

LegCo Panel on Administration of Justice and Legal Services
Applicability of Ordinances to the Offices set up
by the Central People's Government in the HKSAR

Background

At the meeting on 15 May 2001, the Panel was advised that the Administration is working on an appropriate formula to extend the applicability of the Arbitration Ordinance (Cap 341) to the CPG Offices in the HKSAR ("the CPG Offices"). When such a formula is available, it can be applied to the remaining 14 Ordinances, subject to any modifications that may be required in the context of the particular Ordinance.

2. Subsequently, the Clerk to the Panel has written to the Secretary for Justice vide her letter dated 18 May 2001 requesting the provision of the following information to the Panel :-

- matters relating to the drafting of the appropriate formula (when the drafting instructions were received, the progress of drafting and any difficulties encountered);
- the drafting of the remaining 14 Ordinances;
- the progress of adaptations of the references to "Her Majesty's forces" and of the other military references;
- the progress of adaptation of the Crown Proceedings Ordinance (Cap 300).

The Drafting of the Appropriate Formula

3. In March 1999, Director of Administration issued Drafting Instructions to the Law Draftsman in respect of the proposed amendments to the Arbitration Ordinance giving effect to the arrangement for reciprocal enforcement of the arbitration awards between the Mainland and the HKSAR. They included the instruction that a new provision be drafted to replace s 47 of the Ordinance so that the Ordinance would be applicable to any individual or organ (including the CPG Offices) as and when it enters into or becomes in any way involved in an arbitration agreement that is subject to the HKSAR law.

4. The Arbitration (Amendment) Bill 1999 was drafted accordingly with the following application formula :-

“This Ordinance applies to and in relation to any arbitration agreement, irrespective of whether a party to the agreement is an individual, public body, public authority, private body, organ or any other class of person”.

5. The Bill was introduced into the Legislative Council and was considered by a Bills Committee. The Bills Committee, however, did not consider that the draft clause was sufficiently clear to extend the Ordinance to the CPG offices. The Administration agreed that the drafting of the formula might not be perfect, and that there might be better ways to reflect the policy intention. As a result, when the Bill was enacted in January 2000, the Ordinance’s previous scope of application was retained, but the Administration undertook to continue to work on an appropriate formula.

6. Since the enactment of the amendment Ordinance, the Administration has been working on an appropriate formula. The Administration is considering a more specific approach which will involve the extension of the applicability of the Ordinance specifically to the three CPG Offices. The Administration is in the process of consulting the Central People’s Government. An appropriate formula will be introduced into the Legislative Council as soon as it is ready.

7. In drafting the formula, the Law Draftsman will ensure that it will give effect to the policy intention. The draft formula should be neither too wide nor too narrow and will cover those bodies which the Administration would like to include. It should also clearly provide for the extent of application.

The Drafting of the Remaining 14 Ordinances

8. The Department of Justice has not yet received the drafting instructions in respect of the 14 remaining Ordinances. Drafting will commence in accordance with the work schedule as soon as the relevant policy bureaux issue the drafting instructions.

Adaptations of references to “Her Majesty’s Forces” and other military references

9. The Administration is still working on the adaptations involving the Garrison. They cover about 90 Ordinances and subsidiary legislation and there are over 200 references to “Her Majesty’s Forces” and other military references. In accordance with Article 10 of the Garrison Law, the Administration is required to consult the Garrison when formulating any policy or drafting any legislation which concerns them. The Garrison is being consulted on the legislative proposals. As the exercise involves a number of Government bureaux and departments and the consultation with the Garrison, it requires more time before the proposed adaptations can be introduced into the Legislative Council.

Adaptation of the Crown Proceedings Ordinance

10. The Crown Proceedings Ordinance, which was modelled on the Crown Proceedings Act 1947 in the UK, provides for legal rules relating to civil proceedings by and against the Crown. It remains part of the law of the HKSAR, subject to the provisions in the Hong Kong Reunification Ordinance.

11. The Ordinance was first enacted in 1957. It contains provisions relating to old procedures and jurisdiction which may require law reform rather than simple adaptations. Some of the provisions may have to be re-written or repealed. The work involved is therefore complex, but research into the appropriate ways to adapt or reform the Ordinance is actively in progress. The Administration will consult the Garrison on the part relating to it and may consult other CPG Offices if necessary.

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