

LegCo Panel on Administration of Justice and Legal Services

**The 15 Ordinances which expressly apply to the Government
but are silent as to their applicability to the CPG offices**

Introduction

At the meeting of the LegCo Panel on the Administration of Justice and Legal Services (AJLS Panel) on 15 May 2001, members discussed the progress in amending 15 of the 17 Ordinances to extend their applicability to the CPG offices in Hong Kong. Concern was expressed that, until those amendments are enacted, the CPG offices and their personnel would be ‘above the law’. Members also requested the Administration to provide an analysis of the effect in law of each of the 15 Ordinances not being applicable to the CPG offices. This paper addresses the above issues.

No one is above the law

2. Under the rule of law in Hong Kong, no persons or organizations are above the law. So far as the CPG offices in Hong Kong are concerned, that principle is enshrined as a principle of our new constitutional order. Article 22(3) of the Basic Law provides that –

‘All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.’

Similarly, Article 14(4) of the Basic Law provides that –

‘In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region.’

3. The fact that a particular organization or person is not subject to a particular Ordinance does not mean that the organization or person is ‘above the law’. It merely reflects a policy decision that it was neither necessary nor appropriate to apply that Ordinance to the organization or person.

4. Many Ordinances do not apply to everyone in Hong Kong. For example –

- (1) charitable institutions and trusts of a public character are exempt from tax under the Inland Revenue Ordinance (s.88, Cap.112);
- (2) registered trade unions are not subject to the provisions relating to money lenders under the Money Lenders Ordinance (Cap. 163);
- (3) certain schools, and owners or managers of those schools, are not subject to the Education Ordinance (Cap. 279).

It would be wrong to describe charitable institutions, registered trade unions, and those schools and their owners and managers as ‘above the law’ simply because a particular Ordinance does not apply to them.

5. With regard to the 15 Ordinances that do not currently apply to the CPG offices in Hong Kong, this state of affairs arises because –

- (1) when those Ordinances were enacted before Reunification, policy decisions were taken not to apply them to the Crown in right of the UK Government;
- (2) as a result of Reunification, the Ordinances do not therefore apply to the CPG offices in Hong Kong.

For the reasons given above, the fact that those Ordinances do not currently apply to the CPG offices does not mean that they are ‘above the law’. It simply means that the requirements in those particular Ordinances do not apply to them.

6. Whilst it may be legitimate to argue that those Ordinances should be amended so as to apply to the CPG offices, it is not correct to say that those offices are ‘above the law’.

7. As to the personnel of the CPG offices, even if none of the provisions in the 15 Ordinances applied to them, for the reasons set out in paragraphs 4 and 5 above, it would not be correct to regard those personnel as ‘above the law’. Since many provisions of the 15 Ordinances do apply to them in their personal capacities, it would be misleading to say that they are ‘above the law’.

8. A brief description of the 15 Ordinances is set out in the Annex.

June 2001

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but are silent as to their applicability to the CPG offices**

Introduction

A brief description of the 15 Ordinances which expressly apply to the Government but are otherwise silent as to their applicability to the CPG offices is set out below.

Gas Safety Ordinance (Cap. 51)

2. The purpose of the *Gas Safety Ordinance* is to control, in the interests of safety, the importation, manufacture, storage, transport, supply and use of gases as fuel. The Ordinance and its regulations set out certain safety requirements for a person to comply with as applicable in the handling of gases as fuels. For example, a person should employ registered persons for annual inspection, employ registered gas contractors and installers for gas installation works, and apply for approval for construction and use of any new gas installations.

3. The policy intent is to extend the applicability of the Ordinance to the CPG offices.

Arbitration Ordinance (Cap. 341)

4. The *Arbitration Ordinance* seeks to make provisions for arbitration in civil and commercial matters, to set out procedures for both domestic arbitration and international arbitration, and to incorporate the relevant international conventions into the laws of Hong Kong. Any person will be subject to the relevant provisions of the Ordinance if he chooses by mutual consent with another person or party to enter into an arbitration agreement.

5. The policy intent is to extend the applicability of the Ordinance to the CPG offices. Before that is done, the CPG offices will not be able to avail themselves of the procedures provided for in the Ordinance.

Ozone Layer Protection Ordinance (Cap. 403)

6. The *Ozone Layer Protection Ordinance* prohibits any person from the

manufacture of, and controls the importation and exportation by any person of, substances that deplete the ozone layer and products containing or made with those substances. It provides that any person will be obliged to apply for a quota/licence to manufacture, import or export scheduled substances or products that deplete the ozone layer.

7. The policy intent is to extend the applicability of the Ordinance to the CPG offices but it is unlikely that the CPG offices will be engaged in activities like manufacture of or importation and exportation of substances that deplete the ozone layer.

The Legislative Council Commission Ordinance (Cap. 443)

8. The purpose of the *Legislative Council Commission Ordinance* is to establish a Legislative Council Commission, and to provide for matters ancillary to and connected with such purpose. The Ordinance prohibits any person from directing or controlling the Commission or using the name of the Commission.

9. The policy intent is to extend the applicability of the Ordinance to the CPG offices but the likelihood of the CPG offices directing or controlling the Commission or using its name is very remote.

Dumping at Sea Ordinance (Cap. 466)

10. The *Dumping at Sea Ordinance* prohibits any person from disposing articles and substances at sea and dumping articles and substances in the sea and under the sea-bed. The Ordinance requires a person to apply for permits for dumping at sea and incineration at sea.

11. It is expected that the likelihood of the CPG offices being engaged in activities that will result in a need for dumping at sea is very remote. We will liaise with the Garrison to ascertain the likelihood of the Garrison being engaged in such activities. That said, the policy intent is to extend the applicability of the Ordinance to the CPG offices.

Marine Parks Ordinance (Cap. 476)

12. The *Marine Parks Ordinance* provides for the designation, control and management of marine parks and marine reserves. The Ordinance prohibits any

person from carrying out any new developments or conducting certain activities, such as mariculture and collecting marine life and resources, within the designated marine parks and marine reserves.

13. The policy intent is to extend the applicability of the Ordinance to the CPG offices. But there is very little, if any, practical implications for the CPG offices as they are unlikely to be engaged in the activities referred to in the Ordinance.

Sex Discrimination Ordinance (Cap. 480)

14. The *Sex Discrimination Ordinance* prohibits discrimination on the ground of sex, marital status or pregnancy, and sexual harassment in the fields of employment, education, and provision of goods, services or facilities. The Ordinance applies to persons in respect of discrimination in the following aspects –

- (a) as employers in relation to employment at an establishment in Hong Kong;
- (b) as individuals in respect of sexual harassment or aiding other persons to do an act made unlawful by the Ordinance; and
- (c) as providers of goods, services or facilities to the public.

The Ordinance also applies to bodies responsible for educational establishments in respect of discrimination.

15. The policy intent is to extend the applicability of the Ordinance to the CPG offices.

Mandatory Provident Fund Schemes Ordinance (Cap. 485)

16. The purpose of the *Mandatory Provident Fund Schemes Ordinance* is to provide the labour force of Hong Kong with retirement protection. The Ordinance seeks to provide for the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement, to provide for a regulatory regime in respect of such schemes, and to create a Mandatory Provident Fund (MPF) Schemes Authority to oversee the administration and management of registered schemes. The Ordinance applies to persons as employers.

17. The policy intent is to extend the applicability of the Ordinance to the CPG offices so that the CPG offices, in their capacity as employers in Hong Kong, would be required to make MPF contributions in respect of those employees recruited in Hong Kong, and those employees who are posted to work in Hong Kong for longer

than a year but not covered by a retirement scheme outside Hong Kong.

Disability Discrimination Ordinance (Cap. 487)

18. The *Disability Discrimination Ordinance* seeks to ensure equal opportunities for people with disabilities so as to facilitate their integration into the community to the fullest extent possible. The Ordinance prohibits discrimination against other persons on the ground of their disability in the fields of employment, education, use of or access to premises, and provision of goods, services or facilities. The Ordinance applies to persons in respect of discrimination against other persons in the following aspects –

- (a) as employers in relation to employment at an establishment in Hong Kong;
- (b) as individuals in respect of harassment, aiding other persons to do an act made unlawful by the Ordinance, or the use of or access to premises; and
- (c) as providers of goods, services or facilities to the public.

The Ordinance also applies to bodies responsible for educational establishments in respect of discrimination against other persons.

19. The policy intent is to extend the applicability of the Ordinance to the CPG offices.

Plant Varieties Ordinance (Cap. 490)

20. The purpose of the *Plant Varieties Protection Ordinance* is to provide for the protection of proprietary rights in respect of plant varieties except inedible algae and fungi. The Ordinance provides for the application for grant of plant variety rights, and requires a person to obtain authorization or permission from the grantee for reproducing or selling the reproductive materials of the protected plant varieties. The Ordinance sets out the plant variety rights of a grantee in respect of the production, importation or exportation of reproductive materials of protected plant varieties. It provides protection for the grantee for infringement of such rights by another person who uses the reproductive materials for commercial purposes.

21. The policy intent is to extend the applicability of the Ordinance to the CPG offices but the likelihood of the CPG offices being engaged in such activities as reproducing or selling reproductive materials of protected plant varieties without obtaining authorization or permission from the grantee is very remote.

Environmental Impact Assessment Ordinance (Cap. 499)

22. The purpose of the *Environmental Impact Assessment Ordinance* is to protect the environment by requiring the environmental impact of all public and private designated projects to be thoroughly assessed and that only those projects which are considered to be environmentally acceptable would be allowed to proceed. The Ordinance applies to persons as proponents of designated projects listed in the relevant schedules under the Ordinance. These include the construction of roads, railways, tramways, airports and helipads.

23. The policy intent is to extend the applicability of the Ordinance to the CPG offices. It is expected that the CPG offices will unlikely be engaged in any of the designated projects, except perhaps the Garrison which may carry out construction works within the military restricted zones.

Occupational Safety and Health Ordinance (Cap. 509)

24. The purpose of the *Occupational Safety and Health Ordinance* is to ensure the safety and health of employees when they are at work, to prescribe measures to improve the safety and health aspects of the working environment of employees, and to improve the safety and health standards applicable to certain hazardous processes. The Ordinance sets out good safety and health practices that should be adopted by employers, which include ensuring that the premises are safe and without risks to health, reporting accidents or providing certain information to an occupational safety officer, providing first aid facilities in workplace, undertaking risk assessments and providing training to employees. The Ordinance applies to persons as employers or occupiers of the workplace (the latter being those who have any degree of control over the premises or workplace in question).

25. The policy intent is to extend the applicability of the Ordinance to the CPG offices, in their capacity of employers or occupiers of the workplace.

Patents Ordinance (Cap. 514)

26. The *Patents Ordinance* provides for the grant of standard and short-term patents in the HKSAR. The Ordinance sets out the rights of patent proprietors and the various civil remedies available in case their rights are infringed.

27. The policy intent is to extend the applicability of the Ordinance to the CPG offices. But it is unlikely that the CPG offices would seek patent protection or

infringe the rights of patent proprietaries in the HKSAR.

Registered Designs Ordinance (Cap. 522)

28. The *Registered Designs Ordinance* provides for the registration and protection of designs, which cover a wide range of goods such as domestic appliances, furniture, textiles, fashion, jewellery and watches, to provide for the details as to what qualifies for design registration, what procedures are involved, and what the rights of the registered designs owners are.

29. The policy intent is to extend the applicability of the Ordinance to the CPG offices. But it is unlikely that the CPG offices would seek designs protection or infringe the rights in registered designs in the HKSAR.

Family Status Discrimination Ordinance (Cap. 527)

30. The *Family Status Discrimination Ordinance* prohibits discrimination against other persons on the ground of family status (i.e. the status of having responsibility for the care of an immediate family member) in the fields of employment, education, use of or access to premises, and provision of goods, services or facilities. The Ordinance applies to persons in respect of discrimination in the following aspects –

- (a) as employers in relation to employment at an establishment in Hong Kong;
- (b) as individuals in respect of aiding other persons to do an act made unlawful by the Ordinance, or the use of or access to premises; and
- (c) as providers of goods, services or facilities to the public.

The Ordinance also applies to bodies responsible for educational establishments in respect of discrimination against other persons.

31. The policy intent is to extend the applicability of the Ordinance to the CPG offices.

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