

LEGISLATIVE COUNCIL BRIEF

**APPLICABILITY OF HKSAR LAWS TO OFFICES SET UP BY THE
CENTRAL PEOPLE’S GOVERNMENT
IN THE HKSAR**

ADAPTATION OF LAWS BILL 2009

INTRODUCTION

At the meeting of the Executive Council on 20 January 2009, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws Bill 2009 at Annex A should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

2. Section 66(1) of the Interpretation and General Clauses Ordinance (Chapter 1) provides the following –

“No Ordinance (whether enacted before, on or after 1 July 1997) shall in any manner whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby.”

3. There are three offices set up by the Central People’s Government (“CPG”) in the HKSAR (“CPG offices”):

- (a) the Liaison Office of the Central People’s Government in the HKSAR;
- (b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR; and
- (c) the Hong Kong Garrison of the Chinese People's Liberation Army.

4. The Government has been studying and discussing with the relevant authorities of the CPG on whether and how certain ordinances identified in 1998 which expressly bind the Government but are silent on their applicability to offices set up by the CPG in the HKSAR can be made applicable to these offices. As set out in the paper provided by the Administration to the LegCo AJLS Panel in March 2008, progress has been made in respect of the arrangement for applying the relevant ordinances enacted by the HKSAR to the CPG Offices. An application formula¹ and the approach in handling the exercise have now been agreed.

5. In accordance with the consensus attained, as a start, the Adaptation of Laws Bill 2009 is drawn up for introduction in the 2008/09 legislative session to amend the following four ordinances, so as to expressly provide that, aside from being applicable to the Government, they will also apply to the offices set up by the CPG in the HKSAR –

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|-----|--|-------------|
| (a) | The Legislative Council Commission Ordinance | Chapter 443 |
| (b) | Plant Varieties Protection Ordinance | Chapter 490 |
| (c) | Patents Ordinance | Chapter 514 |
| (d) | Registered Designs Ordinance | Chapter 522 |

THE BILL

6. The main provisions are –

- (a) clause 2 amends Chapter 1 to provide a definition of “Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region”, which means –
- (i) the Liaison Office of the Central People’s Government in the HKSAR;
- (ii) the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the HKSAR; and

¹ The provision of the application formula reads “This Ordinance applies to the Government and the Offices set up by the Central People’s Government in Hong Kong Special Administrative Region.”.

- (iii) the Hong Kong Garrison of the Chinese People's Liberation Army; and
- (b) clauses 3 to 7 introduce amendments to The Legislative Council Commission Ordinance, the Plant Varieties Protection Ordinance, the Patents Ordinance, and the Registered Designs Ordinance, to provide that these ordinances will, apart from the HKSAR Government, also apply to the CPG offices. The existing provisions in the relevant ordinances being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be –

Publication in the Gazette	30 January 2009
First Reading and commencement of Second Reading debate	11 February 2009
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no economic, financial, civil service, productivity, environmental or sustainability implications. The proposed amendments will extend the application of the relevant ordinances to the CPG offices.

PUBLIC CONSULTATION

9. The matters were discussed on a number of occasions in the LegCo AJLS Panel from 1998 to 2001 and, more recently, in March and April 2008.

PUBLICITY

10. A press release will be issued and a spokesman will be made available to answer media and public enquiries.

ENQUIRIES

11. For enquiries about this brief, please contact Mr Gary POON, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2852.

Constitutional and Mainland Affairs Bureau
29 January 2009

File Ref.: CMAB B24/1

A BILL

To

Amend the application provisions of The Legislative Council Commission Ordinance, the Plant Varieties Protection Ordinance, the Patents Ordinance and the Registered Designs Ordinance to make the provisions of those 4 Ordinances applicable to the 3 offices set up by the Central People's Government in the Hong Kong Special Administrative Region and to amend section 3 of the Interpretation and General Clauses Ordinance to introduce a single definition for those 3 offices.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws Ordinance 2009.

Amendment to the Interpretation and General Clauses Ordinance

2. Interpretation of words and expressions

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) is amended by adding –

““Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region” (中央人民政府在香港特別行政區設立的機構) means –

- (a) the Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region;
 - (b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the Hong Kong Special Administrative Region;
- and

- (c) the Hong Kong Garrison of the Chinese People's Liberation Army;”.

Amendments to The Legislative Council Commission Ordinance

3. Application to the Government

(1) Section 23 of The Legislative Council Commission Ordinance (Cap. 443) is amended, in the heading, by repealing “**to the Government**”.

(2) Section 23 is amended by repealing “binds the Government” and substituting “applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region”.

Amendments to the Plant Varieties Protection Ordinance

4. Binding effect of Ordinance

(1) Section 3 of the Plant Varieties Protection Ordinance (Cap. 490) is amended, in the heading, by repealing “**Binding effect of Ordinance**” and substituting “**Application**”.

(2) Section 3 is amended by repealing “binds the Government” and substituting “applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region”.

5. Application

Section 4 is amended, in the heading, by repealing “**Application**” and substituting “**Plants to which Ordinance applies**”.

Amendments to the Patents Ordinance

6. Ordinance binding on Government

(1) Section 151 of the Patents Ordinance (Cap. 514) is amended, in the heading, by repealing “**Ordinance binding on Government**” and substituting “**Application**”.

(2) Section 151 is amended by repealing “binds the Government” and substituting “applies to the Government and the Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region”.

Amendments to the Registered Designs Ordinance

7. Ordinance binds Government

(1) Section 4 of the Registered Designs Ordinance (Cap. 522) is amended, in the heading, by repealing “**Ordinance binds Government**” and substituting “**Application**”.

(2) Section 4 is amended by repealing “binds the Government” and substituting “applies to the Government and the Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region”.

Explanatory Memorandum

The objects of this Bill are to amend the application provisions of The Legislative Council Commission Ordinance (Cap. 443) (see clause 3), the Plant Varieties Protection Ordinance (Cap. 490) (see clause 4), the Patents Ordinance (Cap. 514) (see clause 6) and the Registered Designs Ordinance (Cap. 522) (see clause 7) to make the provisions of those 4 Ordinances applicable to the 3 offices set up by the Central People's Government in the Hong Kong Special Administrative Region and to amend section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) to introduce a single definition for those 3 offices (see clause 2).

2. A consequential amendment is made to section 4 of the Plant Varieties Protection Ordinance (Cap. 490) (see clause 5).

3. If enacted, the Ordinance will come into operation on the date on which it is published in the Gazette.

Existing application provisions being amended by the Adaptation of Laws Bill 2009

Chapter:	443	Title:	THE LEGISLATIVE COUNCIL COMMISSION ORDINANCE	Gazette Number:	115 of 1997 s. 11
Section:	23	Heading:	Application to the Government	Version Date:	01/07/1997

This Ordinance binds the Government.

Chapter:	490	Title:	PLANT VARIETIES PROTECTION ORDINANCE	Gazette Number:	L.N. 492 of 1997
Section:	3	Heading:	Binding effect of Ordinance	Version Date:	24/10/1997

This Ordinance binds the Government.

Section:	4	Heading:	Application	Version Date:	01/07/2007
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- (1) This Ordinance applies to the plants listed in the Schedule.
 - (2) The Secretary for Food and Health may, by notice in the Gazette, amend the Schedule.
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Chapter:	514	Title:	PATENTS ORDINANCE	Gazette Number:	
Section:	151	Heading:	Ordinance binding on Government	Version Date:	30/06/1997

Subject to the provisions of this Ordinance, and notwithstanding section 5(3) of the Crown Proceedings Ordinance (Cap 300), this Ordinance binds the Government.

Chapter:	522	Title:	REGISTERED DESIGNS ORDINANCE	Gazette Number:	
Section:	4	Heading:	Ordinance binds Government	Version Date:	30/06/1997

Subject to Part IV, this Ordinance binds the Government.