

**For information  
on 26 March 2007**

**LegCo Panel on Administration of Justice and Legal Services**

**Implementation of international agreements in the Hong Kong SAR**

**I. Introduction**

This paper sets out the various methods employed to implement international agreements which apply to Hong Kong. For the purpose of this paper, “international agreements” includes international agreements entered into between the Hong Kong SAR Government and other jurisdictions, as well as international agreements and treaties entered into by the Central People’s Government and applied to Hong Kong.

**II. Methods for implementing international agreements in our domestic system**

**(A) No implementing legislation required**

2. An international agreement which applies to Hong Kong binds Hong Kong under international law. However, this does not mean that legislation is always required in order to enable us to fulfil our international obligations.

3. Implementing legislation will not be required where the relevant provisions of the international agreement relates to matters of principle, or to matters which are already dealt with under existing legislation, or where the international obligations can be implemented by administrative means; for example:

- the WTO General Agreement on Tariffs and Trade 1994 (“GATT”) requires WTO Members to liberalise their tariff regime on goods. In fact, Hong Kong is a free port and can implement the GATT tariff obligations without enacting implementing legislation;
- bilateral Air Services Agreements, which can be implemented under existing legislation on civil aviation (e.g. the Civil Aviation

Ordinance Cap. 448, the Aviation Security Ordinance Cap. 494, and related subsidiary legislation), and by administrative means.

4. Implementing legislation is also not required where the international agreement purely concerns an international matter which has no relevance in the domestic context; for example, the Vienna Convention on the Law of Treaties concerning treaty making procedures and treaty interpretation between States.

**(B) Legislation in whole or in part giving effect to one or more international agreements**

5. In other cases, implementing legislation may be required to give effect under Hong Kong law to the requirements of an international agreement, or to ensure that administrative authorities have the necessary statutory powers to perform acts required to be undertaken in fulfilment of international obligations. Implementing legislation may take the following forms:

- legislation implementing a single international agreement: for example, the Child Abduction and Custody Ordinance, Cap. 512, implementing the Hague Convention on the Civil Aspects of International Child Abduction 1980;
- legislation implementing several international agreements relating to the same subject matter: for example, the Carriage by Air Ordinance, Cap. 500<sup>1</sup>; and the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap. 434<sup>2</sup>;
- legislation partly implementing an international agreement and partly dealing with matters falling outside the scope of the agreement: for example, the Adoption Ordinance, Cap. 290 which implements the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption 1993 with respect to adoptions cases falling within the scope of the Convention, while also prescribing procedures for adoption cases falling outside the scope of the Convention.

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<sup>1</sup> implementing the Warsaw Convention for the Unification of Certain Rules Relating to the International Carriage by Air 1929, the Additional Protocol thereto, the Hague Protocol 1955, the Guadalajara Convention supplementary to the Warsaw Convention of 1961, the Montreal Convention for the Unification of Certain Rules for International Carriage by Air 1999

<sup>2</sup> implementing the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 and the Convention on Limitation of Liability for Maritime Claims 1976

**(C) Primary legislation establishing an umbrella framework for subsidiary legislation to be made to implement international agreements**

6. An Ordinance may provide a framework for subsidiary legislation to be made to give effect to subsequent international agreements relating to the same subject matter. Examples include:

- the Consular Relations Ordinance, Cap. 557 and the International Organisations (Privileges and Immunities) Ordinance, Cap. 558 and their respective subsidiary legislation implementing international agreements concerning privileges and immunities enjoyed by relevant foreign consulates and international organisations in Hong Kong;
- the Fugitive Offenders Ordinance, Cap. 503 and the Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525 and their respective subsidiary legislation implementing international agreements on surrender of fugitive offenders and mutual legal assistance;
- the Inland Revenue Ordinance, Cap. 112, section 49 of which provides for subsidiary legislation to be made to give effect to agreements for the avoidance of double taxation between Hong Kong and other jurisdictions.

**III. Different approaches adopted in domestic legislation which implement international agreements**

7. Broadly speaking, the following approaches are used in implementing legislation. We have included a number of examples for the purpose of illustration. However, it should be recognised that in practice, different approaches may be used in a single piece of implementing legislation to implement different provisions of an international agreement.

**(A) Incorporating agreement texts into the implementing legislation with supplementary legislative provisions**

8. The text of an international agreement may be incorporated into the implementing legislation by being set out in the legislation, usually in a Schedule. In many cases, however, it is not sufficient simply to give the text of the international agreement the force of law in Hong Kong, and the implementing legislation needs to set out additional

provisions to supplement the incorporated agreement text. For example, the Administration may wish to achieve certain policy goals with respect to the subject matter dealt with by an international agreement but which are not addressed by the provisions of the agreement. This should not affect our international law position provided that the supplementary legislative provisions are not inconsistent with the international agreement. Examples of this approach include the Child Abduction and Custody Ordinance, Cap. 512 and the Consular Relations Ordinance, Cap. 557.

**(B) Transforming the texts of international agreements**

9. In other cases, the wording and terminology of an agreement may not conform to the normal usage in our domestic context. Legislative re-writing may be needed in order to clarify the meaning and to avoid misinterpretation.

10. Moreover, in the case where an international agreement simply requires parties to achieve certain results (e.g. to take action to prohibit, or to criminalise, certain activities) without prescribing the detailed implementation methods, the parties are left to design their own regulatory framework to implement the agreement. In such a case, the Administration will have considerable room to draft the legislative provisions to implement the agreement provisions, and will be able to have regard to the conditions prevailing in Hong Kong and practices adopted by other parties to the agreement.

11. This approach is also common where the existing legislation is largely consistent with the provisions of an international agreement, and can be adapted to fully implement the international agreement.

12. An example of this approach may be found in the Smoking (Public Health) Ordinance, Cap. 371 which, *inter alia*, implements the WHO Framework Convention on Tobacco Control 2003.

**(C) Referring to the requirements under an international agreement in the implementing legislation**

13. The implementing legislation may make reference to the requirements under an international agreement without setting out the text. This approach has been used where the relevant agreement provisions are

technical. An example of this approach is the Merchant Shipping (Safety) (Life-Saving Appliances) Regulation, Cap 369AY<sup>3</sup>.

#### **IV. Conclusion**

14. As can be seen from the above, different methods have been employed to implement international agreements in our domestic system. This suits different types of international agreements and different policy needs. In practice, the precise method to be adopted to implement an international agreement will be decided on a case by case basis by the responsible policy bureau/department having regard to its policy objectives and requirements and the nature and substance of the international agreement in question, and after considering the views of the Department of Justice.

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<sup>3</sup> e.g. Section 4 referring to “the life-saving appliances and arrangements requirements as described in Chapter III of” the International Convention for the Safety of Life at Sea 1974