

**Legislative Council Bills Committee on  
Adaptation of Laws (Military References) Bill 2010  
Follow-up to the Second Meeting on 14 December 2010**

**Purpose**

At the second meeting of the Bills Committee on Adaptation of Laws (Military References) Bill 2010 (“the Adaptation Bill”) held on 14 December 2010, the Bills Committee requested the Administration to provide additional background information. This paper sets out the Administration’s response to the request made by the Bills Committee.

**Law of the People’s Republic of China on the Garrisoning of the Hong Kong Special Administrative Region**

2. The Law of the People’s Republic of China on the Garrisoning of the Hong Kong Special Administrative Region (“the Garrison Law”) was adopted at the 23rd Meeting of the Standing Committee of the Eighth National People’s Congress on 30 December 1996, and promulgated by Order No. 80 of the President of the People’s Republic of China and Legal Notice No. 386 of 1997 of the Chief Executive to take effect in the Hong Kong Special Administrative Region (“the HKSAR”) as of 1 July 1997. A copy of the Garrison Law is set out at **Annex A**.

**Status and Background Information Relating to the Hong Kong Garrison**

3. The Hong Kong Garrison is the military forces stationed by the Central People’s Government (“the CPG”) in the HKSAR for defence purposes. It comprises units from the Army, the Navy and the Air Force of the Chinese People’s Liberation Army (“the PLA”). At present, deployment of the Hong Kong Garrison includes infantry, naval and air units, as well as support elements such as signal stations, hospitals and repair workshops, and is under the overall command of the Commander of the Hong Kong Garrison. Members of the Hong Kong Garrison refer to those who, for the time being, are serving in the Hong Kong Garrison in accordance with the Garrison Law. All members of the Garrison are active servicemen of the Chinese PLA. The Hong Kong Garrison

practises a system of regular rotation of its members, normally on an annual basis.

4. Regarding the status, role, rights and obligations of the Hong Kong Garrison, the Constitution of the People's Republic of China ("the PRC"), the Basic Law and the Garrison Law have provided clear stipulations. The relevant provisions are set out at **Annex B**.

5. Pursuant to section 2(4) of the Immigration Ordinance (Cap. 115), "For the purposes of this Ordinance, a person shall not be treated as ordinarily resident in Hong Kong –

(a) during any period in which he remains in Hong Kong –

(i) .....

..... ;

(viii) as a member of the Hong Kong Garrison;".

In accordance with the Immigration Ordinance, any member of the Hong Kong Garrison who is stationed in Hong Kong is not treated as ordinarily resident in Hong Kong and hence not eligible for applying to become a Hong Kong permanent resident.

### **Status and Background Information of the Former British Forces Stationed in Hong Kong before the Reunification**

6. As we understand, the former British Forces stationed in Hong Kong before the Reunification consisted of units from the Royal Navy, the Army (including infantry battalions, engineer , signals and logistics support units, etc.), the Royal Air Force, medical units and the Hong Kong Military Service Corps, etc. The former British Forces stationed in Hong Kong was under the command of the Commander, British Forces. A list of the rights and obligations enjoyed by the former British Forces stationed in Hong Kong under the laws of Hong Kong is set out at **Annex C**.

7. The former British Forces stationed in Hong Kong also practised a system of rotation and British personnel generally served in Hong Kong for about two to three years. Under the British Nationality Act 1981, British Dependent Territories citizenship can be acquired by birth, descent,

registration or naturalisation. However, members of the former British Forces stationed in Hong Kong could not become British Dependent Territories citizens by virtue of their military services in Hong Kong. In accordance with the then immigration legislation (relevant provisions at **Annex D**) which provided for the status of a permanent resident in Hong Kong, “any person who is a British Dependent Territories Citizens and who belongs to a class or description of persons specified in Article 2 of the Hong Kong (British Nationality) Order 1986 as having a connection with Hong Kong” would be eligible for becoming a Hong Kong permanent resident. As Article 2 of the Hong Kong (British Nationality) Order 1986 did not stipulate that members of the former British Forces stationed in Hong Kong as having a connection with Hong Kong, members of the former British Forces stationed in Hong Kong were not eligible for applying to become Hong Kong permanent residents before the Reunification.

### **Proposals in respect of the Interpretation and General Clauses Ordinance**

8. As stated in our December 2010 paper to the Bills Committee, the addition of the four definitions to section 3 of Interpretation and General Clauses Ordinance (Cap.1) (i.e. obviating the need to repeat the relevant definitions in various Ordinances) would make law drafting more effective, and make the contents of the proposed adaptation amendments more straight forward and clear. Nevertheless, having regard to the views of individual Members, we are consulting the Department of Justice again on the drafting, and would further examine the feasibility of various options and their impact, if any, on the existing legislation. Apart from the relevant provisions in the Adaptation Bill, these four definitions also appear in seven existing Ordinances through 11 different provisions, details of which are set out at **Annex E** for Members’ reference.

**Security Bureau**  
**January 2011**

(English Translation)

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON THE GARRISONING  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(Adopted at the 23rd Meeting of the Standing Committee of the Eighth National People's Congress on December 30, 1996, promulgated by Order No. 80 of the President of the People's Republic of China on December 30, 1996, and effective as of July 1, 1997)

Contents

Chapter I	General Provisions
Chapter II	Functions and Responsibilities of the Hong Kong Garrison
Chapter III	Relationship between the Hong Kong Garrison and the Government of the Hong Kong Special Administrative Region
Chapter IV	Obligations of and Discipline for Members of the Hong Kong Garrison
Chapter V	Judicial Jurisdiction over Members of the Hong Kong Garrison
Chapter VI	Supplementary Provisions

Chapter I      General Provisions

Article 1 This Law is enacted in accordance with the Constitution and the Basic Law of the Hong Kong Special Administrative Region to ensure the lawful performance of functions and responsibilities by the military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence, and to maintain the sovereignty, unity and territorial integrity of the State and the security of Hong Kong.

Article 2 The military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall be composed of forces from the Army, the Navy and the Air Force of the Chinese People's Liberation Army, and be designated as the Hong Kong Garrison of the Chinese People's Liberation Army (hereinafter referred to as the Hong Kong Garrison).

Article 3 The Hong Kong Garrison shall be subject to the direction of the Central Military Commission of the People's Republic of China. The number of its members shall be determined according to the need for the defence of the Hong Kong Special Administrative Region.

The Hong Kong Garrison shall practise a system of rotation of its members.

Article 4 Expenditure for the Hong Kong Garrison shall be borne by the Central People's Government.

Chapter II      Functions and Responsibilities of the Hong Kong Garrison

Article 5 The Hong Kong Garrison shall perform the following defence functions and responsibilities:

- (1) preparing against and resisting aggression, and safeguarding the security of the Hong Kong Special Administrative Region;
- (2) carrying out defence duties;
- (3) controlling military facilities, and
- (4) handling foreign-related military affairs.

Article 6 In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the Government of the Region, decides that the Region is in a state of emergency, the Hong Kong Garrison shall perform its duties in accordance with the provisions of the national laws that the





Hong Kong residents or other persons not of the Hong Kong Garrison involved as defendants in the criminal cases of members of the Hong Kong Garrison under the jurisdiction of the military judicial organs shall be tried by the courts of the Hong Kong Special Administrative Region.

Article 21 Any person who is lawfully arrested as a suspected offender by law-enforcing officers of the Hong Kong Special Administrative Region, once confirmed upon investigation to be a member of the Hong Kong Garrison, shall be handed over to the Hong Kong Garrison for custody. Jurisdiction over the case involving the person in custody shall be determined in accordance with the provisions in Article 20 of this Law.

Article 22 Any member of the Hong Kong Garrison sentenced by a court of the Hong Kong Special Administrative Region to criminal punishment which deprives him of or restricts his personal freedom shall be delivered for sentence enforcement according to the provisions of the laws of the Hong Kong Special Administrative Region, except for the case in which the place of sentence enforcement is determined otherwise by a relevant law-enforcing organ of the Hong Kong Special Administrative Region and the military judicial organ through consultation.

Article 23 Where any member of the Hong Kong Garrison, in contravention of the laws of the Hong Kong Special Administrative Region, infringes the civil rights of any Hong Kong resident or other person not of the Hong Kong Garrison, the parties concerned may seek settlement through consultation or mediation, if they are unwilling or fail to reach settlement through consultation or mediation, the infringed party may bring an action in the court. Cases of tort arising from acts committed by members of the Hong Kong Garrison when not performing their official duties shall be subject to the jurisdiction of the courts of the Hong Kong Special Administrative Region; cases of tort arising from acts committed by members of the Hong Kong Garrison when performing their official duties shall be subject to the jurisdiction of the Supreme People's Court of the People's Republic of China, and compensation for any loss or injury incurred by acts of tort shall be governed by the laws of the Hong Kong Special Administrative Region .

Article 24 Where any contractual dispute arises within the Hong Kong Special Administrative Region between any organ or unit of the Hong Kong Garrison and any Hong Kong resident or other person not of the Hong Kong Garrison, the parties concerned may settle their dispute through consultation or mediation; if the parties are unwilling or fail to reach settlement through consultation or mediation, they may submit the dispute to the arbitration agency for arbitration in accordance with the arbitration clause contained in the contract or with a written arbitration agreement reached by the parties afterwards. If no arbitration clause is contained in the contract and no written arbitration agreement is reached afterwards, the parties may institute proceedings in a court of the Hong Kong Special Administrative Region, except that the parties agree otherwise as to the court for instituting proceedings.

Article 25 Certificates issued by the Hong Kong Garrison regarding facts such as identity of membership of the Hong Kong Garrison and acts in performance of official duties shall be valid evidence in proceedings in the courts of the Hong Kong Special Administrative Region, unless the contrary is proved.

Article 26 Acts of State, such as actions for defence taken by the Hong Kong Garrison, shall not be subject to the jurisdiction of the courts of the Hong Kong Special Administrative Region.

Article 27 Organs or units of the Hong Kong Garrison shall comply with the judgments or orders issued by the courts of the Hong Kong Special Administrative Region concerning arrangement of their property; but the said courts shall not enforce judgments or orders on any weapon, equipment, material or other property of the Hong Kong Garrison.

Article 28 The military judicial organs may, through consultation, maintain juridical relations with the courts and the relevant law-enforcing organs of the Hong Kong Special Administrative Region, and they may render assistance to each other.

#### Chapter VI Supplementary Provisions

Article 29 The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

Article 30 This Law shall come into force as of July 1, 1997.

**Adaptation of Laws (Military References) Bill 2010**

**Relevant Provisions Relating to the Status, Role, Rights, and  
Obligation of the Hong Kong Garrison**

<b>Law</b>	<b>Provisions (Excerpts)</b>
Constitution of the People's Republic of China	<ul style="list-style-type: none"><li data-bbox="703 577 1436 745">▪ <u>Article 93</u>: “The Central Military Commission of the People's Republic of China directs the armed forces of the country”; and</li><li data-bbox="703 790 1436 958">▪ <u>Article 94</u>: “The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee”.</li></ul>
Basic Law	<ul style="list-style-type: none"><li data-bbox="703 1041 1436 1933">▪ <u>Article 14</u>: “The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region. The Government of the Hong Kong Special Administrative Region shall be responsible for the maintenance of public order in the Region. Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief. In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region.</li></ul>

<b>Law</b>	<b>Provisions (Excerpts)</b>
	<ul style="list-style-type: none"><li>▪ <u>Article 18</u>: “In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.”</li></ul>
Garrison Law	<ul style="list-style-type: none"><li>▪ <u>Chapter I</u>: General Provisions Articles 1 to 4 (Please refer to the Garrison Law as set out at Annex A for the specific provisions.)</li><li>▪ <u>Chapter II</u>: Functions and Responsibilities of the Hong Kong Garrison; Articles 5 to 8 (Please refer to the Garrison Law as set out at Annex A for the specific provisions.)</li><li>▪ <u>Chapter III</u>: Relationship between the Hong Kong Garrison and the Government of the Hong Kong Special Administrative Region. Articles 9 to 15 (Please refer to the Garrison Law as set out at Annex A for the specific provisions.)</li><li>▪ <u>Chapter IV</u>: Obligations of and Discipline for Members of the Hong Kong Garrison.</li></ul>

**Annex B**

<b>Law</b>	<b>Provisions (Excerpts)</b>
	Articles 16 to 19 (Please refer to the Garrison Law as set out at Annex A for the specific provisions.)

**Adaptation of Laws (Military Reference) Bill 2010**

**The Rights and Obligations Enjoyed by the  
Former British Forces Stationed in Hong Kong  
before the Reunification under Laws of Hong Kong**

- (a) Powers – a few provisions conferred enforcement powers on members of the former British Forces. For example, they might arrest any person whom they reasonably suspected of being illegal immigrants (Immigration Ordinance), they had the same powers, protection and immunity as police officers when acting in aid of the civil power (Public Order Ordinance), and they might board a ship without the permission of the owner, agent or master (Shipping and Port Control Ordinance). These powers were generally available to members of the British Forces stationed in Hong Kong only when they were on duty and in support of the civil power, and they were required to hand over the persons arrested or the vessel as soon as practicable to the police or immigration officers.
- (b) Exemptions from access controls – there were provisions exempting the former British Forces from restrictions on access to certain areas and from certain parking and traffic related restrictions. Such provisions included the Public Order Ordinance (in respect of closed areas), Hong Kong Airport (Regulations) Ordinance (restricted areas of the airport), Kowloon Canton Railway Corporation Ordinance (restricted areas of the KCR), and subsidiary legislation under the Road Traffic Ordinance and the Housing Ordinance (parking restrictions). These exemptions generally applied when members of the former British Forces were on duty and some had a requirement that they should be on urgent business before the restrictions in question no longer apply to them.
- (c) Exemptions concerning firearms and weapons – members of the former British Forces in their capacity as such were exempt from

the licensing requirements on the possession of, and dealing in, firearms and ammunition under the Firearms and Ammunition Ordinance, and from the restrictions on prohibited weapons under the Weapons Ordinance. The prohibition under the Public Order Ordinance on the possession of offensive weapons at public meetings did not apply to members of the former British Forces stationed in Hong Kong who were on duty. The Defences (Firing Areas) Ordinance prescribed areas in which firing could take place, the procedures to be followed by the former British Forces stationed in Hong Kong and the safety measures to be taken.

- (d) Elections and jury service – under the Electoral Provisions Ordinance, members of the former British Forces stationed in Hong Kong were disqualified from registering as electors or voting in elections for the former Legislative Council, the Municipal Councils and the District Boards. They were exempt under the Jury Ordinance from service as jurors.
- (e) Taxes, rates and tolls – British Forces salaries and pension were excluded in computing income for the purpose of Hong Kong salaries tax under the Inland Revenue Ordinance (but their members were subject to United Kingdom taxes). The Rating Ordinance exempted military land from assessment for rates. Like other law enforcement and emergency services, the former British Forces stationed in Hong Kong was not exempt from the payment of tunnel tolls unless its members were carrying out official duties within the tunnel areas.
- (f) Qualifications – British military dentists and medical officers were deemed to be registered dentists and medical practitioners under the Dentists Registration Ordinance and Medical Registration Ordinance respectively. Under the Army and Royal Air Force (RAF) Legal Services Ordinance, commissioned officers of the Army or RAF Legal Services might act as solicitors for persons having a relevant association with former British Forces in criminal proceedings without obtaining a qualification under the Legal Practitioners Ordinance.

- (g) Immigration controls – under the Immigration Ordinance, serving members of the former British Forces who were not locally engaged might land in Hong Kong without the permission of an immigration officer or assistant. However, any person who was not found to have with him proof of identity (which includes documentary proof of identity officially issued to British servicemen) might be examined by immigration officer or assistant to determine if the person had landed in Hong Kong lawfully.
- (h) Other exemptions and privileges –
- (i) the powers of law enforcement agencies to stop, board and search vessels and aircraft under a wide range of ordinances did not apply to warships and military aircraft (including those of the United Kingdom).
  - (ii) Military canteens were exempt from control under the Public Health and Municipal Services Ordinance.
  - (iii) The former British Forces were exempt from certain building or utility related controls under the Buildings Ordinance, Lifts and Escalators (Safety) Ordinance, and the Electricity Ordinance.
  - (iv) The Medical Clinics Ordinance exempted the registration, control and inspection of medical clinics maintained or controlled by the former British Forces stationed in Hong Kong. Hospitals, nursing homes and maternity homes maintained by the former British Forces stationed in Hong Kong were also exempted from registration and inspection under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance.

However, it was the policy of the United Kingdom Ministry of Defence that the relevant United Kingdom legislation or the Hong Kong legislation should be complied with, whichever was the most stringent body of legislation.

**Adaptation of Laws (Military References) Bill 2010**

**Extract of the then immigration legislation**

“2. Any person who is a British Dependent Territories citizen and who-

(a) belongs to a class or description of persons specified in Article 2 of the Hong Kong (British Nationality) Order 1986 (L.N. 233 of 1986) as having a connection with Hong Kong; or”

Note: The then immigration legislation provided the various conditions which satisfied the status of a permanent resident in Hong Kong.

**Adaptation of Laws (Military References) Bill 2010**

**The list of existing ordinances and provisions that contained the four proposed definitions to be added to Section 3 of the Interpretation and General Clauses Ordinance (Cap.1)**

**(excluding the references included in the Adaptation of Laws (Military References) Bill 2010)**

<b>Terms proposed to be added to Section 3 of Cap.1</b>	<b>Existing Ordinance</b>	<b>Existing Provision</b>
Commander of the Hong Kong Garrison	Nil	Nil
Hong Kong Garrison	Immigration Ordinance (Cap. 115)	<ul style="list-style-type: none"><li>• s.2(4)(a)(viii): For the purposes of this Ordinance, a person shall not be treated as ordinarily resident in Hong Kong- (a) during any period in which he remains in Hong Kong- (viii) as a member of the Hong Kong Garrison</li></ul>
	Shipping and Port Control Regulations (Cap. 313A)	<ul style="list-style-type: none"><li>• regulation 24(1): Except with the permission of the Hong Kong Garrison, no vessel shall enter or navigate within the Ngong Shuen Chau Naval Basin area specified in paragraph 17 of the Fifth Schedule.</li><li>• regulation 41(2)(k): in a naval anchorage except with the permission of the Hong Kong Garrison.</li></ul>

<b>Terms proposed to be added to Section 3 of Cap.1</b>	<b>Existing Ordinance</b>	<b>Existing Provision</b>
	Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E)	<ul style="list-style-type: none"> <li>• regulation 11(5): The following registration marks are reserved for assignment to vehicles of the Hong Kong Garrison</li> <li>• regulation 12F(2)(c)(i): the Hong Kong Garrison or any office set up by the Central People’s Government in Hong Kong</li> </ul>
	Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F)	<ul style="list-style-type: none"> <li>• s.16: Except with the permission of the Hong Kong Garrison, a local vessel shall not enter the Ngong Shuen Chau Naval Basin Area specified in paragraph 17 of the Fifth Schedule to the SAPCR.</li> <li>• s.22(2)(k): in a naval anchorage, except with the permission of the Hong Kong Garrison.</li> <li>• s.23(2)(b): a local vessel used by the Hong Kong Garrison in connection with the performance of official duties</li> </ul>
	Prevention and Control of Disease Regulation (Cap. 599A)	<ul style="list-style-type: none"> <li>• s.2: “military hospital” (軍方醫院) means a hospital of the Hong Kong Garrison</li> </ul>

<b>Terms proposed to be added to Section 3 of Cap.1</b>	<b>Existing Ordinance</b>	<b>Existing Provision</b>
Member of the Hong Kong Garrison	Immigration Ordinance (Cap. 115)	<ul style="list-style-type: none"> <li>• s.2(4)(a)(viii): For the purposes of this Ordinance, a person shall not be treated as ordinarily resident in Hong Kong- (a) during any period in which he remains in Hong Kong- (viii) as a member of the Hong Kong Garrison</li> </ul>
Military Hospital	Prevention and Control of Disease Regulation (Cap. 599A)	<ul style="list-style-type: none"> <li>• s.2: “military hospital” (軍方醫院) means a hospital of the Hong Kong Garrison</li> </ul>