

立法會
Legislative Council

LC Paper No. CB(2)1422/10-11
(The minutes have been seen
by the Administration)

Ref : CB2/BC/5/09

**Bills Committee on
Adaptation of Laws (Military References) Bill 2010**

**Minutes of the fifth meeting
held on Monday, 28 February 2011, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Paul TSE Wai-chun

Members absent : Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS

Public Officers attending : Item II
Ms Carol YIP, JP
Deputy Secretary for Security

Mr David LAU
Principal Assistant Secretary for Security

Mr CHUNG Siu-man
Assistant Director (Port Control)
Marine Department

Ms Francoise LAM
Senior Government Counsel
Department of Justice

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Mr Jimmy MA
Legal Adviser

Ms Clara TAM
Assistant Legal Adviser 9

Ms Catherina YU
Senior Council Secretary (2) 7

Miss Michelle LEE
Legislative Assistant (2) 7

Action

I. Confirmation of minutes

[LC Paper No. CB(2)1109/10-11]

The minutes of the meeting held on 18 January 2011 were confirmed.

II. Meeting with the Administration

2. Members noted the Administration's response to the letter from the Hong Kong Bar Association dated 14 February 2011 which was tabled at the meeting.

3. The Chairman suggested and members agreed that the Administration's responses to issues raised at meetings would be discussed, if necessary, after the clause-by-clause examination of the Bill had been completed.

4. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

Clause-by-clause examination of the Bill
(LC Paper No. CB(2)228/10-11(05))

Cap. 84 Pilotage Ordinance

Section 10D - Exemption from compulsory pilotage

5. Assistant Director (Port Control) ("AD(PC)") briefed members on the operation and legislative intent of the provisions. He said that aside from warships of the United Kingdom ("UK"), ships of Her Majesty also included ships belonging to the UK Government. As such, the Administration's proposal to adapt Her Majesty to Chinese People's Liberation Army ("CPLA") and the Central People's Government ("CPG") reflected the legislative intent and the application of the provision.

6. Dr Margaret NG expressed concern about the classification of ships belonging to Her Majesty. She sought information on the types of ships belonging to CPLA or CPG, the number of such ships which had visited Hong Kong after the Reunification and the purposes of the visits.

7. AD(PC) made reference to section 12E (Supplementary provisions as to Admiralty jurisdiction) of the High Court Ordinance (Cap. 4) and section 38(2) of the Crown Proceedings Act 1947 of the UK which stipulated the definition of "Her Majesty's ships" as "*ships of which the beneficial interest is vested in His Majesty or which are registered as Government ships*". He further supplemented that ships belonging to Her Majesty that had visited Hong Kong before the Reunification were mainly warships.

Admin

8. AD(PC) added that four CPG ships had visited Hong Kong after the Reunification and he would provide written information to the Bills Committee on how the exemption as mentioned in the Ordinance had been applied after the Reunification. He did not have the information about the types of ships belonging to CPLA or CPG.

9. AD(PC) further said that the Administration would advise the relevant Mainland authorities responsible for the visiting ships the pilotage requirements for them to decide if pilotage service was to be engaged if they were exempted from such requirements. The Administration would obtain information, including the purposes of the visits, before determining whether the ships were used on non-commercial service. The Administration would seek the advice of the Department of Justice ("DoJ") when necessary.

Action

10. Dr Margaret NG expressed grave concern that the Administration was not enforcing the law but using its own judgment in the granting of pilotage exemptions. She requested the Administration to provide written information concerning the basis on which pilotage exemptions were granted, i.e. whether it was based on the usage of the ships or the purpose of the visits, the cases requiring DoJ's advice and the details of the advice, if any.

Admin

11. The Chairman, Mr James TO and Mr LAU Kong-wah were of the view that the expression "used only on non-commercial service" could include ships visiting Hong Kong on official duties. It would be more appropriate to replace the expression "used only on non-commercial service" by "used only on official duties" in the proposed adaptation. The Administration was requested to review the adaptation.

Admin

12. Deputy Secretary for Security ("DS for S") responded that there were judgements on court cases in UK that exemptions from pilotage requirements should only be granted to ships providing non-commercial service. The Administration had therefore proposed to specify that the ships should be used only on non-commercial service in the adaptation to provide clarity to the provisions. She noted members' views and undertook to consider members' suggestion with DoJ.

Admin

13. Legal Adviser ("LA") pointed out that Schedule 8 of Cap.1 stipulated the situations under which a reference in a provision to Her Majesty should be construed as a reference to CPG or the Hong Kong Special Administrative Region ("HKSAR"). The Administration should explain to members the justifications for adapting Her Majesty to CPLA or CPG but not HKSAR in Cap. 84. Dr Margaret NG requested the Administration to provide a written response in this regard.

Admin

14. In response to Mr LAU Kong-wah's question, LA said that CPLA was an appropriate adaptation for Her Majesty in this context in accordance with section 2A(2)(c) of Cap.1. Nevertheless, it was doubtful whether the proposed adaptation had already comprised all types of ships intended for the exemption concerned. In his view, there could be doubt whether pilotage matters were affairs for which CPG had responsibility or concerned the relationship between the Central Authorities and the HKSAR as provided in section 1(b) and (c) of Schedule 8 of Cap. 1. The Administration should explain more clearly how the proposed adaptation followed these provisions.

Action

15. As regards the definition of Her Majesty's ships provided in section 38(2) of the Crown Proceedings Act 1947 of UK, LA said that he did not have sufficient information to comment on its applicability to Cap. 84. Dr Margaret NG requested the Administration to provide the relevant provisions of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) which was referred to in section 10D (1)(c) of Cap. 84 to facilitate members' better understanding of the provisions.

Admin

16. Dr Margaret NG requested the Administration to explain the reasons for exempting Her Majesty's ships from compulsory pilotage and clarify whether reflecting sovereignty was the legislative intent of the provision. She expressed concern that the adaptation proposed by the Administration had changed the legal effect as it had included ships other than warships. The Chairman, Ms Cyd HO and Dr Margaret NG said that from the sovereignty perspective, all ships belonging to CPLA or CPG should be exempted regardless of their usage. DS for S reiterated that, one important principle of the present adaptation exercise was that the provisions, when adapted, should have the same legal effect after its adaptation as before. She undertook to check with the policy bureau the legislative intent of the provision and revert to the Bills Committee.

Admin

Cap. 21 Defamation Ordinance

SCHEDULE

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I - STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

17. The Chairman and Dr Margaret NG expressed grave concern about the retention of the expression "any part of the Commonwealth" in the provisions. Dr Margaret NG pointed out that the application of the existing provisions was confined to places within the Commonwealth and the holding of court-martials were subject to certain Acts, but the proposed adaptation failed to adhere to the original intent of the provision which, to her, was unacceptable. DS for S explained that the scope of the current adaptation exercise should only include adaptation proposals of military-related references in the laws of Hong Kong. Hence, the Administration had not proposed to adapt non-military references such as "any part of the Commonwealth outside Hong Kong" in the current Bill. Principal Assistant Secretary for Security supplemented that the provision had not restricted court-martials had to be held within the Commonwealth. They could be held in any place outside Hong Kong.

Action

18. LA commented that there was no mentioning of court-martials in the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administration Region ("the Garrison Law"). Legally speaking, it is not clear whether the term "court-martials" could be regarded as the military judicial organs as stipulated in the Garrison Law.

Admin

19. The Chairman and Dr Margaret NG considered that Cap. 21 should be excluded from the adaptation of laws exercise as it would not be invoked in reality. LA suggested that the Administration might wish to consider providing an editorial note to address the problem of retaining the expression "any part of the Commonwealth" in the provisions as raised by Dr Margaret NG in paragraph 17 above. The Chairman requested the Administration to review the proposed adaptation having regard to the views of members and LA.

Cap. 53 Antiquities and Monuments Ordinance
Section 2 - Interpretation

Admin

20. At the request of Dr Margaret NG, LA explained the ownership of land after the Reunification. He said that according to Article 7 of the Basic Law, the land within HKSAR was State property and the HKSAR Government was responsible for its management, development and use, etc. He pointed out that the Chinese version of item (b) in the meaning of "private land" of section 2 connoted the inclusion of land occupied by bodies other than the Government, such as St. John's Cathedral which was freehold land. The Administration might need to review whether the proposed adaptation was appropriate. Mr LAU Kong-wah shared LA's view and asked the Administration to consider. DS for S explained that the intent of the provision was to ensure that the definition/coverage of "private land" would be sufficient to enable monuments/antiquities to be preserved and protected when certain statutory requirements had been fulfilled. Dr Margaret NG requested the Administration to provide a list setting out the provisions where the term "private land" appeared in the Ordinance concerned.

Admin

III. Any other business

Date of next meeting

21. Members noted that the next meeting would be held on 31 March 2011 at 10:45 am.

Action

22. The meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
31 March 2011

Time marker	Speaker	Subject(s)	Action required
003441 - 004648	Chairman Mr LAU Kong-wah Admin LA	Mr LAU Kong-wah's enquiry and LA's comments on the appropriateness of the proposed adaptation. The Administration was requested to provide the justifications for adapting Her Majesty to CPLA or CPG but not HKSAR in Cap. 84.	Admin
004649 - 010124	Chairman Dr Margaret NG LA Admin	Dr Margaret NG and LA's views on the applicability of section 38(2) of the Crown Proceedings Act 1947 of UK to Cap. 84. Dr Margaret NG's comments on exempting all ships belonging to CPLA or CPG from compulsory pilotage from the sovereignty perspective. The Administration was requested to - (a) provide the relevant provisions of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) referred to in section 10D(1)(c) of Cap. 84; (b) provide the reasons for exempting Her Majesty's ships from compulsory pilotage; (c) clarify whether reflecting sovereignty was the legislative intent of the provision; and (d) provide detailed information on the four CPG ships which had visited Hong Kong after the Reunification and the purposes of their visits.	Admin
011125 - 011507	Chairman Ms Cyd HO Admin	Ms Cyd HO's suggestion to replace "used only on non-commercial service" by "used only on defence purpose". The Chairman and Ms Cyd HO's comments on exempting all ships belonging to CPLA or CPG from compulsory pilotage from the sovereignty perspective.	
011508 - 012809	Chairman Dr Margaret NG Admin LA	<u>Cap. 21 Defamation Ordinance</u> <u>SCHEDULE</u> <u>NEWSPAPER STATEMENTS HAVING</u> <u>QUALIFIED PRIVILEGE</u> <u>PART I - STATEMENTS PRIVILEGED WITHOUT</u> <u>EXPLANATION OR CONTRADICTION</u> The Chairman and Dr Margaret NG's grave concern about the retention of the expression "any part of the Commonwealth" in the provisions. The Administration's explanation that the scope of the current adaptation exercise should include only adaptation proposals of military-related references and thus the non-military references such as "any part of the Commonwealth outside Hong Kong" should not be	

Time marker	Speaker	Subject(s)	Action required
		<p>adapted.</p> <p>LA's comments on the absence of mentioning of court-martials in the Garrison Law and whether court-martials could be regarded as the military judicial organs as stipulated in the Garrison Law.</p>	
012810-014756	<p>Chairman Dr Margaret NG Admin LA</p>	<p>The Chairman and Dr Margaret NG's views on excluding Cap. 21 from the adaptation of laws exercise.</p> <p>LA's suggestion for the Administration to consider using editorial notes to address problems raised by Dr Margaret NG.</p> <p>The Administration was requested to review the proposed adaptation having regard to the views of members and LA.</p>	<p>Admin</p> <p>Admin</p>
014757 - 015754	<p>Chairman Dr Margaret NG Admin LA Mr LAU Kong-wah</p>	<p><u>Cap. 53 Antiquities and Monuments Ordinance Section 2 Interpretation</u></p> <p>Definition of "private land" in Cap. 53.</p> <p>Ownership of land in Hong Kong after the Reunification.</p> <p>The Administration was requested to -</p> <p>(a) review whether the proposed adaptation was appropriate; and</p> <p>(b) provide a list setting out the provisions where the term "private land" appeared in the Ordinance concerned.</p>	<p>Admin</p>
015755 - 015857	<p>Chairman</p>	<p>Date of next meeting</p>	