

Panel on Administration of Justice and Legal Services

Information Note

Review of Applicability of Ordinances to State organs

Background

Section 66 of the Interpretation and General Clauses Ordinance (Cap. 1) which, as at 30 June 1997, provided that "no Ordinance shall in any manner whatsoever affect the right of or be binding on the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby". By way of the Adaptation of Laws (Interpretative Provisions) Bill which was passed by the Provisional Legislative Council on 7 April 1998, the reference to "Crown" in section 66 of Cap.1 was adapted to "State". The Administration then undertook to conduct a review of the 17 relevant Ordinances that expressly bound the Government, but were otherwise silent on their applicability to "State" organs in Hong Kong.

Previous discussions by Panel

2. The subject was discussed at the Panel meetings on 15 September 1998, 20 October 1998, 2 November 1998 and 25 February 1999.

Meeting on 15 September 1998

3. Apart from the 17 Ordinances which expressly bound the "Government" but silent on the binding effect of "State" organs in Hong Kong, the Administration was requested to consider reviewing other ordinances which, although without express provisions on their binding effect, might bind the State or the Government by necessary implication, and to provide additional information on issues raised by members.

Meeting on 20 October 1998

4. The Administration advised that 15 out of the 17 Ordinances should bind the "State" organs. It would introduce the necessary amendments to the 15 Ordinances in due course. The Personal Data (Privacy) Ordinance was more complicated and hence required more time for review.

Meeting on 2 November 1998

5. To follow up on the meeting on 15 September 1998, the issues of

principles governing binding effect of ordinances, ordinances binding the State by necessary implication, definition of "State" for the purpose of section 66 of Cap.1, and classification of ordinances were discussed.

6. The four papers prepared by the Administration are attached -
 - a) LC Paper No. CB(2)415/98-99(01) - Binding effect of Ordinances : legal and constitutional principles, and policy consideration - **Appendix I**;
 - b) LC Paper No. CB(2)415/98-99(02) - Ordinances binding the State by necessary implication - **Appendix II**;
 - c) LC Paper No. CB(2)415/98-99(03) - The definition of "State" for the purposes of section 66 of Cap.1 - **Appendix III**;
 - d) LC Paper No. CB(2)436/98-99(02) - Classification of Ordinances - **Appendix IV**;

An extract of the minutes of meeting is attached at **Appendix V**.

Meeting on 25 February 1999

7. The relevant issues were further discussed at this meeting.

Present Position

8. At the meeting on 20 March 2001, Hon Emily LAU proposed and the Panel agreed that the Panel should follow up the progress of review of the binding effect of Ordinances on "State" organs and their personnel in HKSAR.

9. To facilitate the Panel to consider how to proceed with examining outstanding issues in the subject of applicability of Ordinances to State organs, the Administration was requested to provide an up to date position on the following matters -

- a) Matters outstanding from the Panel's series of the meetings ending on 25 February 1999 -
 - i) in relation to the review of the 17 Ordinances which bind the Government but not the State organs in Hong Kong, progress in amending the 15 Ordinances which had been identified as in need of amendment and the result of the review of the Personal Data (Privacy) Ordinance;

- ii) the present position of the adaptation of the 53 Ordinances that are expressed to bind, or apply to, the "Crown";
 - iii) whether a review has been conducted in respect of the 36 Ordinances that are applicable to the "Government" in whole or in part (but are silent on their applicability to the State organs), and if so, the outcome of the review;
 - iv) whether the Administration has identified any need to review the binding effect of any of the Ordinances which may bind the Government or the State by necessary implication;
- b) Outstanding issues under the Adaptation Exercise -
- i) the present position in respect of the matters outstanding from the Adaptation of Laws (No. 9) Bill 1999 (which was to adapt tunnel legislation) and the Adaptation of Laws (No. 16) Bill 1999 and 9 other Adaptation Bills (which concerned the proper adaptation of provisions which made clear that certain statutory corporations are not a servant or agent of the Crown);
 - ii) the present position in respect of the amendment to section 47 of the Arbitration Ordinance in order to make the Arbitration Ordinance bind both State organs and the Government.