

**Paper for the House Committee Meeting
on 13 February 2009**

**Legal Service Division Report on
Adaptation of Laws Bill 2009**

I. SUMMARY

1. Objects of the Bill

- (a) To add a definition of "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) for the purpose of introducing a single definition for the three offices set up by the Central People's Government (CPG offices) in the Hong Kong Special Administrative Region (HKSAR); and
- (b) To amend the application provisions of The Legislative Council Commission Ordinance (Cap. 443), the Plant Varieties Protection Ordinance (Cap. 490), the Patents Ordinance (Cap. 514) and the Registered Designs Ordinance (Cap. 522) so as to make them applicable to CPG offices.

2. Comments

The adaption of the four Ordinances in the Bill seems to present no difficulty. However, the criteria of selecting ordinances to be applicable to CPG offices and the progress of the adaptation exercise may be matters of policy which members may wish to follow up.

3. Public Consultation

No public consultation has been conducted on the Bill.

**4. Consultation with
LegCo Panel**

The Panel on Administration of Justice and Legal Services (AJLS Panel) has been monitoring the progress of the adaptation programme regarding the applicability of HKSAR laws to CPG offices since 1998. At the meetings held on 19 March 2008 and 28 April 2008, the AJLS Panel was briefed on the latest developments on the subject and was informed that amendments would be introduced to the four Ordinances in the 2008/2009 legislative session as a start of the adaptation programme. The application formula as agreed between the HKSAR Government and the relevant authorities of the CPG and provided in the Bill is that the relevant Ordinance "applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region". The AJLS Panel was informed of this application formula in March 2008 (LC Paper No. CB(2)1356/07-08(02)).

5. Conclusion

In view of the fact that the Bill is the beginning of the adaption exercise in relation to applicability of ordinances to CPG offices in HKSAR, and the concerns raised by members at the meetings of the AJLS Panel in the past, members may wish to consider setting up a Bills Committee to examine the Bill in detail.

II. REPORT

Objects of the Bill

- (a) To add a definition of "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) for the purpose of introducing a single definition for the three offices set up by the Central People's Government (CPG offices) in the Hong Kong Special Administrative Region (HKSAR); and
- (b) To amend the application provisions of the following Ordinances to make them applicable to CPG offices -
 - (i) The Legislative Council Commission Ordinance (Cap. 443);
 - (ii) Plant Varieties Protection Ordinance (Cap. 490);
 - (iii) Patents Ordinance (Cap. 514); and
 - (iv) Registered Designs Ordinance (Cap. 522).

LegCo Brief Reference

- 2. CMAB B24/1 issued by the Constitutional and Mainland Affairs Bureau on 29 January 2009.

Date of First Reading

- 3. 11 February 2009.

Comments

- 4. Regarding the status of CPG offices in Hong Kong, Article 22 of the Basic Law provides, amongst other things, the following -

"If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government."

"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."

5. There are three CPG offices in the HKSAR, namely -
- (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.

6. Under section 66(1) of the Interpretation and General Clauses Ordinance (Cap. 1) as at 30 June 1997, 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 Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby. By the Adaptation of Laws (Interpretative Provisions) Bill passed on 7 April 1998, the reference to "Crown" in section 66 of Cap. 1 was adapted to "State".

7. The definition of "State" is provided in section 3 of Cap. 1 as follows -

" "State" includes only -

- (a) the President of the People's Republic of China;
- (b) the Central People's Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People's Government that -
 - (i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and

(ii) do not exercise commercial functions,

when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and

(f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that -

(i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and

(ii) do not exercise commercial functions,

when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned."

8. The Administration has been studying and discussing with the relevant authorities of the Central People's Government (CPG) on whether and how certain ordinances identified in 1998 which expressly bind the Hong Kong Government but are silent on their applicability to the CPG offices can be made applicable to these offices. The Administration seeks, as a start, to introduce amendments to the four Ordinances referred to in paragraph 1 above to expressly provide that, apart from being applicable to the Hong Kong Government, these Ordinances will also apply to CPG offices (para. 4 and 5 of the LegCo Brief).

9. The application formula as provided in the Bill is that the relevant Ordinance "applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" (clauses 3, 4, 6 and 7). According to the Administration, this formula has been agreed between the HKSAR Government and the relevant authorities of the CPG (para. 4 of the LegCo Brief). The AJLS Panel was informed of this application formula in March 2008 (LC Paper No. CB(2)1356/07-08(02)).

10. The four Ordinances relate to the following subjects -

(a) The Legislative Council Commission Ordinance was passed in 1994 to establish a Legislative Council Commission and to provide for matters ancillary to and connected with this purpose.

- (b) The Plant Varieties Protection Ordinance was passed in 1996 to provide for the protection of plant varieties.
- (c) The Patents Ordinance was passed in 1997 to make new provisions in respect of patents and related matters in substitution for the Registration of Patents Ordinance.
- (d) The Registered Designs Ordinance was passed in 1997 to make new provisions in respect of registered design right and related matters in substitution for the United Kingdom Designs (Protection) Ordinance.

11. The four Ordinances sought to be amended in the Bill are amongst the 16 ordinances that expressly bind the Government but are silent on their applicability to the offices set up by the CPG in the HKSAR as identified by the Administration. For the rest of the 16 ordinances, according to the Administration, it needs to discuss further with the CPG and the relevant bureaux and departments concerned and upon reaching consensus, it will deal with them in phases as appropriate.

12. The Administration has also identified 35 ordinances which expressly bind or apply to the "Crown", six of them require no further action of adaptation and the Administration will continue to examine how the remaining 29 ordinances should be adapted (ref: LC Paper No. CB(2)1699/07-08(04), at para. 9-12).

13. The adaption of the four Ordinances in the Bill seems to present no difficulty. However, the criteria of selecting ordinances to be applicable to CPG offices and the progress of the adaptation exercise may be matters of policy which members may wish to follow up.

Public Consultation

14. No public consultation has been conducted on the Bill.

Consultation with LegCo Panel

15. The Panel on Administration of Justice and Legal Services (AJLS Panel) has been monitoring the progress of the adaptation programme regarding the applicability of HKSAR laws to the CPG offices since 1998. In 2001, the AJLS Panel expressed grave concerns about the slow progress of the adaptation programme and reported its concerns to the House Committee. The Chairman of the House Committee raised the issue with the Chief Secretary for Administration and urged the Administration to proceed with the adaption programme expeditiously (LC Paper No. CB(2)1907/00-01(07)).

16. At the meetings held on 19 March 2008 and 28 April 2008, the AJLS Panel was briefed on the latest developments on the subject and was informed that amendments would be introduced to the four Ordinances in the 2008/2009 legislative session as a start of the adaptation programme. At the meetings, some members reiterated their dissatisfaction with the slow progress of the review of the applicability of ordinances to CPG offices over the past 10 years. They were particularly concerned that the Administration was unable to confirm whether the Personal Data (Privacy) Ordinance (Cap. 486), which touched upon the right to privacy of the public, applied to CPG offices. Some members also expressed the view that the Administration should consider reviewing the formulation of section 66(1) (Saving of rights of State) and the definition of "State" in Cap. 1.

Conclusion

17. In view of the fact that the Bill is the beginning of the adaption exercise in relation to applicability of ordinances to CPG offices in HKSAR, and the concerns raised by members at the meetings of the AJLS Panel in the past, members may wish to consider setting up a Bills Committee to examine the Bill in detail.

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