance (Cap. 602));

¹³ The numbering can also be amended under the Legislation Publication Ordinance (13 of 2011).

- in sections with headings and organized into Parts like the body of the enactment (the Schedule to the West Kowloon Cultural District Authority Ordinance (Cap. 601) and Schedules 1 and 2 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (15 of 2011));
- in a section divided into paragraphs, numbered according to the letters of the alphabet (Schedule 3 to the Race Discrimination Ordinance (Cap. 602));
- in several columns (Schedules 1 to 3 to the Village Representative Election Ordinance (Cap. 576) and Schedules 1 to 3 to the Food Safety Ordinance (5 of 2011)); and
- as a simple numbered list (Schedule 1 to the Buildings Energy Efficiency Ordinance (Cap. 610)).

Listing and numbering of contents

7.2.11 Often the contents of a Schedule are set out in lists. It is not possible to have rigid or even general rules on listing and numbering because so many different kinds of matter are set out in Schedules.

7.2.12 The following guidelines may be helpful—

- It would facilitate future amendment and cross-referencing if the contents are numbered, especially if the contents are set out in column form.
- In a simple list of items, numbering may not be necessary. As a general rule, if the item numbers exceed 20, numbering is preferred. If items are added to a list without numbers in an amendment exercise, the drafter can choose to number the existing and new items.
- If the items are numbered, it is best if the numbering of the items in the Chinese and the English texts correspond.
- If considered appropriate, in a list of names in the English text, the name in Chinese should be set out side by side with the English name, and in a list of names in the Chinese text, the name in English should be set out side by side with the Chinese name (see Schedules 1 to 3 to the Village Representative Election Ordinance (Cap. 576)).

- New items should be added according to the order in which the existing items are arranged. For example, if they are arranged in alphabetical order or according to the number of strokes, new items should be inserted in the same order. (In the English text, a letter of the alphabet may be added after the number so that the new items can be added in the correct sequence.)

Prescribed forms

7.2.13 If forms are to be prescribed by legislation, they should be set out in a Schedule or Schedules.

7.2.14 Generally however the best practice would be to specify forms administratively and not prescribe them legislatively, unless of course because of the nature of the form or for any other reason it should be part of the Laws of Hong Kong. In most cases it may be sufficient to provide that forms may be “specified” by a named official or body.

8

Explanatory Information

This Chapter sets out the conventions and practices relating to the drafting of an Explanatory Memorandum to a Bill and an Explanatory Note to an item of subsidiary legislation.

8.1

Explanatory Memorandum and Explanatory Note

Explanatory Memorandum—LegCo Rule 50(7)

8.1.1 LegCo Rule 50(7) requires an Explanatory Memorandum stating the contents and objects of the Bill, in non-technical language, to be attached to every Bill. This applies to both a Bill for a principal Ordinance and a Bill for an amending Ordinance.

Purpose of Explanatory Memorandum

8.1.2 The purpose of the Explanatory Memorandum is to help LegCo members and members of the public to understand the Bill. Essentially it should state what the Bill does and why. The Explanatory Memorandum is published in the Gazette along with the Bill but since it is not part of the legislative text it is not published in the Gazette with the enacted Ordinance or in the Loose-leaf Edition or on BLIS.

Explanatory Note—no equivalent of LegCo Rule 50(7)

8.1.3 For subsidiary legislation, there is no equivalent of LegCo Rule 50(7) but, as a matter of convention, an “Explanatory Note” is included at the end of the instrument, in both principal and amending subsidiary legislation (exceptions are noted in paragraph 3.5.20). An Explanatory Note serves the same purpose as an Explanatory Memorandum. The Explanatory Note is published in the Gazette together with the subsidiary legislation it relates to but is not published in the Loose-leaf Edition or on BLIS.

Explanatory information to be accurate

8.1.4 It is important to achieve a high degree of accuracy in drafting an Explanatory Memorandum or an Explanatory Note and not take the law further than the Bill proposes or as it is in the instrument of subsidiary legislation.

Judicial observations on Explanatory Memorandum

8.1.5 The Explanatory Memorandum may be looked at to ascertain the purpose of a provision. Note that in *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFAR 568, Li CJ observed—

“The purpose of a statutory provision may be evident from the provision itself. Where the legislation in question implements the recommendations of a report, such as a Law Reform Commission report, the report may be referred to in order to identify the purpose of the legislation. The purpose of the statutory provision may be ascertained from the Explanatory Memorandum to the bill. Similarly, a statement made by the responsible official of the Government in relation to the bill in the Legislative Council may also be used to this end.”¹.

Rulings on scope

8.1.6 In addition, past Rulings on “scope” by the President of the LegCo for the purposes of LegCo Rule 57(4) show that the Explanatory Memorandum is one of the sources referred to when determining the scope of a Bill.

8.2 Drafting Guidelines

Guidelines

8.2.1 The following guidelines may be helpful in drafting an Explanatory Memorandum or an Explanatory Note—

- They should always be written clearly, in plain language.
- The policy objective should be stated clearly and concisely, bearing in mind that the purpose is to explain the effect of the legislation.
- In an Explanatory Memorandum it is not necessary to say “if enacted” or “when enacted” in each reference to the Bill.
- In an Explanatory Memorandum, refer to the “clauses” rather than “sections” of the Bill as much as possible.
- In an Explanatory Note, refer to the “sections” or, if a different nomenclature is used, refer to the provisions accordingly.

¹ A passage that has been often quoted in subsequent judgments.

- In an Explanatory Memorandum, use “Clause 1 sets out the short title and provides for commencement.” to explain the clause on short title and commencement.
- It may also be helpful to draw attention to the relevant provisions of the IGCO that enable phased commencement or, if the Bill or instrument itself has different commencement dates, to draw attention to them.
- It is acceptable to state that “Clause 2/Section 2 defines terms used in the [Bill]/[instrument of subsidiary legislation].”. However significant definitions may need to be mentioned.
- Use the present tense. For example, say “Clause X/Section X amends section Y by increasing the fee for a fishing licence from \$8 to \$10.”.
- Avoid overusing “provides”. Use more specific words such as “increases”, “establishes”, “creates”, “requires” etc.
- Avoid technical or legal terms. The Explanatory Memorandum and Explanatory Note are intended to be an explanation mainly for readers who may not be legally qualified or have specialist knowledge of the subject matter.
- Avoid simply repeating the words of the provision that is being explained, but take care to paraphrase accurately.
- Avoid statements such as “Clause X repeals section Y.”. Such a statement is neither explanatory nor useful. Also, it does not state the object of or the reason for the repeal.
- A group of provisions with a common object may be described together rather than giving a description of each provision individually.
- The core or key provisions should be explained. Consequential, procedural and other minor provisions require only a passing reference.
- The substance of a repealed provision should be stated if it is important to the legislation.
- If the legislation implements a Convention, a Law Reform Commission report or some other reports, this fact should be stated.
- With amending legislation, the effect of the provisions may not be apparent. It would be useful to indicate how the current law will be changed rather than how the law will read after it is amended.

9

Plain Language and Gender-Neutral Drafting

This Chapter sets out the techniques and practices followed by LDD in line with its policy of plain language and gender-neutral drafting.

9.1 Plain Language Drafting

Description of plain language

9.1.1 Written laws are usually highly technical and complex documents that are intended for a diverse group of readers. The goal of plain language drafting is to make the law as simple and clear as possible without taking away from precision or substance.

9.1.2 Plain language embraces a wide range of techniques designed to create legislation that is readable and easy to use by the relevant audience. These techniques include the use of words and expressions familiar to everyone, short sentences rather than complex syntax and a clear and meaningful organization of the legislative provisions. They also include using a document design that helps readers to use the statute book effectively and with minimum effort and information that helps them to understand the text.¹

Write easily understandable text

9.1.3 The guidelines on structural organization in Chapters 2 and 4 are designed to produce a document that is easier to understand. In addition, the following guidelines are recommended for writing legislative text that is easily understandable—

- Organize legislative propositions simply and logically.
- Present one topic per clause, one idea per subclause. (This applies to paragraphs and subparagraphs also.)
- Generally, keep a clause to a maximum of 6 subclauses.

¹ Based on the description of plain language in the paper “Some Implications of Plain Language Drafting” delivered by Professor Ruth Sullivan of the Law Faculty, University of Ottawa, at the conference “Legislative Drafting: Emerging Trends” (6-7 October 2000, Dublin); also published as an article in *Statute Law Review*, Vol. 22, p.145.

- Use short sentences with a simple structure. (A division below paragraphs will make the structure complicated; a division below subparagraphs should not be used unless there is no possible alternative.)
- Use well-constructed sentences, keeping related words as close together as possible.
- Avoid double or triple negatives.
- Avoid jargon and unfamiliar words.
- Use short words.
- Use the active voice instead of the passive voice.
- Use the positive rather than the negative.
- Avoid nominalization by using a base verb to show the action.

Sentence length

9.1.4 Research has shown that readers struggle to follow long sentences that contain large amounts of information. LDD's general guideline recommends limiting a unit of unbroken text to about 50 words. In other words, the maximum length of a sentence that is not divided into paragraphs should usually be about 50 words (i.e. 5 lines of unbroken text).

9.1.5 If the sentence is divided into paragraphs, the maximum length of each paragraph should be about 50 words. If text precedes or follows a series of paragraphs, in each case the text should not run over 50 words. A sentence of more than 5 lines of unbroken text should be a signal to the drafter to consider using 2 or more shorter sentences to make the text more readable.

One sentence per clause or subclause

9.1.6 The general rule is to confine a section or a subsection to one sentence. However, this rule can be departed from in specific cases to avoid an over-long sentence. If the contents of the sentence are very closely connected, it may be suitable to split the sentence within one section or one subsection rather than to create separate sections or subsections.

Minimize cross-references

9.1.7 Cross-references interrupt the flow of sentences and the reader's chain of thought. They force the reader to check the references before proceeding with the text. Use a cross-reference only if its absence would create an ambiguity.

9.1.8 Even if a cross-reference has to be used, it is often possible to minimize its disruptive effect by identifying the topic of reference. For example, “an application for a licence made under section 8” will be more helpful to the reader than “an application made under section 8”. See also Thornton (1996), p. 65.

9.1.9 Cross-references to parts of the same section or words or expressions used in the same section are often unnecessary and should be avoided as far as possible. The words and expressions will be read and interpreted in context.

(1) An application for registration must be made in the specified form.

Instead of:

(2) An application referred to in subsection (1) must be accompanied by the prescribed fee.

Consider:

(2) The/An application must be accompanied by the prescribed fee.

9.2 Use of “Shall” Discontinued

“Shall” not to be used

9.2.1 In the past, in Hong Kong legislation, “shall” was used extensively and for many purposes, but mainly to impose an obligation.² Similarly, “shall not” and “no person shall” were used to impose a prohibition. LDD no longer uses “shall” to impose an obligation or its negative forms to impose a prohibition. Moreover, it is not used for any other purpose for which it had been used. In current everyday usage “shall” most commonly expresses a statement about the future and not a mandatory statement. That being so, using “shall” with its specialized legal meanings could lead to misunderstandings by ordinary readers. With this in mind, “shall” has been discontinued.

Substitutes for “shall”

9.2.2 Although “must” is generally regarded as the plain language equivalent of “shall”, “must” may not be the appropriate substitute in every situation in which “shall” was formerly used. To find the appropriate expression, the drafter should first consider the purpose of the provision, for example, whether it is to create an offence or a statutory duty or to make a declaratory statement etc.

² In this Chapter, the term “obligation” is used to refer to a provision the breach of which attracts a statutory sanction.

Certain purposes—use only “must” and “must not”

9.2.3 For certain purposes, LDD now uses and recommends the use of “must” and “must not” to the exclusion of any other expression. Those are the situations described in paragraphs 9.2.5 and 9.2.6.

Other purposes—choose words to suit desired effect and context

9.2.4 For other purposes, the drafter should exercise judgement and individual preference, having regard to the context of the particular provision and other provisions in the legislation. He or she should choose the word or expression or use the approach that best achieves the intended legal effect. Often a provision can be written in different ways and have the same end effect.³ It should be emphasized that ultimately this is a choice for the drafter to make and that the primary consideration should be whether it achieves the intended legal effect.

Obligations with sanction

9.2.5 For a statutory obligation the contravention of which attracts a statutory sanction, “must” is always used. This applies even if the obligation is imposed in the passive form. (See *Example 7* in Chapter 6.)

Example 1

- (1) Within 14 days after sending an export notification, a person **must** send to the Director—
 - (a) a copy of the notification; and
 - (b) a declaration by the person that—

...
- (2) Within 14 days after receiving from the competent authority ..., a person **must** send to the Director—
 - (a) a copy of the approval; and
 - (b) a declaration by the person ...
- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5.

*Section 24 of the Genetically Modified Organisms (Control of Release)
Ordinance (Cap. 607)*

³ For example, the legislative intention may be achieved by expressing a concept as a statutory duty not to do something (without a penalty) or a restriction on a power or discretion.

Example 2

- (1) The owner of a building ... **must** exhibit a copy of the ...
- (2) An owner who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.

Section 23 of the Buildings Energy Efficiency Ordinance (Cap. 610)

Prohibitions with sanction

9.2.6 For a statutory prohibition the contravention of which attracts a statutory sanction, “must not” is used.⁴

Example 3

- (1) A person who obtains information ... under this Ordinance—
 - (a) **must not** disclose the information ...; and
 - (b) **must not** enable another person to have access to the information ...
- (3) A person who, ..., contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4.

Section 41 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)

Example 4

- (1) The driver of a motor vehicle **must not** cause or permit the vehicle to be idling on a road for more than 3 minutes in any 60-minute period.

Section 5 of the Motor Vehicle Idling (Fixed Penalty) Ordinance (3 of 2011)

- (1) A person who contravenes section 5 does not commit an offence but is liable to pay a fixed penalty of \$320 for the contravention.

Section 7 of the Motor Vehicle Idling (Fixed Penalty) Ordinance (3 of 2011)

⁴ In the past certain other expressions such as “no person may” and “a person may not” have also occasionally been used to impose a statutory prohibition the contravention of which attracts a statutory sanction. Those are no longer used for that purpose and only “must not” is used.

Example 5

- (2) A person **must not** knowingly cause a GMO to be released ... unless ...
- (3) A person **must not** knowingly maintain the life of a GMO with ... unless ...
- (5) A person who contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 6 and to imprisonment for one year.

Section 5 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)

Other substitutes for “shall”

9.2.7 There are some situations (in addition to those in paragraphs 9.2.5 and 9.2.6), in which “must” and “must not” are generally used. However, the drafter can consider alternatives or express the concept in a different way to suit individual preference if they achieve the same legal effect. In the following situations, “must” or “must not” can be used—

- To create a statutory duty that is not enforceable by a statutory sanction.
- To specify a statutory condition or requirement that does not attract a sanction, although it may have other consequences such as invalidity.
- To direct that something should not be done or to limit a power or a discretion, without a statutory sanction.

9.2.8 However as *Examples 6 to 18* demonstrate, in all those situations, drafters can use other expressions that they consider to be acceptable alternatives from a drafting point of view (e.g. “may only”, “may not”, “is to” or “is not to”) depending on the purpose and context and how the provision is cast.

Statutory duty with no statutory penalty

9.2.9 To create a statutory duty or to specify a statutory function, the breach of which does not attract a statutory penalty, “must” can be used. Some drafters may prefer to use “is to” or “is required to”, which is considered less forceful than “must”.

Example 6

- (1) The Director **must** establish and maintain a register for the purposes of this Ordinance.

Section 27 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)

Example 7

- (3) The Authority **is to** establish and maintain a register relating to any disclosure required to be made under subsection ...

Section 13 of the Communications Authority Ordinance (17 of 2011)

Example 8

- (3) The Commissioner **is required to** serve notice on the lessee or the owner or occupier ...

Section 24 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515)

Statutory directions and limitations

9.2.10 The expression “must not” or “is not to” can be used to specify that a discretion or a power should not be exercised in a certain way. To express the concept as a limitation on a discretion or a power, “may only” or “may not” can be used.

Example 9

- (5) The Director may, on an application in writing by the developer concerned, extend ...
- (6) The Director **must not** exercise the power under subsection (5) unless the developer satisfies ...

Section 9 of the Buildings Energy Efficiency Ordinance (Cap. 610)

Example 10

- (6) As soon as practicable after receiving an application ..., the Authority must consider the application.
- (9) The Authority **must not** reject an application under this section without giving the applicant an opportunity to make representations ...

Section 21 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)

Example 11

- (4) In proceedings to recover Government rent or any surcharge, the court **is not to** have regard to a plea ...

Section 15 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515)

Example 12

- (6) A charge referred to in subsection (5) ... **is not to be** enforced, whether by order of any court or otherwise, except with the prior written approval ...

Section 24 of the West Kowloon Cultural District Authority Ordinance (Cap. 601)

Example 13

- (1) An order or direction made, ... is enforceable in the same manner ..., but only with the leave of the Court.
- (2) Leave to enforce an order ... **is not to be** granted, unless the party seeking to enforce it can demonstrate that ...

Section 61 of the Arbitration Ordinance (Cap. 609)

Example 14

- (1) ..., the Commission may, after consultation with ..., by notice in writing served on the company, direct the company ...
- (2) The Commission **may only** serve a notice under subsection (1) if it is of the opinion that the orderly transaction ...

Section 29 of the Securities and Futures Ordinance (Cap. 571)

Example 15

- (1) The Director may make an order to do any one or more ...
- (2) The Director **may only** make a food safety order if the Director has reasonable grounds ... to believe ...

Section 30 of the Food Safety Ordinance (5 of 2011)

Example 16

The Commission **may not** under section 67(1) of the Sex Discrimination Ordinance (Cap. 480) delegate any of its functions or powers under—

- (a) section 82;
- (b) ...; or
- (c) ...

Section 61 of the Race Discrimination Ordinance (Cap. 602)

Example 17

- (1) A person **may not be** charged with an offence arising out of a contravention of a provision of this Ordinance if ...

Section 45E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)

Example 18

- (1) Enforcement of a Mainland award **may not be** refused except in the cases mentioned in this section.

Section 95 of the Arbitration Ordinance (Cap. 609)

9.2.11 In some contexts the drafter may be able to use, to the same effect, expressions other than “must not” that are more suitable from a linguistic point of view. For instance, instead of saying “A notice/decision must not come into force until the expiry of ...”, the drafter can consider “A notice/decision does not/cannot come into force until the expiry of ...” or even recast the provision as “A notice/decision comes into force only on the expiry of ...”.

Specifying statutory conditions

9.2.12 In addition, “must” is commonly used to specify a statutory condition or requirement, the contravention of which would not attract a statutory sanction, but compliance with which may be necessary for validity. Once again, other expressions can be used if they achieve the intended legal effect, for example, “is to” or “is required to”.

Example 19

- (1) ... a registered retailer may apply to the Director for the exemption of part of the area of a registered retail outlet of that retailer, ...
- (2) An application under subsection (1) **must be made** in writing and in the specified form.

Section 8 of the Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603 sub. leg. A)

Example 20

- (1) The Director may authorize a public officer ...
- (2) An authorization—
 - (a) **must be** in writing ...

Section 39 of the Food Safety Ordinance (5 of 2011)

Example 21

- (2) A notice required to be served on any person other than the Secretary under this Ordinance **is to be** in writing and in both the Chinese and English languages.

Section 44 of the Railways Ordinance (Cap. 519)

Example 22

- (3) An originating summons under subsection (1) **is to be** in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

Section 45 of the Financial Reporting Council Ordinance (Cap. 588)

Declaratory provisions

9.2.13 In the past “shall” has also been used in declaratory provisions. This is not correct as they are neither commands nor statements about the future. It would also not be correct to use “must” in place of “shall”. A declaratory provision is best expressed in the present indicative. Accordingly, *Example 23* should be followed and not *Example 24*, and *Example 25* should be followed, not *Example 26*.

Example 23

- (1) Subject to this section, this Ordinance **applies** to every employee, ... employer ... the contract of employment ...
- (2) This Ordinance **does not apply** to a person to whom the Employment Ordinance (Cap. 57) does not apply because of ...

Section 7 of the Minimum Wage Ordinance (Cap. 608)

Example 24**Not to be used**

- (1) The Secretary may act under this Ordinance in relation to any works ... and this Ordinance **shall apply** to these works and the use.

Section 3 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370)

Except to the extent that provision is otherwise made in this Ordinance—

- (a) the Lands Resumption Ordinance (Cap. 124) **shall not apply** to the resumption of any land ordered under section 13 nor to any claim for or determination, award or payment of compensation for such resumption;

Section 38 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370)

Example 25

The repeal of the Corrupt and Illegal Practices Ordinance (Cap. 288) **does not affect** any obligation or liability incurred, or any penalty or disqualification imposed, or any investigation or legal proceedings instituted, under that repealed Ordinance ...

Section 49 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)

Example 26**Not to be used**

- (2) The amendments of Part IIIA by the relevant Ordinance **shall not affect** the validity of any guardianship orders made before the commencement of those amendments or the powers conferred by such orders.

Section 74 of the Mental Health Ordinance (Cap. 136)

Commencement provisions

9.2.14 In the past, “shall come into operation” was the standard formula used in commencement provisions in enactments and in commencement notices. Now the present indicative “comes/come into operation” is used in both.

New principal Bills and subsidiary legislation

9.2.15 In all new principal Bills and subsidiary legislation, “must” and “must not” are used for the purposes described in paragraphs 9.2.5 and 9.2.6. For other purposes described in paragraph 9.2.7, for which “shall” has been used in the past, “must” or “must not” or another contextually appropriate expression is used.

Amending Bills and subsidiary legislation

9.2.16 The use of “must” in place of “shall” is a widely known plain language practice of which courts, lawyers and others involved in legislation would be aware. This being so, even if the Ordinance or subsidiary legislation being amended uses “shall” to impose obligations and prohibitions, “must” and “must not” can be used in the amending legislation to impose statutory obligations and prohibitions.

9.2.17 In amending Bills and subsidiary legislation “shall” is not used even if the legislation being amended uses “shall”.

Guidelines for use in amending enactments

9.2.18 The guidelines below would be useful when using “must” to impose statutory obligations and prohibitions in amending enactments—

- If “shall” is used only in a few provisions in the existing enactment, consider amending them to replace “shall” by “must”.
- Generally, “must” can be used in new subsections even though “shall” is used in the other subsections of the provision being amended.
- Avoid using “must” and “shall” in the same subsection. Instead, change the existing references to “shall” to “must”.
- For the sake of tidiness, consider replacing “shall” by “must” in other provisions in the proximity of the provision in which “must” is used on the understanding that the amendment is purely consequential.

9.3 Gender-Neutral Drafting

More appropriate in modern society

9.3.1 Historically,⁵ legislation tended to be drafted using words of the masculine gender only. Although it is still legally effective to do so⁶, in terms of gender equality and socially inclusive language, it is generally accepted that gender-neutral drafting is more appropriate. However, the gender can be specified if it is relevant to the context, as in legislation that is directed to one gender.⁷

More compatible with plain language

9.3.2 Gender-neutral language also improves intelligibility. This is because using the masculine gender only can misguide anyone unfamiliar with the concept that “he” in legislation is intended to function as a generic pronoun to include “she” and “it”.

Use in all new principal legislation

9.3.3 Gender-neutral language is used in all new principal Bills and subsidiary legislation.

How to use in amending legislation

9.3.4 Gender-neutral language is also used in amending legislation. However, care should be taken when amending a section or group of sections that use the masculine only. For example, avoid having a mixture of “he” and “he or she” in the same section. If amending a section that currently refers to “he”, a gender-neutral technique described below should be used or, if there are only a few references to “he” in the section, the references could be amended consequentially.

Different techniques can be used

9.3.5 There are various techniques that can be used to achieve gender-neutral drafting. The drafter should exercise judgement and choose the approach most appropriate to the context.

⁵ The UK Act of Parliament of 1850, known as Lord Brougham’s Act, “An Act for shortening the Language used in Acts of Parliament” (13 & 14 Victoria) (C.21-23) (10th June 1850) introduced the use of the generic “he” to include “she”—“**Be it enacted that in all Acts Words importing the Masculine Gender shall be deemed and taken to include Females ... unless the contrary as to Gender ... is expressly provided; ...**”.

⁶ Section 7(1) of the IGCO (*provisions for gender and number*) provides that “words and expressions importing the masculine gender include the feminine and neuter genders”.

⁷ For example, provisions dealing with duties of a father (which could only apply to the male gender) or with pregnancy (which could only apply to the female gender), or provisions dealing exclusively with corporate bodies. In these cases the appropriate gender should be used.

Repeat noun (neutral)

9.3.6 A gender-neutral noun can be used in place of a pronoun specific to a gender. However, this formulation may become cumbersome if there are multiple references to the subject/noun in the same provision.

Example 27

A person commits an offence if the person contravenes subsection (1).

Avoid using pronoun/noun

9.3.7 The provision can be recast to avoid repeating the noun.

Example 28

A person who contravenes subsection (1) commits an offence.

Use relative clause

9.3.8 The pronoun can be avoided by using a relative clause.

Example 29

Instead of:

If a receiver is appointed under section ..., he must not ...

Consider:

A receiver who is appointed under section ... must not ...

Replace possessive pronoun

9.3.9 Replace a possessive pronoun with “the” to avoid using “his” or even “his or her”.

Example 30

Instead of:

The Commissioner must give a copy of his report under this subsection to the Secretary.

Consider:

The Commissioner must give a copy of the report under this subsection to the Secretary.

Eliminate pronoun altogether

9.3.10 The provision can be rewritten to the same effect without using a pronoun.

Example 31

Instead of:

The Director may issue an improvement notice if he is of the opinion ...

Consider:

The Director may issue an improvement notice if of the opinion ...

Example 32

Instead of:

A licence granted by the Chief Executive on his being satisfied ...

Consider:

A licence granted by the Chief Executive on being satisfied ...

Example 33

Instead of:

A person is not incompetent, only by reason of his being an executor ...

Consider:

A person is not incompetent, only by reason of being an executor ...

Use both pronouns—“he or she”/“his or her”

9.3.11 Consider whether the provision applies to artificial persons before using “he or she”. If the provision applies only to natural persons, “he or she” and “his or her” can be used but this formulation can sometimes be too cumbersome.

Example 34

The driver of a motor vehicle must not supply any information that he or she knows is false or misleading.

The Commissioner must give a copy of his or her report under this section to the Secretary.

Redraft in passive voice or swap the order of subject and object

9.3.12 The passive voice formulation is a permissible exception to the general principle that legislation should be drafted in the active voice. It is only appropriate if it is obvious or unimportant who is responsible for the required action or who the actor is.

Example 35**Instead of:**

The person must include his name in the application.

Consider:

The person's name must be included in the application.

or

The application must include the person's name.

Use verb instead of noun

9.3.13 A verb can be used in place of a noun.

Example 36**Instead of:**

The Authority may not add an address ... unless the registered user has given his consent to its inclusion ...

Consider:

The Authority may not add an address ... unless the registered user has consented to its inclusion ...

Draft in the plural

9.3.14 Take care using this formulation to avoid creating the impression that it only applies if the members collectively resign or are removed from office.

Example 37**Instead of:**

A member holds office until he resigns or is removed from office.

Consider:

The members hold office until they resign or are removed from office.

Use plural pronoun

9.3.15 The use of the “singular they” as a generic singular pronoun has long been used in the English language as a convenient alternative to a more elaborate gender-specific pronoun reference. Whilst its contemporary usage is recognized in modern grammars, it is still gaining acceptance in formal writing and in the Hong Kong context. A number of jurisdictions use the singular they in their legislation (notably the Commonwealth of Australia and many Australian states). Drafters here may use it so long as there is no possible ambiguity and its use does not jar. The

singular they is a useful way to avoid gender-specific language, but the drafter is, of course, free to use another technique if they prefer.

Example 38

A person must include their name in the application.

Gender-neutral job titles etc.

9.3.16 Avoid the generic term “man” and generic words and expressions that contain “man” or use “man” as an adjective or verb. Also, as far as possible, use gender-neutral terms to describe occupations or classes of persons.

<i>Instead of</i>	<i>Consider</i>
ambulance man	ambulance officer
average man	average person, ordinary person, people in general, the public
chairman	chairperson, presiding officer
crewman	crew member
fireman	fire fighter
foreman	supervisor
headmaster, headmistress	principal
layman	layperson, non-professional, non-specialist
man and wife	husband and wife, wife and husband
man/men	person, people, individual, human being, human
mankind/man (when referring to humanity)	humanity, human beings, the human race, human kind
man-made	artificial, manufactured, of human construction, synthetic, machine-made, hand-made
manpower	work force, staff, labour, employees, staff resources, personnel
per man	per person
policeman	police officer

<i>Instead of</i>	<i>Consider</i>
postman	postal worker, postal officer
salesman/salesgirl	shop-assistant, sales assistant, sales staff, salesperson
spokesman	spokesperson
sportsman	athlete
steward/stewardess	flight attendant, cabin crew
to man	to administer, to staff, to run, to operate
workman	worker
workmanlike	skilful

9.4 Reader's Aids

Devices to assist reader

9.4.1 Reader's aids are essentially devices that are designed or recommended to be used in written text to aid understanding. Examples are notes, examples, graphs, tables, flow-charts and diagrams. In LDD, the use of notes and examples in legislative text is particularly encouraged.

Use in moderation

9.4.2 Of course, the overuse of reader's aids could be counterproductive. An excess of examples can impede the communication of the main message in the substantive provisions. Too many notes could clutter up the legislation and distract the reader. The drafter should exercise judgement and use these in moderation, in a way that will help and not hinder the reader.

Notes widely used

9.4.3 The use of notes in legislation is a widely adopted plain language technique. In providing signposts or other factual information, notes help the reader to understand the legislation more quickly and get a clearer picture of it. Below are some of the situations in which notes can be used—

- to draw the reader's attention to other relevant provisions in the legislation; and

- to provide the reader with factual information that is available elsewhere.

Where to put notes

9.4.4 Generally, a note to a section should be placed at the end of the section and a note that applies only to a particular subsection or paragraph at the end of that subsection or paragraph.

Status clause

9.4.5 A note that is used for a purpose described in paragraph 9.4.3 (which is to give information to the reader) would not affect the interpretation of the legislation. The drafter may, however, in a particular case, having regard to the nature of the notes and the context of the legislation, consider including a clause explaining the status of the notes. *Example 39* shows a suitable form to explain that a note is provided for information only. It can be included in the general interpretation provision or elsewhere as suits the context and structure of the particular enactment.

Example 39

(xx) A note located in the text of this Ordinance is provided for information only and has no legislative effect.

Examples

9.4.6 The purpose of using an example is to help the reader to better understand the law. Naturally, the primary aim is to draft the provision as simply and clearly as possible. But in some situations this alone may not be enough. A complex concept or a technical provision can be understood more easily if illustrated by an example showing how it will work in practice. It should be noted that an example is illustrative only and does not attempt to cover all the scenarios.

9.4.7 Examples can be located wherever it is likely to be most convenient to the reader.

Purpose clause or objects clause

9.4.8 A purpose clause or an objects clause gives the reader a statement of the purposes of, or objects sought to be achieved by, the legislation. As it sets the context for the later provisions and provides an overview of the legislation, it aids clearer understanding.

Which term to use

9.4.9 The terms “purpose clause” and “objects clause” are often used interchangeably. This is not a problem and is entirely acceptable. But if the drafter wishes to make a distinction, “objects clause” can be used to set out the aims of the legislation and “purpose clause” to state the legislative means of achieving the aims. The means are sometimes so closely intertwined with the aims that they may need to be stated together, in which case either term would be appropriate.

Where to place purpose clause or objects clause

9.4.10 A purpose clause or an objects clause can serve its function best if it is included as one of the earliest clauses. The drafter can choose whether to place it before or after the interpretation provision, taking into account factors such as whether defined terms are used in it.

Draft in broad terms

9.4.11 A purpose clause or an objects clause should normally be drafted in broad terms and not contain technical or other detail. Also it should not be inconsistent with the substantive provisions.

10 Spelling and Terminology

This Chapter sets out the conventions to be observed in relation to spelling and the use of certain words and expressions in legislative text. The object is to achieve, as far as possible, a consistency of style throughout the Statute Book and to modernize the language used in legislation. Part 2, in particular, recommends guidelines to avoid the use of arcane language in legislation.

10.1 Spelling

Follow OED spelling

10.1.1 Generally, the *Concise Oxford English Dictionary* (the first choice is British spelling) is to be regarded as authoritative.

Use English not Latin plurals

10.1.2 English plurals are in general to be preferred to Latin ones, unless the Latin plural is the more common usage.

Standardized spelling

10.1.3 The words “subsection”, “subclause”, “subregulation”, “subparagraph” and “Subdivision” are spelt without a hyphen. The “ize” spelling (as opposed to the “ise” spelling) is used in legislation (e.g. “authorize”, “categorize”, “criticize”, “organize”, “recognize” and “summarize”). In references to a judicial decision “judgment” is used.

Capitals

10.1.4 A capital is used at the beginning of titles, such as “Commissioner of Police” and “Registrar of Companies”. However, capitals are not used in generic references such as “assistant commissioners” and “a deputy registrar”.

10.1.5 The words “Bill”, “Ordinance”, “Proclamation”, “Chapter”, “Part” and “Schedule” should always begin with a capital.

10.1.6 Capitals are used in acronyms (e.g. CEPA) and initialisms (e.g. WTO) and can be used in defined terms. Thus, “the Company” may be defined to refer to a

specific company, leaving “the company” in lower case to refer to a company in general.

10.1.7 The words “regulation”, “rule”, “order”, “bylaw”, “resolution”, “notice”, “section” etc. should be in lower case, except when the reference is to a specific instrument.

10.2 Archaic Language

Archaic terminology

10.2.1 The following is a list of archaic forms of modern and shorter prepositions. They should no longer be used in legislation¹—

- “abovementioned”, “aforementioned”, “aforesaid”, “said”
- “herein”, “hereinafter”, “hereinbefore”
- “hereby”², “hereof”, “hereto”, “herewith”
- “whatsoever”, “whomsoever”, “whosoever”
- “whereon”, “whereupon”
- “wheretofore”, “wheresoever”.

10.2.2 The “there” words in the list below (still found in existing legislation) should also be avoided. As the examples in this paragraph illustrate, they can easily be replaced by a more commonplace preposition or the relevant noun.³ This will be in line with modern usage and also the meaning will be clearer.

- “thereby”, “therefor”, “therefrom”
- “therein”, “thereof”, “thereon”, “thereto”
- “thereupon”, “thereunder”, “thereunto”, “therewith”

¹ Some of these words are often quoted in parodies of legal writing as examples of legal jargon.

² Formerly “hereby” was standard usage in provisions establishing a statutory body and in declarations but the practice is no longer current in LDD.

³ The drafter can also consider whether the preposition serves a useful purpose in the particular context or can be omitted without affecting the meaning.

Example 1**Instead of:**

An order under section X must, for each water zone constituted thereby ...

Consider:

An order under section X must, for each water zone constituted **by the order** ...

Example 2**Instead of:**

A person who registers a covenant must pay compensation for any damages caused thereby.

Consider:

A person who registers a covenant must pay compensation for any damages caused **by the registration**.

Example 3**Instead of:**

The Board may renew the registration if the social worker makes an application to the Board therefor.

If the Board rejects the application the Board must notify the applicant of the reasons therefor.

Consider:

The Board may renew the registration if the social worker makes an application **for renewal to the Board**.

If the Board rejects the application the Board must notify the applicant of the **reasons [for the rejection]**.

Example 4**Instead of:**

... may enter a car park and remove any vehicle therefrom.

Consider:

... may enter a car park and remove any vehicle **[from it]/[there]**.

Example 5**Instead of:**

... that the document was signed at the time specified therein ...

Consider:

... that the document was signed at the time specified **in it** ...

Example 6**Instead of:**

... may examine and search a vehicle and anything therein or thereon.

Consider:

... may examine and search a vehicle and anything in or on **[the vehicle]/[it]**.

Example 7**Instead of:**

... the Register and any part thereof ...

Consider:

... the Register and any part of **[it]/[the Register]** ...

Example 8**Instead of:**

... a bus and every deck thereof ...

Consider:

... a bus and every deck **of the bus** ...

Example 9**Instead of:**

... the amount or interest thereon ...

Consider:

... the amount or interest on **[it]/[the amount]** ...

Example 10**Instead of:**

... certificate with the amount endorsed thereon ...

Consider:

... certificate with the amount **endorsed on it** ...

Example 11**Instead of:**

... passport and an amendment thereto ...

Consider:

... passport and an amendment to **[it]/[the passport]** ...

Example 12**Instead of:**

... and the traffic signs and road markings pertaining thereto ...

Consider:

... and the traffic signs and road markings pertaining to **[them]/[those]/[the signs and markings]** ...

Example 13**Instead of:**

... the Ordinance and regulations made thereunder ...

Consider:

... the Ordinance and regulations made under **[it]/[the Ordinance]** ...

Example 14**Instead of:**

... permit any person thereunto authorized by the Commissioner ...

Consider:

... permit any person authorized by the Commissioner ...

Example 15**Instead of:**

If a person ... ceases to act for the principal, the person thereupon ceases to be an accredited agent.

Consider:

[If]/[when] a person ... ceases to act for the principal, the person ceases to be an accredited agent.

Example 16**Instead of:**

On the determination of the rights and liabilities, the Company is thereupon liable ...

Consider:

On the determination of the rights and liabilities, the Company is liable ...

Example 17**Instead of:**

Construction operations or any work connected therewith ...

Consider:

Construction operations or any work connected with **[them]/[those works]** ...

“howsoever”

10.2.3 Instead of “howsoever”, use the more contemporary “however”.

Example 18**Instead of:**

notice (howsoever described)

Consider:

notice (**however** described)

“same”

10.2.4 Avoid the archaic practice of using “same” as a substitute for a pronoun or a noun.

Example 19

Instead of:

On the commencement date, the property vests in the Board on the terms and conditions on which the same was vested ...

Consider:

On the commencement date, the property vests in the Board on the terms and conditions on which **[it]/[the property]** was vested ...

Example 20

Instead of:

A certificate that the notice was posted ... is evidence that the same was sent ...

Consider:

A certificate that the notice was posted ... is evidence that **[the notice]/[it]** was sent ...

Example 21

Instead of:

An authorized officer may seize any food or drugs and any package in which the same was contained ...

Consider:

An authorized officer may seize any food or drugs and any package in which **[they]/[the food or drugs]** were contained ...

“save”

10.2.5 Avoid the archaic use of “save” as a substitute for “except”, “but” or “unless”.

Example 22

Instead of:

A permit holder must, on receiving a notice under section ..., save where the notice ...

Consider:

A permit holder must, on receiving a notice under section ..., **except if** the notice relates ...

*Example 23***Instead of:**

Save where the contrary intention appears ...

Consider:

Unless the contrary intention appears ...

Except where the contrary intention appears ...

*Example 24***Instead of:**

Save and except with the permission of the Director ...

Consider:

Except with the permission of the Director ...

*Example 25***Instead of:**

..., this section applies save to the extent ...

Consider:

..., this section applies **except to** the extent ...

*Example 26***Instead of:**

Save as provided in this section ...

Consider:

Except as provided in this section ...

*Example 27***Instead of:**

... activate any emergency or safety device on the railway premises save for the express purpose for which the same is provided and in accordance with the instructions printed thereon.

Consider:

... activate any emergency or safety device on the railway premises **except** for the express purpose for which **[it]/[the device]** is provided and in accordance with the instructions printed on **[it]/[the device]**.

10.3 Words and Expressions to be Used with Caution

“any”, “all”, “each” and “every”

10.3.1 In some contexts the use of these determiners is necessary and appropriate (e.g. “a penalty of [amount] for each/every day the contravention continues ... ” and “the resolution must be signed by each/every member/all the members”). However they should not be used unnecessarily. For example, do not use “any” if “a” or “an” can be used instead.

Example 28

Instead of:

Any person who contravenes a condition ... commits an offence.

Consider:

A person who contravenes a condition ... commits an offence.

Example 29

Instead of:

Every licensee must keep a record of transactions ...

Consider:

A licensee must keep a record of transactions ...

Example 30

Instead of:

All persons within the controlled area must wear protective clothing ...

Consider:

[A]/[Any] person within the controlled area must wear protective clothing ...

“as the case may be”

10.3.2 The expression “as the case may be” is often used unnecessarily in legal writing. Avoid it, but if without it there can be ambiguity, consider recasting the provision.

“as the case may require” etc.

10.3.3 Avoid the expression “as the case may require”, but if necessary, say “as the case requires”. In any event consider whether the use of the following is necessary in the context and whether the intended meaning is clearly conveyed—

- “as the case requires”
- “as the circumstances require”
- “as applicable”
- “as may be applicable”
- “so far as applicable”
- “as appropriate”
- “where appropriate”
- “wherever appropriate”

“cause to be ...”

10.3.4 When granting administrative powers or imposing duties, it is not necessary to say, for example, “The Director must cause to be published”. “The Director must publish” is sufficient.

“commencing on”

10.3.5 Instead of “commencing on”, consider “beginning on”, which is more in touch with contemporary usage.

“contravene”

10.3.6 Note that section 3 of the IGCO defines “contravene” to include a failure to comply. Therefore it is not necessary to say “A person who contravenes or fails to comply with ...”.

“day next preceding” and “day next following”

10.3.7 Avoid these expressions. Instead, say “the day before” or “the day after”.

“existing”, “before” and “after”

10.3.8 The words “existing”, “before” and “after” should be related to a particular point in time or the happening of a particular event.

“expiration”

10.3.9 Instead of “expiration”, consider “end”, but if that is not appropriate, use “expiry”.

“foregoing”

10.3.10 Instead of using “foregoing”, identify the reference. For example, instead of “despite anything in the foregoing provisions ...”, cite the provisions.

“for the avoidance of doubt”

10.3.11 The best practice is to use clear and unambiguous wording so that there is no doubt. If there is a good reason for using it, say “to avoid doubt” and not “for the avoidance of doubt” (see also paragraph 10.3.16).

“for the purposes of ...”

10.3.12 Too general or unspecific uses of the expression “for the purposes of” should be avoided. For example, “For the purposes of this Ordinance ...” is almost always uninformative and therefore superfluous. It is better to be specific about the purpose to be achieved or to refer to a specific provision.

“if and only if”

10.3.13 The expression “if and only if” should not be used.

“including but not limited to”

10.3.14 Use only “including”. However, “including but not limited to” can be used if without it the definition may be mistakenly interpreted as referring to a class only.

“in a case”, “in the case of ...” and “in the case where”⁴

10.3.15 Avoid these phrases and use only if there is no alternative. In some cases “for” or “if” could be suitable substitutes for all these expressions. They are used mostly in provisions that are divided into paragraphs to deal with a series of alternatives. *Examples 31 to 35* show alternatives that can be used. A situation is a case even if it is not called a case, so in paragraph (c) of *Example 34*, “case” can be used even if it is not used in paragraphs (a) and (b).

⁴ There would rarely be any reason to use “in the case where”.

Example 31**Instead of:**

The training period, in a case to which section 6 applies, is ...

The training period, except in a case to which section 6 applies, is ...

Consider:

The training period, **if** section 6 applies, is ...

The training period, except **if** section 6 applies, is ...

Example 32**Instead of:**

The application must be made—

- (a) in the case of a partnership, by the ...
- (b) in the case of a sole proprietorship, by the ...
- (c) in the case of a company, by the ...

Consider:

The application must be made—

- (a) **for** a partnership, by the ...
- (b) **for** a sole proprietorship, by the ...
- (c) **for** a company, by the ...

Example 33**Instead of:**

The fee to be paid—

- (a) in the case of a ship registered in Hong Kong is ...
- (b) in the case of a foreign ship is ...
- (c) in the case of a local vessel is ...

Consider:

The fee to be paid—

- (a) **for** a ship registered in Hong Kong is ...
- (b) **for** a foreign ship is ...
- (c) **for** a local vessel is ...

Example 34**Instead of:**

The training period—

- (a) in the case of a person appointed under section 6, is 12 months;
- (b) in the case of a person appointed under section 7, is 6 months; and
- (c) in any other case, is 3 months.

Consider:

The training period—

- (a) **for a** person appointed under section 6 is 12 months;
- (b) **for a** person appointed under section 7 is 6 months; and
- (c) in any other case, is 3 months.

or

- (a) **if** the person is appointed under section 6, is 12 months;

Example 35**Instead of:**

The Registrar must give a written notice—

- (a) in the case where the Member is a company incorporated in Hong Kong, ...; and
- (b) in the case where the Member is a company incorporated outside Hong Kong, ...

Consider:

The Registrar must give a written notice—

- (a) **if** the Member is a company incorporated in Hong Kong, ...; and
- (b) **if** the Member is a company incorporated outside Hong Kong, ...

“it is declared”

10.3.16 The expression “it is declared” should not be used unless a declaration is actually required.

Example 36**Instead of:**

For the avoidance of doubt, it is declared that an order made under section X ...

Consider:

To avoid doubt, an order made under section X ...

“it is the duty of” and “it is lawful for”

10.3.17 Avoid “it is the duty of” and use “a person must” or another substitute for “must” as is appropriate in the context. Unless there is a special reason to use it, do not say “it is lawful for”. Instead, say “a person may”.

“less than”, “more than” and similar words and phrases

10.3.18 When using expressions “less than”, “more than”, “greater than”, “smaller than”, “above”, “below”, “not exceeding” and “exceeding”, make sure that each scenario is provided for and nothing is left out. For example, a provision that says what happens at “a speed of more than 50 km/h” and at “a speed of less than 50 km/h” does not cover what happens at “a speed of 50 km/h”.

“notwithstanding”

10.3.19 Avoid “notwithstanding” and say “despite” instead. (It is now the practice of LDD to use “despite” in contexts in which “notwithstanding” had been used. This applies even if the existing enactment uses “notwithstanding”.)

“prima facie”

10.3.20 Text books on legislative drafting⁵ say that “prima facie” is superfluous in the expression “prima facie evidence” and recommend that it should not be used. Within LDD, its use is no longer current.

“such”

10.3.21 The word “such” is frequently overused in legal writing. It is entirely acceptable to use “such” to refer back to something mentioned previously as in *Examples 37* and *38*. However, do not use “such” as a substitute for “the”, “that” or “any” (*Examples 39* to *41*).

Example 37

This section applies to the following—

- (a) any information contained in an application for registration;
- (b) any document accompanying such an application; and
- (c) any other information provided in relation to such an application ...

⁵ Thornton (1996), p. 365; E.A. Driedger, *The Composition of Legislation*, 2nd ed., rev. (Ottawa: Department of Justice, 1976), pp. 268-269.

Example 38

- (1) A person who—
- (a) ... falsifies ... information in multiple commercial electronic messages that have a Hong Kong link; and
 - (b) knowingly initiates the transmission of such messages ...

Example 39**Instead of:**

give such particulars as [are]/[may be] required by the Director ...

Consider:

give **the** particulars required by the Director ...

Example 40**Instead of:**

... must be in such form as may be specified by the Commission ...

Consider:

... must be in **a** form specified by the Commission ...

Example 41**Instead of:**

... submit an application and in such application ...

Consider:

... submit an application and in **[the]/[that]** application ...

“under and in accordance with”

10.3.22 Avoid using “under” and “in accordance with” together. Use “under section X” to refer to the provision that gives the power. Use “in accordance with section X” to refer to compliance with section X.

“unless and until”

10.3.23 These words should not be used together. (Use “unless” to introduce a condition and “until” to introduce a time limit.)

“upon”

10.3.24 Use “on” instead of “upon”. For example, say “on receiving ...” not “upon receiving ...”, “on conviction on indictment” not “upon conviction on indictment” and “on the death of a person ...” not “upon the death of a person”.

“upon the expiration of”

10.3.25 Do not say “upon the expiration of”. If “at the end of” is not appropriate in the context, use “on the expiry of”.

“without limiting the generality of” and “without affecting the generality of”

10.3.26 In the expressions “without limiting the generality of” and “without affecting the generality”, it is not necessary to use the traditional “the generality of ...” because the expressions have the same meaning even without those words. Therefore, say, for example, “without limiting subsection (X) ...” or “without limiting the conditions specified in section Y ...” or “without affecting article Z of the UNCITRAL model law ...”.

“without prejudice to the generality of”

10.3.27 Avoid the expression “without prejudice to the generality of section X” or “without prejudice to the generality of the foregoing”. Instead, say “without limiting section X ...” or “without affecting section X ...”. (See paragraph 10.3.10 on the use of “foregoing”.)

“whichever is the less”

10.3.28 Do not say “whichever is the less”. Say “whichever is the lesser” or “whichever is less” as suits the context.

10.4 Other Style and Usage Issues

Use of synonyms

10.4.1 As a general rule, to avoid interpretation issues, different words or expressions should not be used to denote the same thing. However, this does not extend to techniques used for the purpose of and in the context of modernizing drafting (e.g. the use of “despite” (instead of “notwithstanding”), “must” (instead of “shall”) or the gender-neutral “worker” (instead of “workman”)).

“and” and “or”

10.4.2 When using these expressions, the intended meaning should be made clear to avoid any ambiguity.⁶ For example, the expression “A **and** B may do X” conveys the following 3 meanings—

- A and B jointly may do X
- A may do X, B may do X, or both A and B may do X
- The single concept of A and B may do X.

10.4.3 Use linking words such as “and” or “or” between paragraphs and subparagraphs carefully (see paragraphs 4.4.6 and 4.4.7).

“Despite” and “subject to”

10.4.4 If one provision is subordinate to another, a qualification such as “subject to ...” may be used at the beginning of the first-mentioned provision. Alternatively, the qualification “despite” may be used in the later provision that prevails over the first-mentioned provision. Either “subject to” or “despite” may be used, but not both together. That is, do not say “subject to section 4 ...” in section 3 and “despite section 3” in section 4.

“If”, “where” and “when”

10.4.5 The first choice should be “if”. Use “when” or “where” if the event is so certain that “if” is inappropriate or the use of “if” leads to an awkward construction.

Pronouns

10.4.6 Use the pronouns “it”, “them”, “they”, “their” etc. (rather than repeating the noun) if there is no risk of ambiguity.

“Provisions of”

10.4.7 It is usually not necessary to use “the provisions of” when referring to a provision. For example, do not say “subject to the provisions of section 3 ...”. Instead, say “subject to section 3 ...”.

“Subject to this Ordinance”

10.4.8 Some general qualifications are too vague to be helpful to the reader and are best avoided. For example, “subject to this Ordinance” and “despite this Ordinance”.

⁶ See Thornton (1996), pp. 95-98.

“That” and “which”

10.4.9 As a general rule use “that” for the defining relative clause and “which” for the non-defining relative clause. However there may be occasions where it is more appropriate to use “which” as a defining relative. Because “that” has no equivalent to “with which” or “to which”, the use of “that” may often result in a sentence ending with a terminal preposition. This is not incorrect but it should be avoided in case the style is distracting to the readers. For example, “... any goods to which this section applies.” is better than “... any goods that this section applies to.”.

“If ... then ...” constructions

10.4.10 From a grammatical point of view, the following construction is acceptable—

Example 42

If—

- (a) ...;
- (b) ...; or
- (c) ...,

a contract is void.

10.4.11 However, the preferred structure is to put the main clause first. A sentence is easier to digest when the main clause and subordinate clause are close together, as in the following—

Example 43

A contract is void if—

- (a) ...;
- (b) ...; or
- (c)

Possessives

10.4.12 If the syntax allows it, the apostrophe can be used to indicate possession rather than the long form of the prepositional “of” phrase. For example, say “... the Director’s decision ...” rather than “... the decision of the Director ...”.

Use of “deemed” etc.

10.4.13 Certain words such as “deemed”, which are generally associated with, or traditionally used to create, legal fictions are sometimes used for other purposes.

Before choosing the appropriate word, it is essential to consider the legal effect sought to be created. (For example, consider whether the intention is to create a legal fiction, presumption or neither.)

10.4.14 The use of “deemed” should be avoided in contexts such as those shown below.

Example 44

Instead of:

... as the Registrar deems fit ...

Consider:

... as the Registrar **[thinks]/[considers]** fit ...

Example 45

Instead of:

Nothing in this section is deemed to exempt ... a person from ...

Consider:

Nothing in this section **exempts** a person from ...

Retrospective commencement—used “deemed”

10.4.15 The practice within LDD is to use “deemed” to create the legal fiction of retrospective commencement.

Example 46

This Ordinance is deemed to have come into operation on 1 July 1997.

Use of “is to be regarded as”, “is taken to be” and “is to be treated as”

10.4.16 If a contemporary approach is preferred when creating a legal fiction, plain language terms such as “is to be regarded as”, “is taken to be” and “is to be treated as” can be used. (These terms can also be used for other purposes and in other contexts as well.)

Use of “presumed”

10.4.17 If the intention is to create a presumption “presumed” is a clear way of expressing it. Note however that other terms such as “is to be regarded as”, “is taken to be” and “is to be treated as” can also be used as long as the purpose of the provision is clear.

Declaratory statements

10.4.18 From a drafting point of view, if the intention is to make a declaratory statement or to provide a definition, the best practice is to use the present indicative.

Example 47

Instead of:

The Board is not to be regarded as an agent of the Government.

Consider:

The Board **is not** an agent of the Government.

Example 48

Instead of:

An employer is not to be regarded as liable under this section if ...

Consider:

An employer **is not** liable under this section if ...

Example 49

Instead of:

For the purposes of this section, a beauty product is to be treated as part of the personal effects of a person if ...

Consider:

For the purposes of this section, a beauty product **is** part of the personal effects of a person if ...

E-terminology

10.4.19 The standard spelling used by LDD for e-terminology is as follows—

- “the Internet” (as a proper noun) is used to refer to the global network of interconnected computers that is popularly known as the “Internet”. It is no longer necessary to preface the term with “commonly known as”.
- “online”—the spelling “online” instead of “on-line” is used.
- “email”—the spelling “email” instead of “e-mail” is used. Otherwise the expression “electronic mail” is used.
- “intranet”—the spelling “intranet” (not capitalized) is used.
- “website”—the standard spelling is “website”.

“Facsimile” vs “fax”

10.4.20 The expressions “facsimile transmission”, “facsimile number” and “facsimile machine” are often used in legislation. Consider using “fax” instead of “facsimile” as the former is more in line with popular usage and will be familiar to readers. Further, it has an ordinary meaning and is also defined (as is “facsimile”) in the *Concise Oxford English Dictionary* and other standard dictionaries.

Foreign words

10.4.21 Latin and other foreign terms should not be italicized. In any event, if there is a clear and concise way of expressing a concept in English, foreign words should not be used. Thus, the following should not be used—

- *inter alia* (say “among other things”);
- *mutatis mutandis* (say “with the necessary changes” or instead specify the changes, i.e. “applies as if references to X were to Y”);
- *pari passu* (say “equally”);
- *in pari materia* (say “on the same subject”).

Use of “Government” and “government”

10.4.22 Generally, to refer to the Government of the Hong Kong Special Administrative Region in an enactment, the word “Government” should be used (e.g. “... may be recovered as a debt due to the Government” and “... applies to the Government”). Section 3 of the IGCO (*interpretation of words and expressions*) defines “Government” to mean the Government of the Hong Kong Special Administrative Region.

10.4.23 In some contexts, the expression “Government of the Hong Kong Special Administrative Region” may be more appropriate presentationally (e.g. “A representative of a government other than the Government of the Hong Kong Special Administrative Region ...”).

10.4.24 In a reference to the national government of a specific place, use a capital to spell “government” (e.g. “the Government of the Republic of Singapore”).

10.4.25 In a generic reference, use the lower case at the beginning (e.g. “the government of a place outside Hong Kong” and “the government of a state to which the Convention applies”).

References to Hong Kong

10.4.26 The expression “Hong Kong” or “HKSAR”⁷ can be used to refer to the Hong Kong Special Administrative Region. Note that “HKSAR”, “Hong Kong” and “Hong Kong Special Administrative Region” are defined in the IGCO.

⁷ “HKSAR” is used in the context of the “HKSAR” being a party to criminal proceedings in section 15(3) of the Hong Kong Reunification Ordinance (110 of 1997), section 56(2)(a) of the CPO and the Schedule to the Indictment Rules (Cap. 221 sub. leg. C).

11 Punctuation

This Chapter sets out the conventions and practices on punctuation that are observed in drafting legislative provisions.

11.1 General

Purpose of punctuation

11.1.1 Punctuation makes possible the clear presentation of the written language.¹ In legislation, particularly, its purpose is to guide the reader through the grammatical construction of a sentence in a way that helps easy understanding of the contents. Punctuation should be used with care to avoid a misinterpretation of the provision.

11.2 Punctuation Rules

Full stop

11.2.1 A full stop should be used—

- At the end of the long title.
- At the end of the enacting words.
- After the section number at the beginning of a section, for example, “12.” (in the same line as the section heading).
- At the end of each section or subsection.
- To indicate an abbreviation, for example, “(Cap. 1)” (Chapter 1) and “s. 1” (section 1).

11.2.2 If a subsection, or a section that is not divided into subsections, contains more than one sentence, a full stop should be used at the end of each sentence. (See paragraph 9.1.4 on using more than one sentence.)

¹ Graham King, *Good Punctuation* (Glasgow: HarperCollins, 2004), p. 1.

Colon

11.2.3 A colon is used at the end of a preamble.

*Example 1*²

WHEREAS—

- (1) at the 24th Meeting ...;
- (2) ...; and
- (3) by the “Official Reply of the State Council ...”—
 - (a) stipulated the area of the Hong Kong Port Area ...; and
 - (b) determined that the land use right of the Stipulated Area ...:

NOW, THEREFORE, it is enacted by the Legislative Council as follows—

Dash

11.2.4 A long dash (also known as an “em-dash”) is used in legislative text in the following situations—

- After the opening words of a provision to indicate that other units of text, such as paragraphs and subparagraphs, are to follow (*Example 2*).
- In the preamble after “WHEREAS” and at the end of the enacting formula (*Example 1*).
- In signpost definitions (see *Example 16* in Chapter 5).
- In standard amending formulas, after the amendment location (see Chapter 15).

Example 2

(2) A GMO approval application must—

- (a) be in the specified form;
- (b) contain the information set out in Part 1 of Schedule 2; and
- (c) be accompanied by—
 - (i) a report on a risk assessment carried out, or caused to be carried out, by the applicant in accordance with Schedule 3, on the possible adverse biosafety effect of the GMO; and
 - (ii) the prescribed fee payable on the application.

Section 8 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)

² Extract from the preamble of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591).

Semicolon

11.2.5 Semicolons should be used in the long title to separate the distinct objects of a Bill.

Example 3

An Ordinance to incorporate the existing Independent Police Complaints Council; to provide for the Council's functions in monitoring the handling and investigation of reportable complaints by the Commissioner of Police; to provide for the Council's powers relating to its affairs and operation; to provide for the appointment of observers in relation to reportable complaints; and to provide for connected matters.

*Long title of the Independent Police Complaints Council Ordinance
(Cap. 604)*

11.2.6 If a provision contains a list of definitions or a series of paragraphs or subparagraphs, use a semicolon at the end of each definition, paragraph or subparagraph except the last one in the series (*Example 4*). The last should end with a full stop. (But see *Example 6*.) In a series of subparagraphs, if there are one or more paragraphs after the last subparagraph, use a semicolon and not a full stop at the end of the last subparagraph (*Example 5*).

Example 4

The Register of Registered Energy Assessors must contain in respect of every registered energy assessor—

- (a) the name of the assessor;
- (b) the registration number ... of the assessor;
- (c) the validity periods of ... certificates ... ; and
- (d) any other details as the Director thinks fit.

*Section 3 of the Buildings Energy Efficiency (Registered Energy Assessors)
Regulation (Cap. 610 sub. leg. B)*

Example 5

- (2) A magistrate may issue a warrant ... only if—
- (a) the magistrate is satisfied ... that—
 - (i) an offence ... has been ... committed in the place; or
 - (ii) there is in the place anything that constitutes, or is likely to constitute, evidence ...; and
 - (b) the magistrate is satisfied that—
 - (i) it is not practicable to ...;
 - (ii) such a person has unreasonably refused entry ...;
 - (iii) an authorized officer ...; or
 - (iv) the purpose of entry to the place would be prejudiced unless an authorized officer arriving at the place can secure immediate entry.

Section 8 of the Product Eco-responsibility Ordinance (Cap. 603)

Comma

11.2.7 If a provision contains a list of paragraphs or subparagraphs and the sentence continues after the last paragraph or subparagraph, a comma should follow that last paragraph or subparagraph.

Example 6

- (2) If, after entering any information in the register under subsection (1), the Director receives further information from the applicant—
- (a) on the GMO approval application; or
 - (b) on a variation request on the Director's decision on that application,
- the Director must enter the further information in the register within 14 days after receipt of it.

Section 13 of the Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)

Question mark

11.2.8 The practice is not to use the question mark in a section heading (as it is not regarded as a question but as a statement).

Example 7**20. Who is eligible to be nominated as a candidate***Section 20 of the District Councils Ordinance (Cap. 547)***Parentheses**

11.2.9 No firm rule can be laid down about the use of parentheses, indicated by (). The basic rule is that without the parentheses the sentence should be grammatically and logically correct. It is perhaps preferable to avoid their use if the part of a provision in question can be equally well placed between commas.

11.2.10 Parentheses are used mainly for the following purposes—

- To set out the Cap. No. of an enactment (*Examples 8 and 9*).

Example 8

Arbitration Ordinance (Cap. 609)

Example 9

Fixed Penalty (Smoking Offences) Regulation (Cap. 600 sub. leg. A)

- In the titles of legislation—
 - ◆ to enclose the word “Amendment” in amending legislation (*Example 10*);
 - ◆ to enclose “No.” of the Amendment (*Example 11*);
 - ◆ to set out other information in short titles of Ordinances or titles of subsidiary legislation (*Examples 12 and 13*).

Example 10

Legislative Council (Amendment) Ordinance 2011

Example 11

Inland Revenue (Amendment) (No. 2) Ordinance 2011

Example 12

Residential Care Homes (Persons with Disabilities) Ordinance (12 of 2011)

Example 13

Minimum Wage (Assessment Methods) Notice (Cap. 608 sub. leg. B)

- In numbers of subsections, paragraphs and subparagraphs (*Example 14*).

Example 14

- (1) An applicant under a GMO approval application or variation request who is aggrieved by a decision of the Director under section 15(1)(a)(ii) or (iii) may ...

*Section 16 of the Genetically Modified Organisms
(Control of Release) Ordinance (Cap. 607)*

- To insert a paraphrase, explanation or information into a provision. For example, if a section in another Ordinance or another section in a long Ordinance is being referred to, it is sometimes convenient to give a brief indication of the contents of that section. Such information should always be within parentheses.

Example 15

- (3) Without limiting the powers of the Authority under section 32(1)(e) (*powers of Authority in relation to do-not-call registers*) but subject to subsection (4), ...

Section 33 of the Unsolicited Electronic Messages Ordinance (Cap. 593)

- To set out a tag-definition referred to in paragraph 5.4.8 (*Example 16*).

Example 16

- (5AA) In relation to an agreement for sale made in respect of immovable property (***first agreement***), there is occurrence of a specified event if—

Section 29C of the Stamp Duty Ordinance (Cap. 117)

- For using after a defined term to show the equivalent definition in the other official language.

Example 17

(1) In this Ordinance—

approved website (認可網站) means a website approved under section 3(b);

(1) 在本條例中 —

認可網站 (approved website)指根據第3(b)條認可的網站；

Section 2 of the Legislation Publication Ordinance (13 of 2011)

- In the section heading of an amending provision to set out the heading or other description of the provision that is being amended (which includes a provision being repealed) (*Example 18*).

Example 18

33. Section 99 repealed (Reprint of Ordinances)

Section 33 of the Legislation Publication Ordinance (13 of 2011)

11.2.11 It is better to avoid using parentheses for a phrase that is contained within another parenthetical phrase. It is preferable to use commas for the inner phrase.

Square brackets

11.2.12 Square brackets, as indicated by [], are used at the top right-hand corner of a Schedule to show the numbers of the sections in which there is a reference to the Schedule (*Example 19*).

Example 19

Schedule 2

[ss. 3, 5, 6 & 7]

Requirements Relating to Customer Due Diligence and Record-keeping

Part 1

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (15 of 2011)

Apostrophe

11.2.13 An apostrophe should be used in the possessive form of nouns (as opposed to the “of” form) as shown in *Examples 20 to 22*.

Example 20

- (b) on the lessee ... or the owner of a tenement, ... , by leaving the ... document at the tenement or at the lessee’s or owner’s last known address or by sending it ... to the tenement or to the lessee’s or owner’s last known address;

Section 45(1)(b) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515)

Example 21

... holder lodges an appeal under section 46(1) against the Director’s decision relating to the cancellation ...

Section 26 of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)

Example 22

The Board may delegate ... the Board’s functions and duties ...

Section 9 of the Long-term Prison Sentences Review Ordinance (Cap. 524)

11.2.14 Contractions such as “don’t” and “can’t” should not be used. Instead say “do not” and “cannot”.

Hyphen

11.2.15 A hyphen is used to indicate that 2 (or more) words or part-words are linked together to form a compound word.

11.2.16 It is necessary to be consistent in the use of the hyphen in compound words. Also, where possible, follow established usage. Generally speaking, a hyphen is used—

- when 2 or more words act together as a single modifier (a hyphen is important in making the meaning clearer, but large and complex modifiers should be avoided)—

Example 23

earth-retaining structure

Schedule 3 to the Construction Workers Registration Ordinance (Cap. 583)

- with prefixes (a prefix should not be written as a separate word)—

Example 24

ex-prisoner

Rule 239 of the Prison Rules (Cap. 234 sub. leg. A)

Example 25

non-compliance

Section 40 of the Financial Reporting Council Ordinance (Cap. 588)

Example 26

pre-existing right

Section 8 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591)

pre-inquest review

Section 11 of the Coroners Ordinance (Cap. 504)

Example 27

post-admission experience

Section 4 of the Overseas Lawyers (Qualification for Admission) Rules (Cap. 159 sub. leg. Q)

Example 28

half-brother

Section 49(1) of the Crimes Ordinance (Cap. 200)

Example 29

third-party liability

*Section 2 of the Nuclear Material (Liability for Carriage) Ordinance
(Cap. 479)*

Example 30

quasi-contract

Section 32(1) of the District Court Ordinance (Cap. 336)

Example 31

re-export

*Section 8 of the Protection of Endangered Species of Animals and Plants
Ordinance (Cap. 586)*

Example 32

semi-skilled worker

Section 45 of the Construction Workers Registration Ordinance (Cap. 583)

Example 33

multi-storey building

*Section 13 of the Waste Disposal (Chemical Waste) (General) Regulation
(Cap. 354 sub. leg. C)*

- between the elements of a fraction—

Example 34

one-half

Section 44 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478)

one-quarter

Section 37A of the Inland Revenue Ordinance (Cap. 112)

two-thirds

*Section 6 of the Post-Release Supervision of Prisoners Ordinance
(Cap. 475)*

four-fifths

Section 10 of the Employees' Compensation Ordinance (Cap. 282)

one-tenth

*Regulation 2 of the Road Traffic (Registration and Licensing of Vehicles)
Regulations (Cap. 374 sub. leg. E)*

three-quarters

Regulation 19 of the Pensions Regulations (Cap. 89 sub. leg. A)

- for numbers twenty-one through ninety-nine, even if they are part of a larger number (see paragraph 12.1.1 on the recommended use of figures).

Example 35

twenty-first day

Section 3 of the Fugitive Offenders Ordinance (Cap. 503)

thirty-six hours

*Regulation 291 of the Merchant Shipping (Instructions to Surveyors)
(Passenger Ships) Regulations (Cap. 369 sub. leg. C)*

forty-fifth business day

Section 195 of the Banking (Capital) Rules (Cap. 155 sub. leg. L)

fifty-five years

Section 7 of the Perpetuities and Accumulations Ordinance (Cap. 257)

Example 35 (cont'd)

sixty-five and a half milligrammes

Schedule 1A to the Carriage by Air Ordinance (Cap. 500)

seventy-five dollars

Rule 17 of the Judicial Trustee Rules (Cap. 29 sub. leg. B)

ninety-six per cent

Section 8 of the Widows and Orphans Pension Ordinance (Cap. 94)

12

Numbers, Symbols, Date and Time

This Chapter presents the conventions for using numbers and symbols and expressing the date and time in legislative provisions. It is recommended that these are followed generally. However, as numerical expressions are used in many different contexts in legislative provisions, there can be occasions that call for a different approach.

12.1 Numbers

Use figures not words

12.1.1 The general rule is that numbers should be written as figures and not words. The figures should be in Arabic numerals.

Money, measurements etc.

12.1.2 Expressions of amounts of money, percentages, age, days, time and measurements of speed, length etc. should be expressed as shown in *Examples 1 to 8*.

Example 1

- (1) Within 21 days after receiving a notice of appeal ...
- (2) ... is to consist of 5 members appointed from all 5 categories of members ...

Section 35 of the Buildings Energy Efficiency Ordinance (Cap. 610)

Example 2

- (iii) who has experience of ... not less than 3 years in the aggregate gained during the 7 years ...

*Section 2 of the Minimum Wage (Criteria for Approved Assessors) Notice
(Cap. 608 sub. leg. A)*

Example 3

... means an offender of or over 14 and under 21 years of age.

Section 2 of Rehabilitation Centres Ordinance (Cap. 567)

Example 4

... exceeding a speed of 30 kilometres per hour ...

... at least 4.4 kilowatts for every 1 000 kilograms of the permitted gross vehicle weight ...

Regulations 2 and 10 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A)

Example 5

... not less than 4.0 grams of acetic acid in 100 cubic centimetres of ...

Schedule 1 to the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W)

Example 6

... a vessel of 5 m or more but less than 6 m in length ...

Schedule 6 to the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548 sub. leg. G)

Example 7

... dollar value of each point on the scale by 5.38%.

Section 5 of the Public Officers Pay Adjustment Ordinance (Cap. 606)

Example 8

... a further fine of \$2,000 for every day ...

Section 139 of the Securities and Futures Ordinance (Cap. 571)

12.1.3 Avoid using the number 1 to begin a sentence or a heading. The sentence or heading should be recast or the word spelled out (*Example 9*). With other numbers also, if the sentence begins with the number, spelling out the word is preferred.

Example 9

- (1) Six weeks before each anniversary of the date of issue or renewal of a licence ...

Section 3(1) of the Security and Guarding Services (Licensing) Regulation (Cap. 460 sub. leg. B)

Zero or 0

12.1.4 Whether the word or figure is more appropriate will depend on the context. *Examples 10 to 13* show situations in which the use of the word is appropriate. (An alternative such as “nil” can also be considered.) The use of the figure is appropriate in measurements, percentages and other numerical expressions (*Examples 14 and 15*).

Example 10

less than zero

Section 3 of the Legal Aid (Charge on Property) (Rate of Interest) Regulation (Cap. 91 sub. leg. D)

Example 11

A zero annual export quota

Schedule 1 to the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)

Example 12

incapacity suffered ... is zero

Section 22 of the Occupational Deafness (Compensation) Ordinance (Cap. 469)

Example 13

exposure is zero on the specified payment

Section 72 of the Banking (Capital) Rules (Cap. 155 sub. leg. L)

Example 14

1.0 gram per kilometre
 0.60 gram per kilometre
 0.06 gram per kilometre

Schedule 7 to the Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 sub. leg. J)

Example 15

is 0% of the value of the goods

Section 3AA of the Dutiable Commodities Ordinance (Cap. 109)

One or 1

12.1.5 The word “one” is more appropriate when the number is used as a pronoun with expressions such as “more/less than”, “or more” and in general expressions (*Examples 16 to 20*).

Example 16

not less than one independent manager

Section 40AL of the Education Ordinance (Cap. 279)

Example 17

at least one previous wage period

Section 5 of the Minimum Wage Ordinance (Cap. 608)

Example 18

one or more live animals

Schedule 2 to the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 589)

Example 19

where more than one building is constructed to the design

Section 89(5) of the Copyright Ordinance (Cap. 528)

Example 20

produced on any one day

*Regulation 58 of the Building (Construction) Regulations
(Cap. 123 sub. leg. B)*

not issue in any one day

*Regulation 7 of the Dutiable Commodities Regulations
(Cap. 109 sub. leg. A)*

during any one day

Schedule 1 to the Environmental Impact Assessment Ordinance (Cap. 499)

Example 21

only if the person is one of the following

*Section 68 of the Mandatory Provident Fund Schemes (General) Regulation
(Cap. 485 sub. leg. A)*

12.1.6 The phrase “more than one” is plural in meaning but singular in form. It should therefore be used in conjunction with a singular noun and a singular verb (Examples 22 and 23).

Example 22

arbitral tribunal may make more than one award

Section 71 of the Arbitration Ordinance (Cap. 609)

there is more than one registered owner

Section 49 of the Registered Designs Ordinance (Cap. 522)

Example 23

more than one payment is made

Section 26 of the Construction Workers Registration Ordinance (Cap. 583)

more than one election petition is lodged

*Section 11 of the Village Representative (Election Petition) Rules
(Cap. 576 sub. leg. B)*

12.1.7 The figure 1 is appropriate when used as a determiner expressing a number (*Example 24*) or when followed by a unit of measurement, currency or mathematical symbol (*Examples 25 and 26*).

Example 24

1 member from the social work sector

Section 3A of the Human Organ Transplant Ordinance (Cap. 465)

Example 25

minimum height of 1 metre

Section 9 of the Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470)

0.1 cubic metres

Regulation 21 of the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub leg. B)

exempted from duty to the extent of 1 litre

Section 1 of the Dutiable Commodities Ordinance (Exempted Quantities Notice) (Cap. 109 sub. leg. G)

1 gram of the substance

Section 3 of the Dangerous Drugs Ordinance (Cap. 134)

of less than 1 Watt

Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G)

Example 26

imprisonment for 1 year

Section 8 of the Hazardous Chemicals Control Ordinance (Cap. 595)

within 1 month, publish ... in the Gazette

Section 104 of the Chinese Medicine Ordinance (Cap. 549)

not less than 1 week before the date

Regulation 29 of the Dentists (Registration and Disciplinary Procedure) Regulations (Cap. 156 sub. leg. A)

Example 26 (cont'd)

not later than 1 day before the hearing date

*Section 3 of the Village Representative Election (Registration of Electors)
(Appeals) Regulation (Cap. 576 sub. leg. A)*

not exceeding 1 hour in duration

*Regulation 2 of the Hong Kong Auxiliary Police Force Regulations
(Cap. 233 sub. leg. A)*

for every period of 1 minute

*Schedule 5 to the Road Traffic (Public Service Vehicles) Regulations
(Cap. 374 sub. leg. D)*

for at least 1 second

Schedule 1 to the Milk Regulation (Cap. 132 sub. leg. AQ)

Example 27

1% higher or lower than the percentage

*Section 12 of the Air Pollution Control (Motor Vehicle Fuel) Regulation
(Cap. 311 sub. leg. L)*

Example 28

\$1 to \$2,000

Section 113C of the Criminal Procedure Ordinance (Cap. 221)

Other numbers as pronouns

12.1.8 It is far more common to use the figure rather than the word when other numbers are used as pronouns (e.g. 2 or more). The drafter can use his or her preferred expression.

Ordinal numbers

12.1.9 The general guideline is to use words for the ordinal numbers “first”, “second” and “third” except in expressions describing a day of a month or in expressions relating to a period. The convention is to use figures for numbers after “tenth”. However, drafters may decide to use either words or figures to express ordinal numbers according to each case.

Example 29

for the first occasion on which a financial penalty is so imposed
Section 35 of the Unsolicited Electronic Messages Ordinance (Cap. 593)

Example 30

on a first or second conviction to a fine of \$50,000
Section 20 of the Film Censorship Ordinance (Cap. 392)

Example 31

or try to get, a third person to vote at the election
Section 11 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)

Example 32

for a further year after the expiry of the 3rd year
Schedule 2 to the Patents (General) Rules (Cap. 514 sub. leg. C)

Example 33

penalty set out in the 2nd, 3rd and 4th columns
Regulation 43 of the Aerial Ropeways (Operation and Maintenance) Regulations (Cap. 211 sub. leg. A)

Example 34

from the 1st day of that month to the 14th day of that month
Rule 2(2) of the Exchanges (Special Levy) Rules (Cap. 351 sub. leg. A)

Fractions

12.1.10 The word “half” is preferred to the figure “1/2”.

Example 35

half of the percentage
Section 20 of the Occupational Deafness (Compensation) Ordinance (Cap. 469)

Example 36

between half an hour after sunset and half an hour before sunrise

*Section 9 of the Merchant Shipping (Local Vessels) (General) Regulation
(Cap. 548 sub. leg. F)*

Example 37

signed by not less than half of its members

Schedule 3 to the Construction Industry Council Ordinance (Cap. 587)

Example 38

half of the prescribed fee for a full licence

Section 40 of the Frozen Confections Regulation (Cap. 132 sub. leg. AC)

Example 39

loan creditors of the company to receive more than half of the assets

Section 34(2)(d) of the Estate Duty Ordinance (Cap. 111)

12.1.11 A fraction with “one” may be expressed in words as shown in *Example 40*.

Example 40

at one-half of the rate specified in Schedule 8

Section 14B of the Inland Revenue Ordinance (Cap. 112)

12.1.12 Some other fractions that may be expressed in words are “two-thirds”, “three-fourths”, “three-quarters” and “four-fifths”.

12.1.13 When a number forms part of a term, either a word or a figure may be used.

Example 41

two-way radio communication

*Article 64A(3) of the Air Navigation (Hong Kong) Order 1995
(Cap. 448 sub. leg. C)*

Example 42

three-wire system

*Regulation 2(b)(ii) of the Electricity Supply Regulations
(Cap. 406 sub. leg. A)*

Example 43

four-wheeled trailer

*Paragraph 2(b)(i) of Part II of the Ninth Schedule to the Road Traffic
(Construction and Maintenance of Vehicles) Regulations
(Cap. 374 sub. leg. A)*

Example 44

3-dimensional work

Section 23(3) of the Copyright Ordinance (Cap. 528)

Example 45

5-pointed star

*Paragraph II of Schedule 2 to the Regional Flag and Regional Emblem
Ordinance (117 of 1997)*

Example 46

24-hour clock system

*Regulation 10(b) of the Shipping and Port Control Regulations
(Cap. 313 sub. leg. A)*

12.1.14 For numbers in the thousands (other than money), it is best to mark off the thousands with a space rather than a comma.

Example 47

ships of 10 000 tons

*Section 21(4)(a)(iii) of the Merchant Shipping (Seafarers) (Crew
Accommodation) Regulation (Cap. 478 sub. leg. I)*

12.1.15 For amounts of money, the best practice is to mark off the thousands with a comma.

Example 48

a fine of \$1,000,000

Section 303(1)(b) of the Securities and Futures Ordinance (Cap. 571)

12.1.16 Large numbers may be expressed in a combination of words and figures. If words are not used, it would be particularly helpful to mark off the thousands with a comma.

Example 49

5 million special drawing rights

Section 11(1) of the Nuclear Material (Liability for Carriage) Ordinance (Cap. 479)

12.2
Dates

References to specific dates

12.2.1 A reference to a specific date should be in the form shown in *Example 50*.

Example 50

Say

23 May 2011

Declaration of Constituencies (District Councils) Order 2011 (Cap. 547 sub. leg. F)

Do not use these formats

the 23 May, 2011

the 23 May 2011

23rd May 2011

the 23rd day of May 2011

Dates in tables

12.2.2 When a date is shown in a table, it is acceptable to use figures only as shown in *Example 51*.

Example 51

Schedule			
Name of State	Title of agreement or arrangement	Date of agreement or arrangement	Provision
Canada	Consular Agreement between the Government of the People's Republic of China and the Government of Canada	28.11.1997	Article 10.3

*The Schedule to the Administration of Estates by Consular Officers Ordinance
(Cap. 191)*

Prescribed forms

12.2.3 In a form prescribed for the purpose of legal or other proceedings, provision may be made for a date to be inserted as shown in *Examples 52 and 53*.

Example 52

Dated this day of 20.....

*The Schedule to the Village Representative (Election Petition) Rules
(Cap. 576 sub. leg. B)*

Example 53

Dated this day of 20.....

*Schedule 1 to the Race Discrimination (Formal Investigations) Rules
(Cap. 602 sub. leg. A)*

12.2.4 In a prescribed form, provision may be made for a date to be inserted as shown in *Example 54*.

Example 54

____/____/____
Day / Month / Year

*Form 2 of the Schedule to the Employees' Compensation Regulations
(Cap. 282 sub. leg. A)*

Date of signing

12.2.5 In an instrument of subsidiary legislation, the standard form to indicate the date on which the subsidiary legislation is made is shown in *Example 55*.

<i>Example 55</i>	
	29 July 2011

12.3 Time

Hong Kong time

12.3.1 Any expression of time referred to in legislation is Hong Kong time unless the contrary is indicated (see section 67 of the IGCO (*Hong Kong Time*)).

If not Hong Kong time

12.3.2 If a time other than Hong Kong time is intended, it should be specified (*Examples 56 and 57*).

<i>Example 56</i>	
	the date and Co-ordinated Universal Time of the accident <i>Hong Kong Civil Aviation (Investigation of Accidents) Regulations</i> <i>(Cap. 448 sub. leg. B)</i>

<i>Example 57</i>	
	date and time (GMT) <i>Paragraph 4.2.1 of Schedule 4 to the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A)</i>

Use “a.m.” and “p.m.”

12.3.3 In expressions of time or to state the time, “a.m.” (which indicates the period between midnight and the following noon) and “p.m.” (which indicates the time between noon and the following midnight) should be used as shown in *Example 58* (see section 69 of the IGCO (*references to “a.m.” and “p.m.”*)).

Example 58

between the hours of 7 a.m. and 7 p.m.

*Section 62(1) of the Merchant Shipping (Local Vessels) Ordinance
(Cap. 548)*

12.3.4 Minutes past an hour should be shown as in *Example 59*.

Example 59**Say**

7:30 a.m.

*The definition of **non-peak hours** in section 2 of the Waste Disposal (Refuse Transfer Station) Regulation (Cap. 354 sub. leg. M)*

Do not use this format

~~10:00 p.m.~~ (**say** 10 p.m.)

or

~~6:00 a.m.~~ (**say** 6 a.m.)

12.3.5 Twelve noon should be expressed as shown in *Example 60* or *61*.

Example 60

12 noon

Rule 6(3) of the Labour Tribunal (Suitors' Funds) Rules (Cap. 25 sub. leg. D)

Example 61

at midday

Paragraph (j) of Part II of Part A of Schedule 4 to the Merchant Shipping (Safety) (Radio Installations) Regulations (Cap. 369 sub. leg. AP)

12.3.6 Twelve midnight should be expressed as shown in *Example 62* or *63*.

Example 62

12 midnight

*Regulation 19(3) of the Shipping and Port Control Regulations
(Cap. 313 sub. leg. A)*

Example 63

at midnight

*Section 74B(1) of the Landlord and Tenant (Consolidation) Ordinance
(Cap. 7)*

12.3.7 The expression “at midnight on (date)” means the midnight immediately following the end of that day (*Examples 64 and 65*).

Example 64

midnight on the day before the day on which

Section 63 of the Race Discrimination Ordinance (Cap. 602)

Example 65

midnight on 30 April 2012

*Section 37 of the United Nations Sanctions (Cote d’Ivoire) (No. 2)
Regulation 2011 (Cap. 537 sub. leg. AV)*

12.4 Symbols

Use “\$” for HK dollars

12.4.1 The dollar symbol (\$) should be used rather than the word “dollar” for Hong Kong currency. In most cases, it is not necessary to preface the amount with “HK\$” (even though there is no provision to the effect that an amount of money mentioned in legislation means an amount in Hong Kong dollars).

Large amounts of money

12.4.2 Large amounts of money are best expressed as a combination of words and figures or with thousands marked off with a comma.

Example 66

\$50 million

Section 22(1) of the Banking (Capital) Rules (Cap. 155 sub. leg. L)

Fines

12.4.3 Amounts of fines should be expressed in numerals.¹

Example 67

a fine of \$10,000,000

Section 303(1)(a) of the Securities and Futures Ordinance (Cap. 571)

Cents

12.4.4 An amount less than a dollar should be expressed as shown in *Example 68*.

Example 68

50 cents per plastic shopping bag

Schedule 3 to the Product Eco-responsibility Ordinance (Cap. 603)

Foreign Currency

12.4.5 All currencies except Hong Kong dollars must be specified clearly either in words or by using the appropriate symbols.

Example 69

Currency (stating whether it is denominated in HK\$/US\$/Euro/£/A\$/NZ\$ or another currency)

Item 5 of the Schedule to the Securities and Futures (Exempted Instruments—Information) Rules (Cap. 571 sub. leg. G)

Percentages

12.4.6 Use the symbol “%” to express a percentage after an amount expressed in figures rather than “per cent” or “percent”.

Example 70

2.5%

Section 7 of the Discovery Bay Tunnel Link Ordinance (Cap. 520)

¹ Under section 113B of the CPO, if an Ordinance provides for a fine for an offence by reference to a “level” or specifies a “level” of fine that may be prescribed by subsidiary legislation, the applicable fine is the amount corresponding to that “level” in Schedule 8 to the CPO.

Metric symbols

- 12.4.7 A list of metric units and their symbols can be found in the First Schedule and the Second Schedule to the Metrication Ordinance (Cap. 214).
- 12.4.8 Metric symbols should be used after numerals but not after words.

Example 71

80 Hz

Paragraph 4.8 of Schedule 5 to the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413 sub. leg. A)

Non-metric symbols

- 12.4.9 Non-metric symbols can be used after a measurement expressed in figures and not in words.

Example 72

20 ft.

Item 6(b) of the Schedule to the Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg. A)

Mathematical symbols

- 12.4.10 Mathematical symbols may be used in mathematical formulas, in measurements of size and in drafting technical provisions that are better expressed in mathematical terms.

Example 73

number of relevant days
in that charging period

$$\$8,000,000,000 \times \frac{\text{number of relevant days in that charging period}}{365} - (\$100,000,000 \times J)$$

Section 6GG of the Betting Duty Ordinance (Cap. 108)

Example 74

$$0.33p + 0.67d$$

Paragraph 181(b) of the Merchant Shipping (Instructions to Surveyors) (Passenger Ships) Regulations (Cap. 369 sub. leg. C)

Example 75

permanent variation of $\pm 10\%$

*Schedule 4 to the Merchant Shipping (Prevention of Oil Pollution)
Regulations (Cap. 413 sub. leg. A)*

Example 76

220V (+/- 6%) root mean square alternating current between a phase conductor and earth and 380V (+/- 6%) alternating current

*Regulation 2A of the Electricity Supply Regulations
(Cap. 406 sub. leg. A)*

Example 77

not larger than 175 mm $\times$ 245 mm

*Section 101A(1)(d) of the Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) Regulation (Cap. 541 sub. leg. D)*

13

References to Enactments and Provisions

This Chapter sets out the current conventions for referring, in the text of legislation, to legislative provisions and enactments. It is recommended that generally these conventions be followed, but they are not prescriptive rules and can be departed from if it is desirable or appropriate to do so in a particular case.

13.1 References to Provisions

Useful provisions of IGCO

13.1.1 It is also useful to be familiar with the following provisions of the IGCO—

- **Section 13** (citation of Ordinance)
- **Section 15** (reference to Ordinance as amended)
- **Section 16** (citation of part of Ordinance)
- **Section 17** (construction of reference to Ordinance, section etc.)
- **Section 31** (construction of subsidiary legislation)

Forward-referencing system used in HK

13.1.2 As a general rule, in Hong Kong legislation, the forward-referencing system is used to refer to other provisions. That is, the provision is referred to by the highest unit in the reference and not the lowest.

References to parts of a section

13.1.3 Accordingly, parts of a section are referred to as follows—

- (a) section 5(1) and **not** subsection 5(1);
- (b) section 5(1)(a) and **not** paragraph 5(1)(a);
- (c) section 5(1)(a)(i) and **not** subparagraph 5(1)(a)(i).

References to parts of a subsection

13.1.4 Parts of a subsection are referred to as follows—

- (a) subsection (1)(a) and **not** paragraph (1)(a);

- (b) subsection (1)(a)(i) and **not** subparagraph (1)(a)(i).

Reference to part of a paragraph

13.1.5 A part of a paragraph is referred to as paragraph (a)(i) and **not** subparagraph (a)(i).

Provisions with different nomenclature

13.1.6 Even if the highest unit is not referred to as a section, the same principle applies.¹ That is, the provision should be referred to by the highest unit in the reference. The references in paragraphs 13.1.3 to 13.1.5 can be adapted for provisions with other nomenclature. Note that in a set of—

- (a) regulations (in which the earlier nomenclature is used)², the highest unit is a “regulation” (instead of a section), the next division is a subregulation, the next a paragraph and so on;
- (b) rules, the highest unit is a rule, the next is a subrule, the next a paragraph and so on;
- (c) bylaws (in which the earlier nomenclature is used)³, the highest unit is a bylaw, the next is a paragraph, the next a paragraph and so on.

Deviations from normal style

13.1.7 The general rule set out in paragraph 13.1.2 can be departed from if in the context it is considered appropriate to refer directly to the particular paragraph or subsection etc. (*Examples 1 and 2.*)

Example 1

- (4) An election under subsection (1) is effective—
- (a) in relation to an account referred to in paragraph (a) of that subsection, when written notice of the election is given to the transferor trustee concerned; and
 - (b) in relation to an account referred to in paragraph (b) or (c) of that subsection, when written notice of the election is given to the transferee trustee concerned.

*Section 146 of the Mandatory Provident Fund Schemes (General)
Regulation (Cap. 485 sub. leg. A)*

¹ See paragraphs 3.5.2 to 3.5.5 for different nomenclature in some subsidiary legislation.

² See footnote 10 to Chapter 3, Part 5.

³ See footnote 11 to Chapter 3, Part 5.

Example 2

This Regulation is made for the purposes of paragraph (c) of subsection (1) of section 8 and paragraphs (c) and (d) of subsection (1) of section 9 of the Ordinance and supplements the rules for the sending of commercial electronic messages set out in those sections.

*Section 2 of the Unsolicited Electronic Messages
Regulation (Cap. 593 sub. leg. A)*

Cross-references to Divisions and Subdivisions**13.1.8** Generally—

- A Division in another Part is referred to as “Division [No.] of Part [No.]”.
- A Subdivision of a Division in another Part is referred to as “Subdivision [No.] of Division [No.] of Part [No.]”.
- A Division in the same Part is referred to simply by the Division number (e.g. Division 3).
- A Subdivision of another Division in the same Part is referred to as “Subdivision [No.] of Division [No.]”.

Cross-references to provisions collectively or alternatively

13.1.9 To refer to 2 or more sections in the alternative use “section 2, 3, 4 or 5”.

13.1.10 To refer to 2 or more sections collectively use “sections 2, 3, 4 and 5”.

13.1.11 Use the singular to refer to 2 or more subsections, paragraphs etc. of the same section collectively—

Example 3

section 16(1), (2) and (3) **does** not apply to ...
subsection (3)(b) and (c) **is** not to be construed as ...

13.1.12 Alternatively, the examples in paragraph 13.1.11 can be referred to as “sections 16(1), 16(2) and 16(3)” and “subsections (3)(b) and (3)(c)”.

13.1.13 Use the plural to refer to provisions of different sections collectively—

Example 4

sections 5 and 6(1)(b) **are** ...

Sections 17(2) and 31(2) of IGCO

13.1.14 If the reference is to a particular provision within the enactment, in view of sections 17(2) and 31(2) of the IGCO, it is not necessary to cite the short title or the title or to say “of this Ordinance” or “of this Regulation”.

References to specific provisions

13.1.15 Generally, a provision should be referred to simply by its number. Of course sometimes depending on the context, to refer back to a previously cited provision, it may be more appropriate to use “that section”, “that subsection”, “the section”, “the subsection” etc.

13.1.16 Do not use “the preceding section” or “the section next following” or similar expressions.

13.1.17 The following can be used to refer to other provisions as the situation requires⁴—

- (a) use “this section” to refer in a section to the same section; similarly use “this subsection”, “this paragraph” or “this subparagraph” to refer to the same subsection, paragraph, subparagraph and so on;
- (b) use “this Part”, “this Division” or “this Subdivision” to refer in a Part, Division or Subdivision to the same Part, Division or Subdivision;
- (c) to refer to another section (e.g. “section 5”) say “section 5”; to refer to a subsection, say “section 5(1)”; to refer to a paragraph say “section 5(1)(a)” and so on;
- (d) to refer in one subsection (e.g. subsection (2)) to another subsection of the same section, say “subsection (3)”; to refer to a paragraph of subsection (3) say “subsection (3)(b)” and so on;
- (e) to refer in a subsection to a paragraph of the same subsection, say for example “paragraph (b)”; to refer in a subsection to a subparagraph in the same subsection say “paragraph (b)(i)” and so on;
- (f) to refer in a paragraph to a subparagraph of the same paragraph say “subparagraph (i)”.

⁴ These can be adapted as necessary for provisions that use different nomenclature.

Cross-references—schedules divided into sections

13.1.18 The following applies in respect of a Schedule (e.g. Schedule 1) that is divided into sections—

- A section of the Schedule is referred to in the main body of the enactment as “section [X] of Schedule 1”.
- A section of the main body of the enactment is referred to in Schedule 1 simply as “section X”. However, if in the context this can create an ambiguity, “of this Ordinance”⁵ can be added. (For example, if there are references both to section X of the Ordinance and section X of Schedule 1, which can give rise to an ambiguity.)
- A section of Schedule 1 is referred to in the same Schedule as “section X of this Schedule”.
- A section of another Schedule is referred to in Schedule 1 as “section X of Schedule [2]”.

Cross-references—schedules in other formats

13.1.19 How to refer to the contents of a Schedule that is in any other format, will depend on how the provisions are numbered or arranged. For example, if the contents are arranged as a list of items, the reference in the body of the enactment would be to “[item number] of [Schedule Number]”. If the contents are arranged in columns, the specific column can be referred to as appropriate (e.g. “a vehicle of a description specified in column 2 of item 1 of Schedule 6”).⁶ If they are arranged in paragraphs (without division into sections), the reference would be to the paragraph number. In references within a Schedule itself, the Schedule number need not be cited.

External references in Schedules

13.1.20 Naturally, if the reference is in another enactment, the name of the enactment and the Cap. No. should be cited in addition to the above.

Parenthetical description after cross-references

13.1.21 If it would be helpful and is practical to do so, the heading of the section referred to (or other suitable description) may be added in parentheses after the section number (*Example 5*).

⁵ Can be adapted as “this Regulation”, “these Rules” or “this Bylaw” etc.

⁶ Section 8 of the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B).

Example 5

- (1) This section applies if a person sends an unsubscribe request to an individual or organization using the unsubscribe facility provided under section 9 (*commercial electronic messages must contain unsubscribe facility*).
- (5) In this section, **unsubscribe facility** (取消接收選項) has the same meaning as in section 9 (*commercial electronic messages must contain unsubscribe facility*).

Section 10 of the Unsolicited Electronic Messages Ordinance (Cap. 593)

13.2 References to Enactments

Cross-references to Ordinances—before publication in Loose-leaf Edition

13.2.1 Before publication in the Loose-leaf Edition, an Ordinance is referred to by the number under which it is published in the Gazette (**Ord. No.**) (see paragraph 1.2.14). The Ord. No. is placed within parentheses as shown in *Examples 6* and *7*. An amending Ordinance is also referred to by its Ord. No. Any such reference to a principal Ordinance in legislation can be replaced editorially by the Cap. No. under the Loose-leaf Ordinance or the Legislation Publication Ordinance (13 of 2011) after the relevant Ordinance is published in the Loose-leaf Edition.

Example 6

Food Safety Ordinance (5 of 2011)

Example 7

Stamp Duty (Amendment) Ordinance 2011 (14 of 2011)

Cross-references to Ordinances—after publication in Loose-leaf Edition

13.2.2 After the Ordinance is published in the Loose-leaf Edition and given a chapter number (see paragraph 1.2.15),⁷ it is referred to by its short title and Cap. No., in the abbreviated form shown below. The Cap. No. is placed within parentheses. (The Cap. No. is not included in any reference to an enactment in a long title.)

⁷ As noted in paragraph 1.2.15, an amending Ordinance is not given a separate Cap. No. and its contents will be incorporated into the principal Ordinance.

Example 8

Legal Practitioners Ordinance (Cap. 159)

Cross-references to subsidiary legislation—before publication in Loose-leaf Edition

13.2.3 Before publication in the Loose-leaf Edition, an item of principal subsidiary legislation is referred to by the Legal Notice number under which it is published in the Gazette (see paragraph 1.3.4). An item of amending subsidiary legislation is also referred to by its L.N. No. Any such reference to principal subsidiary legislation can be replaced editorially by the Cap. No. under the Loose-leaf Ordinance or the Legislation Publication Ordinance (13 of 2011) when the relevant subsidiary legislation is published in the Loose-leaf Edition.

Example 9

Residential Care Homes (Persons with Disabilities) Regulation (L.N. 111 of 2011)

Example 10

Building (Construction) (Amendment) Regulation 2011 (L.N. 3 of 2011)

Cross-references to subsidiary legislation—after publication in Loose-leaf Edition

13.2.4 After an item of subsidiary legislation is published in the Loose-leaf Edition and given a Cap. No. (see paragraph 1.3.6),⁸ it is referred to by its title and Cap. No. in the abbreviated form shown below. The Cap. No. is placed within parentheses.⁹

Example 11

Product Eco-responsibility (Plastic Shopping Bags) Regulation (Cap. 603 sub. leg. A)

⁸ An item of amending subsidiary legislation is not given a separate Cap. No. and its contents will be incorporated into the principal subsidiary legislation.

⁹ As the practice of assigning a letter of the alphabet to an item of subsidiary legislation published in the Loose-leaf Edition is relatively recent, there are still some references in legislation in the old form (i.e. XXX Regulation (Cap. Y sub. leg.).

Multiple references

13.2.5 If an Ordinance or an enactment is referred to by the short title or title more than once in any enactment or in any provision of an enactment, after each reference, the Cap. No. or the Gazette reference should be added. This is required for the BLIS database so that all searches by Cap. No. or Gazette reference can be located and highlighted on the screen.

Subsidiary legislation made contemporaneously

13.2.6 If it becomes necessary to refer in an item of subsidiary legislation (amending or principal) to another item of subsidiary legislation (amending or principal), not yet published but made on the same day as the first, it can be referred to by the title only. If the L.N. No. to be given to that item is known at the time, that also can be included within parentheses. This applies whether or not—

- both items are made by the same person or different persons; and
- the reference is to a particular provision and not the whole enactment.

Cross-references to particular provisions

13.2.7 If the reference is to a particular provision, the short title or title, the Ord. No. or L.N. No. (whichever applies) should be cited after the number of the provision as shown in *Example 12*.

Example 12

- (1) A deduction from the wages of an employee made under section 25(3) or 32(2)(b), (c), (d), (e), (f), (g), (h) or (i) of the Employment Ordinance (Cap. 57) in respect of any wage period must be counted as part of the wages payable in respect of that period.

Section 6 of the Minimum Wage Ordinance (Cap. 608)

Reference by Gazette reference even after commencement

13.2.8 Sometimes it may be necessary to maintain the Gazette reference despite the amendments having been incorporated into the principal enactment. An example is a transitional or other arrangement that applies with reference to the amending enactment (as opposed to the principal enactment). The reference could be in primary legislation, subsidiary legislation, in the principal enactment itself or in another enactment.

Example 13

... a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(b) and (c) ... of the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 (L.N. 16 of 2009)—

*Rule 4 of the Hong Kong Court of Final Appeal Fees Rules
(Cap. 484 sub. leg. B)*

Example 14

(2) Nothing in the Workmen's Compensation (Amendment) Ordinance 1980 (44 of 1980) ...

Section 55 of the Employees' Compensation Ordinance (Cap. 282)

Example 15

(7) A reference in this section to a medical certificate issued by a registered Chinese medicine practitioner does not include ... before the commencement of section 33 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006).

*Section 164 of the Mandatory Provident Fund Schemes (General)
Regulation (Cap. 485 sub. leg. A)*

References in subsidiary legislation to parent Ordinance

13.2.9 A reference in any subsidiary legislation made under an Ordinance to a provision in the parent Ordinance should be qualified by “of the Ordinance” but a reference to the short title or Cap. No. is not necessary. (See section 31(1) of the IGCO.)

Example 16

These Rules apply to the appointment of arbitrators and umpires under section 13, 23 or 24 of the Ordinance.

*Rule 2 of the Arbitration (Appointment of Arbitrators and Umpires)
Rules (Cap. 609 sub. leg. B)*

Example 17

- (1) For the purposes of section 26(1) of the Ordinance, a GMO that is intended for direct consumption as food or feed or for processing ...

Section 3 of the Genetically Modified Organisms (Documentation for Import and Export) Regulation (Cap. 607 sub. leg. A)

References in parent Ordinance to subsidiary legislation

13.2.10 A principal Ordinance will not usually refer to particular provisions of subsidiary legislation made under it. (The subsidiary legislation will be made after the Ordinance is enacted.) However, if a reference is added, for instance by an amendment exercise, then it should include the title (or the L.N. No.) of the subsidiary legislation.

Example 18

- (1) The Authority may revoke the approval of an approved trustee on being satisfied on reasonable grounds that—
- (e) the trustee has failed to comply with section 42B(6) or (7) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A). (Added 18 of 2008 s. 28)

Section 20B of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)

14 Amending Enactments

14.1 Preliminary

Application of practices to amending Bills and subsidiary legislation

14.1.1 This Chapter sets out the practices and procedures to be followed when drafting amending enactments.

14.1.2 The recommended practices and procedures apply to amending Bills, amending subsidiary legislation and subsidiary legislation that amends an Ordinance.¹

14.1.3 However, some practices will not apply to subsidiary legislation, such as those relating to the long title and the short title. Also, the organization of amendments when amending multiple enactments is unlikely to be relevant for subsidiary legislation because normally an instrument of subsidiary legislation will amend only one enactment.²

14.1.4 The practices and procedures are described with reference to “sections”. In subsidiary legislation that uses other nomenclature (e.g. regulation, rule, bylaw), the terms should be adapted accordingly.

14.1.5 Similarly, in a Bill, the amending provisions are referred to as “clauses” and “subclauses”, which are terms used only in amending Bills. References to these should be adapted as required for amending subsidiary legislation.

14.2 General Matters

Amendments must be made directly

14.2.1 Amendments must be made directly or textually, not indirectly or non-textually. In other words, an amending enactment should alter the text of the

¹ This refers to amendments made under a provision in primary legislation authorizing the amendment of part of the primary legislation, usually a Schedule, by an instrument of subsidiary legislation.

² An exception is where consequential amendments are authorized by the empowering Ordinance.

principal enactment by expressly adding, repealing or substituting words or provisions.³

Standard amendment formulas

14.2.2 Chapter 15 sets out the standard formulas to be used to amend Ordinances and subsidiary legislation. For subsidiary legislation, the formulas should adopt the relevant terms of the subsidiary legislation concerned.

14.2.3 The amending formulas in Chapter 15 should generally be used for all amendments. In the situations referred to in paragraph 14.3.13, because of the special nature of the amendments, they can take a form that suits the particular case.

Language of new text

14.2.4 Consistency in language and style produces more easily understood legislation. The general rule therefore is that the style of new and amended text should be consistent with the language and style of the enactment being amended. However, in some situations it may not accord with current drafting practices to follow the existing language and style. For example—

- As “shall” is no longer used in new or amending legislation, “must” or a suitable alternative should be used even if “shall” is used in existing provisions of the enactment being amended (see Chapter 9, Part 2).
- Gender-inclusive/gender-neutral language should be used in amending legislation (even if the principal enactment uses gender-specific language), but in a way that would not have an impact on the interpretation of the provisions (see Chapter 9, Part 3).
- If an enactment on a similar subject has used “old-fashioned” language that is out of tune with contemporary usage or current drafting practices,⁴ it should not be followed, unless there is good reason to do so.
- If the language or terminology used in an existing provision has been standardized, the standardized language and terminology should be followed, unless there is good reason not to do so.

³ The textual amendment system is in contrast to the technique of “indirect amendment”, providing that the Ordinance is to be construed or applied in a certain way.

⁴ For example, the use of “despite” in an enactment in which the existing provisions use “notwithstanding”.

No renumbering of existing provisions

14.2.5 When adding new sections or other whole provisions (including Schedules) to an enactment, the existing provisions must not be renumbered. Nor should the existing provisions be renumbered when sections or other provisions of an enactment are repealed. Retaining the existing numbering allows different historical “versions” to be kept on the BLIS database, serving as a useful archive for legal research.

14.2.6 One exception to this rule is that an existing section without subsections may be renumbered as a subsection if new subsections are being added to the section.

Reusing numbers of repealed or omitted provisions

14.2.7 A number of a repealed provision, or a provision that has been omitted as spent, can be used for a new provision in a subsequent exercise. This applies to a section, a part of a section and also to Parts, Divisions, Subdivisions and Schedules. However, this is a matter for the drafter’s decision. For instance, if a repealed provision is well-known by that number, the drafter may not want to reuse that number.

14.3 Organizational Matters

Arrangement of clauses—amending bill

14.3.1 The clauses of an amending Bill are normally arranged as follows—

- Long title
- Enacting formula
- Clause setting out the short title and providing for commencement⁵
- Enactments amended clause⁶
- Amending clauses
- Savings and transitional provisions, if any⁷
- Consequential amendments, if any

⁵ This of course is not necessary if commencement is on publication.

⁶ See Chapter 15 for other locations of the enactments amended clause.

⁷ For more information on the appropriate location for savings and transitional provisions, see Chapter 7.

- Schedules, if any
- Explanatory Memorandum

Arrangement of amending provisions—subsidiary legislation

14.3.2 Typically, the sections of an item of amending subsidiary legislation are arranged in the order set out below—

- Title
- Empowering section/enacting formula
- Commencement provision, if any
- Enactments amended clause
- Amending provisions
- Savings and transitional provisions, if any⁸
- Consequential amendments, if any
- Schedules, if any
- Name, title and signature of the enacting authority or person signing on behalf of the enacting authority
- Date of signing
- Explanatory Note

Amendments to be in consecutive order

14.3.3 As a general rule, sections of an enactment are amended in consecutive order, with one clause for each section amended. In certain limited cases, one clause may be used to repeal 2 or more sections or to amend 2 or more sections in the same way (see Chapter 15 for examples).

One subclause, one amendment

14.3.4 If 2 or more amendments are made to the same section, the amending clause should be divided into subclauses, with one subclause for each individual amendment. However, consecutive repeals within the same section can be effected by the same clause or subclause (see Chapter 15 for examples).

⁸ See footnote 7.

Subclause not to be further divided

14.3.5 A subclause should not be further divided. In simple cases, the amendments may be included in a single clause that is divided into paragraphs, with one paragraph for each provision being amended. Examples of these simple cases are the correction of punctuation, the amendment of identical text in the same way in different sections, and when making several short amendments to the same provision. Sometimes for better presentation, a subclause may be divided into paragraphs.

Order of amendments

14.3.6 If one clause makes 2 or more amendments to the same section, generally, the amendments should follow the order in which the affected provisions appear in the section. (But see paragraphs 15.4.20 and 15.5.18, which deal with the repeal or addition of definitions, and are exceptions to the general rule.) For example, a clause that amends different words in different parts of a section should be organized so that the words are amended in the order in which they appear in the section. This makes the Bill easier for the reader to understand.

Each section to be amended by one clause

14.3.7 For the same reasons, as a general rule, a section of an enactment should not be amended by more than one clause. However, this practice is subject to the exceptions mentioned above and may be unavoidable if it is an amending Bill that is organized according to the subject matter of the amendments. (See paragraph 14.3.15.)

Division into Parts if 2 or more enactments amended

14.3.8 If an amending Bill amends more than one enactment, it should be divided into numbered Parts, with one Part⁹ for each enactment amended.¹⁰ (See paragraph 14.3.15 for the organization of a Bill in which the amendments are arranged according to subject matter.)

If Bill also has consequential amendments

14.3.9 See Part 7 of this Chapter for organizing consequential amendments in a Bill that is divided into Parts.

⁹ Amendments to an Ordinance and its subsidiary legislation can be set out in the same Part, separated into Divisions or Subdivisions.

¹⁰ See the Chief Executive Election (Amendment) Ordinance 2011 (1 of 2011). Also see the Enduring Powers of Attorney (Amendment) Bill 2011 and the Road Traffic (Amendment) Bill 2011, both published in the Gazette on 13 May 2011.

Amending private Bills

14.3.10 An amending private Bill may have to be divided into Parts however short it is. This is because every private Bill has to contain a savings clause as required by LegCo Rule 50(8), whether it is a new principal Bill or an amending Bill.

14.3.11 As a general rule, in every amending Bill, amendments must be preceded by an enactments amended clause (**EAC**). (See Chapter 15 on the amending styles adopted by LDD.) The EAC is basically a statement that the enactment is amended as set out in the ensuing clauses. As this statement cannot apply to the savings clause, in an amending Bill that is a private Bill, the amending provisions will have to be set out in a separate Part, preceded by the EAC, and the savings clause will have to be set out in a separate Part.

Substantive amendments to be in main body

14.3.12 As a general rule, the main amendments in an amending Bill (other than consequential amendments etc.) should be in the body of the Bill and not in a Schedule or Schedules to the Bill. (See also Part 8 of this Chapter.)

Use of Schedules for amendments

14.3.13 In certain exceptional situations, a Schedule or Schedules can be used for the amendments. For example, for technical amendments to a large number of provisions to substitute a new term for an existing term¹¹ and for terminological amendments to replace a title consequent on the change of title, or transfer of functions, of a public officer.¹²

Generally no arrangement by subject matter

14.3.14 As a general rule, clauses in an amending Bill should not be arranged according to the subject matter of the amendments. This could result in the same section being amended by more than one clause or in sections being amended in a non-consecutive order. The result in both cases would be a less user-friendly Bill.

When arrangement by subject matter is appropriate

14.3.15 As an exception to the above rule, amendments can be arranged according to subject matter if in a particular case it is the more systematic or coherent approach. Examples would be a law reform exercise or an amendment exercise that affects several enactments but has a common theme. Such an exercise could require the

¹¹ See the Schedule of amendments in column form in the Personal Data (Privacy) (Amendment) Bill 2011, published in the Gazette on 8 July 2011.

¹² These could be amendments made under section 54A (*power to transfer functions of public officers*) or 55 (*change of title of office*) of the IGCO.

amendment of more than one enactment to give effect to each initiative.¹³ It is important to note that although amendments to different enactments may be arranged under one topic in a Part, the amendments to each enactment should be set out in a separate Division or Subdivision within the Part.¹⁴

14.3.16 Another exception is a miscellaneous statute law amendment Bill sponsored by the Department of Justice, which is normally divided into numbered Parts, with each Part dealing with a different subject matter.¹⁵ Again, each enactment under a Part should have its own Division or Subdivision.

14.3.17 Further exceptions can be made if the situation requires it. For example, if a series of amendments are made to the same section with separate commencement dates. For clarity, the amendments may be grouped according to their commencement dates.

14.4 Long Titles of Amending Bills

Should be wide enough to encompass amendments

14.4.1 LegCo Rule 50(3) requires each Bill to be given a long title “setting out the purposes of the Bill in general terms”. As with new Bills, the long title of an amending Bill should be drafted in wide enough terms to embrace the whole of the contents of the Bill.

Types of long titles

14.4.2 The long titles to amending Bills generally take three basic forms. The first simply names the principal Ordinance or Ordinances being amended. The second both names the principal Ordinance or Ordinances being amended and describes the purpose of the amendments. The third describes the purpose of the amendments but does not name the principal Ordinance or Ordinances concerned.

14.4.3 It is now more common to describe the purposes of the amendments in a long title although the first type continues to be used. The long title should be wide enough to encompass all the amendments, but LegCo Rule 50(3) has to be kept in mind when drafting the second or third type of long title.

¹³ See the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008), the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009 (6 of 2009) and the Electoral Legislation (Miscellaneous Amendments) Ordinance 2011 (18 of 2011).

¹⁴ See the Electoral Legislation (Miscellaneous Amendments) Ordinance 2011 (18 of 2011).

¹⁵ See the Statute Law (Miscellaneous Provisions) Ordinance 2008 (10 of 2008).

Ordinances named

14.4.4 The first type of long title names the principal Ordinance or Ordinances being amended without stating anything more, as illustrated by *Examples 1 to 3*. Note that the Cap. No. of the Ordinance as set out in the Laws of Hong Kong is not cited in the long title.

<i>Example 1</i>	<i>One Ordinance named</i>
A BILL To Amend the Legal Practitioners Ordinance.¹⁶	

<i>Example 2</i>	<i>One Ordinance named</i>
A BILL To Amend the Trade Descriptions Ordinance.¹⁷	

<i>Example 3</i>	<i>Two or more Ordinances named</i>
A BILL To Amend the Immigration Ordinance, the Registration of Persons Ordinance and the Crimes Ordinance.	

Ordinances named and purposes described

14.4.5 The second type of long title both names the Ordinance or Ordinances being amended and describes the purpose of the amendments, as illustrated by *Examples 4 and 5*.

<i>Example 4</i>	<i>One Ordinance named and purpose described</i>
A BILL To Amend the Copyright Ordinance to provide for the circumstances in which section 119B(1) of the Ordinance does not apply.¹⁸	

¹⁶ The long title of the Legal Practitioners (Amendment) Ordinance 2010 (2 of 2010).

¹⁷ The long title of the Trade Descriptions (Amendment) Ordinance 2008 (19 of 2008).

¹⁸ The long title of the Copyright (Amendment) Ordinance 2009 (15 of 2009).

<i>Example 5</i>	<i>One Ordinance named and purpose described</i>
A BILL To Amend the Inland Revenue Ordinance to give effect to the proposals in the Budget introduced by the Government for the 2010–2011 financial year concerning tax concessions for qualifying debt instruments; to make further provisions relating to debt instruments; and to provide for related matters.¹⁹	

Purpose of amendments described only

14.4.6 The third type of long title describes the purpose of the amendments but does not name the principal Ordinance or Ordinances being amended. This type of long title is most often used if the amending Bill amends different enactments for the same purpose, as illustrated by *Examples 6* and *7*.

<i>Example 6</i>	<i>Purpose described only</i>
A BILL To Amend various Ordinances to provide for the use of electronic means in carrying out certain transactions under those Ordinances; and for connected purposes.²⁰	

<i>Example 7</i>	<i>Purpose described only</i>
A BILL To Transfer the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of the Companies Ordinance to the offers of investments regime of the Securities and Futures Ordinance and to make consequential and related amendments.²¹	

¹⁹ The long title of the Inland Revenue (Amendment) Ordinance 2011 (4 of 2011). For an example of a more detailed long title, see the Legislative Council (Amendment) Ordinance 2011 (2 of 2011).

²⁰ The long title of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002).

²¹ The long title of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (8 of 2011).

Reference to subsidiary legislation

14.4.7 If the Bill amends both an Ordinance and subsidiary legislation, the better practice is for the long title to mention that subsidiary legislation is being amended, without relying on the IGCO definition of **Ordinance** to include subsidiary legislation (*Examples 8 and 9*).

<i>Example 8</i>	<i>Reference to subsidiary legislation in long title</i>
A BILL To Amend the Mandatory Provident Fund Schemes Ordinance and the subsidiary legislation made under it.²²	
<i>Example 9</i>	<i>Reference to subsidiary legislation in long title</i>
A BILL To Amend the Enduring Powers of Attorney Ordinance and the Enduring Powers of Attorney (Prescribed Forms) Regulation.	

Reference to consequential amendments

14.4.8 Most amending Bills make consequential amendments to other enactments. It is not strictly necessary for the long title to reflect that. Thus the long title shown in *Example 1* would also be suitable for a Bill that both amends the Legal Practitioners Ordinance (Cap. 159) and makes consequential amendments to other enactments. The common practice however is to mention in the long title that the Bill makes consequential amendments.

14.4.9 If the Bill makes consequential amendments to both primary legislation and subsidiary legislation, the better practice is to draft the long title so as to include the subsidiary legislation²³ rather than depend on the IGCO definition of **Ordinance** to include subsidiary legislation.

²² The long title of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2008 (18 of 2008).

²³ By referring simply to “consequential amendments” or to “enactments” or naming the subsidiary legislation being amended.

Reference to related or other amendments

14.4.10 In some cases, an amending Bill may make amendments, either to the same Ordinance or another enactment, that are related to the main amendments but are not truly consequential. In these cases the long title should mention that the Bill deals with “related matters”^{24, 25} or makes “related amendments”²⁶ or if necessary both.²⁷ Apart from those, other suitable wording can be used to describe amendments other than the main amendments included in the Bill (e.g. to provide for matters connected with these purposes²⁸).²⁹

Miscellaneous amending bills

14.4.11 If an amending Bill amends different enactments for different purposes, the long title may simply indicate that the Bill makes miscellaneous amendments to various enactments, as in the case of the long title to the Statute Law (Miscellaneous Provisions) Ordinance 2008,³⁰ which is shown in *Example 10*.

Example 10	Statute Law (Miscellaneous Provisions) Bill 2008
A BILL To Provide for miscellaneous amendments to various Ordinances and for connected purposes.	

²⁴ Road Traffic (Driving-Offence Points) (Amendment) Ordinance 2009 (4 of 2009).

²⁵ See the Ruling of the President under LegCo Rule 57(4) in the Fixed Penalty (Smoking Offences) Bill in the 2007–2008 Legislative Council, in which the effect of the expression “related matters” or similar expressions was considered in the context of a ruling on whether such an expression expanded the scope or changed the subject matter of the Bill as represented by the provisions contained in it.

²⁶ The Hong Kong University of Science and Technology (Amendment) Ordinance 2008 (24 of 2008).

²⁷ Road Traffic (Amendment) Bill 2011, published in the Gazette on 13 May 2011.

²⁸ See the Ruling of the President under LegCo Rule 57(4) in the Prevention of Bribery (Amendment) Bill 2007 in the 2007–2008 Legislative Council, in which the President ruled on the point whether the expression “to provide for matters connected with these purposes” (referring to 3 purposes set out before that expression) allowed an amendment to a provision that was not sought to be amended by the Bill.

²⁹ Examples from recent Bills are “to provide for matters ancillary to that purpose”, “to provide for incidental matters”, “to make consequential and incidental amendments”, “to provide for incidental and connected matters”, “to make consequential and technical amendments”, “to make minor technical amendments”, “to make related, consequential and other minor amendments”, “to make minor and textual amendments” and “to make miscellaneous amendments”.

³⁰ Statute Law (Miscellaneous Provisions) Ordinance 2008 (10 of 2008). All recent Statute Law (Miscellaneous Provisions) Bills have this long title.

14.5 Short Titles of Amending Bills

LegCo Rule 50(2)

14.5.1 LegCo Rule 50(2) requires each Bill to be given a short title. This also applies to an amending Bill. The first numbered clause of the Bill is used for this purpose.

Should show it is an amending Bill

14.5.2 It is important that the short title makes it clear that it is an amending Bill and not a Bill for a new principal Ordinance.

Also add year of publication

14.5.3 In an amending Bill, the year of publication in the Gazette is added to the end of the short title.

Bill amending one Ordinance

14.5.4 For Bills that amend only one Ordinance (excluding enactments amended consequentially), the short title is derived from the short title to the Ordinance concerned, with the word “Amendment” added to it. Thus the short title clause for a Bill that amends the Inland Revenue Ordinance (Cap. 112) presented to LegCo in 2011 would be as shown in *Example 11*.

Example 11

Simple short title: first Bill presented in a particular year

Short title

This Ordinance may be cited as the Inland Revenue (Amendment) Ordinance 2011.

If more than one Bill amends same Ordinance

14.5.5 If more than one Bill amending the same Ordinance is presented in the same year with the same short title, those after the first are numbered according to the order in which they are presented, beginning with the number 2.

14.5.6 The number appears in parentheses after “(Amendment)”. Note that two pairs of parentheses are used in the short title (i.e. “(Amendment) (No. 2)” and not “(Amendment No. 2)”. For example, the short title of a second Bill amending the

Inland Revenue Ordinance (Cap. 112) presented to LegCo in 2011 would be as shown in *Example 12*.³¹

Example 12	Bill subsequent to first presented in a particular year
Short title This Ordinance may be cited as the Inland Revenue (Amendment) (No. 2) Ordinance 2011. ³²	

LegCo Rule 58(10)

14.5.7 Note that in view of LegCo Rule 58(10) (*procedure in committee of the whole Council on a Bill*), no amendment is needed to change the year or a number in the short title of a Bill. LegCo Rule 58(10) authorizes the Law Draftsman to change the reference to the year or to any number in the title in order “to refer to the year, or to reflect the order, in which the bill becomes law”. Thus if a Bill was published in the Gazette in 2010 but becomes law in 2011, the year can be changed to 2011. Similarly, for example, had the Inland Revenue (Amendment) (No. 2) Bill 2011 become law before the earlier Bill, then “(No. 2)” in the short title of the second Bill would have had to be deleted and “(No. 2)” inserted in the short title of the earlier Bill.

Bill amending an un-commenced Ordinance

14.5.8 An amending Bill that amends an amendment Ordinance that has not commenced should have a short title derived from the title of the amending Ordinance as shown in *Example 13*.

Example 13	Bill amending Ordinance not yet in operation
Short title This Ordinance may be cited as the Legislative Council (Amendment) Ordinance 1999 (Amendment) Ordinance 2000. ³³	

Bill amending more than one Ordinance

14.5.9 If a Bill amends more than one Ordinance (excluding Ordinances amended consequentially), its short title should reflect that and also indicate that it is not a new principal Bill. The use of an expression such as “Miscellaneous Amendments” or

³¹ This applies only if the same short title is used. It is possible for a Bill amending the same Ordinance to have a different short title (e.g. a short title that describes the subject matter of the amendment).
³² 9 of 2011.
³³ 15 of 2000.

“General Amendments” or a generic word such as “Legislation” or “Law” is recommended for this purpose (*Examples 14 to 17*). Note that when a generic word is used, it is entirely acceptable to use “Amendment” in the singular as the generic word indicates that it is not a new principal Bill but a Bill amending 2 or more enactments on a similar subject matter.

Example 14

Short title

This Ordinance may be cited as the Disciplined Services Legislation (Miscellaneous Amendments) Ordinance 2009.³⁴

Example 15

Short title

This Ordinance may be cited as the Electoral Legislation (Miscellaneous Amendments) Ordinance 2011.³⁵

Example 16

Short title

This Ordinance may be cited as the Road Traffic Legislation (Amendment) Ordinance 2008.³⁶

Example 17

Short title

This Ordinance may be cited as the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011.³⁷

14.5.10 The annual “Revenue Ordinance”, which implements the budget and which normally takes the form of an amending Bill, is an exception to the practice recommended above.

³⁴ 6 of 2009.

³⁵ 18 of 2011.

³⁶ 23 of 2008.

³⁷ 8 of 2011.

14.6 Titles of Amending Subsidiary Legislation

Amending subsidiary legislation

14.6.1 In amending subsidiary legislation also, the title should include the word “(Amendment)” within parentheses and a reference to the year at the end of the title. Some examples are shown below—

- Import and Export (General) (Amendment) Regulation 2011³⁸
- Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011³⁹

14.6.2 If there is more than one amendment to the same principal subsidiary legislation and the amending instruments have the same title, the second amendment will be numbered “(No. 2)” and so on. For example—

- Poisons List (Amendment) Regulation 2010⁴⁰
- Poisons List (Amendment) (No. 2) Regulation 2010⁴¹
- Poisons List (Amendment) (No. 3) Regulation 2010⁴²

14.7 Titles of Private Amending Bills

Amendments to private Ordinances

14.7.1 LegCo Rule 50(8) states that a “private bill” within the meaning of the PBO must include the following clause—

“Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.”.

³⁸ L.N. 43 of 2011.

³⁹ L.N. 120 of 2011.

⁴⁰ L.N. 33 of 2010.

⁴¹ L.N. 82 of 2010.

⁴² L.N. 105 of 2010.

14.7.2 The rule applies to every private Bill. In a private amending Bill, the savings clause should be added as a clause to the Bill itself rather than to the Ordinance being amended.⁴³ This rule applies even if the Ordinance being amended already contains a savings clause to the same effect.

14.8 Consequential Amendments

Amending Bill to include consequential amendments

14.8.1 An amending enactment should include all necessary consequential amendments. The usual practice is for the drafting instructions to identify the consequential amendments that need to be included in the amending enactment. The most common consequential amendments are set out below.

- Amendments to cross-references required as a result of the amendment or repeal of a section or the addition of a section.
- Amendments to references to an office or body required as a result of an amendment changing the title of that office or the name of that body.
- Amendments to terminology required as a result of an amendment that repeals an existing definition, adds a new definition or substitutes modern terminology for outdated terminology.

Consequential amendments in subsidiary legislation

14.8.2 When amending subsidiary legislation, consequential amendments to that legislation arising from the amendments should be included in the amending legislation. But unlike amending Bills, consequential amendments to other subsidiary legislation should not be included. It is perhaps acceptable to consequentially amend other subsidiary legislation that is made by the same body under the same enabling provision.⁴⁴ However, as a general rule, any such consequential amendments should be made by separate legislation.⁴⁵ Of course, this restriction does not apply if the enabling provision authorizes the making of consequential amendments to other subsidiary legislation or to an Ordinance.⁴⁶

⁴³ See section 9 of the Prior of the Order of Cistercians of the Strict Observance Incorporation (Amendment) Ordinance 2001 (1 of 2001).

⁴⁴ See L.N. 115 of 1999.

⁴⁵ To do otherwise might also raise issues of the vires of the consequential amendments.

⁴⁶ See section 4 of the Administrative Appeals Board Ordinance (Cap. 442), section 47 of the Airport Authority Ordinance (Cap. 483), section 11 of the Provision of Municipal Services (Reorganization) Ordinance (Cap. 552) and section 398 of the Securities and Futures Ordinance (Cap. 571).

Organization of consequential amendments

14.8.3 In an amending Bill containing consequential amendments to other enactments, the consequential amendments should be separated from the main provisions and placed in a different Part or a Schedule.⁴⁷ This would be usually at the end of the Bill. If a single Part is used, amendments to different enactments should be set out in separate Divisions or Subdivisions within the Part.

14.8.4 It may be more convenient to set out consequential amendments in a Schedule or Schedules, particularly if the Bill (whether a principal Bill or an amending Bill) consequentially amends more than one enactment or there is a significant number of consequential amendments.⁴⁸ This applies whether or not the principal amendments are divided into Parts. If a single Schedule is used, there should be a separate Part, Division or Subdivision within the Schedule for each enactment.

⁴⁷ If there are also substantive amendments to the enactment which is being consequentially amended, the substantive and the consequential amendments can be in the same Part.

⁴⁸ See Schedule 9 to the Companies Bill, published in the Gazette on 14 January 2011.

15 Standard Amending Formulas

15.1 Preliminary

15.1.1 The current document design of the gazetted version of legislation has been in place since 15 July 2010. At that time, a new drafting template and new amending styles and formulas replaced the existing amending styles and formulas.¹

15.1.2 The current amending formulas are shorter and simpler and in the form of instructions, making it easier to identify the different components of the amendment. For every amendment, whether it is a repeal, an addition or a repeal and a substitution, the amendment location is set out first. The amending action and the other components of the amendment (i.e. the text that is being repealed, added or substituted) are set out at different levels.

15.1.3 Part 2 of this Chapter explains what an Enactments Amended Clause is and technical drafting matters relating to an EAC.

15.1.4 Parts 3 to 7 set out the standard amending formulas now in use to amend enactments. It should be noted that the formulas can be changed from time to time for technological reasons or due to a review of drafting practices.

15.1.5 The amending formulas for repeals, additions and repeals and substitutions, are set out separately in different Parts. The appropriate formula for each type of amendment can be found under the relevant Part. The formulas to be used for different parts of a provision are set out in separate paragraphs under each Part. In an amending exercise, a combination of these different amendments may have to be made to the same section, using a separate subclause for each amendment (see paragraph 14.3.7). (Appendix 2 is a sample of an amending Bill that illustrates the use of the formulas.)

15.1.6 It should be noted that sometimes an amendment can be made to the Chinese text or English text only. In such a case, the text should be specified in the

¹ The current document design, legislation drafting template and amending styles and formulas are designed to facilitate clearer communication. The old amending formulas were essentially in the form of full sentences.

formula. See the examples in paragraphs 15.4.22 and 15.6.27, which can be adapted as required.

15.2 Enactments Amended Clause

What is an Enactments Amended Clause

15.2.1 Another change that was introduced along with the current amending styles and formulas was the inclusion of an Enactments Amended Clause (**EAC**). The EAC is a legislative statement that the legislation is being amended as set out in the individual amending provisions. Now, in a legislative instrument that contains an amendment to existing legislation, an EAC precedes the amending provisions. The exceptions to this rule are in paragraph 15.2.6. The exceptions are the situations in which an old-style, full-sentence amending formula can still be used.

Commencement of EAC

15.2.2 If all the amendments are to come into operation at the same time, the EAC must be commenced together with the amendments. If there is phased commencement of the amendments, the EAC must be commenced together with the first of the amendments to be commenced.² The commencement of the EAC does not commence the amendments to which it relates. The amendments must be commenced expressly according to the instructions of the Policy Bureau, independently of the EAC.³

LegCo resolutions with amendments

15.2.3 In a LegCo resolution that contains amendments, which under the new styles for such resolutions should be set out in a Schedule, the body of the resolution should state that the legislative instrument is amended as set out in the Schedule.

² If there is more than one EAC, each must be commenced together with the first of the amendments to which it relates. Formerly, if amendments or other provisions were set out in a Schedule, sometimes the linking clause in the body of the enactment was commenced in stages as and when specific amendments or provisions were commenced. This practice should not be followed. The linking clause (which in the case of amendments would be the EAC) should be commenced together with the first of the amendments or the provisions to be commenced. The contents of the Schedule should be commenced expressly, independently of the linking clause.

³ If there is phased commencement, some amendments would be commenced after the commencement of the EAC.

When EAC is to be included

15.2.4 In an amending instrument, an EAC should be included even if the instrument contains only one amendment.

15.2.5 In a new principal Bill or instrument of subsidiary legislation,⁴ an EAC should be included if the Bill or instrument contains an amendment to another enactment.

When EAC is not required

15.2.6 The following are examples of situations in which the old full-sentence style may be used in place of the EAC—

- If the only amending provision in the instrument is a repeal.⁵
- If it is important to present the repeal separately whether or not the instrument contains other amendments (e.g. if the repeal is the principal object of the exercise or it is part of the legislative scheme and not a consequential matter).⁶
- If, in view of the exceptional nature of the amendments, a special drafting approach has to be used and the old full-sentence style is more appropriate.⁷

Form of EAC—amendments to single enactment

15.2.7 *Examples 1 to 3*⁸ show the form of an EAC that relates to a single enactment.

Example 1

ABC Ordinance amended

The ABC Ordinance (Cap. No.) is amended as set out in [section 3]/[sections 3 and 4]/[sections 3, 4 and 5]/[sections 3 to 10].⁹

⁴ As a rule, except for the repeal of an existing item of subsidiary legislation, amendments to other subsidiary legislation are not made by new principal subsidiary legislation.

⁵ United Nations Sanctions (Liberia) Regulation 2010 (Repeal) Regulation (L.N. 48 of 2011).

⁶ Section 3 of the Provision of Municipal Services (Reorganization) Ordinance (78 of 1999), section 16 of the Prevention and Control of Disease Ordinance (14 of 2008), section 12 of the Alice Ho Miu Ling Nethersole Charity Foundation Ordinance (13 of 2008) and section 3 of the Hong Kong Sports Development Board (Repeal) Ordinance (11 of 2004).

⁷ An example is the large number of technical amendments set out in column form in the Schedule to the Personal Data (Privacy) (Amendment) Bill 2011, published in the Gazette on 8 July 2011.

⁸ Examples 1 to 3 can be adapted as appropriate for subsidiary legislation.

⁹ If there are more than 3 amending clauses, a condensed reference can be used.

Example 2**ABC Ordinance amended**

The ABC Ordinance (Cap. No.) is amended as set out in this Part.¹⁰

Example 3**ABC Ordinance amended**

The ABC Ordinance (Cap. No.) is amended as set out in the Schedule.

Form of EAC—amendments to multiple enactments

15.2.8 *Examples 4 and 5* show the form of an EAC that relates to multiple enactments. When this general form is used, the short titles or titles and Cap. Nos. of the enactments being amended do not appear in the EAC (unlike in *Examples 1 to 3*). They will only appear in the heading of the Part, Division or Subdivision containing the amendments to the relevant enactment.

Example 4**Enactments amended**

The enactments specified in [Part Nos.]/[Division Nos.]/[Subdivision Nos.] are amended as set out in those [Parts]/[Divisions]/[Subdivisions].

Example 5**Enactments amended**

The enactments specified in [the Schedule]/[Schedules [Nos.]] are amended as set out in [the Schedule]/[those Schedules].

Location of EAC

15.2.9 The EAC should always be placed before and not after the amendments to which it relates. Other than that, the specific location is for the drafter to decide according to what best suits the organization of the Bill. More than one EAC can be included if a single EAC relating to all the amendments does not suit the structure of the Bill or if it is preferred to include separate EACs for separate enactments.

15.2.10 In an amending Bill that amends more than one enactment, the usual practice is to arrange the enactments according to Cap. No. and to arrange the

¹⁰ It is advisable to refer to the Part instead of the sections to avoid amending the EAC if clauses are added or deleted as a result of amendments at committee stage.

provisions being amended in numerical sequence under each enactment. The amendments to each enactment should be set out in a Part, Division or Subdivision, with the heading—“**Amendments to [Name of Enactment] (Cap. No.)**”.¹¹

15.2.11 In a Bill that amends more than one enactment, sometimes it may be more appropriate to organize the amendments according to subject matter.¹² The headings relating to the amendments and the position of the EAC or EACs (if more than one is included) are matters for the drafter to decide, but in relation to each enactment, either the EAC or the heading should indicate the name and Cap. No. of the enactment.

15.3 Section Headings of Amending Provisions

Cite number of provision

15.3.1 The general rule is that the number of the provision being amended, repealed, added or substituted should be cited. In a clause that amends a single provision (say repeal of section 5(1)), this could be either “**Section 5 amended**” or “**Section 5(1) repealed**” (with a suitable description—see paragraph 15.3.4(c)), according to the drafter’s preference.

Cite existing section heading etc.

15.3.2 When a single provision is being amended or repealed, apart from the above, the existing section heading or a description of the amendment should be included within parentheses in the section heading of the amending provision. This is not necessary for substitutions or additions of whole provisions (i.e. a Part, Division, Subdivision, section or Schedule).

Examples of section headings to amend sections etc.

15.3.3 The following examples of section headings can be followed when amending or adding a section or sections. They can be used with suitable modifications for—

- repealing, adding or substituting, whole Schedules;
- amending regulations in which an individual regulation is referred to as a “regulation” instead of as a “section”; or

¹¹ The Cap. No. can be omitted from the heading if it is included in the EAC relating to the enactment.

¹² The amendments would however still need to be separated according to enactment except in the exceptional situations mentioned in paragraph 14.3.13.

- amending a “rule” in a set of rules or a “bylaw” in a set of bylaws.¹³

15.3.4 When making multiple amendments to the same section (whether repeals, additions or substitutions), the section heading would be **“Section [5] amended (present section heading)”**. This would also be the section heading of a provision making a single amendment to a section (except the repeal or substitution of the whole section) unless the drafter wishes to describe the specific amendment (e.g. **“Section 5(1) repealed”**).

Examples: section headings of provisions amending sections

- (a) to amend a section (whether a single amendment or multiple amendments)—

Section 5 amended (present section heading)

- (b) to repeal a single section—

Section 5 repealed (present section heading)

- (c) to repeal a subsection, both the following can be used; the second can be used if the repeal is the only amendment to the section—

Section 5 amended (present section heading)

Section 5(1) repealed (description of amendment)

- (d) to add or substitute a single section—

Section 5A added

Section 5 substituted

- (e) to add or substitute 2 or 3 consecutive sections by one clause—

Sections 5A and 5B added

Sections 5A, 5B and 5C added

¹³ Although whole provisions in orders and notices are now referred to as sections, there are existing instruments in which they are referred to as paragraphs. The formulas can be adapted suitably when amending them.

Sections 5, 6 and 7 substituted

- (f) to repeal 2 or 3 consecutive sections, or non-consecutive sections with no amendments to the intervening provisions, by one clause—

Sections 5 and 6 repealed

Sections 5, 6 and 8 repealed

- (g) to add, repeal or substitute more than 3 consecutive sections by one clause—

Sections 5A to 5F added

Sections 5 to 10 repealed

Sections 5 to 9 substituted

15.3.5 When amending a section of a Schedule, the usual practice is to say “**Schedule [No.] amended**” in the heading rather than to refer to the section number. The description within parentheses would therefore be the Schedule heading and not the section heading. That means the same heading (shown below) can be used to amend, repeal or substitute one or more provisions in a Schedule or to add one or more provisions to a Schedule.

Schedule [No.] amended (present Schedule heading)

15.3.6 However, when amending a Schedule that is divided into sections (with section headings), the drafter can choose to amend each section in the same way that a section in the body of the enactment is amended.¹⁴ The section heading of such an amending provision should be as shown below.

Schedule, section 5 amended (present section 5 heading)

15.3.7 When repealing more than 3 non-consecutive sections,¹⁵ instead of citing the section numbers, the section heading can refer to “Sections” as shown below. The same formula can be used for repealing multiple Schedules, with “Schedules”

¹⁴ See Part 2 of the Chief Executive Election (Amendment) Ordinance 2011 (1 of 2011).

¹⁵ This can be done only if there are no amendments to the intervening provisions.

substituted for “Sections”, and can also be adapted for repealing “regulations” and “rules”.

Sections repealed

15.3.8 If a group of scattered provisions are amended by one clause to achieve a common purpose (e.g. repealing or replacing a term common to all the provisions), the heading, instead of citing the section numbers, can give a description of the amendment, as shown below.

“Director” repealed

“Board” substituted for “Committee”

Section headings to amend Parts etc.

15.3.9 The general rule on citing numbers in the heading of the amending provision applies to the amendment of a Part, Division or a Subdivision in the body of the enactment or within a Schedule.¹⁶ The difference is that when repealing, substituting or adding a Division or a Subdivision, the number of the next higher level should also be cited. This would be the Part number for a Division and both the Part number and the Division number for a Subdivision.

Examples: section headings of provisions amending Parts etc.

- (a) to repeal¹⁷ or substitute a Part, Division or Subdivision in the body of the enactment—

Part 2 repealed/substituted

Part 2, Division 1 repealed/substituted

Part 2, Division 1, Subdivision 2 repealed/substituted

- (b) to add a Part, Division or Subdivision in the body of the enactment—

Part 2A added

¹⁶ For a Schedule this applies if those provisions are amended individually.

¹⁷ For a repeal, the heading of the provision being repealed or a description of the amendment should be included within parentheses, but this is not necessary for a substitution.

Part 2, Divisions 3A and 3B added

Part 2, Division 3, Subdivisions 2A to 2D added

Sections headings to add or amend headings

15.3.10 Section headings are “amended” but not “repealed” as the number of the provision may be taken to be part of the heading and so may also be taken to have been repealed along with the heading.¹⁸

15.3.11 For a Part, Division or Subdivision, if both the number and the text of the heading are being replaced,¹⁹ the section heading of the amending provision should say “substituted”. If only the number or the text is being replaced, the section heading should say “amended”.

15.3.12 The examples below show the section heading of a provision that amends or substitutes a section heading,²⁰ Part heading, Division heading or a Subdivision heading. They can be adapted to amend a heading of, or within, a Schedule.

Examples: section headings of provisions amending headings

Section 5 heading amended (present section heading)

Part II heading amended/substituted²¹ (present Part heading)

Part 2, Division 3 heading amended/substituted (present Division heading)

Part 2, Division 3, Subdivision 4 heading amended/substituted (present Subdivision heading)

15.3.13 Sometimes it may be necessary to divide into Parts an existing enactment without Parts. If so, the following heading can be used to introduce a Part heading and number. The same formula can be adapted to introduce Division headings and Subdivision headings.

¹⁸ Sections are not renumbered as a rule, and so the question of replacing the number would not arise.

¹⁹ This can happen if a Part Number is changed to Arabic numerals or a Division/Subdivision heading is converted from the 2-line format to 1-line format or vice versa. (It can also be done editorially under the Legislation Publication Ordinance (13 of 2011)).

²⁰ The examples for amending a section heading can be adapted for amending the heading of a whole provision with different nomenclature.

²¹ For substitutions, the description within parentheses is not necessary.

Part 1 heading added

Part 1, Division 1 heading added

Part 1, Division 1, Subdivision 1 heading added

15.3.14 Although cross-headings are not used in new legislation, sometimes it may be necessary to amend an existing cross-heading. The heading of an amending provision to repeal, amend or substitute a cross-heading should be as follows—

Cross-heading before section [No.] repealed/amended/substituted

15.3.15 If a cross-heading and the section or sections to which it relates are repealed together, the heading of the amending provision can be as follows—

Sections 6 and 6A and cross-headings repealed

Section headings in amending resolutions

15.3.16 When an item of subsidiary legislation is amended by a resolution under section 34 (*placing of subsidiary legislation before Legislative Council*) or 35 (*approval of Legislative Council to subsidiary legislation*) of the IGCO, the amendments are set out in a Schedule to the resolution. The section headings of the amending provisions in the Schedule should first cite the section number of the section in the original item and should also include within parentheses the heading of that section.

Examples: section headings of amending provisions in resolutions

Section 5 amended (section 5 heading)²²

Section 8 amended²³ (section 6 amended (section 6 heading))

Section 9 amended (section 10A added)

²² If the LegCo resolution amends a provision in new principal subsidiary legislation or existing principal subsidiary legislation (which may be the case if the amending instrument has already commenced), this would be the section number of the provision in the principal subsidiary legislation.

²³ If the subsidiary legislation being amended is amending legislation, this would be the section number of the amending provision.

15.3.17 If a commencement notice (which is not normally divided into sections) is being amended by a resolution under section 34 of the IGCO, the heading of the amending provision in the Schedule of amendments should be as follows—

Notice amended

15.3.18 If the commencement notice is divided into sections (which would be rare), the recommended heading for amending a section can be followed.

Section [No.] amended

15.4 Repeal without Substitution

Components of formula for repeal without substitution

15.4.1 The formula for a repeal without substitution has 2 components: the amendment location and the amending action (“**Repeal**”).

Repeal of a Part, section or Schedule

15.4.2 When repealing a Part, section or a Schedule, the general rule is that the amendment location is the level of text that is being repealed.

Examples: repeal of a Part, section or Schedule

(a) to repeal a Part—

Example 6

Part 3 repealed (present Part heading)

Part 3—

Repeal the Part.

(b) to repeal a section—

Example 7

Section 4 repealed (present section heading)

Section 4—

Repeal the section.

(c) to repeal a Schedule—

Example 8

Schedule 2 repealed (present Schedule heading)

Schedule 2—

Repeal the Schedule.

Repeal of a Division, Subdivision etc.

15.4.3 When repealing a Division or a Subdivision, the amendment location should also refer to the next higher level as there could be more than one Division or Subdivision with the same number in the enactment. When repealing a Part or a section of a Schedule, the amendment location should refer to the Schedule, with the number if it has a number. When repealing a Division of a Schedule, the amendment location should refer to the Schedule and the Part, and when repealing a Subdivision, to the Division as well.

Examples: repeal of a Division or Subdivision or a provision in a Schedule

(a) to repeal a single Division—

Example 9

Part 2, Division 3 repealed (present Division heading)

Part 2—

Repeal Division 3.

(b) to repeal a single Subdivision—

Example 10

Part 4, Division 3, Subdivision 2 repealed (present Subdivision heading)

Part 4, Division 3—

Repeal Subdivision 2.

(c) to repeal a single section of a Schedule²⁴—

Example 11

Schedule amended (present Schedule heading)

The Schedule—

Repeal section 4.

(d) to repeal a single Part of a Schedule—

Example 12

Schedule amended (present Schedule heading)

Schedule 2—

Repeal Part 1.

(e) to repeal a single Division of a Schedule (this can be adapted to repeal a Subdivision by adding the Division number to the amendment location)—

Example 13

Schedule amended (present Schedule heading)

Schedule 2, Part 2—

Repeal Division 1.

Repeal of multiple provisions

15.4.4 When repealing more than one consecutive Part, Division, Subdivision, section or Schedule, the drafter can, as best suits commencement, readability and presentation—

- repeal by a single clause (undivided or divided into subclauses);
- repeal individually by separate stand-alone clauses; or
- adopt a paragraphed approach.

15.4.5 When repealing more than one provision by a single clause, in the amendment location, the provisions should always be cited individually (the expanded reference). That is, for example, the location should be “Sections 5, 6, 7 and 8” and not “Sections 5 to 8”.

²⁴ This formula contemplates a Schedule that is divided into sections, which would not always be the case (see Chapter 7, Part 2). If the contents of a Schedule are organized in the same way as the body of the enactment (i.e. sections with headings), the drafter can choose to amend it the same way as a provision in the Ordinance (see section 35 of the Electoral Legislation (Miscellaneous Amendments) Ordinance 2011 (18 of 2011)).

15.4.6 Non-consecutive provisions also can be repealed by a single clause, but only if there are no amendments to the intervening provisions.

15.4.7 A whole section and a part of a consecutive or non-consecutive section can be repealed together if there are no amendments to the provisions in between.²⁵

Examples: repeal of multiple provisions

(a) to repeal multiple Parts by a single clause—

Example 14

Parts 2, 3 and 4 repealed

Parts 2, 3 and 4—

Repeal the Parts.

(b) to repeal multiple sections²⁶ by a single clause—

Example 15

Sections repealed

Sections 5, 6, 7 and 9—

Repeal the sections.

(c) to repeal a section and the part of another section by the same clause—

Example 16

Sections 5, 6(2) and 6(3)(a) repealed

(1) Section 5—

Repeal the section.

²⁷(2) Section 6—²⁸

Repeal subsections (2) and (3)(a).

or

Example 16A

Sections 5, 6(2) and 6(3)(a) repealed

Sections 5, 6(2) and 6(3)(a)—

Repeal the sections.

²⁵ The parts of the section would also be expressed as “sections” under the forward-referencing system used in Hong Kong legislation.

²⁶ If they are non-consecutive, they can be repealed by a single clause only if there are no amendments to the provisions in between. Here, if there is no amendment to section 8.

²⁷ If preferred, the amendments in subclauses (1) and (2) can be effected by a single clause or the amendments in subclause (2) effected by 2 separate subclauses.

²⁸ Although the provisions repealed by subclause (2) are a subsection and a paragraph, under the forward referencing system used in Hong Kong legislation, they are correctly referred to as “sections”.

(d) to repeal several sections by paragraphs under the same clause—

Example 17

Sections 5 to 8(1) repealed

The following sections—

- (a) section 5;
- (b) section 6;
- (c) section 7;
- (d) section 8(1)—

Repeal the sections.

(e) to repeal multiple Schedules by a single clause—

Example 18

Schedules 2 and 2A repealed

Schedules 2 and 2A—

Repeal the Schedules.

(f) to repeal multiple Divisions by a single clause—

Example 19

Part 1, Divisions 1 and 1A repealed

Part 1—

Repeal Divisions 1 and 1A.

(g) to repeal multiple Subdivisions by a single clause—

Example 20

Part 2, Division 1, Subdivisions 2 to 4 repealed

Part 2, Division 1—

Repeal Subdivisions 2, 3, 3A and 4.

(h) to repeal multiple sections of a Schedule by a single clause—

Example 21

Schedule amended (present Schedule heading)

²⁹The Schedule—

Repeal sections 4(6), 5, 6, 7 and 8.

²⁹ If the Schedule does not have a number, in the amendment location (but not in the heading) it should be referred to as “The Schedule”.

Repeal of a single subsection, paragraph or subparagraph

15.4.8 When repealing a subsection, paragraph or subparagraph, the amendment location is the part of the section that is one level higher than the part that is being repealed. This also applies to the repeal of a paragraph of a regulation and the repeal of a part of a rule.

15.4.9 Accordingly, to repeal subsection (2) of section 5, the amendment location should not be specified as “Section 5(2)” and the amending action as “**Repeal the subsection**”. The amendment location should be cited as “Section 5” and the amending action as “**Repeal subsection (2)**”.

Examples: repeal of a single subsection, paragraph or subparagraph

(a) to repeal a single subsection—

Example 22

Section 5 amended (present section heading)

Section 5—

Repeal subsection (2).

(b) to repeal a single paragraph—

Example 23

Section 5 amended (present section heading)

Section 5(3)—

Repeal paragraph (b).

(c) to repeal a single subparagraph—

Example 24

Section 5 amended (present section heading)

Section 5(3)(c)—

Repeal subparagraph (iii).

Multiple repeals in the same section

15.4.10 When making several amendments to the same section (whether a repeal or other amendment), the general rule is that a separate subclause should be used for each amendment. (See paragraph 14.3.5.)

15.4.11 The following are also acceptable as being within the one amendment, one subclause rule—

- (a) the repeal of 2 or more consecutive subsections, consecutive paragraphs or consecutive subparagraphs, or non-consecutive provisions with no amendments in between, by one clause or subclause;
- (b) grouping subsections, paragraphs or subparagraphs within the same section, expressed as subsections, with no intervening amendments and repealing them together by one clause or subclause (if the amendment location does not exceed one line).

15.4.12 The drafter can choose the style that best suits commencement, readability and presentation. Grouping together amendments to the same subsection reduces the number of subclauses. A separate subclause for each individual amendment will give the necessary flexibility if phased commencement is a consideration.

Examples: repeal of multiple provisions of the same section

- (a) to use a separate subclause for each individual repeal—

Example 25

Section 5 amended (present section heading)

- (1) Section 5—
Repeal subsection (1).
- (2) Section 5—
Repeal subsection (3).
- (3) Section 5(5)—
Repeal paragraph (b).
- (4) Section 5(5)(c)—
Repeal subparagraph (ii).
- (5) Section 5(5)(c)—
Repeal subparagraph (iii).

- (b) to repeal 2 or more subsections or paragraphs by one subclause—

Example 26

Section 5 amended (present section heading)

- (1) Section 5—
Repeal subsections (2) and (3).
- (2) Section 5(4)—
Repeal paragraphs (c) and (d).

- (c) to repeal 2 or more subsections, paragraphs and subparagraphs by one subclause—

Example 27

Section 5 amended (present section heading)

- (1) Section 5—
Repeal subsections (2), (2A) and (3)(a).
- (2) Section 5—
Repeal subsections (5) and (6)(1)(a)(i).

- (d) to repeal subsections, paragraphs and subparagraphs by a series of subclauses—

Example 28

Section 5 amended (present section heading)

- (1) Section 5—
Repeal subsections (1) and (2).
- (2) Section 5(3)—
Repeal paragraphs (b) and (c)(iii).
- (3) Section 5(6)(b)—
Repeal subparagraphs (ii), (iii) and (iv).

- (e) to repeal subsections, paragraphs and subparagraphs by a single subclause (but not to be used if the string of sections exceeds one line)—

Example 29

Section 5 amended (present section heading)

- Section 5—
Repeal subsections (2), (3)(b), (3)(c)(iii) and (6).

Repeal of words, expressions or blocks of text

15.4.13 To repeal a word, an expression or a block of text, the amendment location is the level of the provision in which the word, expression or block of text appears.

15.4.14 If a word or expression appears in more than one place, and it is to be repealed only in a particular place, one approach is to use “where first/secondly/thirdly/last appearing” to identify the amendment location. However, it is recommended that this form should be used only if no other presentation is possible. An alternative approach is to repeal the word or expression together with

some adjacent text and to replace the adjacent text. This also applies when repealing a word such as “or” or “the”, which is likely to appear more than once within a provision.

15.4.15 A word or expression that appears twice or more within a provision can be repealed by the same clause or subclause, using “(wherever appearing)”. However, if there are other amendments to the section, the word or expression should be repealed in the order in which they appear, like any other amendment to a section.

15.4.16 If the same word or expression appearing in different provisions is to be repealed, the guidelines below should be followed—

- They can be repealed together, using “(wherever appearing)”.
- If there are other amendments to the sections in which the word or expression appears, the repeal should be effected individually in the clauses amending those sections. The other provisions in which the word or expression appears can be grouped together. The group-repeal clause should be the last clause.
- If the word or expression also appears in bold (as in headings) or in italics (e.g. in a Form), or in upper-case letters, the repeal should be effected by a separate subclause or paragraph but not necessarily by a separate clause. If it appears in the body of a Schedule, even if in a different font size from the body of the enactment, it can be repealed together with the word or expression in the normal font size.
- If the amendment location is longer than one line, a single clause should not be used to effect the repeal; instead separate subclauses or paragraphs should be used.

Examples: repeal of words or expressions

(a) to repeal a word or expression appearing in one place—

Example 30

Section 5 amended (present section heading)

Section 5(3)(b)—

Repeal

“the owner”.

- (b) to repeal a word or expression in the first place it appears (which is not the preferred approach)—

<i>Example 31</i>	<i>Not the preferred approach</i>
Section 5 amended (present section heading) Section 5(4)— Repeal “the owner” (where first appearing).	

- (c) to repeal a word or expression appearing in a particular place by repealing and replacing adjacent text instead of using *Example 31*—

<i>Example 32</i>	
Section 5 amended (present section heading) Section 5(4)— Repeal “the owner, the occupier” Substitute “the occupier”.	

<i>Example 33</i>	
Section 5 amended (present section heading) Section 5(6), definition of <i>licensee</i>, paragraph (b)— Repeal “occupier; or” Substitute “occupier;”.	

- (d) to repeal a word or expression appearing more than once in a section in every place it appears—

<i>Example 34</i>	
Section 5 amended (present section heading) Section 5— Repeal “the owner” (wherever appearing).	

- (e) to repeal a word or expression by a “group amendment”—

Example 35

References to Director repealed

- (1) The following provisions—
 - (a) Section 2(1), definition of **certificate**;
 - (b) Section 4;
 - (c) Section 5(2);
 - (d) Section 10(1)(d);
 - (e) Section 11(3)(c)(ii);
 - (f) Schedule 3, sections 3 and 4—

Repeal

“the Director” (wherever appearing).

- (2) Part 2, heading—

Repeal

“the Director”.

- (3) The following provisions—
 - (a) Section 4, heading;
 - (b) Section 5, heading;
 - (c) Section 10, heading—

Repeal

“Director” (wherever appearing).

- (4) Schedule 3, Form 1—

Repeal

“the Director” (wherever appearing).

Example 36

The expression “the owner” repealed

Sections 2(1), 4, 5(1)(a), 6(1) and 7—

Repeal

“the owner” (wherever appearing).

- (f) to repeal a word or expression appearing in a definition—

Example 37

Section 2 amended (present section heading)

Section 2(1), definition of **licensee**—

Repeal

“the owner”.

(g) to repeal a word or expression appearing in a proviso³⁰—

Example 38

Section 5 amended (present section heading)

Section 5(5), proviso—

Repeal
“owner”.

(h) to repeal a word or expression appearing in a heading—

Example 39

Section 5 heading amended (present section heading)

Section 5, heading—

Repeal
“owner”.

(i) to repeal a word or expression appearing in the long title—

Example 40

Long title amended

The long title—

Repeal
“owners”.

(j) to repeal a word or expression appearing in the short title—

Example 41

Section 1 amended (present section heading)³¹

Section 1—

Repeal
“Owners”.

³⁰ Note that use of provisos is no longer current in LDD (see paragraph 4.1.15).

³¹ This would be “short title” or “short title and commencement”.

- (k) to repeal a word or expression appearing in the title of an item of subsidiary legislation—

Example 42

Title amended

The title—

Repeal

“Owners”.

- (l) to repeal a block of text³² (but if it is possible that the instruction is not clear, it is recommended that the words to be repealed should be set out in full)—

Example 43

Section 5 amended (present section heading)

Section 5(3)—

Repeal

everything after “if” and before “until”.

Repeal of punctuation marks

15.4.17 Punctuation marks must be repealed by legislative amendment. The amendment location is the level of the provision in which the punctuation mark appears.

Examples: repeal of punctuation marks

- (a) to repeal a punctuation mark—

Example 44

Section 5 amended (present section heading)

Section 5(2)(d)—

Repeal the comma.

Example 45

Section 5 amended (present section heading)

Section 5(6)(f)—

Repeal the full stop.

³² Here “block of text” is used for a piece of text that is too long to be cited word for word and is not a unit like a section/subsection/paragraph/subparagraph.

- (b) to repeal a punctuation mark by repealing the word and replacing it without the punctuation mark (this may be the better option, for example, if there is more than one comma or semicolon in the amendment location and to also avoid using expressions like “at the end of”)—

Example 46

Section 5 amended (present section heading)

Section 5(2)(d)—

Repeal

“occupier,”

Substitute

“occupier”.

Repeal of headings or provisions together with cross-headings

15.4.18 In principle headings can be repealed in the same manner as other provisions. However, as “heading” can include both the number and text, a repeal would be rare and they would more often be amended or substituted (see also paragraph 15.3.10).

15.4.19 Cross-headings are not used in new legislation, but it may become necessary to repeal an existing cross-heading, sometimes with the provision to which it relates. A cross-heading is identified for amendment with reference to the provision immediately after it.

Examples: repeal of cross-headings

- (a) to repeal a single cross-heading—

Example 47

Cross-heading before section X repealed

Cross-heading before section X—

Repeal the cross-heading.

- (b) to repeal a cross-heading and the section immediately following it by separate subclauses—

Example 48

Section X and cross-heading before it repealed

- (1) Cross-heading before section X—

Repeal the cross-heading.

- (2) Section X—

Repeal the section.

- (c) to repeal consecutive provisions and a number of related cross-headings, by separate subclauses under the same clause instead of repealing the cross-headings and the sections separately³³—

Example 49

Sections A to D and cross headings repealed

- (1) Cross-heading before section A—
Repeal the cross-heading.
- (2) Sections A and B—
Repeal the sections.
- (3) Cross-heading before section C—
Repeal the cross-heading.
- (4) Sections C and D—
Repeal the sections.

Repeal of definitions

15.4.20 When repealing a definition in an interpretation provision, whether it is in the general interpretation provision or a provision specific to a section or any other part of the enactment (e.g. a Division), the guidelines below should be followed even if only one definition is being repealed—

- The repealing subclause should be the last subclause,³⁴ unless a new definition or definitions are being added to the same section, in which case the repealing subclause should be the last but one subclause³⁵ (that is, the repealing subclause should come after the amendments to, including the substitution of, individual definitions).
- The repeal of multiple definitions should be effected together unless there is a special reason for repealing definitions individually (e.g. phased commencement of the repeal of the relevant substantive provisions).

³³ The subclause approach is preferred to the single-clause approach unless of course phased commencement needs to be taken into account.

³⁴ If the definitions are specific to a section and contained in a subsection, this means that the repeals should come after the subclauses amending the definitions in the subsection (unless definitions are being added).

³⁵ In an interpretation provision specific to a section, this means that the additions should be in the last subclause amending the subsection in which the definitions are contained.

Examples: repeal of definitions

(a) to repeal a single definition—

Example 50**Section 2 amended (present section heading)**

Section 2(1)—

Repeal the definition of *ship*.

(b) to repeal multiple definitions by a single clause (this should be avoided if the string of definitions exceeds one line)—

Example 51**Section 2 amended (present section heading)**

(1) Section 2(1), definition of *seaworthy*—

Repeal

“ship”.

(2) Section 2(1)—

Repeal the definitions of *master, ship, toll and vessel*.

(c) to repeal multiple definitions by a single clause divided into paragraphs—

Example 52**Section 2 amended (present section heading)**

Section 2(1)—

(a) definition of *arms*;

(b) definition of *embargo*;

(c) definition of *government entity*;

(d) ...;

(e) ...;

(f) definition of *vessel*—

Repeal the definitions.

Repeal of whole enactment

15.4.21 If the repeal of the whole enactment is part of an exercise in which there are other amendments, there should be an EAC relating to the repeal. Even though one of the “amendments” covered by the EAC is a repeal of a whole enactment, the EAC should follow *Examples 4 and 5* on the basis that “amend” includes a repeal. In

the situations that do not require an EAC (see paragraph 15.2.6), *Examples 55 and 56* should be used.

Examples: repeal of whole enactment

(a) to repeal a whole enactment or enactments with an EAC—

Example 53

ABC Ordinance repealed

ABC Ordinance (Cap. No.)—

Repeal the Ordinance.

Example 54

Enactments repealed—

The following enactments—

- (a) ABC Ordinance (Cap. No.);
- (b) ABC (General) Regulation (Cap. No. sub. leg. [A]);
- (c) XYZ Order (Cap. No. sub. leg. [A])—

Repeal the enactments.

(b) to repeal a whole enactment or enactments without an EAC—

Example 55

ABC Ordinance repealed

The ABC Ordinance (Cap. No.) is repealed.

Example 56

Enactments repealed

The following enactments are repealed—

- (a) the ABC Ordinance (Cap. No.);
- (b) the ABC (General) Regulation (Cap. No. sub. leg. [A]);
- (c) the XYZ Order (Cap. No. sub. leg. [A]).

Repeal—one language text only

15.4.22 When repealing a provision in the Chinese text only or the English text only, the amendment location should specify the language of the text to be amended.

Examples: repeal in one language text

(a) to repeal a provision in the Chinese text—

Example 57**Section 5 amended (present section heading)**

Section 5(1), Chinese text—

Repeal

“text to be repealed”.

(b) to repeal a provision in the English text—

Example 58**Section 5 amended (present section heading)**

Section 5(1)(b), English text—

Repeal the comma.

15.5 Additions

Components of formula for addition

15.5.1 The formula for an addition has 3 components: the amendment location, the amending action (“**Add**”) and the new text to be added.

Addition of a Part, Division, Subdivision, section or Schedule

15.5.2 When adding a Part, Division, Subdivision, section or Schedule, the amendment location (i.e. the location for the addition) should be identified with reference to the provision appearing before or after the provision to be added.

15.5.3 The preferred approach is to specify the location with reference to the provision that appears before the provision to be added, using the word “after”.

15.5.4 Sometimes it may be necessary to identify the location with reference to the provision that comes after the provision to be added, using the word “before”. For example, when adding a section, it may be necessary to make it clear whether the new section is to be added at the end of a Part, Division or Subdivision or at the beginning of the next Part, Division or Subdivision.

15.5.5 Adding a section before the first section of an enactment would be rare. If the situation arises, to avoid numbering problems, the drafter could consider expanding the existing first section to include the new material.

15.5.6 If it becomes necessary to add a Part, Division or a Subdivision before the first Part, Division or Subdivision, the drafter could consider numbering the addition as “1” and renumbering the existing Parts, Divisions or Subdivisions accordingly. This may involve amending cross-references, but there would be few at the level of such large units.

Examples: addition of a single section, Part, Division etc.

(a) to add a single section—

Example 59

Section 5A added

After section 5—

Add

“5A. Section heading
Section text.”.

(b) to add a section at the end of a Part—

Example 60

Section 10A added

Part 2, after section 10—

Add

“10A. Section heading
Section text.”.

(c) to add a section at the beginning of a Part—

Example 61

Section 10B added

Part 3, before section 11—

Add

“10B. Section heading
Section text.”.

(d) to add a single Part—

Example 62

Part 5A added

After Part 5—

Add

“Part 5A
Part Heading

Part text.”.

(e) to add a single Division—

Example 63

Part 3, Division 2A added

Part 3, after Division 2—

Add

“Division 2A—Division Heading

Division text.”.

(f) to add a single Subdivision—

Example 64

Part 3, Division 1, Subdivision 5 added

Part 3, Division 1, after Subdivision 4—

Add

“Subdivision 5—Subdivision Heading

Subdivision text.”.

(g) to add a single Schedule—

Example 65

Schedule 2A added

After Schedule 2—

Add

“Schedule 2A
Schedule Heading

Schedule text.”.

[s. X]

Addition of multiple sections, Parts, Divisions, Subdivisions or Schedules

15.5.7 When adding more than one whole provision, the drafter can use one clause or separate clauses³⁶ as best suits commencement, readability and presentation.

Examples: addition of multiple whole provisions

(a) to add 2 or more sections by a single clause—

Example 66

Sections 5A, 5B and 5C added

After section 5—

Add

“5A. Section heading

Section text.

5B. Section heading

Section text.

5C. Section heading

Section text.”.

(b) to add 2 or more Parts—

Example 67

Parts 2A and 2B added

After Part 2—

Add

“Part 2A

Part Heading

Part text.

Part 2B

Part Heading

Part text.”.

³⁶ If separate clauses are used when adding more than one consecutive provision, the drafter will need to keep in mind the possibility that the provisions might not be commenced in their numerical sequence (i.e. if section 5B is added “After section 5A” but section 5B is commenced before section 5A, the amendment location would refer to a provision not yet in force). Another option if using separate clauses is for the amending formula to refer to the existing section after the sections to be added (i.e. assuming section 6 is the next section, “Before section 6—**Add**”).

- (c) to add 2 or more Divisions (this can be adapted to add Subdivisions to a Division)—

Example 68

Part 2, Divisions 3A and 3B added

Part 2, after Division 3—

Add

“Division 3A—Division Heading

Division text.

Division 3B—Division Heading

Division text.”.

Addition of a single subsection, paragraph or subparagraph

15.5.8 The amendment location to add a subsection is the part of the provision that is one level higher than the level of text that is being added. That is, to add a subsection, the amendment location is the section, cited with the number of the subsection after which the new subsection is to be added (e.g. “After section 5(2)” and not “Section 5, after subsection (2)”).

15.5.9 A paragraph is added to a subsection or a section without subsections that is divided into paragraphs. To add a paragraph, the amendment location is cited as a section. That is “After section 5(2)(a)” or “After section 5(a)” and not “Section 5(2), after paragraph (a)” or “Section 5, after paragraph (a)”. Similarly, to add a subparagraph, say, after subparagraph (i), the amendment location is cited as “After section 5(2)(a)(i)”.

15.5.10 It is recommended that the amendment location (i.e. the location for the addition) is identified with reference to the provision appearing before, using the word “after”. However, it may be necessary sometimes to identify the location with reference to the provision appearing after the provision to be added, using the word “before”. An example is when a subsection is being added before the first existing subsection.

15.5.11 If possible, adding a subsection before the first subsection of a section should be avoided because of the numbering problems. For the same reason, adding a new paragraph before paragraph (a) or a new subparagraph before subparagraph (i) should be avoided. Instead, the drafter can consider whether one of the following options would suit the particular case—

- Expanding the existing first provision to include the proposed new material.

- Adding the new subsection, paragraph or subparagraph as (1), (a) or (i) and renumbering the existing provisions (taking care to amend the existing cross-references accordingly).
- Repealing and re-enacting the provision with the additions.³⁷

15.5.12 When making more than one amendment to the same subsection, paragraphs (instead of a subclause for each amendment) may be used if the amendments are minor (see paragraph 14.3.5).

Examples: addition of a single subsection, paragraph or subparagraph

(a) to add a single subsection—

Example 69

Section 5 amended (present section heading)

After section 5(2)—

Add

“(2A) Subsection text.”.

(b) to add a subsection to a section without a subsection—

Example 70

Section 5 amended (present section heading)

(1) Section 5—

Renumber the section as section 5(1).

(2) After section 5(1)—

Add

“(2) Subsection text.”.

(c) to add a single paragraph—

Example 71

Section 5 amended (present section heading)

After section 5(4)(b)—

Add

“(ba) paragraph text;”.

³⁷ This could be a good option at the subparagraph level. In this scenario, the drafter may consider explaining in the Explanatory Memorandum/Note that it is merely a tidier drafting approach and does not introduce new matter except for the additions. Such an explanation would assist the reader and in the LegCo scrutiny process.

Example 72**Section 5 amended (present section heading)**

After section 5(a)—

Add

“(aa) paragraph text;”.

(d) to add a single subparagraph—

Example 73**Section 5 amended (present section heading)**

After section 5(2)(b)(ii)—

Add

“(iia) subparagraph text;”.

Addition of 2 or more subsections, paragraphs or subparagraphs

15.5.13 The general guidelines in paragraphs 15.5.1 to 15.5.6 apply to the addition of more than one subsection, paragraph or subparagraph. The drafter can, as best suits commencement, readability and presentation, add sequential provisions within a section together or separately. If separate subclauses are used for individual additions, the drafter will have to keep in mind the scenario described in footnote 36 of the possibility of the provisions not being commenced in their numerical sequence.

Examples: addition of 2 or more subsections, paragraphs or subparagraphs

(a) to add 2 or more subsections by a single subclause—

Example 74**Section 5 amended (present section heading)**

(1) After section 5(2A)—

Add—

“(2B) Subsection text.”.

(2) After section 5(4)—

Add—

“(4A) Subsection text.

(4B) Subsection text.”.

- (b) to add 2 or more paragraphs by a single clause—

Example 75

Section 5 amended (present section heading)

After section 5(1)(b)—

Add

“(ba) paragraph text;
(bb) paragraph text;”.

- (c) to add subsections, paragraphs or subparagraphs by a series of subclauses—

Example 76

Section 5 amended (present section heading)

- (1) After section 5(2)—

Add

“(2A) Subsection text.
(2B) Subsection text.”.

- (2) After section 5(6)(c)—

Add

“(ca) paragraph text;
(cb) paragraph text;”.

- (3) After section 5(7)(d)(ii)—

Add

“(iia) subparagraph text;
(iib) subparagraph text;”.

Addition of words or expressions

15.5.14 To add a word or expression, the amendment location is the level of the text to which the word or expression is added.

15.5.15 Although “after” is the preferred option for identifying the location for adding new text, more flexibility is allowed for adding words or expressions, “Before” can be used if it is more appropriate in the context. Also, as words such as “by”, “the”, “may” etc. would occur more than once in a provision, to avoid using “where first/secondly/thirdly/last appearing”, the location for adding the text can be identified by “before” or by reference to the relevant word together with adjacent text.

Examples: addition of words or expressions

- (a) to add a word or expression to a section by using “before” to avoid “where first appearing” —

Example 77**Section 5 amended (present section heading)**

Section 5, before “grant” —

Add

“issue or”.

Example 78***Not the preferred approach*****Section 5 amended (present section heading)**

Section 5(1), after “may” (where first appearing)³⁸ —

Add

“issue or”.

- (b) to add a word or expression to a paragraph or subparagraph —

Example 79**Section 5 amended (present section heading)**

Section 5(1)(a), after “granted” —

Add

“or issued”.

Example 80**Section 5 amended (present section heading)**

Section 5(1)(a)(ii), before “the Secretary” —

Add

“the Director or”.

- (c) to add a word or expression to a definition —

Example 81**Section 2 amended (present section heading)**

Section 2(1), definition of *licence*, after “issued by” —

Add

“the Director or”.

³⁸ Another option is to repeal with adjacent text and substitute.

Example 82**Section 2 amended (present section heading)**

Section 2(1), definition of *vessel*, paragraph (c), before “foreign” —

Add

“local or”.

(d) to add a word or expression to the long title—

Example 83**Long title amended**

The long title, before “foreign” —

Add

“local or”.

(e) to add a word or expression to the short title—

Example 84**Section 1 amended (present section heading)**

Section 1, before “Foreign” —

Add

“Local or”.

(f) to add a word or expression to the title of an item of subsidiary legislation—

Example 85**Title amended**

The title, before “**Foreign**” —

Add

“**Local or**”.

(g) to add a word or expression to a heading—

Example 86**Section 5 heading amended (present section heading)**

Section 5, heading, before “**foreign**” —

Add

“**local or**”.

Example 87

Part 4 heading amended (present Part heading)

Part 4, heading, before “Foreign” —

Add

“Local or”.

Addition of punctuation marks

15.5.16 Punctuation marks must be added by legislative amendment. The amendment location is the level of the provision in which the punctuation mark appears.

Example 88

Schedule 1 amended (present Schedule heading)

Schedule 1, item 1(b), after “xxxxx” —

Add a semicolon.

Addition of headings

15.5.17 Sometimes it may be necessary to add a heading to an enactment. This would normally happen if an existing enactment is being divided into Parts, or a Part into Divisions, or a Division into Subdivisions. To identify the location “before” or “after” may be used as best suits the particular case.

Examples: addition of headings

(a) to add a Part heading with the number—

Example 89

Part 1 heading added

Before section 1—

Add

**“Part 1
Preliminary”.**

(b) to add a Division heading with the number—

Example 90

Part 5, Division 1 heading added

Before section 20—

Add

“Division 1—Division Heading”.

(c) to add a Subdivision heading with the number—

Example 91

Part 5, Division 2, Subdivision 1 heading added

After section 30—

Add

“Subdivision 1—Subdivision Heading”.

Addition of definitions

15.5.18 When adding a definition to an interpretation provision, whether it is to the general interpretation provision or a provision specific to a section or any other part of the enactment (e.g. a Division), follow the guidelines below—

- The subclause adding the definition should be the last one (i.e. it should come after the subclauses amending individual definitions and repealing the definitions) even if only one definition is being added.³⁹
- If more than one definition is being added, they should be added by a single clause (if there are no other amendments) or a single subclause.
- The instruction for the English text should specify that the definition should be added in alphabetical order, even if only one definition is being added.⁴⁰
- The instruction for the Chinese text should specify that the definition should be added according to the number of strokes of the first character, even if only one definition is being added.

³⁹ In an interpretation provision specific to a section, this means that the additions should be in the last subclause amending the subsection in which the definitions are contained.

⁴⁰ This means the alphabetical order of definitions within the interpretation provision as a whole.

Examples: addition of definitions**Example 92****Section 2 amended (interpretation)**

Section 2(1)—

Add in alphabetical order

“melon () includes ...;”.

Example 93**Section 2 amended (interpretation)**

Section 2(1)—

Add in alphabetical order

“blueberry () means ...;

longan () means ...;

lychee () means ...;

pineapple () means ...;”.

Addition of provisions after or before a repealed provision

15.5.19 When adding a provision after a provision that has been repealed or is being repealed in the same exercise, it is not possible to say add “After provision X” in the formula because the provision before is being or has been repealed.

15.5.20 If the repealed provision is the last provision, it is also not possible to identify the location as “Before provision X”.

15.5.21 One option is to cite the location as “At the end of [the Ordinance]/[Part/Division/Subdivision]/[section]”.⁴¹

15.5.22 The same situation can arise if the provision is to be added at the beginning of a Part, Division or Subdivision and the first provision is being or has been repealed. If so, the location can be identified as “At the beginning of [Part/Division/Subdivision]/[section]”.

⁴¹ Although adding the provision after the last existing provision is an option, it is not recommended. For example, if the last section, say section 15, is being or has been repealed, the better practice is to add the provision as section 16 and not new section 14A. This is because if the 14A sequence is continued, the numbers from 16 onwards will never be used.

Examples: addition of provisions after or before a repealed provision

- (a) to add a section at the end of an Ordinance if the last section (say section 15) is being or has been repealed (this can be adapted to add a Part after a repealed Part, with Part substituted for section,⁴² and, similarly to add a Schedule after a repealed Schedule)—

Example 94

Section 16 added

At the end of the Ordinance⁴³—

Add

“16. Section heading
Section text.”.

- (b) to add a section if the last section is being or has been repealed, but there is a Schedule (this can be adapted to add a Part before a Schedule, with Part substituted for section)—

Example 95

Section 16 added

Before Schedule 1—

Add

“16. Section heading
Section text.”.

- (c) to add a section to a Part or a Division if the last section is being or has been repealed (this can be adapted to add a section to a Subdivision)—

Example 96

Section 10A added

[At the end of Part 2]/[Before Part 3]—

Add

“10A. Section heading
Section text.”.

⁴² If the repealed Part is not the last Part, “Before Part []” can be used. See clause 7 of the Immigration (Amendment) Bill 2011, published in the Gazette on 8 July 2011.

⁴³ This can be modified as necessary for a regulation, order, notice or rule.

Example 97**Section 10A added**

Part 2, [at the end of Division 1]/[before Division 2]—

Add

“10A. Section heading

Section text.”.

- (d) to add a section at the beginning of a Part if the first provision is being, or has been, repealed (this can be adapted to add a section at the beginning of a Division or Subdivision)—

Example 98**Section 10A added**

At the beginning of Part 2—

Add

“10A. Section heading

Section text.”.

- (e) to add a Division after the last Division if the last Division of a Part is being, or has been, repealed (this can be adapted to add a Subdivision after the repealed last Subdivision of a Division)—

Example 99**Part 2, Division 4 added**

At the end of Part 2—

Add

“Division 4—Division Heading

Division text.”.

- (f) to add a subsection if subsection (5) is being, or has been, repealed (this can be adapted to add a paragraph within a subsection or a subparagraph within a paragraph)—

Example 100**Section 5 amended (present section heading)**

At the end of section 5—

Add

“(6) Subsection text.”.

15.6 Repeal and Substitution

Components of formula for repeal and substitution

15.6.1 The formula for repeal and substitution has 4 components: the amendment location, the 2 amending actions and the new text to be added.

15.6.2 The amendment location is set out at the first level.

15.6.3 The first amending action, “**Repeal**”, appears one level below the amendment location.

15.6.4 The second amending action, “**Substitute**”, appears one level below the first amending action.

15.6.5 The text that replaces the repealed provision is set out within quotes at the last level.

Repeal and substitution of a Part, section or Schedule

15.6.6 To repeal and substitute a Part, section or a Schedule, the amendment location is the level of the provision that is being repealed.

Examples: repeal and substitution of a single Part, section, Schedule

- (a) to repeal and substitute a single section (this can be adapted to repeal and substitute a “regulation” or “rule”)—

Example 101

Section 5 substituted

Section 5—

Repeal the section

Substitute

“5. Section heading

Section text.”.

- (b) to repeal and substitute a single Part—

Example 102

Part 2 substituted

Part 2—

Repeal the Part

Substitute

“Part 2

Part Heading

Part text.”.

(c) to repeal and substitute a single Schedule—

Example 103

Schedule 2 substituted

Schedule 2—

Repeal the Schedule

Substitute

“Schedule 2
Schedule Heading

[s. x]

Schedule text.”.

Repeal and substitution of a Division or Subdivision

15.6.7 When repealing and substituting a Division or a Subdivision, the amendment location should also refer to the next higher level as there could be more than one Division or Subdivision with the same number in the enactment. When repealing and substituting a Part or a section of a Schedule, the amendment location should refer to the Schedule. If repealing a Division or a Subdivision of a Schedule, the amendment location should also refer to the Part and Division.

Examples: repeal and substitution of a single Division or a Subdivision

(a) to repeal and substitute a single Division—

Example 104

Part 1, Division 2 substituted

Part 1—

Repeal Division 2

Substitute

“Division 2—Division Heading

Division text.”.

(b) to repeal and substitute a single Subdivision—

Example 105

Part 1, Division 2, Subdivision 1 substituted

Part 1, Division 2—

Repeal Subdivision 1

Substitute

“Subdivision 1—Subdivision Heading

Subdivision text.”.

- (c) to repeal and substitute a Subdivision of a Schedule—

Example 106

Schedule 2, Part 2, Division 1, Subdivision 2 substituted

Schedule 2, Part 2, Division 1—

Repeal Subdivision 2

Substitute

“Subdivision 2—Subdivision Heading

Subdivision text.”.

Repeal and substitution of multiple whole provisions

15.6.8 When repealing and substituting more than one consecutive whole provision (without adding new provisions), the drafter can use one clause or separate clauses as best suits commencement, readability and presentation.

15.6.9 To repeal and substitute a section and add one or more sequential new sections, separate clauses should be used. This also applies to Parts, Divisions, Subdivisions and Schedules.

15.6.10 If several consecutive sections are repealed by one clause, but not all of them are replaced, a second, separate clause should be used for the repeal without substitution. That is, if sections 4, 5 and 6 are repealed but only sections 4 and 5 are substituted, as section 6 remains repealed, a separate clause should be used to repeal it.

Examples: repeal and substitution of multiple whole provisions

- (a) to repeal and substitute multiple whole sections—

Example 107

Sections 4, 5 and 6 substituted

Sections 4, 5 and 6—

Repeal the sections

Substitute

“4. Section heading

Section text.

5. Section heading

Section text.

6. Section heading

Section text.”.

- (b) to repeal and substitute one section and to add one or more sequential sections—

Example 108

First clause

Section 5 substituted

Section 5—

Repeal the section

Substitute

“5. Section heading

Section text.”.

Second clause

Sections 5A and 5B added

After section 5⁴⁴—

Add

“5A. Section heading

Section text.

5B. Section heading

Section text.”.

- (c) to repeal and substitute 2 consecutive sections and to repeal the section next in sequence—

Example 109

First clause

Sections 4 and 5 substituted

Sections 4 and 5—

Repeal the sections

Substitute

“4. Section heading

Section text.

5. Section heading

Section text.”.

Second clause

Section 6 repealed (present section heading)

Section 6—

Repeal the section.

⁴⁴ It is not necessary to say “new section 5” as the old section 5 will be repealed, the new section 5 added and the new sections 5A and 5B added at the same time. The drafter can also consider using “Before section 6” (assuming that it is the next section after existing section 5) if there is a possibility that the section adding the new sections will be commenced before the substitution section is commenced.

- (d) to repeal and substitute a Subdivision and to add a sequential Subdivision by separate clauses—

Example 110

First clause

Part 2, Division 3, Subdivision 1 substituted

Part 2, Division 3—

Repeal Subdivision 1

Substitute

“Subdivision 1—Subdivision Heading

Subdivision text.”.

Second clause

Part 2, Division 3, Subdivision 1A added

Part 2, Division 3, after Subdivision 1—

Add

“Subdivision 1A—Subdivision Heading

Subdivision text.”.

Repeal and substitution of a subsection, paragraph etc.

15.6.11 To repeal and substitute a subsection, paragraph or subparagraph, the amendment location is one level higher than the provision being repealed.

15.6.12 Accordingly, for example, to repeal and substitute subsection (1) of section 5, the amendment location is “Section 5”. The first amending action is **“Repeal subsection (1)”**. The amendment location should not be specified as “Section 5(1)” and the first amending action as **“Repeal the subsection”**.

15.6.13 In repealing and substituting parts of a section, the approach is flexible, but if a provision is repealed and not replaced, it should be shown as a repeal. The following guidelines can be followed—

- 2 or more sequential subsections can be repealed and substituted together by one clause or subclause or they can be repealed and substituted separately. This applies to paragraphs and subparagraphs as well.
- One or more subsections can be repealed and substituted by 2 or more sequential subclauses, including any additions, separately or together. This applies to paragraphs and subparagraphs as well.
- If 2 or more consecutive subsections are repealed but not all of them are replaced, effect the repeal without substitution separately. This applies to paragraphs and subparagraphs as well.

Examples: repeal and substitution of parts of a section

(a) to repeal and substitute a single subsection—

Example 111**Section 5 amended (present section heading)**

Section 5—

Repeal subsection (1)

Substitute

“(1) Subsection text.”.

(b) to repeal and substitute one or more subsections together by one clause—

Example 112**Section 5 amended (present section heading)**

Section 5—

Repeal subsections (1) and (2)

Substitute

“(1) Subsection text.

(2) Subsection text.”.

(c) to repeal and substitute one or more subsections by separate subclauses instead of by one subclause—

Example 113**Section 5 amended (present section heading)**

(1) Section 5—

Repeal subsection (1)

Substitute

“(1) Subsection text.”.

(2) Section 5—

Repeal subsection (2)

Substitute

“(2) Subsection text.”.

- (d) to repeal one or more subsections and to replace with a sequential additional subsection—

Example 114

Section 5 amended (present section heading)

Section 5—

Repeal subsections (1) and (2)

Substitute

- “(1) Subsection text.
(2) Subsection text.
(2A) Subsection text.”.

- (e) to repeal one or more subsections and to replace them by a sequential additional subsection by separate subclauses instead of by the same subclause—

Example 115

Section 5 amended (present section heading)

(1) Section 5—

Repeal subsection (1)

Substitute

“(1) Subsection text.”.

(2) Section 5—

Repeal subsection (2)

Substitute

“(2) Subsection text.”.

(3) After section 5(2)—

Add

“(2A) Subsection text.”.

- (f) to repeal sequential subsections and to replace only some of them, use separate subclauses—

Example 116

Section 5 amended (present section heading)

(1) Section 5—

Repeal subsection (1).

(2) Section 5—

Repeal subsections (2) and (3)

Substitute

- “(2) Subsection text.
(3) Subsection text.”.

Example 117**Section 5 amended (present section heading)**

- (1) Section 5—
Repeal subsection (4)
Substitute
“(4) Subsection text.”.
- (2) Section 5—
Repeal subsection (5).

- (g) to repeal one or more paragraphs and to replace them by a sequential additional paragraph—

Example 118**Section 5 amended (present section heading)**

- Section 5(3)—
Repeal paragraphs (b) and (c)
Substitute
“(b) paragraph text;
(c) paragraph text;
(ca) paragraph text;”.

- (h) to repeal one or more subparagraphs and to replace only some of them, use separate subclauses—

Example 119**Section 5 amended (present section heading)**

- (1) Section 5(3)(d)—
Repeal subparagraph (i).
- (2) Section 5(3)(d)—
Repeal subparagraph (ii)
Substitute
“(ii) subparagraph text;”.

- (i) to repeal and substitute a paragraph with an additional sequential paragraph and to repeal a paragraph next in sequence, use separate subclauses—

Example 120**Section 5 amended (present section heading)**

- (1) Section 5(1)—

Repeal paragraph (b)

Substitute

“(b) paragraph text;

(ba) paragraph text;”.

- (2) Section 5(1)—

Repeal paragraph (c).

Repeal and substitution of words, expressions or blocks of text

15.6.14 To repeal and substitute a word or an expression or a block of text, the amendment location is the level of the provision in which the word, expression or block of text appears.

15.6.15 If a word or expression appears in more than one place, and it is to be substituted only in a particular place, one approach is to use “where first/secondly/thirdly/last appearing” to identify the amendment location. However, they should be used only if there is no other possible presentation. The preferred approach is to repeal the word or expression with some adjacent text and replace it along with the substituted word or expression.

15.6.16 Identifying an amendment location with a word that is likely to occur in more than one place (e.g. “the” or “may”) should also be avoided because then it may have to be qualified with “first appearing” etc. The better approach is to repeal “the” or “may” with some adjacent text.

15.6.17 To repeal and substitute a word or expression that appears more than once, in all the places that it appears, use “(wherever appearing)”. This applies even if the word or expression appears only twice.

15.6.18 If the word or expression appears in different provisions and it is to be repealed and substituted, follow the guidelines below—

- They can be repealed and substituted together, using “(wherever appearing)”.

- If there are other amendments to the sections in which the word or expression appears, the repeal and substitution should be done individually in the clauses amending those sections. The other provisions in which the word or expression appears can be grouped together. The group-substitution clause should be the last clause.
- A single clause or separate subclauses can be used to repeal and substitute the word or expression. But if the amendment location is longer than one line, a single clause should not be used.

Examples: repeal and substitution of words or expressions

- (a) to repeal and substitute a word or expression appearing only in one place—

Example 121

Section 5 amended (present section heading)

Section 5(3)—

Repeal

“licence”

Substitute

“permit”.

- (b) to repeal and substitute a word or expression in the second place it appears—

Example 122

Not the preferred approach

Section 5 amended (present section heading)

Section 5(4)—

Repeal

“issue” (where secondly appearing)

Substitute

“grant”.

- (c) to repeal and substitute a word or expression in a particular place without using the formula “first/secondly/thirdly/last appearing” —

Example 123

Section 5 amended (present section heading)

Section 5(4)—

Repeal

“issue to the applicant”

Substitute

“grant to the applicant”.

Example 124

Section 5 amended (present section heading)

Section 5(4)—

Repeal

“may, if satisfied”

Substitute

“must, if satisfied”.

- (d) to repeal and substitute a word or expression appearing more than once in a section, in every place it appears—

Example 125

Section 5 amended (present section heading)

Section 5—

Repeal

“issue” (wherever appearing)

Substitute

“grant”.

- (e) to repeal and substitute a word or expression by a “group amendment”—

Example 126

“Director” substituted for “Secretary”

The following provisions—

- (a) Section 5(2);
- (b) Section 6(3);
- (c) Section 7(1), (5) and (6);
- (d) The Schedule, items 5 and 6—

Repeal

“Secretary”

Substitute

“Director”.

- (f) to repeal and substitute a word or expression appearing in a definition—

Example 127

Section 2 amended (present section heading)

Section 2(1), definition of *certificate*—

Repeal

“foreign”

Substitute

“local”.

- (g) to repeal and substitute a word or expression appearing in a heading—

Example 128

Section 5 heading amended (present section heading)

Section 5, heading—

Repeal

“foreign”

Substitute

“local”.

Example 129

Part 3, Division 1 heading amended (present Division heading)

Part 3, Division 1, heading—

Repeal

“Foreign”

Substitute

“Local”.

- (h) to repeal and substitute a word or expression appearing in a proviso—

Example 130

Section 5 amended (present section heading)

Section 5(5), proviso—

Repeal

“foreign”

Substitute

“local”.

- (i) to repeal and substitute a word or expression appearing in the long title—

Example 131

Long title amended

The long title—

Repeal

“foreign”

Substitute

“local”.

- (j) to repeal and substitute a word or expression appearing in the short title—

Example 132

Section 1 amended (present section heading)

Section 1—

Repeal

“Foreign”

Substitute

“Local”.

- (k) to repeal and substitute a word or expression appearing in the title of an item of subsidiary legislation—

Example 133

Title amended

The title—

Repeal

“Foreign”

Substitute

“Local”.

- (l) to repeal and substitute a block of text (but if it is possible that the instruction is not clear, it is recommended that the words to be repealed should be set out in full)—

Example 134

Section 5 amended (present section heading)

Section 5(3)—

Repeal

everything after “manner”

Substitute a full stop.

Example 135**Section 5 amended (present section heading)**

Section 5(5)—

Repeal

everything after “If” and before “until”

Substitute

“new text”.

(m) to repeal and substitute a “sandwich clause”—⁴⁵**Example 136****Section 5 amended (present section heading)**

Section 5(7)—

Repeal everything after paragraph (b)⁴⁶**Substitute**

“new text.”.

Repeal and substitution of punctuation marks

15.6.19 Punctuation marks must be repealed and substituted by legislative amendment. The amendment location is the level of the provision in which the punctuation mark appears.

Examples: repeal and substitution of punctuation marks**Example 137****Section 5 amended (present section heading)**

Section 5(2)(d)—

Repeal the comma**Substitute a semicolon.****Example 138****Section 5 amended (present section heading)**

Section 5(6)(f)—

Repeal the full stop**Substitute a semicolon.**

⁴⁵ Care should be taken not to repeal unintentionally any other provision that appears after the provision being repealed.

⁴⁶ In this case it may also be necessary to repeal the punctuation mark after paragraph (b) before repealing what comes after paragraph (b).

Amendment or substitution of headings

15.6.20 Section headings⁴⁷ are always “amended” and not “substituted” or “repealed”. Even if the entire text of a heading (i.e. excluding the number) is to be replaced, the heading of the amending provision should say “amended” and not “substituted”.

15.6.21 The headings of Parts, Divisions or Subdivisions can be “amended” or “substituted”. If only the number is replaced, it is regarded as an amendment. If the entire text of the heading (i.e. excluding the number) is replaced, it is also regarded as an amendment.

15.6.22 Sometimes, it may be necessary to replace both the number and the text of the heading of a Part, Division, Subdivision or Schedule (e.g. to change from the 2-line format to the 1-line format). In such a scenario, the number and the heading are taken to be “substituted”.⁴⁸

Examples: amendment or substitution of headings

(a) to amend a section heading—

Example 139

Section 5 heading amended (present section heading)

Section 5, heading—

Repeal

“Registration of local ships”

Substitute

“Licensing of local vessels”.

(b) to amend a Part heading to substitute the number by Arabic numerals—

Example 140

Part II heading amended (present Part heading)

Part II, heading—

Repeal

“PART II”

Substitute

“Part 2”.

⁴⁷ As it is not our practice to renumber sections, the question of replacing the number is unlikely to arise.

⁴⁸ Amendment of headings can also be done editorially under the Legislation Publication Ordinance (13 of 2011).

- (c) to repeal and substitute the text of a Part heading—

Example 141

Part 2 heading amended (present Part heading)

Part 2, heading—

Repeal

“Applications for Registration of Local Ships”

Substitute

“Applications for Licensing of Local Vessels”.

- (d) to substitute the Division number and heading to change from the 2-line format to the 1-line format—

Example 142

Part 2, Division 1 heading substituted (present Division heading)

Part 2, Division 1, heading—

Repeal the heading

Substitute

“Division 1—Procedure for Registration”.

Repeal and substitution of definitions

15.6.23 The repeal and substitution of definitions should be effected in the order in which they occur in the provision, as with other amendments to definitions except repeals.

15.6.24 An amendment is treated as a repeal and substitution only if the new definition defines the same term that is being repealed (e.g. if the definition of **annual return** is repealed and substituted by a new definition of **annual return**).

15.6.25 If the purpose of the amendment is to substitute a new defined term for the existing defined term (with no other amendment), the drafter may either treat it as a repeal and addition of a definition or the amendment of a definition, as he or she considers appropriate in the circumstances. For example, if the defined term **annual return** is to be replaced by **annual tax return**, one option is to repeal the whole definition of **annual return** (Example 50) and add a definition of **annual tax return** (Example 92) and the other is to simply repeal the expression **annual return**, the defined term, and substitute **annual tax return** (Example 127).

15.6.26 If a definition is being repealed and substituted, and a new definition that is next in alphabetical sequence to the substituted definition is being added, use a separate subclause to repeal and substitute and a separate subclause to add the new definition.

Examples: repeal and substitution of definitions

Example 143

Section 2 amended (present section heading)

- (1) Section 2(1)—
Repeal the definition of *ship*
Substitute—
“ship () means ...;”.
- (2) Section 2(1)—
Add in alphabetical order
“shoreline () means...;”.

Repeal and substitution of one language text

15.6.27 If a repeal and substitution affect only one language text, the amendment location should specify the language of the text.

Examples: repeal and substitution in one language text

- (a) to repeal and substitute a provision in the Chinese text—

Example 144

Section 5 amended (present section heading)

Section 5, Chinese text—

Repeal
“old text”
Substitute
“new text”.

- (b) to repeal and substitute a provision in the English text—

Example 145

Section 5 amended (present section heading)

Section 5, English text—

Repeal
“old text”
Substitute
“new text”.

15.7 Amendment of Un-commenced Amending Provisions

15.7.1 An amending provision in an amending Ordinance or amending subsidiary legislation may sometimes have to be amended before it comes into operation.⁴⁹ If the amending provision is in subsidiary legislation, the amendment can be made by the maker of it or, if it is made under section 34 or 35 of the IGCO, by a LegCo resolution. If made by resolution, the amendments should be set out in a Schedule to the resolution.

15.7.2 The provision being amended should be identified with care. In the amending enactment “section” means a section of the amending Ordinance or amending subsidiary legislation. A section that is added to the principal enactment by the amending enactment is referred to as “new section”.

15.7.3 If the amending enactment is in the old style, the amendments to be incorporated into the amending provision should be made in the old full-sentence style. The amending formulas that amend the amending provisions should be in the new style.

Examples: amendment of un-commenced provisions

- (a) to repeal all the amendments made by a repealing provision (this can be used whether the amending provision makes a single amendment or more)—

Example 146

Section 5 repealed (section 5 heading)

Section 5—

Repeal the section.

- (b) to repeal the amendments made by a subsection or a paragraph of an amending provision—

Example 147

Section 5 amended (section 5 heading)

(1) Section 5—

Repeal subsection (2).

(2) Section 5(3)—

Repeal paragraph (b).

⁴⁹ If the amendments are not commenced, they would not have been incorporated into the principal enactment and it is the amending enactment that should be amended.

- (c) to repeal one of 2 or more consecutive new sections added by an amending provision—⁵⁰

Example 148

Section 5 amended (section 5 heading)

Section 5—

Repeal new section 12B.

- (d) to repeal a new provision and to renumber the remaining provisions—

Example 149

Section 5 amended (section 5 heading)

- (1) Section 5(1), new section 12A—

Repeal subsection (6).

- (2) Section 5(1), new section 12A—

Renumber subsection (7) as subsection (6).

Example 150

Section 5 amended (section 5 heading)

- (1) Section 5(5), new section 15(7A)—

Repeal paragraph (a).

- (2) Section 5(5), new section 15(7A)—

Renumber paragraphs (b) and (c) as paragraphs (a) and (b).

- (e) to add a new subsection to a new section added by an amending provision—

Example 151

Section 5 amended (section 5 heading)

Section 5, after new section 12A(3)—

Add

“(3A) Subsection text.”.

⁵⁰ If the amending provision had added more than one consecutive provision, if any of them is repealed or provisions are added in between, the current practice is not to renumber the remaining provisions. However the drafter may choose to do so. The same applies to adding new provisions to the new principal enactment or repealing provisions in the new principal enactment (whether whole provisions or parts of a provision).

- (f) to substitute a new section for a section added by section 5—

Example 152

Section 5 amended (section 5 heading)

Section 5—

Repeal new section 12A

Substitute

“12A. Section heading

Section text.”.

- (g) to add a new subsection between 2 new subsections (say subsections (4A) and (4B)) added by an amending provision—

Example 153

Section 5 amended (section 5 heading)

Section 5(2), after new section 15(4A)—

Add

“(4AB) Subsection text.”.

- (h) to substitute a new amending provision for an un-commenced amending provision—

Example 154

Section 5 amended (section 5 heading)

Section 5—

Repeal subsection (7)

Substitute

“(7) Section 15—

Repeal subsection (2)

Substitute

“(2) Subsection text.”.

- (i) to repeal one of the new subsections and one of the new paragraphs added by an amending provision—

Example 155

Section 5 amended (section 5 heading)

(1) Section 5(3)—

Repeal new section 15(2A).

(2) Section 5(4)—

Repeal new section 15(4)(ca).

- (j) to add a new amendment to an un-commenced amending provision—

Example 156

Section 5 amended (section 5 heading)

After section 5(3)—

Add

“(3A) Section 15(5)—

Repeal

“elector”

Substitute

“voter”. ”.

- (k) to add a new amendment if the amending provision has no subsections—

Example 157

Section 5 amended (section 5 heading)

(1) Section 5—

Renumber the section as section 5(1).

(2) After section 5(1)—

Add

“(2) Section 15(5)—

Repeal

“elector”

Substitute

“voter”. ”.

- (l) to further amend a new provision added by an amending provision—

Example 158

Section 5 amended (section 5 heading)

Section 5(5), new section 15(6A), before “constituency”—

Add

“functional”.

(m) to add a new amendment to an amending provision in the old full-sentence style—

Example 159	<i>If the amending enactment is in the old style</i>
Section 5 amended (section 5 heading) After section 5(9)— Add “(10) Section 15(5) is amended by repealing “elector” and substituting “voter”.”.	

Abbreviations

AC—Appeal Cases (United Kingdom)

BL—Basic Law of the Hong Kong Special Administrative Region

BLIS—Bilingual Laws Information System

BOR—Bill of Rights, Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383)

Cap. No.—Chapter Number

CPO—Criminal Procedure Ordinance (Cap. 221)

CSAs—committee stage amendments

ExCo—Executive Council of the Hong Kong Special Administrative Region

HKCFAR—Hong Kong Court of Final Appeal Reports

Gazette—Government of the Hong Kong Special Administrative Region Gazette

IGCO—Interpretation and General Clauses Ordinance (Cap. 1)

LDD—Law Drafting Division of the Department of Justice

LegCo—Legislative Council of the Hong Kong Special Administrative Region

LegCo Rules—Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

L.N. No.—Legal Notice Number

Loose-leaf Edition—Loose-leaf edition of the Laws of Hong Kong published under the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990)

Loose-leaf Ordinance—Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990)

MO—Magistrates Ordinance (Cap. 227)

PBO—Private Bills Ordinance (Cap. 69)

Thornton (1996)—Thornton, G. C. *Legislative Drafting*, 4th ed. London: Butterworths, 1996.

Appendix 1

Interpretation and General Clauses Ordinance (Cap. 1) (abridged)

To consolidate and amend the law relating to the construction, application and interpretation of laws, to make general provisions with regard thereto, to define terms and expressions used in laws and public documents, to make general provision with regard to public officers, public contracts and civil and criminal proceedings and for purposes and for matters incidental thereto or connected therewith.

Part I

Short Title and Application

1. Short title

This Ordinance may be cited as the Interpretation and General Clauses Ordinance.

2. Application

(1) Save where the contrary intention appears either from this Ordinance or from the context of any other Ordinance or instrument, the provisions of this Ordinance shall apply to this Ordinance and to any other Ordinance in force, whether such other Ordinance came or comes into operation before or after the commencement of this Ordinance, and to any instrument made or issued under or by virtue of any such Ordinance.

(1A) The inclusion of the substance of a provision of this Ordinance in another Ordinance does not imply the exclusion of the application of any other provision of this Ordinance to the other Ordinance. (Added 89 of 1993 s. 2)

(2) This Ordinance shall be binding on the State. (Replaced 26 of 1998 s. 2)

2A. Laws previously in force

(1) All laws previously in force shall be construed with such modifications, adaptations, limitations and exceptions as may be necessary so as not to contravene the Basic Law and to bring them into conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

(2) Without prejudice to the generality of subsection (1), in any Ordinance—
(a) provisions relating to foreign affairs in respect of the Hong Kong Special Administrative Region which are inconsistent with any national law applied in the Hong Kong Special Administrative Region

shall be construed subject to that national law and shall be so construed as to be consistent with the international rights and obligations of the Central People's Government of the People's Republic of China;

- (b) provisions conferring privileges on the United Kingdom or other Commonwealth countries or territories, other than provisions giving effect to reciprocal arrangements between Hong Kong and the United Kingdom or other Commonwealth countries or territories shall have no further effect;
 - (c) provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom shall, subject to the provisions of the Basic Law and the Garrison Law of the Hong Kong Special Administrative Region of the People's Republic of China, continue to have effect and apply to the military forces stationed in the Hong Kong Special Administrative Region by the Central People's Government of the People's Republic of China;
 - (d) provisions relating to the superior legal status of the English language as compared with the Chinese language shall be construed as providing that both the English and Chinese languages are to be official languages; and
 - (e) provisions applying any English law may continue to be applicable by reference thereto as a transitional arrangement pending their amendment by the Hong Kong Special Administrative Region through the Legislature thereof, provided that they are not prejudicial to the sovereignty of the People's Republic of China and do not contravene the provisions of the Basic Law.
- (3) In all laws previously in force words and expressions listed in Schedule 8 shall be construed according to that Schedule.

(4) In this section—

laws previously in force (原有法律) means the common law, rules of equity, Ordinances, subsidiary legislation and customary law in force immediately before 1 July 1997 and adopted as laws of the Hong Kong Special Administrative Region.

(Added 110 of 1997 s. 5. Amended 26 of 1998 s. 3)

Part II

Interpretation of Words and Expressions

3. Interpretation of words and expressions

act (作為), when used with reference to an offence or civil wrong, includes a series of acts, an illegal omission and a series of illegal omissions;

Administrative Appeals Board (行政上訴委員會) means the Administrative Appeals Board established under the Administrative Appeals Board Ordinance (Cap. 442); (Added 6 of 1994 s. 32)

adult (成人、成年人) means a person who has attained the age of 18 years; (Amended 32 of 1990 s. 6)

aircraft (飛機、航空器) means any machine that can derive support in the atmosphere from the reactions of the air;

alien (外籍人士) means a person other than a Chinese citizen; (Added 26 of 1998 s. 4)

amend (修訂) includes repeal, add to or vary and the doing of all or any of such things simultaneously or by the same Ordinance or instrument; (Amended 89 of 1993 s. 3)

arrestable offence (可逮捕的罪行) means an offence for which the sentence is fixed by law or for which a person may under or by virtue of any law be sentenced to imprisonment for a term exceeding 12 months, and an attempt to commit any such offence; (Added 30 of 1971 s. 2)

Basic Law (《基本法》) means the Basic Law of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

Chief Executive (行政長官) means—

- (a) the Chief Executive of the Hong Kong Special Administrative Region;
- (b) a person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law; (Added 26 of 1998 s. 4)

Chief Executive in Council (行政長官會同行政會議) means the Chief Executive acting after consultation with the Executive Council; (Added 26 of 1998 s. 4)

Chief Judge (高等法院首席法官) means the Chief Judge of the High Court; (Added 26 of 1998 s. 4)

Chief Justice (終審法院首席法官) means the Chief Justice of the Court of Final Appeal; (Added 26 of 1998 s. 4)

Chief Secretary for Administration (政務司司長) means the Chief Secretary for Administration of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

China (中國) means the People's Republic of China; (Added 26 of 1998 s. 4)

Chinese citizen and **Chinese national** (中國公民) mean a person who has Chinese nationality under the Nationality Law of the People's Republic of China in Schedule 4 to the Promulgation of National Laws 1997 (L.N. 379 of 1997); (Added 26 of 1998 s. 4)

Clerk to the Executive Council (行政會議秘書) includes any person appointed by the Chief Executive to be Deputy Clerk to the Executive Council; (Added 26 of 1998 s. 4)

Clerk to the Legislative Council (立法會秘書) means the Secretary General of the Legislative Council Secretariat appointed under section 15(1) of The Legislative Council Commission Ordinance (Cap. 443) and includes the Deputy Secretary General and any Assistant Secretary General of the Legislative Council Secretariat; (Added 26 of 1998 s. 4)

commencement (生效日期), when used in relation to an Ordinance, or any part or provision thereof, means the date on which the Ordinance, part or provision came or comes into operation; (Replaced 39 of 1982 s. 2)

committed for trial (交付審判), when used in relation to a person, means—

- (a) committed to prison with a view to his being tried before the Court of First Instance; or
- (b) admitted to bail to appear and stand his trial before the Court of First Instance; (Added 26 of 1998 s. 4)

common law (普通法) means the common law in force in Hong Kong; (Added 26 of 1998 s. 4)

consul (領事) and **consular officer** (領事館官員) mean any person, including the head of a consular post, recognized by the competent authority of the receiving state as entrusted in that capacity with the exercise of consular functions;

contravene (違反) in relation to any requirement or condition prescribed in any Ordinance or in any grant, permit, licence, lease or authority granted under or by virtue of any Ordinance includes a failure to comply with that requirement or condition;

counsel (大律師) means a person admitted before the Court of First Instance to practise as counsel; (Added 26 of 1998 s. 4)

court (法院、法庭) means any court of the Hong Kong Special Administrative Region of competent jurisdiction; (Added 26 of 1998 s. 4)

Court of Appeal (上訴法庭) means the Court of Appeal of the High Court; (Added 26 of 1998 s. 4)

Court of Final Appeal (終審法院) means the Hong Kong Court of Final Appeal established by section 3 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484); (Added 79 of 1995 s. 50)

Court of First Instance (原訟法庭) means the Court of First Instance of the High Court; (Added 26 of 1998 s. 4)

Crown lease (官契) means any lease granted by the Crown before 1 July 1997, any instrument whereby the term of a Crown lease may have been extended or the provisions thereof varied and any agreement for a Crown lease; (Added 26 of 1998 s. 4)

department (部門), in relation to the Government, includes bureau; (Added 26 of 1998 s. 4)

District Council (區議會) has the meaning assigned to it by the District Councils Ordinance (Cap. 547); (Replaced 8 of 1999 s. 89)

District Court (區域法院) means the District Court of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

District Judge (區域法院法官) means a judge of the District Court; (Added 26 of 1998 s. 4)

document (文件) means any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means;

enactment (成文法則) has the same meaning as Ordinance; (Added 26 of 1998 s. 4)

Executive Council (行政會議) means the Executive Council of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

export (輸出、出口) means to take out or cause to be taken out of Hong Kong by air, land or water; (Added 26 of 1998 s. 4)

Financial Secretary (財政司司長) means the Financial Secretary of the Hong Kong Special Administrative Region and the Secretary for Financial Services and the Treasury; (Added 26 of 1998 s. 4. Amended L.N. 106 of 2002)

financial year (財政年度) means the period from 1 April in any year to 31 March in the immediately succeeding year, both days inclusive;

foreign country and **foreign state** (外國) mean a country or state other than the People's Republic of China; (Added 23 of 1998 s. 2)

foreign currency (外幣) means any currency other than Hong Kong currency; (Added 23 of 1998 s. 2)

full age (成年) means the age of 18 years; (Added 32 of 1990 s. 6)

Gazette (憲報) means—

- (a) the Government of the Hong Kong Special Administrative Region Gazette and any supplement thereto;
- (b) the Gazette published by the Administration on or between 12 October 1945 and 1 May 1946;
- (c) the Government of the Hong Kong Special Administrative Region Gazette Extraordinary;
- (d) the Hong Kong Government Gazette and any supplement thereto published before 1 July 1997;
- (e) any Special Gazette or Gazette Extraordinary published before 1 July 1997; (Added 26 of 1998 s. 4)

general holiday and **public holiday** (公眾假期、公眾假日) mean any day which is a general holiday for the purposes of the General Holidays Ordinance (Cap. 149); (Added 26 of 1998 s. 4. Amended 35 of 1998 s. 5)

general revenue (政府一般收入) means the general revenue of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

Government (特區政府) means the Government of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

Government lease (政府租契) means a lease of land granted by or on behalf of the Government, and includes—

- (a) an instrument whereby—
 - (i) the term of the lease has been extended; or
 - (ii) the provisions of the lease have been varied;
- (b) an agreement for such a lease; and
- (c) a Crown lease; (Added 26 of 1998 s. 4)

Government Printer (政府印務局) means—

- (a) the Government Logistics Department of the Hong Kong Special Administrative Region and any other printer authorized by or on behalf of the Chief Executive to print any Ordinance or any other document of the Government; (Amended L.N. 164 of 2003)
- (b) in relation to any Ordinance or any other document printed before 1 July 1997, the Government Printer within the meaning of this section as in force immediately before that date; (Added 26 of 1998 s. 4)

harbour (海港) means the waters of Hong Kong within the boundaries specified in Schedule 3; (Added 26 of 1998 s. 4)

health officer (衛生主任) means—

- (a) the Director, Deputy Director and Assistant Director of Health;
- (b) any person appointed as a health officer by the Chief Executive; and
- (c) any person for the time being performing the duties of a health officer under any Ordinance; (Added 26 of 1998 s. 4)

High Court (高等法院) means the High Court of the Hong Kong Special Administrative Region established by section 3 of the High Court Ordinance (Cap. 4); (Added 26 of 1998 s. 4)

HKSAR (特區) means the Hong Kong Special Administrative Region of the People's Republic of China; (Added 26 of 1998 s. 4)

Hong Kong (香港) means the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

Hong Kong permanent resident and **permanent resident of the Hong Kong Special Administrative Region** (香港永久性居民、香港特別行政區永久性居民) mean a person who belongs to a class or description of persons

specified in Schedule 1 to the Immigration Ordinance (Cap. 115);
(Added 26 of 1998 s. 4)

Hong Kong Special Administrative Region (香港特別行政區) means the Hong Kong Special Administrative Region of the People's Republic of China, the geographical extent of which is the land and sea specified or referred to in Schedule 2; (Added 26 of 1998 s. 4)

immovable property (不動產) means—

- (a) land, whether covered by water or not;
- (b) any estate, right, interest or easement in or over any land; and
- (c) things attached to land or permanently fastened to anything attached to land;

import (輸入、進口) means to bring or cause to be brought into Hong Kong by air, land or water; (Added 26 of 1998 s. 4)

infant (幼年人) and **minor** (未成年人) mean a person who has not attained the age of 18 years; (Amended 32 of 1990 s. 6)

instrument (文書) includes any publication in the Gazette having legal effect;

Joint Declaration (聯合聲明) means the Sino-British Joint Declaration on the Question of Hong Kong done at Beijing on 19 December 1984; (Added 26 of 1998 s. 4)

judge (法官) means the Chief Justice, a judge of the Court of Final Appeal, the Chief Judge, a Justice of Appeal, a judge of the Court of First Instance, a recorder of the Court of First Instance and a deputy judge of the Court of First Instance; (Added 26 of 1998 s. 4)

judge of the Court of Final Appeal (終審法院法官) means the Chief Justice, a permanent judge and a non-permanent judge of the Court of Final Appeal; (Added 79 of 1995 s. 50. Amended 26 of 1998 s. 37)

justice and **justice of the peace** (太平紳士) mean a person appointed to be a justice of the peace under the Justices of the Peace Ordinance (Cap. 510); (Amended 47 of 1997 s. 10)

Kowloon (九龍) means the area specified in Schedule 4;

Lands Tribunal (土地審裁處) means the Lands Tribunal established under section 3 of the Lands Tribunal Ordinance (Cap. 17); (Added 62 of 1974 s. 16)

law (法律、法例、法) means any law for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong; (Added 26 of 1998 s. 4)

Legislative Council (立法會) means—

- (a) the Legislative Council of the Hong Kong Special Administrative Region;

(b) the Provisional Legislative Council during its existence; (Added 26 of 1998 s. 4)

magistrate (裁判官) means any person appointed to be a permanent or special magistrate under the Magistrates Ordinance (Cap. 227); (Replaced 47 of 1997 s. 10)

master (船長), when used with reference to a vessel, means the person (except a pilot) having for the time being command or charge of the vessel;

medical practitioner (醫生), **registered medical practitioner** (註冊醫生) and any words importing that a person is recognized by any Ordinance to be a medical practitioner in Hong Kong or a member of the medical profession in Hong Kong, mean a person duly registered as, or deemed to be registered as, a medical practitioner under the Medical Registration Ordinance (Cap. 161);

Ministry of Foreign Affairs (外交部) means the Ministry of Foreign Affairs of the Central People's Government; (Added 26 of 1998 s. 4)

month (月) means calendar month;

movable property (動產) means property of every description except immovable property;

national law applying in Hong Kong (在香港實施的全國性法律) means a national law applied in Hong Kong pursuant to the provisions of Article 18 of the Basic Law; (Added 26 of 1998 s. 4)

New Kowloon (新九龍) means the area specified in Schedule 5;

New Territories (新界) means the area specified or referred to in Schedule 5A; (Added 26 of 1998 s. 4)

oath (誓言) and **affidavit** (誓章) include, in the case of persons allowed or required by law to affirm instead of swearing, affirmation; and **swear** (宣誓) in the like case includes affirm;

occupy (佔用) includes use, inhabit, be in possession of or enjoy the land or premises to which the word relates, otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof;

offence (罪、罪行、罪項、犯法行為) includes any crime and any contravention or other breach of, or failure to comply with, any provision of any law, for which a penalty is provided; (Added 26 of 1998 s. 4)

Offices set up by the Central People's Government in the Hong Kong Special Administrative Region (中央人民政府在香港特別行政區設立的機構) means—

(a) the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region;

- (b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region; and
- (c) the Hong Kong Garrison of the Chinese People's Liberation Army;
(Added 2 of 2009 s. 2)

official languages (法定語文) means the English language and the Chinese language, and a reference to an "official language" shall be construed as a reference to the English language or the Chinese language as the case may be; (Added 18 of 1987 s. 2)

order paper (議事程序表), in relation to the Legislative Council, includes agenda; (Added 26 of 1998 s. 4)

Ordinance (條例) means—

- (a) any Ordinance enacted by the Legislative Council;
- (b) any Ordinance adopted by virtue of Article 160 of the Basic Law as a law of the Hong Kong Special Administrative Region;
- (c) any subsidiary legislation made under any such Ordinance except any such subsidiary legislation which has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; and
- (d) any provision or provisions of any such Ordinance or subsidiary legislation; (Added 26 of 1998 s. 4)

People's Republic of China (中華人民共和國) includes Taiwan, the Hong Kong Special Administrative Region and Macau; (Added 26 of 1998 s. 4)

per cent (釐、百分之), when used in relation to a rate of interest payable in any circumstances, means the rate of interest specified payable in respect of a year, unless it is expressly provided that it is payable in respect of any other period;

person (人、人士、個人、人物、人選) includes any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;

pier (碼頭) includes every quay, wharf or jetty of whatever description connected to and having direct access to the shore and used or intended to be used for the purposes of a pier, quay, wharf or jetty;

police officer (警務人員) and terms or expressions referring to ranks in the Hong Kong Police Force shall bear the meanings respectively assigned to them by the Police Force Ordinance (Cap. 232); (Added 26 of 1998 s. 4)

power (權、權力) includes any privilege, authority and discretion;

prescribed (訂明) and **provided** (訂定), when used in or with reference to any Ordinance, mean prescribed or provided by that Ordinance or by subsidiary legislation made under that Ordinance;

prison (獄、監獄) means any place or building or portion of a building set apart for the purpose of a prison under any Ordinance relating to prisons;

property (財產) includes—

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition;

Provisional Legislative Council (臨時立法會) means the Provisional Legislative Council of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

public (公眾、公眾人士) includes any class of the public;

publication (刊物) means—

- (a) all written and printed matter;
- (b) any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;
- (c) anything whether of a similar nature to the foregoing or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing or conveying words or ideas; and
- (d) every copy and reproduction of any publication as defined in paragraphs (a), (b) and (c) of this definition;

public body (公共機構) includes—

- (a) the Executive Council;
- (b) the Legislative Council;
- (c) (Repealed 78 of 1999 s. 7)
- (ca) any District Council; (Added 42 of 1981 s. 27. Amended 8 of 1999 s. 89)
- (cb) (Repealed 78 of 1999 s. 7)
- (d) any other urban, rural or municipal council;
- (e) any department of the Government; and
- (f) any undertaking by or of the Government;

public office (公職) means any office or employment the holding or discharging of which by a person would constitute that person a public officer;

public officer (公職人員) means any person holding an office of emolument under the Government, whether such office be permanent or temporary; (Added 26 of 1998 s. 4)

public place (公眾地方、公眾場所) means—

- (a) any public street or pier, or any public garden; and
- (b) any theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment or to which the public have or are permitted to have access;

public seal (公印) means the public seal of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

public servant (公務員、公務人員) has the same meaning as public officer; (Added 26 of 1998 s. 4)

registered (登記、註冊), when used with reference to a document, means registered under the provisions of any law applicable to the registration of such a document;

Registrar of the High Court (高等法院司法常務官) means the Registrar of the High Court and any Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the High Court; (Added 26 of 1998 s. 4. Amended 10 of 2005 s. 162)

regulations (規例) has the same meaning as subsidiary legislation and subordinate legislation; (Added 26 of 1998 s. 4)

repeal (廢除) includes rescind, revoke, cancel or replace;

road (路、道路) has the same meaning as street; (Added 26 of 1998 s. 4)

rules of court (法院規則), when used in relation to any court, means rules made by the authority having for the time being power to make rules and orders regulating the practice and procedure of such court;

Secretary for Justice (律政司司長) means the Secretary for Justice of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

sell (賣、售賣、出售) includes exchange and barter;

Shenzhen Bay Port Hong Kong Port Area (深圳灣口岸港方口岸區) means the Shenzhen Bay Port Hong Kong Port Area declared by section 3 of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591); (Added 4 of 2007 s. 16)

ship (船、船舶) includes every description of vessel used in navigation not exclusively propelled by oars;

sign (簽名、簽署) includes, in the case of a person unable to write, the affixing or making of a seal, mark, thumbprint or chop;

sitting, in relation to the Legislative Council, includes meeting; (Added 26 of 1998 s. 4)

solicitor (律師) means a person admitted before the Court of First Instance to practise as a solicitor; (Added 26 of 1998 s. 4)

State (“國家”) includes only—

- (a) the President of the People's Republic of China;
- (b) the Central People's Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People's Government that—
 - (i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
- (f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that—
 - (i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; (Added 26 of 1998 s. 4)

statutory declaration (法定聲明), if made—

- (a) in Hong Kong, means a declaration under the repealed Statutory Declarations Ordinance or the Oaths and Declarations Ordinance (Cap. 11);
- (b) in any other common law jurisdiction, means a declaration made before a justice of the peace, notary public, or other person having authority therein under any legal provision for the time being in force in the jurisdiction to take or receive a declaration;
- (c) in the mainland of the People's Republic of China, means a declaration made before a notary pursuant to his notarial functions;
- (d) in any other place, means a declaration made before a consul of the People's Republic of China or a person having authority under a statute for the time being in force in the place to take or receive a declaration; (Added 26 of 1998 s. 4)

street (街、街道) means—

- (a) any highway, street, road, bridge, thorough-fare, parade, square, court, alley, lane, bridle-way, footway, passage or tunnel; and

- (b) any open place, whether or not situate on land the subject of a Government lease, used or frequented by the public or to which the public have or are permitted to have access; (Added 26 of 1998 s. 4)

subsidiary legislation and **subordinate legislation** (附屬法例、附屬法規、附屬立法) mean any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect; (Added 26 of 1998 s. 4)

summary conviction (簡易程序定罪) means a summary conviction by a magistrate in accordance with the provisions of the Magistrates Ordinance (Cap. 227);

surname (姓、姓氏) includes a clan or family name;

treaty (條約) means a treaty, convention or agreement made between states, and any protocol or declaration attached thereto or independent thereof but referring thereto; (Added 26 of 1998 s. 4)

triable summarily (可循簡易程序審訊) means triable by a magistrate, in accordance with the provisions of the Magistrates Ordinance (Cap. 227);

vessel (船隻) means any ship or boat and any description of vessel used in navigation;

waters of Hong Kong and **Hong Kong waters** (香港水域) mean all waters, whether navigable or not, included in the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

weekday and **week-day** (周日) mean any day other than a Sunday; (Added 68 of 1995 s. 15)

words (字、文字、語言文字) includes figures and symbols;

writing (書寫) and **printing** (印刷) include writing, printing, lithography, photography, typewriting and any other mode of representing words in a visible form;

year (年) means a year according to the Gregorian calendar;

years of age (歲、年歲、年齡) and words of like meaning, when used in reference to the age of any person, means years of age calculated from the date of birth. (Added 26 of 1998 s. 4)

(Amended 89 of 1993 s. 3; 26 of 1998 s. 4; 78 of 1999 s. 7)

3A. References to former or retired judge

A reference to a person who is a former or retired judge of a court, or of a specified court, in Hong Kong, includes respectively a reference to a person who is a former or retired judge of a court which was constituted under the laws of Hong Kong before 1 July 1997, or of the court in Hong Kong which before 1 July 1997 exercised jurisdiction similar to that of the specified court.

(Added 32 of 2000 s. 15)

4. (Repealed 26 of 1998 s. 5)

5. **Grammatical variations and cognate expressions**

Where any word or expression is defined in any Ordinance, such definition shall extend to the grammatical variations and cognate expressions of such word or expression.

6. **References to Government property**

- (1) Where reference is made in any Ordinance to property and the expressions used in relation thereto imply that the property is owned by, belongs to, or reverts to, the Government, or convey a similar meaning, the reference shall be construed in accordance with Article 7 of the Basic Law.
- (2) In this section, **property** (財產) means any of the land and natural resources within the Hong Kong Special Administrative Region.

(Replaced 26 of 1998 s. 6)

7. **Provisions for gender and number**

- (1) Words and expressions importing the masculine gender include the feminine and neuter genders. (Amended 89 of 1993 s. 4)
- (2) Words and expressions in the singular include the plural and words and expressions in the plural include the singular.

8. **Service by post**

Where any Ordinance authorizes or requires any documents to be served or any notice to be given by post or by registered post, whether the expression “serve” or “give” or “send” or any other expression is used, the service or notice shall be deemed to be effected by properly addressing, pre-paying the postage thereon and dispatching it by post or by registered post, as the case may be, to the last known postal address of the person to be served or given notice, and, unless the contrary is proved, such service or notice shall be deemed to have been effected at the time at which the document or notice would be delivered in the ordinary course of post.

(Amended 36 of 1972 s. 2)

9. **Chinese and English words and expressions**

Chinese words and expressions in the English text of an Ordinance shall be construed according to Chinese language and custom and English words and expressions in the Chinese text of an Ordinance shall be construed according to English language and custom.

(Replaced 18 of 1987 s. 3. Amended 26 of 1998 s. 7)

10. (Repealed 26 of 1998 s. 8)**Part IIA****General Provisions as to Laws in Both Official Languages****10A. Application of Part IIA**

This Part shall apply to an Ordinance—

- (a) enacted in both official languages; or
- (b) in respect of which an authentic text is published under section 4B of the Official Languages Ordinance (Cap. 5).

10B. Construction of Ordinances in both official languages

- (1) The English language text and the Chinese language text of an Ordinance shall be equally authentic, and the Ordinance shall be construed accordingly.
- (2) The provisions of an Ordinance are presumed to have the same meaning in each authentic text.
- (3) Where a comparison of the authentic texts of an Ordinance discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted. (Amended L.N.46 of 1991)

10C. Expressions of common law

- (1) Where an expression of the common law is used in the English language text of an Ordinance and an analogous expression is used in the Chinese language text thereof, the Ordinance shall be construed in accordance with the common law meaning of that expression. (Amended L.N. 336 of 1990)
- (2) (Repealed 26 of 1998 s. 9)

10D. Name of statutory body corporate

Where an Ordinance establishes a body corporate and in the English language text and Chinese language text of that Ordinance the name of the body corporate is in the form only of the language of that text, the name of the body corporate shall consist of the form of its name in each of the texts of the Ordinance.

(Amended L.N. 336 of 1990)

10E. Words etc. in the official languages may be declared as equivalents

- (1) The Chief Executive in Council may, by notice in the Gazette, declare that any word, expression, office, title (including the short title of any Ordinance), citation or thing therein specified in one official language

shall, in relation to the interpretation of an Ordinance, be the equivalent of any word, expression, office, title, citation or thing therein specified in the other official language.

- (2) No declaration shall be made under this section unless a draft of the notice has been laid before and approved by resolution of the Legislative Council, and section 34 of this Ordinance shall not apply in relation to any such declaration.

(Amended 26 of 1998 s. 37)

(Part IIA added 18 of 1987 s. 4)

Part III

General Provisions as to Ordinances

11. Ordinance to be public Ordinance

Every Ordinance shall be a public Ordinance and shall be judicially noticed as such.

12. (Repealed 89 of 1993 s. 5)

13. Citation of Ordinance

- (1) Where any Ordinance is referred to, it shall be sufficient for all purposes to cite such Ordinance by—
- (a) the title, short title or citation thereof;
 - (b) its number among the Ordinances of the year in which it was enacted; or
 - (c) any chapter number lawfully given to it under the authority of any Ordinance providing for the issue of a revised or other edition of the laws of Hong Kong. (Amended L.N. 54 of 1989)
- (2) Any reference made to any Ordinance, in accordance with the provisions of subsection (1), may be made according to the title, short title, citation, number or chapter number used in copies of Ordinances printed by the Government Printer.

(Amended L.N. 57 of 1974)

14. (Repealed 89 of 1993 s. 6)

15. Reference to Ordinance as amended

- (1) Where in any Ordinance a reference is made to another Ordinance, such reference shall be deemed to include a reference to such last mentioned Ordinance as the same may from time to time be amended.
- (2) Where any Ordinance repeals and re-enacts, with or without modification, any provision of a former Ordinance, references in any

other Ordinance to the provision so repealed shall be construed as references to the provision so re-enacted.

16. Citation of part of Ordinance

In any Ordinance a description or citation of a portion of an Ordinance shall be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

17. Construction of reference to Ordinance, section, etc.

- (1) Any reference in any Ordinance to “any Ordinance” or to “any enactment” shall be construed as a reference to any Ordinance for the time being in force.
- (2) Where in an Ordinance there is a reference to a section or other division by number, letter or combination of number and letter, and not in conjunction with the title or short title of any other Ordinance, the reference shall be construed as a reference to the section or other division of that number, letter or combination in the Ordinance in which the reference occurs. (Replaced 89 of 1993 s. 7)
- (3) Where in a section of an Ordinance there is a reference to a subsection or other division by number, letter or combination of number and letter, and not in conjunction with the number of a section of that or any other Ordinance, the reference shall be construed as a reference to the subsection or other division of that number, letter or combination in the section in which the reference occurs. (Replaced 89 of 1993 s. 7)
- (4)-(5) (Repealed 89 of 1993 s. 7)

18. Marginal notes and section headings

- (1) Where any section, subsection or paragraph of any Ordinance is taken verbatim from, or is substantially similar to, a section, subsection, paragraph or other provision of any law of a place outside Hong Kong or any treaty, there may be added as a note to the section, subsection or paragraph of the Ordinance a reference, in abbreviated form, to such section, subsection, paragraph or provision of that law or treaty. (Amended 26 of 1998 s. 10)
- (2) A reference added under subsection (1) shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance.
- (3) A marginal note or section heading to any provision of any Ordinance shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance.

(Amended 44 of 1988 s. 2)

19. General principles of interpretation

An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.

Part IV**Commencement, Disallowance, Amendment and Repeal****20. Commencement, etc. of Ordinance**

- (1) An Ordinance shall be published in the Gazette.
 - (2) An Ordinance commences— (Amended 26 of 1998 s. 11)
 - (a) at the beginning of the day on which it is published; or
 - (b) if provision is made for it to commence on another day, at the beginning of that other day.
 - (3) If an Ordinance—
 - (a) is to commence on a day to be notified in the Gazette, the notice may fix different days—
 - (i) for different provisions to commence (including commence for different purposes);
 - (ii) for the same provisions to commence for different purposes;
 - (b) is to be repealed from a day to be notified in the Gazette, the notice may fix different days—
 - (i) from which different provisions are to be repealed (including repealed for different purposes);
 - (ii) from which the same provisions are to be repealed for different purposes,
- and different notices may fix different days—
- (i) for different provisions and for different purposes;
 - (ii) for the same provisions for different purposes. (Replaced 26 of 1998 s. 11)

(Replaced 89 of 1993 s. 8)

21. Invalidation

- (1) Where an Ordinance is returned pursuant to Article 17 of the Basic Law, the invalidation of the Ordinance shall as soon as possible be notified by the Chief Executive by notice in the Gazette.
- (2) Where an Ordinance is invalidated as referred to in subsection (1), the provisions of section 23 shall apply as if the Ordinance had been repealed.

- (3) An Ordinance repealed or amended by an Ordinance which is invalidated as referred to in subsection (1) shall revive and continue in force in its original form. (Amended L.N. 46 of 1991)

(Replaced 26 of 1998 s. 12)

22. (Repealed 89 of 1993 s. 9)

23. Effect of repeal generally

Where an Ordinance repeals in whole or in part any other Ordinance, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of any Ordinance so repealed or anything duly done or suffered under any Ordinance so repealed;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any Ordinance so repealed;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any Ordinance so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been passed.

24. Repealed Ordinance not revived

Where any Ordinance repealing in whole or in part any former Ordinance is itself repealed, such last repeal shall not revive the Ordinance or provision previously repealed, unless provision is made to that effect.

25. Repeal and substitution

Where any Ordinance repeals in whole or in part any other Ordinance and substitutes other provisions therefor, the repealed Ordinance shall remain in force until the substituted provisions come into operation.

26. (Repealed 89 of 1993 s. 10)

27. Effect of expiry, etc. of Ordinance

Where an Ordinance—

- (a) expires or lapses;
- (b) has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; or

- (c) is discovered to be in contravention of the Basic Law and, as specified in Article 160 of the Basic Law, ceases to have force in accordance with the procedure prescribed by the Basic Law,
- the provisions of section 23 shall apply as if the Ordinance had been repealed.

(Replaced 26 of 1998 s. 13)

Part V

Subsidiary Legislation

28. General provision with regard to power to make subsidiary legislation

- (1) Where an Ordinance confers power on a person to make subsidiary legislation, the following provisions shall have effect with reference to the subsidiary legislation—
 - (a) when any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all other powers that enable its making;
 - (b) no subsidiary legislation shall be inconsistent with the provisions of any Ordinance;
 - (c) subsidiary legislation may at any time be amended by the same person and in the same manner by and in which it was made;
 - (ca) where the person referred to in paragraph (c) has been replaced wholly or in part by another person, the power conferred by paragraph (c) may be exercised by the other person for all matters in his jurisdiction as if he were the original person; (Added 89 of 1993 s. 11)
 - (d) where any Ordinance confers power on any person to make subsidiary legislation for any general purpose, and also for any incidental special purpose, the enumeration of the special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose;
 - (e) subsidiary legislation may provide that a contravention or breach of the subsidiary legislation is an offence punishable on summary conviction by such fine not exceeding \$5,000 or by such term of imprisonment not exceeding 6 months as may be specified in the subsidiary legislation or by both such fine and imprisonment; (Amended 23 of 1981 s. 2)
 - (f) subsidiary legislation may amend any forms contained in the Ordinance under which such subsidiary legislation is made and may prescribe new forms.
 - (g) (Repealed 89 of 1993 s. 11)
- (2) Subsidiary legislation shall be published in the Gazette. (Added 89 of 1993 s. 11)

- (3) Subsidiary legislation comes into operation—
 - (a) at the beginning of the day on which it is published; or
 - (b) if provision is made for it to commence on another day, at the beginning of that other day. (Added 89 of 1993 s. 11)
- (4) A person who makes subsidiary legislation may provide for the subsidiary legislation to commence on a day to be fixed by notice to be given by him or by some other person designated in the subsidiary legislation. (Added 89 of 1993 s. 11)
- (5) If subsidiary legislation is to commence on, or be repealed from, a day to be notified in the Gazette, the notice may fix different days for different provisions to commence or from which different provisions are to be repealed and different notices may fix different days for different provisions. (Added 89 of 1993 s. 11)

(Amended 89 of 1993 s. 11)

28A. Construction of power to make subsidiary legislation

Where an Ordinance that applies in Hong Kong and in the Shenzhen Bay Port Hong Kong Port Area confers power on a person to make subsidiary legislation, the power shall be construed as including—

- (a) a power to declare that the subsidiary legislation does not apply in the Shenzhen Bay Port Hong Kong Port Area; and
- (b) a power to make different provisions with reference to Hong Kong and the Shenzhen Bay Port Hong Kong Port Area respectively.

(Added 4 of 2007 s. 17)

29. Fees and charges

- (1A) Where an Ordinance confers a power on a person to make subsidiary legislation, the subsidiary legislation may impose a fee or charge for anything in it or the Ordinance. (Added 89 of 1993 s. 12)
- (1) Where provision is made by any subsidiary legislation in respect of fees or other charges, such subsidiary legislation may provide for all or any of the following matters—
 - (a) specific fees or charges;
 - (b) maximum or minimum fees or charges;
 - (c) maximum and minimum fees or charges;
 - (d) the payment of fees or charges either generally or under specified conditions or in specified circumstances;
 - (e) the exemption of any person or class of persons from the payment of fees or charges; and

- (f) the reduction, waiver or refund, in whole or in part, of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.
- (2) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for by any subsidiary legislation, such reduction, waiver or refund may be expressed to apply or be applicable either generally or specially—
 - (a) in respect of certain matters or transactions or classes of matters or transactions;
 - (b) in respect of certain documents or classes of documents;
 - (c) in respect of the occurrence or the termination of any event;
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of such matters, transactions, documents, events or persons,
 and may be expressed to apply or be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified therein.

29A. Variation of certain fees and charges

- (1) Where the amount of any fee or charge is for the time being specified in, or otherwise fixed or determined by, subsidiary legislation made by the Chief Executive in Council, subject to subsection (2), the Financial Secretary may by similar subsidiary legislation increase or decrease, or otherwise vary, the amount of the fee or charge.
- (2) (a) The Chief Executive in Council may by a direction in writing direct the Financial Secretary to exercise, as regards fees or charges specified in the direction, a power conferred on him by subsection (1) either—
 - (i) only with the prior approval of the Chief Executive in Council; or
 - (ii) so as not to exceed limits specified in the direction; or
 - (iii) only in some other manner so specified.
- (b) For so long as a direction under this subsection is in force the Financial Secretary shall comply with it.
- (3) The powers conferred by subsection (1) are in addition to, and are not in substitution for, any power exercisable by the Chief Executive in Council in relation to fees or charges.
- (4) Where—
 - (a) a power under subsection (1) is exercisable; and
 - (b) the subsidiary legislation by which the relevant fee or charge was specified, fixed or otherwise determined (*the primary instrument*) is—

- (i) subsidiary legislation to which section 35 applies or to which section 34 does not apply; or
- (ii) subsidiary legislation of which a draft was required to be laid on the table of the Legislative Council,

then such 1 or more of the following provisions as are appropriate in the particular circumstances shall operate—

- (i) section 35 shall apply to subsidiary legislation made or issued in exercise of the power which amends the primary instrument;
- (ii) section 34 shall not apply to such subsidiary legislation;
- (iii) the enactment requiring or otherwise relevant to so laying the primary instrument shall also apply to subsidiary legislation which is so made or issued and amends that instrument.

(Added 39 of 1993 s. 2. Amended 26 of 1998 s. 37)

30. (Repealed 89 of 1993 s. 13)

31. Construction of subsidiary legislation

- (1) Where any Ordinance confers power to make any subsidiary legislation, expressions used in the subsidiary legislation shall have the same meaning as in the Ordinance conferring the power, and any reference in such subsidiary legislation to “the Ordinance” shall be construed as a reference to the Ordinance conferring the power to make such subsidiary legislation. (Amended 89 of 1993 s. 14)
- (2) Where in subsidiary legislation there is a reference to a section or other provision by number, letter or combination of number and letter, and not in conjunction with the title or short title of other subsidiary legislation or an Ordinance, the reference shall be construed as a reference to the section or other provision of that number, letter or combination in the subsidiary legislation in which the reference occurs. (Added 89 of 1993 s. 14)
- (3) Where in subsidiary legislation there is a reference to a subsection or other subdivision of a provision by number, letter or combination of number and letter, and not in conjunction with the number of any other section or provision of that subsidiary legislation or any other subsidiary legislation, the reference shall be construed as a reference to the subsection or other subdivision of a provision of that number, letter or combination in the section or other provision in which the reference occurs. (Added 89 of 1993 s. 14)

32. Exercise of statutory powers between enactment and commencement of Ordinance

- (1) Where an Ordinance is to come into operation on a day other than the day of its publication in the Gazette, a power to do anything under the

Ordinance may be exercised at any time after its publication in the Gazette.

- (2) An exercise of a power under subsection (1) is not effective until the provision in the Ordinance to which it relates comes into operation unless the exercise of the power is necessary to bring the Ordinance into operation.

(Replaced 89 of 1993 s. 15)

33. (Repealed 89 of 1993 s. 16)

34. Placing of subsidiary legislation before Legislative Council

- (1) All subsidiary legislation shall be laid on the table of the Legislative Council at the next sitting thereof after the publication in the Gazette of that subsidiary legislation.
- (2) Where subsidiary legislation has been laid on the table of the Legislative Council under subsection (1), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which it was so laid, provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation, and if any such resolution is so passed the subsidiary legislation shall, without prejudice to anything done thereunder, be deemed to be amended as from the date of publication in the Gazette of such resolution.
- (3) If the period referred to in subsection (2) would but for this subsection expire—
 - (a) after the last sitting before the end of a session or dissolution of the Legislative Council; but (Replaced 89 of 1993 s. 17)
 - (b) on or before the day of the second sitting of the Legislative Council in the next session, (Replaced 89 of 1993 s. 17)

that period shall be deemed to extend to and expire on the day after that second sitting.
- (4) Before the expiry of the period referred to in subsection (2) or that period as extended by virtue of subsection (3), the Legislative Council may by resolution in relation to any subsidiary legislation specified therein—
 - (a) in the case of the period referred to in subsection (2), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;
 - (b) in the case where the period referred to in subsection (2) has been extended by virtue of subsection (3), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session. (Replaced 8 of 2002 s. 2)

(5) Any resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Chief Executive may allow in any particular case. (Amended 26 of 1998 s. 37)

(6) In this section—

sitting (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper;

subsidiary legislation (附屬法例) does not include a resolution of the Legislative Council. (Replaced 89 of 1993 s. 17)

(Replaced 39 of 1986 s. 2)

35. Approval of Legislative Council to subsidiary legislation

Where any Ordinance provides that subsidiary legislation shall be subject to the approval of the Legislative Council or of any other authority, or contains words to the like effect, then—

- (a) the subsidiary legislation shall be submitted for the approval of the Legislative Council or other authority; and
- (b) the Legislative Council may by resolution or the other authority may by order amend the whole or any part of the subsidiary legislation.

36. Effect of repeal on subsidiary legislation

(1) Where any Ordinance—

- (a) repeals in whole or in part any former Ordinance and substitutes other provisions therefor; or
- (b) repeals in whole or in part any former Ordinance and re-enacts such former Ordinance with or without modification, (Amended 26 of 1998 s. 14)

any subsidiary legislation made under the former Ordinance and in force at the commencement of the repealing Ordinance shall, so far as it is not inconsistent with the repealing Ordinance, continue in force and have the like effect for all purposes as if made under the repealing Ordinance.

(2) Where any subsidiary legislation is continued in force by virtue of subsection (1), such subsidiary legislation may be from time to time amended as if it had been made under the repealing Ordinance.

37. Forms

- (1) Where any form is prescribed by or under any Ordinance, deviations therefrom, not affecting the substance of such form, shall not invalidate it.
- (2) Where a form is prescribed in any Ordinance in both official languages and the text in one official language is combined in a particular manner

with, or is set out separately from, the text in the other official language, the form may be printed and used—

- (a) with the texts combined in any manner; or
- (b) in either official language. (Added 18 of 1987 s. 5)

37A. Amendment of subsidiary legislation by Ordinance

The amendment of subsidiary legislation by an Ordinance does not prevent, and has never prevented, a person on whom power is conferred by an Ordinance (as defined in section 3) to make that subsidiary legislation (and whether or not the person made the subsidiary legislation) from amending that subsidiary legislation.

(Added 26 of 1998 s. 15)

Part VI

Powers

38. Presumption of lawful exercise of power

Where any Ordinance confers power upon any person to—

- (a) make any subsidiary legislation;
- (b) make any instrument; or
- (c) exercise any power,

and the Ordinance conferring the power prescribes conditions, subject to the observance, performance or existence of which any such power may be exercised, such conditions shall be presumed to have been duly fulfilled if in the subsidiary legislation, the instrument or the document evidencing the exercise of the power there is a statement that the subsidiary legislation or instrument is made, or the power exercised, in exercise of, or in pursuance of, the power conferred by such Ordinance, or a statement to the like effect.

(Amended 89 of 1993 s. 18)

39. Exercise of powers

- (1) Where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.
- (2) Where any Ordinance confers any power or imposes any duty on the holder of any public office as such, then the power may be exercised and the duty shall be performed by the holder for the time being of that public office.

40. Construction of enabling words

- (1) Where any Ordinance confers upon any person power to do or enforce the doing of any act or thing, all such powers shall be deemed to be also

conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

(2) Without prejudice to the generality of subsection (1), where any Ordinance confers power—

- (a) to provide for, prohibit, control or regulate any matter, such power shall include power to provide for the same by the licensing thereof and power to prohibit acts whereby the prohibition, control or regulation of such matter might be evaded;
- (b) to grant a licence, Government lease, permit, authority, approval or exemption, such power shall include power to impose reasonable conditions subject to which such licence, Government lease, permit, authority, approval or exemption may be granted; (Amended 26 of 1998 s. 16; 29 of 1998 s. 105)
- (c) to approve any person or thing, such power shall include power to withdraw approval thereof;
- (d) to give directions, such power shall include power to couch the same in the form of prohibitions.

(3)-(4) (Repealed 89 of 1993 s. 19)

41. Power to issue licences, etc. discretionary

- (1) Where any Ordinance confers power upon any person to issue, grant, give or renew any licence, Government lease, authority, approval, exemption or permit, the person so empowered shall have a discretion either to issue, grant, give or renew or to refuse to issue, grant, give or renew such licence, Government lease, authority, approval, exemption or permit.
- (2) Nothing in this section shall affect any right which may be conferred by any Ordinance upon any person to appeal against a refusal to issue, grant, give or renew any licence, Government lease, authority, approval, exemption or permit.

(Amended 89 of 1993 s. 20; 26 of 1998 s. 17; 29 of 1998 s. 105)

42. Power to appoint includes power to suspend, dismiss, re-appoint, etc.

Where any Ordinance confers a power or imposes a duty upon any person to make any appointment or to constitute or establish any board, tribunal, commission, committee or similar body, then the person having such power or duty shall also have the power—

- (a) to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in exercise of such power or duty;
- (b) to revoke the appointment, constitution or establishment of, or to dissolve, any board, tribunal, commission, committee or similar body

appointed, constituted or established, in exercise of such power or duty, and to re-appoint, re-constitute or re-establish the same; and

- (c) to specify the period for which any person appointed in exercise of such power or duty shall hold such appointment:

Provided that where the power or duty of such person so to act is only exercisable upon the recommendation, or is subject to the approval or consent, of some other person, then such power shall only be exercisable upon such recommendation or subject to such approval or consent.

43. Delegation by specified public officers

- (1) Where any Ordinance confers powers or imposes duties upon a specified public officer, such public officer may delegate any other public officer or the person for the time being holding any office designated by him to exercise such powers or perform such duties on his behalf, and thereupon, or from the date specified by such specified public officer, the person delegated shall have and may exercise such powers and perform such duties.
- (2) Nothing in subsection (1) shall authorize a specified public officer to delegate any person to make subsidiary legislation or to hear any appeal.
- (3) Where any Ordinance confers any power or imposes any duty upon a specified public officer and such power is exercised or such duty is performed by any other public officer, the specified public officer shall, unless the contrary is proved, be deemed to have delegated the latter public officer under subsection (1) to exercise the power or perform the duty.
- (4) In this section ***specified public officer*** (指明的公職人員) means the person for the time being holding any public office which has been specified, either generally or for the purposes of any particular Ordinance, under this section by the Chief Executive in Council by notice in the Gazette. (Amended 26 of 1998 s. 37)

44. Effect of delegation of powers and duties

- (1) Where any Ordinance confers power upon any person to delegate the exercise on his behalf of any of the powers or the performance of any of the duties conferred or imposed upon him under any Ordinance—
 - (a) such delegation shall not preclude the person so delegating from exercising or performing at any time any of the powers or duties so delegated;
 - (b) such delegation may be conditional, qualified or limited in such manner as the person so delegating may think fit;
 - (c) where the delegation may be made only with the approval of some person, such delegation may be conditional, qualified or limited in such manner as the person whose approval is required may think fit;

- (d) the delegation may be to a named person or to the person for the time being holding any office designated by the person so delegating; and
 - (e) any delegation may be amended by the person so delegating.
(Added 14 of 1971 s. 2)
- (2) The delegation of any power shall be deemed to include the delegation of any duty incidental thereto or connected therewith and the delegation of any duty shall be deemed to include the delegation of any power incidental thereto or connected therewith.

45. Exercise of powers in special cases

Where any Ordinance confers any power or imposes any duty upon the holder of any public office and either—

- (a) that office has been abolished; or
- (b) no person has been appointed to discharge the functions of that office,

those powers and duties may be exercised or performed—

- (i) in the case of making subsidiary legislation, by the Chief Executive in Council; and
- (ii) in any other case, by the holder of such other public office as the Chief Executive may by order direct.

(Amended 26 of 1998 s. 37)

46. Power to make public instruments and perform acts

Where any Ordinance confers power upon any person to make, grant, issue or approve any proclamation, order, notice, declaration, instrument, notification, licence, permit, exemption, register or list, such power shall include power—

- (a) to amend or suspend such proclamation, order, notice, declaration, instrument, notification, licence, permit, exemption, register or list;
- (b) to substitute another proclamation, order, notice, declaration, instrument, notification, licence, permit, exemption, register or list for one already made, granted, issued or approved;
- (c) to withdraw approval of any proclamation, order, notice, declaration, instrument, notification, licence, permit, exemption, register or list so approved; and
- (d) to declare the date of the coming into operation, and the period of operation, of any such proclamation, order, notice, declaration, instrument, notification, licence, permit, exemption, register or list.

(Amended 89 of 1993 s. 21)

47. Power to relate back appointment

Any appointment made under the provisions of any Ordinance may be declared to have effect as from the date upon which the person appointed in fact began to exercise the powers and perform the duties of his appointment, not being a date earlier than the commencement of the Ordinance under which the appointment is made.

Part VII**Boards and Committees****47A. Power of Chief Executive to appoint advisory bodies**

- (1) The Chief Executive may from time to time by order published in the Gazette establish by law such advisory and other committees and bodies as he considers appropriate in the public interest and may appoint the members thereof.
- (2) An order under subsection (1) may contain such provisions relating to the committee or body established by the order as the Chief Executive thinks fit, including the terms of reference of the body, the terms of office of members appointed to that body, the removal or resignation of members, the re-appointment of members, quorums for meetings and similar procedural matters.

(Added 39 of 1982 s. 3. Amended 26 of 1998 s. 37)

48. Power to appoint chairman

Where any Ordinance confers power upon any person to appoint any persons to be members of any board, tribunal, commission, committee or similar body, the person so appointing may appoint a chairman, a deputy chairman, a vice-chairman and a secretary of such board, tribunal, commission, committee or similar body.

49. Power to appoint public officer to board, etc.

Where any Ordinance confers power upon any person to appoint any persons to be members of any board, tribunal, commission, committee or similar body, the person so empowered may appoint any public officer, by his official designation, to be a member of such board, tribunal, commission, committee or similar body, and, on such appointment and until such appointment shall be revoked or otherwise determined, the person for the time being holding the public office in question shall be a member of such board, tribunal, commission, committee or similar body.

50. Appointment of alternates

Where any board, tribunal, commission, committee or similar body is established by or under any Ordinance, any person who is empowered by such Ordinance to appoint any or all of the members thereof may—

- (a) appoint 1 or more duly qualified persons to be alternate members of the same, and any one such alternate member may attend any meeting of the same when a substantive member is temporarily unable to attend for any reason; and
- (b) appoint a duly qualified person to be a temporary member of the same in the place of any substantive member who is precluded by illness, absence from Hong Kong or any other cause from exercising his functions as such, (Amended 26 of 1998 s. 18)

and when attending any meeting of such board, tribunal, commission, committee or similar body, such alternate or temporary member shall be deemed for all purposes to be a member of the same.

51. Power of board, etc. not affected by vacancy

Where any board, tribunal, commission, committee or similar body is established by or under any Ordinance, the powers of such board, tribunal, commission, committee or similar body shall not be affected by—

- (a) any vacancy in the membership thereof;
- (b) any defect in the appointment or qualification of a person purporting to be a member thereof; or
- (c) any minor irregularity in the convening of any meeting thereof.

52. Power of majority and exercise of powers

- (1) Where any Ordinance confers a power or imposes a duty upon a body or number of persons consisting of or being not less than 3, such power may be exercised or duty performed in the name of that body or number of persons by a majority of those persons.
- (2) Whenever such body or number of persons is assembled, the chairman or other member presiding shall have a casting as well as a deliberative vote, in all matters in which a decision is taken by vote by whatever name such vote may be called.
- (3) The exercise of any power vested in such body or number of persons may be signified either by the chairman or other person presiding at the meeting or other deliberation at which such power was exercised or at which, as the case may be, authority to exercise it was conferred, or by any person from time to time authorized by such body or persons to signify the exercise of such power.

53. Seal

Where any Ordinance constitutes any board, tribunal, commission, committee or similar body to be a body corporate having perpetual succession and a common seal, and any document requires to be sealed with such common seal, then such common seal shall be affixed by the chairman of such board, tribunal, commission, committee or similar body, or by any member thereof

appointed by the chairman for that purpose, and shall be authenticated by the signature of the chairman or such member.

Part VIII

Public Officers and Public Contracts

54. References to public officer

In any Ordinance, instrument, warrant or process of any kind, any reference to a public officer, or to a person holding a public office by a term designating his office, shall include a reference to any person for the time being lawfully discharging the functions of that office, or any part of such functions, and any person appointed to act in or perform the duties of such office, or any part of such duties, for the time being.

(Amended L.N. 54 of 1989; L.N. 46 of 1991)

54A. Power to transfer functions of public officers

- (1) The Legislative Council may by resolution provide for the transfer to any public officer of any functions exercisable by virtue of any Ordinance by another public officer.
- (2) A resolution under this section may contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the resolution.
- (3) A certificate issued by the Chief Secretary for Administration that any property vested in a public officer immediately before a resolution under this section takes effect has been transferred by virtue of the resolution to another public officer shall be conclusive evidence of the transfer.

(Amended L.N. 362 of 1997 ss. 2 & 3)

- (4) In this section—

functions (職能) includes powers and duties;

public officer (公職人員) includes any corporation created for the purpose of incorporating a person for the time being holding a public office.

(Added 67 of 1975 s. 3)

[cf. 1946 c. 31 s. 1 U.K.]

55. Change of title of office

The Chief Secretary for Administration may, by notice (which may be given retrospective effect) in the Gazette, declare a change in title of any public officer or public body, or of any person referred to in any Ordinance, and the notice may contain provisions substituting the new title in any Ordinance relating to the public officer, public body or person and in any instrument, contract or legal proceedings made or commenced before the date on which the notice takes effect.

(Replaced 67 of 1975 s. 4. Amended L.N. 362 of 1997 ss. 2 & 3)

[cf. 1946 c. 31 s. 2 U.K.]

56. Appointment of officers by name or office

Where any Ordinance confers power upon any person to appoint or name a person to have and exercise any powers or perform any duties, the person so empowered may either appoint a person by name or direct the person for the time being holding any office designated by him to have and exercise such powers or perform such duties; and thereupon, or from the date specified by the person so empowered, the person appointed by name or the person holding the office aforesaid shall have and may exercise such powers or perform such duties accordingly until such appointment be revoked or otherwise determined.

57. Filling vacancy

- (1) When any Ordinance confers a power or imposes a duty upon a public officer and such public officer is unable to exercise the powers or perform the duties of his office, owing to absence or inability to act from illness or any other cause, the Chief Executive may, by notice in the Gazette, direct that such power shall be had and may be exercised and such duty shall be performed by a public officer named by, or by a public officer holding the office designated by, the Chief Executive, subject to such conditions, exceptions and qualifications as the Chief Executive may direct.
- (2) Any direction by the Chief Executive under subsection (1) may be given—
 - (a) in anticipation of any absence or inability occurring; or
 - (b) subsequently thereto and may relate back to the commencement of such absence or inability.
- (3) Where any Ordinance confers powers or imposes duties upon a public officer and a new post is subsequently created in the same or another Government department, the Chief Executive may, by notice in the Gazette, direct that the said powers and duties or any of them shall be exercised by any holder of the new post so created, either to the exclusion of or in addition to the first named public officer or otherwise.

(Amended 26 of 1998 s. 37)

58. Power to appoint while holder on retirement leave

- (1) Where the holder of any public office is on leave of absence pending the relinquishment by him of such office, another person may be appointed to the same public office.
- (2) Where 2 or more persons are holding the same public office by reason of an appointment made in accordance with subsection (1), then, for the purposes of any Ordinance and in respect of any power conferred or duty imposed upon the holder of such office, the person last appointed to the office shall be deemed to be the holder thereof. (Amended L.N. 46 of 1991)

59. Contracts by public officer

In any contract or other document, signed, executed or made by the Chief Executive or by any public officer on behalf of the Chief Executive or the Government or of any Government department, it shall not be necessary to name the Chief Executive or such public officer, but it shall be sufficient to name the office held by the Chief Executive or such public officer, and the Chief Executive or public officer shall be deemed to be a party thereto as if the Chief Executive or such public officer were a corporation sole with perpetual succession for this purpose.

(Amended 26 of 1998 s. 37)

60. (Repealed 26 of 1998 s. 19)**61. Omission of title after signature of public officer immaterial**

The omission to add the title of the public office held by the Chief Executive or any public officer signing or executing any contract or other document after the signature of such officer shall not exclude such contract or other document from the operation of section 59.

(Amended 26 of 1998 ss. 20 & 37)

Part IX

Government, Chief Executive and Chief Executive in Council

(Replaced 26 of 1998 s. 21)

62. Signification of orders of Chief Executive and Chief Executive in Council

- (1) Where any Ordinance confers a power or imposes a duty upon the Chief Executive or the Chief Executive in Council to make any subsidiary legislation or appointment, give any directions, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or exercise any other power or perform any other duty, the exercise of such power or the performance of such duty may be signified—
 - (a) in the case of the Chief Executive, under the hand of any public officer specified in Schedule 6; (Amended 36 of 1972 s. 3)
 - (b) in the case of the Chief Executive in Council, under the hand of the Clerk to the Executive Council. (Amended 14 of 1994 s. 24)
- (2) Notwithstanding the provisions of subsection (1), proclamations shall be made or issued only under the hand of the Chief Executive in Council.
- (3) The Chief Executive in Council may, by order published in the Gazette, amend Schedule 6. (Added 36 of 1972 s. 3)

(Amended 26 of 1998 s. 37)

63. Delegation by Chief Executive

- (1) Where any Ordinance confers powers or imposes duties upon the Chief Executive, he may delegate any person by name or the person holding any office designated by him to exercise such powers or perform such duties on his behalf and thereupon, or from the date specified by the Chief Executive, the person so delegated shall have and may exercise such powers and perform such duties.
- (2) Nothing in subsection (1) shall authorize the Chief Executive to delegate any person to make subsidiary legislation, issue proclamations or to determine any appeal. (Replaced 26 of 1998 s. 22)
- (3) Where any Ordinance confers powers or imposes duties upon the Chief Executive and such power is exercised or such duty is performed by any public officer, the Chief Executive shall, unless the contrary is proved, be deemed to have delegated such public officer under subsection (1) to exercise the power or perform the duty.

(Amended 26 of 1998 s. 37)

64. Appeals and objections to Chief Executive in Council

- (1) Where any Ordinance confers upon any person a right of appeal or objection to the Chief Executive in Council, such appeal or objection shall be governed by rules made in accordance with subsection (2). (Replaced 54 of 1969 s. 5)
- (2) The Chief Executive in Council may make rules governing the procedure to be followed in appeals or objections to the Chief Executive in Council. (Replaced 54 of 1969 s. 5)
- (3) The conferring by any Ordinance of a right of appeal or objection to the Chief Executive in Council shall not prevent any person from applying to the High Court for an order of mandamus, certiorari, prohibition, injunction or any other order, instead of appealing or making an objection to the Chief Executive in Council, where an application for such an order would lie, but no proceedings by way of mandamus, certiorari, prohibition, injunction or other order shall be taken against the Chief Executive in Council in respect of any such appeal or objection to the Chief Executive in Council or any proceedings connected therewith. (Amended 54 of 1969 s. 5; 26 of 1998 s. 23)
- (4) The Chief Executive in Council, when considering any appeal or objection to him (whether by way of petition or otherwise, and whether such appeal or objection is made by virtue of any Ordinance or otherwise) shall act in an administrative or executive capacity and not in a judicial or quasi-judicial capacity and shall be entitled to consider and take into account any evidence, material, information or advice in his absolute discretion. (Amended 54 of 1969 s. 5)

- (5) The Chief Executive in Council, when considering any appeal or objection to him (whether by way of petition or otherwise and whether such appeal or objection is made by virtue of any Ordinance or otherwise) against any decision of any person, public officer or public body, may confirm, vary or reverse such decision or substitute therefor such other decision or make such other order as the Chief Executive in Council may think fit. (Amended 54 of 1969 s. 5)

(Amended 26 of 1998 s. 37)

65. (Repealed 26 of 1998 s. 24)

66. Saving of rights of State

- (1) No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby.
- (2) The repeal and substitution of the former section 66 of this Ordinance effected by section 24 of the Adaptation of Laws (Interpretative Provisions) Ordinance (26 of 1998) do not prejudice the operation of section 2A(2)(c), whether before, on or after that repeal and substitution.

(Replaced 26 of 1998 s. 24)

Part X

Time and Distance

67. Hong Kong time

- (1) Whenever any expression of time occurs in any Ordinance the time referred to is Hong Kong Time.
- (2) For the purposes of subsection (1), **Hong Kong Time** (香港時間) means the time used for general purposes throughout Hong Kong namely, 8 hours, or such other period as may be determined by the Legislative Council by resolution under this subsection or under section 16 of the Oil (Conservation and Control) Ordinance (Cap. 264), in advance of Universal Standard Time. (Amended 27 of 1979 s. 17)
- (3) A resolution of the Legislative Council under subsection (2) may determine Hong Kong Time for the whole or part of a year.
- (4) Nothing in this section shall affect the use of Universal Standard Time for the purposes of astronomy, meteorology, navigation or aviation, or affect the construction of any document mentioning or referring to a point of time in connection with any of these purposes.

(Replaced 17 of 1977 s. 3. Amended 26 of 1998 s. 25)

68. (Repealed 17 of 1977 s. 3)

69. **References to “a.m.” and “p.m.”**

The expression “a.m.” indicates the period between midnight and the following noon, and the expression “p.m.” indicates the time between noon and the following midnight. Where 2 such expressions occur conjunctively in relation to any specified hour or in conjunction with the word “sunset” or “sunrise”, they shall be construed as relating to a consecutive period of time.

70. **Provision where no time prescribed**

Where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.

71. **Computation of time**

(1) In computing time for the purposes of any Ordinance—

- (a) a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
- (b) if the last day of the period is a public holiday or a gale warning day or black rainstorm warning day the period shall include the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;
- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is a public holiday or a gale warning day or black rainstorm warning day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;
- (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, no public holiday or a gale warning day or black rainstorm warning day shall be reckoned in the computation of that time. (Amended 43 of 1983 s. 2; 68 of 1995 s. 16)

(2) In this section—

black rainstorm warning day (黑色暴雨警告日) means any day throughout or for part of which a black rainstorm warning is in force, and **black rainstorm warning** (黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; (Amended L.N. 362 of 1997 ss. 2 & 3)

gale warning day (烈風警告日) means any day throughout or for part of which a gale warning is in force, and **gale warning** (烈風警告) has the

meaning assigned to it by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62). (Replaced 68 of 1995 s. 16)

72. Power to extend time

Where in any Ordinance a time is prescribed for doing any act or taking any proceeding and power is given to a court, public body, public officer or other authority to extend such time, then the power may be exercised by the court, public body, public officer or other authority although the application for the same is not made until after the expiration of the time prescribed.

73. Distance

In the measurement of any distance for the purposes of any Ordinance, that distance shall be measured in a straight line on a horizontal plane.

74. Warrants, etc. valid on public holiday

Any summons, notice, warrant or other process may be issued, served or executed and any arrest, search or seizure may be carried out or made on any day, whether a public holiday or not, and at any hour of the day or night.

Part XI

National Laws Applying in Hong Kong

(Replaced 26 of 1998 s. 26)

75. Modifications

A national law applying in Hong Kong shall be judicially noticed as such and shall be read with such modifications as to names, localities, courts, officers, persons, moneys, penalties or otherwise as may be necessary to make the same applicable to the circumstances of Hong Kong.

(Amended 26 of 1998 s. 27)

76. Citation of national laws applying in Hong Kong

A national law applying in Hong Kong may be cited by its full name and—

- (a) the name of the body which adopted or approved it and the date on which it was adopted or approved;
- (b) reference to the Gazette or other instrument in which it is promulgated; or
- (c) reference to the order issued by the Central People's Government which applied it in Hong Kong.

(Replaced 26 of 1998 s. 28)

77. (Repealed 26 of 1998 s. 29)

78. Reference to subsidiary legislation under national laws applying in Hong Kong

A reference in any law to any national law applying in Hong Kong shall include a reference to any resolution, rule, regulation, proclamation, order, notice, rule of court, by-law or other instrument made under or by virtue thereof and having legislative effect in Hong Kong.

(Amended 26 of 1998 s. 30)

79. (Repealed 89 of 1993 s. 23)

80. Copies of national laws applying in Hong Kong

A copy of a national law applying in Hong Kong shall, if it—

- (a) is published in the Gazette or purports to be printed by the Government Printer; or
- (b) is contained in any printed collection purporting to be published or printed by authority,

be deemed, until the contrary is proved, to be an authentic copy of the national law as at the date of such publication or printing.

(Replaced 2 of 1975 s. 4. Amended 26 of 1998 s. 31)

80A. Application of section 23 to national laws applying in Hong Kong

Where a law causes a national law applying in Hong Kong to cease in whole or in part to be such a national law, then the provisions of section 23 shall apply to and in relation to the national law as it applies to and in relation to an Ordinance repealed in whole or in part save where the contrary intention appears from the first-mentioned law or the national law.

(Added 26 of 1998 s. 32)

Part XII

Search and Seizure of Journalistic Material

(Omitted from the Guide)

Part XIII

Miscellaneous

98. Copies of Ordinances, etc. in Gazette

- (1) A copy of an Ordinance shall, if published in the Gazette, be deemed to be an authentic copy of that Ordinance as at the date of such publication.
(Amended 51 of 1990 s. 4)

- (2) A copy of any other instrument shall, if published in the Gazette or purporting to be printed by the Government Printer, on its production be admitted as prima facie evidence thereof in all courts and for all purposes whatsoever without any further proof.

(Replaced 2 of 1975 s. 5)

98A. Rectification of errors

- (1) The Secretary for Justice may, by order published in the Gazette, rectify any clerical or printing error appearing in any Ordinance printed or published pursuant to this Ordinance. (Amended 51 of 1990 s. 5; L.N. 46 of 1991; L.N. 362 of 1997 s. 2 & 3)
- (2) Every order made under this section shall be laid on the table of the Legislative Council without unreasonable delay, and, if a resolution is passed at the first sitting of the Legislative Council held not less than 27 days after the sitting at which the order is so laid that the order be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of a new order. (Amended 2 of 1981 s. 3)
- (3) In this section, **sitting** (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper. (Added 89 of 1993 s. 28)

(Added 14 of 1971 s. 3)

98B. (Repealed 13 of 2011 s. 31)

98C. (Repealed 13 of 2011 s. 32)

99. (Repealed 13 of 2011 s. 33)

100. (Repealed 89 of 1993 s. 27)

100A. Power to increase fines

- (1) The Legislative Council may, by resolution, amend an Ordinance so as to increase—
- (a) the amount of a fine specified in the Ordinance; and
 - (b) the amount of a fine specified in the Ordinance as an amount that may be prescribed in subsidiary legislation made under the Ordinance. (Replaced 58 of 1994 s. 5)
- (1A) The increase under subsection (1) may be expressed as an amount of money or as a level in Schedule 8 to the Criminal Procedure Ordinance (Cap. 221). (Added 58 of 1994 s. 5)

- (2) A resolution under this section may contain such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to the resolution.

(Added 23 of 1981 s. 3)

101. Amendment of Schedules

The Chief Executive in Council may from time to time, by notice in the Gazette, amend all or any of the Schedules (except Schedules 1 and 9).

(Amended 26 of 1998 ss. 35 & 37)

102. Amendment of Schedules 1 and 9

The Secretary for Justice may, by notice in the Gazette, amend Schedule 1 or repeal any of the provisions of Schedule 9.

(Added 26 of 1998 s. 36)

Schedule 1

[s. 102 & Sch. 9]

Boundaries of the City of Victoria

(Amended 26 of 1998 s. 38)

On the north—The Harbour;

On the west—A line running due north and south drawn through the north-west angle of Inland Lot No. 1299 and extending southwards a distance of 850 feet from the aforesaid angle;

On the south—A line running due east from the southern extremity of the western boundary until it meets a contour in the vicinity of the Hill above Belchers 700 feet above principal datum, that is to say, a level 17.833 feet below the bench-mark known as “Rifleman’s Bolt”, the highest point of a copper bolt set horizontally in the east wall of the Royal Navy Office and Mess Block Naval Dockyard, and thence following the said contour until it meets the eastern boundary;

On the east—A line following the west side of the Government Pier, Bay View and thence along the west side of Hing Fat Street, then along the north side of Causeway Road to Moreton Terrace. Thence along the west side of Moreton Terrace to the south-east corner of Inland Lot No. 1580 and produced in a straight line for 80 feet, and thence along the north side of Cotton Path and produced until it meets the west side of Wong Nei Chong Road on the east side of Wong Nei Chong Valley and thence to the south-east angle of Inland Lot No. 1364, produced until it meets the southern boundary.

Schedule 2

[s. 3]

The Land and Sea Comprising the Hong Kong Special Administrative Region

The land and sea comprised within the boundary of the administrative division of the Hong Kong Special Administrative Region of the People's Republic of China promulgated by the Order of the State Council of the People's Republic of China No. 221 dated 1 July 1997 and published as S.S. No. 5 to Gazette No. 6/1997 of the Gazette.

Schedule 3

[s. 3]

Boundaries of the Harbour

On the east—A straight line drawn from the westernmost extremity of Siu Chau Wan Point to the westernmost extremity of Ah Kung Ngam Point (sometimes known as Kung Am);

On the west—A straight line drawn from the westernmost point of Island of Hong Kong to the westernmost point of Green Island, thence a straight line drawn from the westernmost point of Green Island to the south-easternmost point of Tsing Yi, thence along the eastern and northern coast lines of Tsing Yi to the westernmost extremity of Tsing Yi and thence a straight line drawn true north therefrom to the mainland. (Amended 54 of 1969 s. 8)

Schedule 4

[s. 3]

Area of Kowloon

Kowloon (九龍) means that portion of the peninsula of Kaulung which became part of Hong Kong on 24 October 1860.

(Amended 26 of 1998 s. 40)

Schedule 5

[s. 3]

Area of New Kowloon

New Kowloon (新九龍) means that portion of the New Territories which is delineated in red and shown upon a plan marked "New Kowloon" dated 8 December 1937, signed by the Director of Public Works, countersigned by the Governor and deposited in the Land Registry.

(Amended 8 of 1993 s. 2)

Schedule 5A

[s. 3]

Area of New Territories

All of Hong Kong except the land and sea comprised within the boundary of Hong Kong immediately before 9 June 1898.

(Schedule 5A added 26 of 1998 s. 41)

Schedule 6

[s. 62]

Public Officers

Chief Secretary for Administration

Financial Secretary

Secretary for Justice

Secretary for the Civil Service

Secretary for Commerce and Economic Development

Secretary for Constitutional and Mainland Affairs

Secretary for Development

Secretary for Education

Secretary for the Environment

Secretary for Financial Services and the Treasury

Secretary for Food and Health

Secretary for Home Affairs

Secretary for Labour and Welfare

Secretary for Security

Secretary for Transport and Housing

Under Secretary

Permanent Secretary

Director of Administration

Director of Home Affairs

Deputy Secretary

Deputy Director of Administration

Principal Assistant Secretary

Assistant Director of Administration

(Schedule 6 replaced L.N. 134 of 2007. Amended L.N. 49 of 2008)

Schedule 7

[ss. 85(2) & 90]

Directorate Disciplined Officers*(Omitted from the Guide)*

Schedule 8

[s. 2A(3)]

Construction on and after 1 July 1997 of Words and Expressions in Laws Previously in Force

1. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision—
 - (a) relates to title to land in the Hong Kong Special Administrative Region;
 - (b) involves affairs for which the Central People's Government of the People's Republic of China has responsibility;
 - (c) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,shall be construed as a reference to the Central People's Government or other competent authorities of the People's Republic of China.
2. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in section 1 shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.
3. Any reference to Her Majesty in Council or to the Privy Council, where the content of the provision relates to appellate jurisdiction in relation to Hong Kong, shall be construed as a reference to the Hong Kong Court of Final Appeal.
4. Any reference to Her Majesty in Council or to the Privy Council in contexts other than its appellate jurisdiction shall be construed in the same manner as references to Her Majesty are construed under sections 1 and 2.
5. Any reference to a Government agency which bears a name which includes the word "Royal" shall be read—
 - (a) as if the word "Royal" were omitted; and
 - (b) as a reference to the corresponding Government agency of the Hong Kong Special Administrative Region.

6. Any reference to the Colony of Hong Kong (or to similar names, terms or expressions) shall be construed as a reference to the Hong Kong Special Administrative Region and any reference to the boundaries of the Colony of Hong Kong shall be construed as a reference to the boundaries as specified in the map of the administrative division of the Hong Kong Special Administrative Region published by the State Council of the People's Republic of China.
7. Any reference to the Supreme Court of Hong Kong shall be construed as a reference to the High Court of the Hong Kong Special Administrative Region.
8. Any reference to the Court of Appeal of Hong Kong shall be construed as a reference to the Court of Appeal of the High Court of the Hong Kong Special Administrative Region.
9. Any reference to the High Court of Justice of Hong Kong shall be construed as a reference to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region.
10. Any reference to “地方法院” shall be construed as a reference to “區域法院”.
11. Any reference to the Governor of Hong Kong or to the Governor in Council shall be construed as a reference to the Chief Executive of the Hong Kong Special Administrative Region or the Chief Executive in Council respectively.
12. Any reference to the Chief Justice of the Supreme Court of Hong Kong shall be read as a reference to the Chief Judge of the High Court of the Hong Kong Special Administrative Region.
13. Any reference to “上訴法院大法官” shall be construed as a reference to “高等法院上訴法庭法官”.
14. Any reference to a judge of the High Court shall be construed as a reference to a judge of the Court of First Instance.
15. Any reference in the Chinese version of any law to the Legislative Council, the Judiciary or the Executive Authorities or to the officers of those bodies shall be construed in accordance with the relevant provisions of the Basic Law.
16. Any reference in any law to the Legislative Council shall, as the case may require, be construed as including a reference to the Provisional Legislative Council.
17. Any reference to the People's Republic of China or to China (or to similar names, terms or expressions) shall be construed as a reference to the People's Republic of China as including Taiwan, the Hong Kong Special Administrative Region and Macau.

18. Any reference to the Mainland, Taiwan, Hong Kong or Macau (whether separately or concurrently) shall be construed as a reference to the Mainland, Taiwan, Hong Kong or Macau, as the case may be, as a part of the People's Republic of China.
 19. Any reference to a foreign country or foreign state (or to similar terms or expressions) shall be construed as a reference to a country or territory other than the People's Republic of China or as a reference to any place other than the Hong Kong Special Administrative Region, depending on the content of the relevant law.
 20. Any reference to an alien (or to similar terms or expressions) shall be construed as a reference to a person other than a citizen of the People's Republic of China.
 21. Any provision saving the rights of Her Majesty, Her Heirs and Successors shall be construed as saving the rights of the Central People's Government of the People's Republic of China and the rights of the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws.
 - 21A. Any reference to “立法局” shall be construed as a reference to “立法會”.
(Added 26 of 1998 s. 42)
 - 21B. Any reference to “行政局” shall be construed as a reference to “行政會議”.
(Added 26 of 1998 s. 42)
 - 21C. Any reference to “地方法院法官” or “地院法官” shall be construed as a reference to “區域法院法官”. (Added 26 of 1998 s. 42)
 - 21D. Any reference to “大法官” or “大法官或法官” shall be construed as a reference to “法官”. (Added 26 of 1998 s. 42)
 - 21E. Any reference to “政府” shall be construed as a reference to “特區政府”.
(Added 26 of 1998 s. 42)
 - 21F. Any reference to “首席法官” or “首席大法官” shall be construed as a reference to “終審法院首席法官”. (Added 26 of 1998 s. 42)
 22. This Schedule applies unless the context otherwise requires.
(Added 110 of 1997 s. 6)
-

Schedule 9

[s. 102]

Temporary Provisions

1. Interpretation of words and expressions

British citizen (英國公民) means a person who has the status of a British citizen under the British Nationality Act 1981 (1981 c. 61 U.K.);

British Dependent Territories citizen (英國屬土公民) means a person who has or had the status of a British Dependent Territories citizen under the British Nationality Act 1981 (1981 c. 61 U.K.);

British enactment and **imperial enactment** (英國成文法則) mean—

- (a) any Act of Parliament;
- (b) any Order in Council; and
- (c) any rule, regulation, proclamation, order, notice, rule of court, by-law or other instrument made under or by virtue of any such Act or Order in Council;

British Overseas citizen (英國海外公民) means a person who has the status of a British Overseas citizen under the British Nationality Act 1981 (1981 c. 61 U.K.);

British protected person (受英國保護人士) means a person who has the status of a British protected person under the British Nationality Act 1981 (1981 c. 61 U.K.);

British subject (英籍人士) means a person who has the status of a British subject under the British Nationality Act 1981 (1981 c. 61 U.K.);

Commonwealth (英聯邦) means collectively—

- (a) the United Kingdom;
- (b) the Channel Islands;
- (c) the Isle of Man;
- (d) the countries mentioned in Schedule 3 to the British Nationality Act 1981 (1981 c. 61 U.K.);
- (e) the British Dependent Territories mentioned in Schedule 6 to the British Nationality Act 1981 (1981 c. 61 U.K.);

Commonwealth citizen (英聯邦公民) means a person who has the status of a Commonwealth citizen under the British Nationality Act 1981 (1981 c. 61 U.K.);

Crown Agents (英聯邦代辦) means the persons or body for the time being acting as Crown Agents for Oversea Governments and Administrations;

Order in Council (樞密院頒令) means an order made by Her Majesty in Her Privy Council (being the Lords and others for the time being of Her Majesty's Most Honourable Privy Council);

Parliament (國會) means the Parliament of England, the Parliament of Great Britain and the Parliament of the United Kingdom;

territorial waters (領海) has the same meaning as waters of Hong Kong;

United Kingdom (聯合王國) means—

- (a) the United Kingdom of Great Britain and Northern Ireland; or
- (b) when used with reference to citizenship or nationality, Great Britain, Northern Ireland, the Channel Islands and the Isle of Man;

Victoria (維多利亞) means the area within the boundaries specified in Schedule 1 to this Ordinance.

2. **Modifications**

A British enactment shall be judicially noticed as such and shall be read with such modifications as to names, localities, courts, officers, persons, moneys, penalties or otherwise as may be necessary to make the same applicable to the circumstances of Hong Kong.

3. **Citation of British enactments**

A British enactment may be cited by a short title or citation, if any, or by reference to the regnal or calendar year in which it was passed or by the number assigned to any statutory instrument or statutory rule and order.

4. **Construction of reference to British enactment**

A reference in any law to a British enactment or to any provision, part or division thereof shall be construed as a reference to the same as the same may be from time to time amended on or before 1 January 1994 and as a reference to any British enactment or to any provision, part or division of a British enactment, substituted for it on or before 1 January 1994.

5. **References to subsidiary legislation under British enactment**

A reference in any law to any British enactment shall include a reference to any Order in Council, rule, regulation, proclamation, order, notice, rule of court, by-law or other instrument made under or by virtue thereof and having legislative effect.

6. **Copies of British enactments**

A copy of a British enactment shall, if it—

- (a) is published in the Gazette or purports to be printed by the Government Printer; or
- (b) is contained in any printed collection purporting to be published or printed by authority,

be deemed, until the contrary is proved, to be an authentic copy of the British enactment as at the date of such publication or printing.

7. Construction of certain references to Crown

- (1) Where it is expressly provided in an Ordinance that the Ordinance—
 - (a) affects or does not affect the right of; or
 - (b) is or is not binding on,the Crown, then that reference to the Crown shall be construed as a reference to the State.
- (2) Subsection (1) does not prejudice the operation of section 2A(2)(c) of this Ordinance, whether before, on or after the commencement of this section.

(Schedule 9 added 26 of 1998 s. 43)

Sample (Amendment) Bill 2011

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Clause

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Division 2—Enactments Repealed

24.

Enactments repealed

10

Sample (Amendment) Bill 2011

Part 1

Clause 1

1

A BILL

To

Illustrate by means of a hypothetical Bill the use of some standard amending formulas.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Sample (Amendment) Ordinance 2011.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Sample (Amendment) Bill 2011

Part 2

Clause 3

2

Part 2

Amendments to Fruits Ordinance (Cap. 998)

3. Section 2 amended (interpretation)

- (1) Section 2, definition of *apple*, after “red”—

Add

“, green”.

- (2) Section 2—

Repeal the definitions of *exported, imported and shipped*.

- (3) Section 2—

Add in alphabetical order

“*blueberry* (藍莓) means the fruit of the plant with the scientific classification *Vaccinium cyanococcus*;

lychee (荔枝) means the fruit of the plant with the scientific classification *Litchi chinensis*”.

4. Section 3 amended (Fruits Authority)

- (1) Section 3(1)—

Repeal

“vegetable”.

- (2) Section 3(3), after “regarding”—

Add

“canned, dried or”.

- (3) Section 3(4)(a)—

Repeal

everything after “temperate” and before “climate”

Substitute

“or tropical”.

Sample (Amendment) Bill 2011

Part 2
 Clause 5

3

- (4) Section 3(6)—

Repeal

“arctic” (wherever appearing).

5. Section 5 amended (storage of fruits)

- (1) Section 5—

Repeal subsection (2).

- (2) Section 5(3)—

Repeal paragraphs (b) and (c).

- (3) Section 5(4)(b)—

Repeal subparagraph (i)

Substitute

“(i) a wooden box coloured in green, red or yellow;”.

- (4) After section 5(4)—

Add

“(5) This section does not apply to the fruits specified in Schedule 3.”.

6. Sections 7, 8 and 9 repealed

Sections 7, 8 and 9—

Repeal the sections.

7. Sections 11A and 11B added

After section 11—

Add

“11A. Licence required for sale of fruits

- (1) A person must not sell any fruit without a licence issued under subsection (2).

Sample (Amendment) Bill 2011

Part 2

Clause 8

4

- (2) The Fruits Authority may, on an application made to it by a person, issue a licence for the sale of fruits to the applicant for the period specified in the licence.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 1.

11B. Fee payable for licence

- (1) The fee specified in Schedule 4 is payable at the time an application is made for a licence.
- (2) The Fruits Authority may, by notice published in the Gazette, amend Schedule 4.”.

8. Section 33 substituted

Section 33—

Repeal the section**Substitute****“33. Manufacture of canned fruits for sale**

A manufacturer of canned fruit intended for sale must ensure that—

- (a) the can—
 - (i) is durable;
 - (ii) is air-tight; and
 - (iii) has attached to it a label that complies with section 34; and
- (b) no additive other than an additive named on the label referred to in paragraph (a)(iii) is present in the contents.”.

9. Part 4 repealed (transhipment of fruits)

Part 4—

Repeal the Part.

Sample (Amendment) Bill 2011

Part 2

Clause 10

5

10. Part 5, Division 2 repealed (export permit)

Part 5—

Repeal Division 2.**11. Part 6, Division 1, Subdivisions 2 to 5 repealed**

Part 6, Division 1—

Repeal Subdivisions 2, 3, 4 and 5.**12. Schedules 3 and 4 added**

After Schedule 2—

Add**“Schedule 3**

[s. 5]

Fruits Exempted from Storage Requirements

1. Bananas
2. Grapes
3. Pears

Schedule 4

[s. 11B]

Fee Payable for Licence for Sale of Fruits

\$100”.

13. “Secretary” substituted for “Director”

The following provisions—

- (a) Section 40;

Sample (Amendment) Bill 2011

Part 2

Clause 13

6

- (b) Section 42(3)(b);
- (c) Section 44(1);
- (d) Schedule 1, items 4 and 5—

Repeal

“Director” (wherever appearing)

Substitute

“Secretary”.

Sample (Amendment) Bill 2011

Part 3

Clause 14

7

Part 3**Amendments to Drinks Ordinance (Cap. 999)****14. Section 5 amended (classification of drinks)**

(1) Section 5(1)(a)—

Repeal the comma.

(2) Section 5(1)(d)—

Repeal

“; and”

Substitute a semicolon.**15. Section 6 amended (preparation of drinks)**

(1) Section 6(4)(b)(i), Chinese text, after “提述”—

Add

“的”.

(2) Section 6(6), Chinese text—

Repeal

“飲料” (wherever appearing)

Substitute

“飲品”.

(3) Section 6(7), Chinese text, definition of 汽水—

Repeal

“人工”.

16. Section 8 amended (hot drinks)

(1) Section 8—

Renumber the section as section 8(1).

(2) After section 8(1)—

Sample (Amendment) Bill 2011

Part 3

Clause 17

8

Add

“(2) A hot drink must not be served in a plastic container.

(3) In this section—

hot drink (熱飲) means any beverage that is served at a temperature of 40°C or more.”.

17. Section 10 heading amended (sale of drinks in Hong Kong)

Section 10, heading—

Repeal

“in Hong Kong”.

18. Section 12 amended (labelling of drinks)

(1) Section 12, heading, after “**Labelling**”—

Add

“**and description**”.

(2) Section 12(1)—

Repeal

“, retail price”.

19. Part II heading substituted

Part II, heading—

Repeal the heading**Substitute****“Part 2****Import of Drinks”.**

20. Part 2, Division headings added

(1) Part 2, before section 25—

Add

Sample (Amendment) Bill 2011

Part 3

Clause 21

9

“Division 1—Import from the Mainland”.

(2) Part 2, after section 29—

Add**“Division 2—Import from a Place Other than the Mainland”.****21. Cross-heading before section 40 repealed**

Cross-heading before section 40—

Repeal the cross-heading.

Sample (Amendment) Bill 2011

Part 4—Division 1

Clause 22

10

Part 4**Consequential Amendments****Division 1—Amendments to Fruits (Registration)
Regulations (Cap. 998 sub. leg. A)****22. Regulation 3 amended (registration of fruits for sale)**

Regulation 3(1)—

Repeal

“7, 8, 9,”.

23. Regulation 5 amended (registration certificate)

Regulation 5(2)—

Repeal

“7, 8, 9,”.

Division 2—Enactments Repealed**24. Enactments repealed**

The following enactments—

- (a) Fruits (Nutritional Values) Regulation (Cap. 998 sub. leg. C);
- (b) Fruits (Colouring) Regulation (Cap. 998 sub. leg. E);
- (c) Drinks (Manufacture of Bottled Drinks) Regulation (Cap. 999 sub. leg. F)—

Repeal the enactments.

Sample (Amendment) Bill 2011

Explanatory Memorandum
Paragraph 1

11

Explanatory Memorandum

This hypothetical Bill is an Appendix to the publication entitled “Drafting Legislation in Hong Kong — A Guide to Styles and Practices” (*the Guide*) issued by the Law Drafting Division of the Department of Justice in January 2012.

2. The object of this Bill is to provide sample clauses on the use of certain standard formulas for amending legislative provisions. The relevant Chapter in the Guide is Chapter 15.
3. Clause 2 is an **Enactment Amended Clause**. Paragraphs 15.2.1 to 15.2.11 of the Guide are relevant.
4. Clause 3 shows amendments relating to **definitions**. Paragraphs 15.4.20 (repeal), 15.5.18 (addition) and 15.6.23 to 15.6.26 (repeal and substitution) of the Guide are relevant.
5. Clauses 4 to 13 show amendments concerning the **text of the body** of an enactment—
 - (a) Clause 4 shows amendments concerning **words, expressions or blocks of text**. Paragraphs 15.4.13 to 15.4.15 (repeal), 15.5.14 and 15.5.15 (addition) and 15.6.14 to 15.6.17 (repeal and substitution) of the Guide are relevant;
 - (b) Clause 5 shows amendments concerning the whole of a **part of a section** (i.e. a subsection, paragraph or subparagraph, etc.). Paragraphs 15.4.8 to 15.4.12 (repeal), 15.5.8 to 15.5.13 (addition) and 15.6.11 to 15.6.13 (repeal and substitution) of the Guide are relevant;
 - (c) Clauses 6 to 8 show amendments concerning the whole of a **section**. Paragraphs 15.4.2 to 15.4.7 (except 15.4.3) (repeal), 15.5.2 to 15.5.7 (addition) and 15.6.6 to 15.6.10 (except 15.6.7) (repeal and substitution) of the Guide are relevant;

Sample (Amendment) Bill 2011

Explanatory Memorandum

Paragraph 6

12

- (d) Clauses 9 to 12 show amendments concerning the whole of a **Part, Division, Subdivision or Schedule**. The paragraphs of the Guide mentioned in subparagraph (c) above are also relevant. Note however that paragraphs 15.4.3 and 15.6.7 of the Guide are relevant to Divisions and Subdivisions; and
 - (e) Clause 13 shows an amendment affecting the same word, expression or block of text appearing in **multiple provisions**. Paragraphs 15.4.16 (repeal) and 15.6.18 (repeal and substitution) of the Guide are relevant.
- 6. Clause 14 shows amendments relating to **punctuation**. Paragraphs 15.4.17 (repeal) and 15.6.19 (repeal and substitution) of the Guide are relevant.
- 7. Clause 15 shows amendments affecting **one language text only**. Paragraphs 15.4.22 (repeal) and 15.6.27 (repeal and substitution) of the Guide are relevant.
- 8. Clause 16 shows amendments involving the **renumbering of a section** without a subsection **as a subsection** when new subsections are being added. Note however paragraphs 14.2.5 and 14.2.6 of the Guide.
- 9. Clauses 17 to 21 show amendments relating to **headings**—
 - (a) Clauses 17 and 18 show an amendment of a **section heading** when it is the only amendment to the section and when there are other amendments to the section respectively. Paragraphs 15.3.10 and 15.6.20 of the Guide are relevant;
 - (b) Clause 19 shows an example of amending the **heading of a Part, Division, Subdivision or Schedule**. Paragraphs 15.3.11, 15.3.12, 15.6.21 and 15.6.22 of the Guide are relevant;
 - (c) Clause 20 shows an example of adding headings for **dividing** an enactment or part of an enactment **into**

Sample (Amendment) Bill 2011

Explanatory Memorandum

Paragraph 10

13

-
- smaller components.** Paragraphs 15.3.13 and 15.5.17 of the Guide are relevant; and
- (d) Clause 21 shows an amendment concerning **cross-headings**. Paragraphs 15.3.14, 15.3.15 and 15.4.19 of the Guide are relevant.
10. Clauses 22 and 23 show amendments to the provisions in an item of **subsidiary legislation** (the nomenclature is adapted as appropriate).
11. Clause 24 shows an example of **repealing the whole of an enactment**. Paragraph 15.4.21 of the Guide is relevant.