

Hong Kong Moves Towards Open Access to Authenticated Legal Information

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Abstract:

Hong Kong SAR (Special Administrative Region)'s legal system has retained its common law system developed during its colonial days under UK rule. The combination of legislative law and judge made law has been made available online in various commercial, academic and government sources. Government sources though to date for legislation are not "official" but recent developments by the Department of Justice aim to address this issue and this paper will outline the various Government sources of Hong Kong law online and this new development towards authentication of online legislation.

Part I outlines the bilingual legal system of Hong Kong and its sources of law. Part II describes the various sources in which legislation and court judgments are available. Part III discusses the recent Government initiative in moving towards digital authentication.

Keywords: Open access, Authenticated legal information, Digital authentication, Hong Kong, Bilingual

Introduction

Whilst the Greater China region consists of the People's Republic of China, the Hong Kong Special Administrative Region (HKSAR), the Macau Special Administrative Region (MSAR) and the Republic of China (also known as Taiwan) this paper will focus on online authenticated legal information in Hong Kong only. As they all have different legal systems and sources of law it was beyond the scope of the authors to cover all regions in Greater

China in terms of their respective moves towards providing online authenticated legal information. Most legal activity in Hong Kong is still conducted in English so there are many free and commercial resources available including comprehensive bilingual legislative sources but interestingly enough the Hong Kong Government has just started moving towards an authenticated online database of legislation. At this point the official source is still a print series and the online versions found in various free and commercial sources are not authoritative or completely up to date as recourse to the Hong Kong Government Gazette is still required for very new principal or amendment legislation.

I. Legal System in Hong Kong

As alluded to above Hong Kong is a bilingual legal system. Both English and Chinese are the official languages¹. Hong Kong was a British colony until 1997 and still follows the common law tradition developed under its colonial period. After the handover to the PRC government on 1st July 1997, under the principle of “One country, two systems”, Hong Kong has retained its common law legal system and all existing and new legislation and case law remains in effect on condition that it does not conflict with the Basic Law of the HKSAR.

The court system of the HKSAR consists of the Court of Final Appeal which is the highest appellate court in Hong Kong, the High Court which consists of the Court of Appeal and the Court of First Instance, the District Court, the Family Court, seven Magistrates’ Courts, and various tribunals. The Appeal mechanism to the UK Privy Council ceased on handover.

Sources of Law

The primary sources of law of the HKSAR include legislation, case law, Chinese customary law and treaties made within the context of Hong Kong as a Special Administrative Region of China. The Basic Law of the HKSAR is the most important piece of legislation in Hong Kong after the handover in 1997. It is often referred to as the constitutional document of the HKSAR. Apart from the Basic Law of the HKSAR, the main pieces of legislation are called ‘Ordinances’ as opposed to the term ‘Acts’ which is common in other common law jurisdictions. Subsidiary or delegated legislation includes regulations, rules, notices, etc. As is standard in common law jurisdictions like the UK, Australia etc., ordinances and subsidiary legislation are published initially in the Hong Kong Government Gazette, which is available online and in print and legislation is then published in a consolidated or reprinted form in the Laws of Hong Kong series which is in print and online format, (the BLIS database), discussed further below.

II. Online Statutes and Judicial Decisions

The Government of HKSAR has been playing an important role in making legislation and decisions available online through the BLIS (Bilingual Laws Information System)² electronic database established and updated by the Department of Justice, and the Legal Reference System³ of the Judiciary.

¹ The Basic Law of the HKSAR, Art 9 “in addition to the Chinese Language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region”

² 雙語法例資料系統 <http://www.legislation.gov.hk/eng/index.htm>

³ 法律參考資料系統 <http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp>

The BLIS provides a consolidated version of the laws of Hong Kong. It contains bilingual texts of Ordinances and subsidiary legislation in force on or after 30 June 1997, including the current version and past versions dating back to 30 June 1997. It was first made available to the public, free via the Internet, in November 1997 under the Department of Justice's website. It provides full text search functions and customized search functions⁴, as well as viewing of legislation either on a provision-by-provision basis, or whole enactment basis.

Though updates to BLIS are more timely compared to that of the print Loose-leaf Edition⁵, it was not designed to carry legal status. So anyone who wishes to refer in court to an updated official version of Hong Kong legislation must rely on the Loose-leaf Edition, *The Laws of Hong Kong* series, which is the official source published under statutory authority⁶, together with the Government Gazette, which is the official source of new legislation.

The Legal Reference System is the official database of court judgments and practice directions delivered by the Judiciary of the HKSAR. It is an open access database maintained by the Judiciary and contains judgments handed down in English, Chinese and the English translation of some selected Chinese judgments.

*HKLII (Hong Kong Legal Information Institute)*⁷

As a member of the World Legal Information Institute (WorldLII)⁸, HKLII supports and participates in the free access to law movement. It is a free, independent and non-profit Internet facility providing the public with legal information relating to Hong Kong. Its 18 legal databases include ordinances, regulations, constitutional instruments, historical laws, court judgments, practice directions, domain name arbitration decisions for .hk domain, Privacy Commission's case notes and Administrative Appeals Board decisions, law reform consultation papers and reports.

The focus of HKLII is on primary legal information. Such information is reproduced directly by HKLII from current data obtained from the Bilingual Laws Information System of the Department of Justice, and from data obtained from the Judiciary's website on a daily basis. Similar to BLIS, legislation in HKLII has no legal status.

Compared to the websites of BLIS and the Hong Kong Judiciary, though HKLII came late on the scene in Hong Kong's legal information landscape, it has remained widely used by the public since its launch in 2002. Besides having a user-friendly interface, its wide scope of primary materials covered has made it possible for universal searching to be conducted across

⁴ Currently there are seven search forms available on BLIS, i.e. Search for section(s) or enactment(s); word(s), word(s) in definition(s); Law as at specified date; Law between a range of dates; external reference (English language only); internal cross reference (English language only).

⁵ Currently the lead time for updating the printed copy is about six to nine months while that for BLIS database is about two to three weeks.

⁶ Laws (Loose-leaf Publication) Ordinance 1990, Instrument A603, <http://www.hklai.hk/eng/hk/legis/instrument/603/cur.html>

⁷ HKLII is a project of Law & Technology Centre, a centre jointly established by Department of Computer Science and Faculty of Law of the University of Hong Kong. English website: <http://www.hklai.hk/eng/>; Traditional Chinese website: <http://www.hklai.hk/chi/>; A simplified Chinese interface of HKLII is also available through Google Translate service <http://translate.google.com.hk/translate?sl=auto&tl=zh-CN&u=http%3A%2F%2Fwww.hklai.hk%2Fchi%2F>.

⁸ <http://www.worldlii.org/>

all legal information in Hong Kong including legislation, judgments, other related primary sources, and even beyond in other LIIs (Legal Information Institutes). Its internal hyperlinks within legislation and external links to legislation outside of Hong Kong⁹ in other LIIs are a convenient feature not available in BLIS.

Commercial Databases

The Laws of Hong Kong is available in both Westlaw and Lexis commercial databases. Westlaw, locally called Westlaw HK, provides legislation since 1997 in English and Chinese. It also contains an historical legislation file (HK-LEG-HIST) which includes all amendments and legislation that has been amended, replaced or repealed since 1997. Lexis, locally called LexisHK, provides the *Laws of Hong Kong* in English version only since 1999. It also contains the Annotated Ordinances of Hong Kong series of annotated versions of about 120 major Hong Kong Ordinances which are also available in print.

Digital Initiatives

*The Historical Laws of Hong Kong Online*¹⁰ provides free access to past revised (consolidated) editions of Hong Kong Laws. It comprises a total of seven consolidations of the laws of Hong Kong: 1890, 1901, 1912, 1923, 1937, 1950, and 1964 (also called the Revised Edition and was last updated to 1989). Since these consolidated versions do not contain legislation repealed, amended, or replaced, past versions will have to be traced by referring to old Government Gazettes.¹¹

Since Government Gazettes available online dates back only to May 2000, those wishing to access gazettes prior to this date will have to rely on print copies. Pre-World War II historical gazettes may be traced via *Hong Kong Government Reports Online (1842-1941)*,¹² which provides free access to five major government publications, i.e. Administrative Report, Hong Kong Sessional Papers, Hong Kong Hansard, Hong Kong Government Gazette and Blue Book.

*Basic Law Drafting History Online*¹³ is an online resource of information and materials from the drafting history of Hong Kong's constitution, The Basic Law. It provides free public access to a collection of almost 900 documents prepared or used by various official bodies and individuals from 1985 to 1990, when the Basic Law was drafted and promulgated, and from 1990 to 1997, when preparations were made for the resumption of sovereignty. Its Textual History database contains the various draft versions of each article in the Basic Law together with official commentary where available. As the Basic Law is increasingly relied upon in litigation and has found application in a wide range of cases including criminal, civil, property, and administrative law cases, access to the original drafting materials is important to the proper understanding of the Basic Law.

⁹ For example see Copyright Ordinance, Cap 528 s.11, Retrieved from <http://www.hklib.org/hk/legis/ord/528/s11.html>

¹⁰ University of Hong Kong Libraries <http://oelawhk.lib.hku.hk/exhibits/show/oelawhk/home>

¹¹ The HKSAR Government Gazette is available online and includes the Main Gazette and Supplements No. 1 through No. 6, from May 2000 onwards. <http://www.gld.gov.hk/egazette/>

¹² University of Hong Kong Libraries <http://hkgro.lib.hku.hk/exhibits/show/hkgro/home>

¹³ The database is a joint project of the Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong, and the University of Hong Kong Libraries <http://sunzi.lib.hku.hk/bldho/home.action>

III. Towards digital authentication

The long road to digital authentication of legal information for Hong Kong began in 2009 when a consulting firm was engaged by the Government of HKSAR to embark on a feasibility study. This subsequently led to a formal initiative put forward by the Department of Justice to the legislature in the same year, the introduction of the Legislation Publication Bill¹⁴ in 2010, and the eventual passage of the Legislation Publication Ordinance¹⁵ in July 2011.¹⁶ While the full migration and authentication of all Hong Kong legislation from print to electronic is scheduled to take place around the year 2020, it is worth looking at how this has come about, the driving force for the need, the expected outcomes and benefits, the challenges, the implications for the print version and other third-party or commercial databases, and its current status.

1. The need for digital authentication

Free access to the law promotes justice and the rule of law. In working towards this goal as well as to become the regional hub for legal services and dispute resolution, Hong Kong has seen the need for a “verified, authenticated and searchable electronic database of Hong Kong legislation”.¹⁷ Digital authentication in other jurisdictions including New South Wales, the Commonwealth of Australia, Tasmania, New Zealand, Singapore, all at various stages of development, have also provided the impetus to the cause for Hong Kong.

At present the updatedness of the official Loose-leaf Edition leaves much to be desired. As a printed copy, because of the time required to prepare and issue the updated replacement version, it may take up to nine months before relevant amendments are incorporated in it. A case in point is the New Companies Ordinance (Ord. No. 28 of 2012), which was passed on 12 July 2012 and expected to come into operation in 2014. At the time of writing, the text of the new ordinance has not yet been incorporated in the print Loose-leaf Edition (i.e. issue 46). Users would have to check the print Gazette (10 August 2012) or the online Gazette. As far as the online version of the legislation is concerned, it is not available on BLIS either.

Such a time lag in updating could well be risky where a fully updated version of relevant laws is not readily available to litigants in proceedings or the court.

The cost of subscription and maintenance of the Loose-leaf Edition can also be prohibitive. To acquire a complete print set comprising of 50 volumes of legislation with one index volume amounts to HK\$700,000¹⁸, with the latest replacement issue (issue 46) at HK\$2,862.

¹⁴ Bill in English: <http://www.legco.gov.hk/yr10-11/english/bills/b201010081.pdf>; Bill in Chinese: <http://www.legco.gov.hk/yr10-11/chinese/bills/b201010081.pdf>

¹⁵ English version: <http://www.hklii.hk/eng/hk/legis/ord/614/>;

Chinese version: <http://www.hklii.hk/chi/hk/legis/ord/614/>

¹⁶ For a full legislative history of the Legislation Publication Ordinance, see Bills Committee on Legislation Publication Bill, HKSAR Fourth Legislative Council (2008-2012), Year 2010-11 <http://www.legco.gov.hk/yr10-11/english/bc/bc51/general/bc51.htm>

¹⁷ Finance Committee of the Legislative Council, HKSAR, Item for Finance Committee: Capital Works Reserve Fund, Head 710 - Computerisation (2010), 26th Meeting (14 May 2010), FCR(2010-11)12 Retrieved from <http://www.legco.gov.hk/yr09-10/english/fc/fc/papers/f10-12e.pdf>

¹⁸ Price quotation supplied by Publications Sales Unit, Information Services Department, Hong Kong Government as at 21 May 2013. Equivalent to approximately US\$89,743.

BLIS was not designed to carry legal status and it is not technically feasible to upgrade it on its current platform, on Lotus Notes, to meet security requirements essential for digital authentication. Neither does it have the capability to track changes down to field level and provide an audit log.¹⁹

As the Government currently supports a dual system of the printed Loose-leaf Edition and BLIS, this results in duplication of efforts in updating and proofreading two versions, neither of which is entirely satisfactory as far as lead time in updating and legality are concerned.

2. Expected outcomes

A new system of electronic legislation is therefore to replace BLIS (hereafter referred to as the 'Database'). It is expected that the Database will provide legislation data that is accurate, up-to-date, free to the public, and with legal status. When this system is in place, it will serve as the one single source of data from which the hard copy of legislation in Hong Kong should be printed.

The Database will also support the operations of the Law Drafting Division of the Department of Justice in the entire process of publication of legislation, i.e. (a) Capture of information to facilitate compilation of consolidated legislation upon gazetting; (b) Compilation including consolidation, proofreading and verification; (c) Online publication for access by users; (d) Full chapter reprint in a layout similar to the Loose-leaf Edition for online access by users; (e) Auditing and checking of updates made to published legislation.²⁰

3. A "Verified, Authenticated and Searchable Electronic Database of Hong Kong Legislation"

The Database will no longer reside on its current Lotus Notes platform but will adopt the use of an open data format to facilitate legal publishers or third-party data providers to provide value-added services such as annotations. It will also adopt a modular design to allow for independent modification of various system components.

For the Database to be given legal status, essential security features will be necessary and these include such features as track changes to facilitate proofreading and verification, and detailed audit log recording to trace any action taken on the system or changes made to the content of the legislation.

4. Benefits

In terms of monetary savings, the Government has estimated this to be about HK\$13,148,000 from 2020-21 onwards²¹, including realisable savings of HK\$383,000 per annum of the running costs of BLIS, and notional savings of HK\$12,765,000 per annum of staff costs of Department of Justice and government departments and bureaux in maintaining and updating the print version, and lastly office space for its housing.

Of more importance perhaps is the benefits brought about to the legal community and the public at large, in the timely dissemination of and free access to Hong Kong legislation with

¹⁹ Finance Committee of the Legislative Council, *supra* note 11.

²⁰ Finance Committee of the Legislative Council, *supra* note 11.

²¹ *Ibid.* Equivalent to approximately US\$1.68 million.

legal status. The lead time for updating legislation is expected to be shortened considerably, from three to four weeks (for BLIS) up to nine months (for the Loose-leaf Edition), to between one to five days for the new Database. The switch from two separate sources (BLIS and the Loose-leaf Edition) to one single source (the new Database) will also eliminate possible inconsistency.

The Loose-leaf Edition is expected to retire by 2019-20 when the entire process of verification of and giving legal status to legislation in the new Database (officialisation) will be completed. This will also benefit subscribers outside the Government in saving efforts to maintain the currency of the print version and office space to house it. This is also in line with the Government's policies and objectives to make HKSAR a green and digital city.

The adoption of a modular design and open data format on a brand new platform not only makes it easier for third parties to provide value added services, but it enables the Government to integrate such operations as the law drafting process with the new Database.

5. Challenges

Database integrity

Safeguards for the Database's integrity are critical to its success. In response to potential risks ranging from hacking, multiple and co-ordinated online attacks, to appearance of fake legislation websites, the Government is set to have stringent security measures put in place. These include anti-virus and malicious code detection, internal and external firewalls from different vendors, decentralized servers and a disaster recovery mechanism. As both the BLIS database and the print Loose-leaf Edition will eventually be phased out, and the new Database will be the ultimate source of legislation with legal status after officialisation, it is important that a reasonable fall-back be made available to ensure uninterrupted public access. The Government has advised that its service pledge for restoring the Database in case of damage or disaster is for it to be restored in less than several hours.²²

Database contents

Section 4²³ of the Legislation Publication Ordinance outlines the contents of the Database. Besides all the existing information in the Loose-leaf Edition and BLIS²⁴, it also includes bills to be introduced or introduced into the Legislative Council (s.4 (2)(a)), which currently have to be searched separately by referring to Special Supplements No. 3, 5 or 6 of the Gazette, or retrieved online from the Gazette website.²⁵ Incorporating these in the new Database will provide more convenience for the public or the researcher in researching the legislative history of an ordinance. The Secretary for Justice is also empowered under s.4 (2)(b) to include in the Database reference materials and information useful to users. This is likely to include the text of international treaties and bilateral agreements, and user's aids

²² Report of the Bills Committee on Legislation Publication Bill, Paper for the House Committee meeting on 10 June 2011, LC Paper No. CB(2)1999/10-11. Retrieved from <http://www.legco.gov.hk/yr10-11/english/hc/papers/hc0610cb2-1999-e.pdf>

²³ <http://www.hkllii.hk/eng/hk/legis/ord/614/s4.html>

²⁴ For an overview of Hong Kong laws in both as made and consolidated form and the contents of the Database, see Information paper on Availability of Hong Kong Laws and the Contents of the Database, LC Paper No. CB(2)1506/10-11(01) <http://www.legco.gov.hk/yr10-11/english/bc/bc51/papers/bc510415cb2-1506-1-e.pdf>

²⁵ *Supra* note 9.

such as Glossary of legal terms, among other things. According to the Government, it has undertaken to keep stakeholders informed of the contents to be included at various stages of the Database project.

The Database will include the past versions of Ordinances from 30 June 1997 to the day before the launch of the Database for public use. These past versions will not have legal status. An online gap therefore remains as the Database will not provide past versions of Ordinances between the first issue of the Loose-leaf Edition in 1991 to 29 June 1997, and “as made” version of Hong Kong laws prior to May 2000²⁶. These past versions will still have to be traced from the Loose-leaf Edition, together with the Gazette and related legal notices (the Supplements). While the Government has indicated that it may not be able to undertake extensive retrospective capture given the enormous financial implications, it will consider selectively back capturing Ordinances which have a high usage rate, or to spread out the exercise over a longer period time.

Database features and functionality

At the time of writing, little is known about the detailed functionalities of the Database. However, high on the list of desirable improvements would be a feature to provide information on commencement date of provisions, latest amendments and updates, outstanding or pending amendments, etc. Currently, to find out whether a statutory provision has come into operation requires a fairly time-consuming process depending on whether the legislation is published in Legal Supplement No. 1 (or No. 2) to the Government Gazette or in the Loose-leaf Edition of the Laws of Hong Kong.²⁷ Given that it has become more common now in Hong Kong legislation to defer the effective date to a day to be appointed by a public officer by notice in the Gazette (i.e. “Commencement Notice”), the addition of such a feature in the new Database would simplify the procedure of checking whether a provision is in operation.

Dealing with bilingual text

Under the Official Languages Ordinance²⁸, both English and Chinese are official languages of the law in Hong Kong. In the Loose-leaf Edition of the Laws of Hong Kong, the text of both languages run parallel to each other. Yet in the online environment, in both BLIS and HKLII, Chinese and English texts of legislation are displayed separately, making it inconvenient to view side by side. It is yet to see if this can be rectified with in the new Database.

Secretary for Justice’s editorial powers

Division 1 of Part 4 of the Legislation Publication Ordinance deals with editorial powers of the Secretary for Justice. While this aims to facilitate timely editorial amendments to Ordinances, and hence reduce the lead time for making minor editorial adjustments, there have been concerns from legislators over the possible abuse of the editorial powers. Even

²⁶ “As made” version of Hong Kong laws refers to laws originally enacted or made and published in the Government Gazette, the electronic version of which begins from May 2000.

²⁷ The procedure to determine if a piece of legislation is in operation is described in detail in *Is It in Operation?* Department of Justice. Retrieved from <http://www.legislation.gov.hk/eng/oper.htm>

²⁸ Cap 5, Retrieved from <http://www.hkllii.hk/eng/hk/legis/ord/5/>

though s.13 states that such powers under s.12 would not change the legal effect of any Ordinance, it remains to be seen if such powers will be exercised prudently, as undertaken by the Government.

Opportunities for value-added services

As the new Database is to adopt an open data format in its design, it was believed that this would open up opportunities for legal publishers or third party data providers such as HKLII to provide value-added services including annotations and showing of past versions of relevant sections of legislation. Cross references among different ordinances via hyperlinks is also another feature which the Government would seek to provide in the new Database.

6. Implementation Plan and Current Status

The new Database will be implemented in two phases. Phase one covers core functions for use by the Law Drafting Division of the Department of Justice for data maintenance and officialisation. Phase two covers functions for use by the public and other government bureaux and departments.

After having been put out to tender in mid-2012, the contract of the project for the new Database was subsequently awarded in December 2012. As at March 2013, the government is working closely with the contractor on the project details. On completion of internal testing, the new Database is expected to be made available for public access in the fourth quarter of 2016. The completion of phase two will also see the retirement of BLIS.

After the public launch, the officialisation process will then begin and is expected to take five years. The Loose-leaf Edition will be phased out progressively along with the migration of all Ordinances from the Loose-leaf Edition to the Database, which is expected to be completed around 2020.

IV. Conclusion

Whilst it can be seen that Hong Kong has some way to go to realise the desire for online authenticated legal information the activities to date by the Hong Kong Government is admirable and they are showing a keen desire to move towards this optimal position. At present even with the availability of online legislation through BLIS, HKLII and commercial sources the text is not official and the up to datedness of legislation is problematic. The fact that there is also no cross referencing or access to supplementary materials such as bills, legal glossary's and treaty materials also inhibits effective and full use of the laws of Hong Kong by the Government, courts and the public. These issues according the details in the Legislation Publication Ordinance will be addressed with the creation of the new Database of Hong Kong legal materials in due course.