

*Re: Applicability of HKSAR Laws to Offices set up by
the Central People's Government in the HKSAR*

Submission of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“HKBA”) had previously made two submissions relating to the applicability of the laws of the HKSAR to offices set up by the Central People’s Government (“CPG”) in the HKSAR (“CPG HK Offices”). The first was made in 1998 in respect of the proposal concerning the Adaptation of Laws (Interpretative Provisions) Bill: see LC Paper No CB(2)200/98-99(01). The second was made in 1999 on the exemption of “State” from the application of the laws of the HKSAR and section 66 of the Interpretation and General Clauses Ordinance (Cap 1): see LC Paper No CB(2)1324/98-99(03).
2. The HKBA has studied the Administration’s paper of the latest developments on legislative work relating to the Ordinances that expressly bind the Government but are silent on their applicability to CPG HK Offices and the adaptation of 35 Ordinances that are expressed to bind, or apply to, the “Crown”.
3. The HKBA reiterates and affirms the submissions made in 1999 that the HKSAR has no plenary legislative powers that would enable it to legislate so as to bind the organs of state identified in the Constitution of the People’s Republic of China. Besides, the HKSAR has only a very limited power to legislate in respect of the offices identified in Art 22 of the Basic Law of the HKSAR and such limited legislative power can only be exercised when the offices are established in the HKSAR.

Once an office referred to in Art 22 is established in the HKSAR, it is a matter of the HKSAR, through its executive authorities and legislature, to decide whether the office should or should not be bound by the laws of the HKSAR.

4. In 1998, the Administration expressed the preliminary view that as a matter of policy, 15 out of 17 Ordinances which expressly apply to the Government should also bind the CPG HK Offices. The HKBA has not been informed that the Administration has since changed its views in this regard.
5. Although a decade has passed, the Administration is only minded in the 2008/09 legislative session to put forward amendment legislation to amend 4 of those 15 Ordinances so that they bind also the CPG HK Offices. Apart from explaining why the amendment exercise should be done in phrases, the HKBA invites the Administration to provide a timetable for the next phrase(s) of the amendment exercise.
6. The Administration's approach towards the application of the Personal Data (Privacy) Ordinance (Cap 486) to the CPG HK Offices is less than satisfactory. One way or another, a decision should be made by the Administration bearing in mind that whether or not an Ordinance of the HKSAR should bind an "office established in the HKSAR" referred to in Art 22 of the Basic Law is a matter of *decision* of the HKSAR's executive authorities and legislature.
7. Overall, the HKBA finds it unsatisfactory that the Administration's latest paper is silent on its efforts and perceived difficulties in deciding whether or not any of the 16 Ordinances listed in Annex A to that paper should bind the CPG HK Offices.

8. Turning to the adaptation of Ordinances that expressly bind or apply to the “Crown”, the HKBA invites the Administration to complete the adaptation exercise soonest possible since more than a decade has elapsed since 1997. It is extraordinary to find Chapter 300 of the Laws of Hong Kong to have as its title “*Crown Proceedings Ordinance*” in 2008.

Hong Kong Bar Association
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