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GOVERNMENT SECRETARIAT

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8 April 2011

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Mrs Sharon Tong
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road

Dear Mrs Tong,

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

**Response to the follow-up actions
of the meeting on 10 February 2011**

At the fourth meeting of the Bills Committee on Adaptation of Laws (Military References) Bill 2010 ("the Adaptation Bill") on 10 February 2011, the Bills Committee requested the Administration to provide supplementary information on Sections 1 to 3 of the Adaptation Bill, i.e. Interpretation and General Clauses Ordinance, Jury Ordinance and the Probate and Administration Ordinance. In this connection, we have set out our response at the Annex. I should be grateful if you could forward the information to Members for their reference.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Janet Ho', written in a cursive style.

(Janet Ho)
for Secretary for Security

Adaptation of Laws (Military References) Bill 2010

Response to the follow-up actions of the meeting on 10 February 2011

Follow-up Action	Response
<p>▪ A member would like to know the circumstances under which members of the Chinese People’s Liberation Army would become “member of the Hong Kong Garrison”, and suggested taking away the reference “for the time being serving with” therein. (Section 2 of Schedule 1 of the Adaptation of Laws (Military References) Bill (“the Adaptation Bill”)/ Section 3 of the Interpretation and General Clauses Ordinance (Cap.1))</p> <p>[Paragraph 14 of the minutes refers.]</p>	<p>▪ Only those members included in the establishment of the Hong Kong Garrison would be regarded as “member of the Hong Kong Garrison”. In other words, those members serving in other military regions of the Chinese People’s Liberation Army would not be categorised under the proposed definition of “member of the Hong Kong Garrison”.</p> <p>▪ The Adaptation Bill aims to ensure that members of the Hong Kong Garrison, like members of the Former British Garrison, will enjoy the exemptions in the laws when they carry out the defence-related duties in Hong Kong. It is therefore necessary to retain the relevant reference of “for the time being serving with” to clearly indicate that they would enjoy exemptions in the laws of Hong Kong only when they are performing defence-related duties in Hong Kong.</p>
<p>▪ On the definition of “Commander of the Hong Kong Garrison”, a member would like to seek further information on the scope of “for the time being in command of the Hong Kong Garrison”. (Section 1 of Schedule 1 of the Adaptation</p>	<p>▪ The Hong Kong Garrison is subject to the direction of the Central Military Commission of the People’s Republic of China, and the Commander of the Hong Kong Garrison is responsible for commanding the defence duties of the Hong Kong Garrison. “Commander of the Hong Kong</p>

Follow-up Action	Response
<p>Bill/Section 3 of the Interpretation and General Clauses Ordinance (Cap.1))</p> <p>[Paragraph 17 of the minutes of the meeting refers.]</p>	<p>Garrison” only refers to the Commander who is in command of the Hong Kong Garrison in performing its defence duties in Hong Kong, and should not be confused with the Central Military Commission of the Chinese People’s Liberation Army or military officers of other military regions.</p> <ul style="list-style-type: none"> ▪ The Adaptation Bill aims to ensure that the arrangement after the Reunification is in line with that before the Reunification, i.e. the Commander of the Hong Kong Garrison enjoys exemptions in the laws only when he carries out the defence-related duties in Hong Kong. It is therefore necessary to retain the reference “for the time being in command of the Hong Kong Garrison” to clearly indicate that he would enjoy exemptions in the laws of Hong Kong only when he is performing defence-related duties in Hong Kong.
<ul style="list-style-type: none"> ▪ A member would like to know whether the Chief Executive was aware of the size of the Hong Kong Garrison. (Section 1 of Schedule 1 of the Adaptation Bill/ Section 3 of the Interpretation and General Clauses Ordinance (Cap.1)) <p>[Paragraph 18 of the minutes of the meeting refers.]</p>	<ul style="list-style-type: none"> ▪ The Chief Executive’s Office indicates that the Chief Executive has regular meetings and exchanges with the Hong Kong Garrison. The Chief Executive is also aware that the Hong Kong Garrison has earlier provided response to the enquiry on the size of the Hong Kong Garrison to the Bills Committee (vide LC Paper No. CB(2)944/10-11(02) on the response to the follow-up actions of the 18 January 2011

Follow-up Action	Response
	<p>meeting.), indicating that the number of its members is determined according to the defence needs of the Hong Kong Special Administrative Region, and as the size of the Hong Kong Garrison is a defence matter and involves military information, it is therefore considered not appropriate to provide such information. The Chief Executive's Office has nothing further to add to the reply of the Hong Kong Garrison.</p>
<ul style="list-style-type: none"> ▪ Some members would like to seek further information on the operation of the Jury Ordinance, including the implementation of the relevant sections before the Reunification, the implementation of exemption from jury service, whether the trial results would be affected if those who are exempted from service serve as jurors, and the scope of sections (5)(1)(j) and (p). (Section 2 of Schedule 1 of the Adaptation Bill/ Sections (5)(1)(j) & (p) of the Jury Ordinance (Cap.3)) <p>[Paragraph 23-28 of the minutes of the meeting refers.]</p>	<ul style="list-style-type: none"> ▪ The Jury Ordinance came into operation as early as 1887. The relevant bureau/department has confirmed that the Ordinance exempted members of the former British Forces (irrespective of rank) and their spouses from service as jurors before the Reunification. In this connection, the Adaptation Bill correspondingly proposes the exemption from service as jurors to be applied to members of the Chinese People's Liberation Army (irrespective of rank) and their spouses, in order to ensure the arrangement after the Reunification is in line with that before the Reunification. ▪ According to section 6 of the Jury Ordinance, even if a person who is exempt from service eventually serves as a juror, such status shall not be accepted as a ground for impeaching any verdict given by the jury on which such person has served,

Follow-up Action	Response
	<p>nor affect the judgement of the case.</p> <ul style="list-style-type: none"> ▪ Regarding the other enquiry on whether the reference “officers” in section (5)(1)(j) should be interpreted as only Officers could enjoy the exemption, and whether the reference “members” in section (5)(1)(p) should be interpreted as both Officers and non-Officers, as the Ordinance has been in operation since 1887, the relevant bureau/department has confirmed that they have no document, and cannot find any document, showing the legislative background of the legislation. That said, noting the reference of “members” appears in the Chinese version in both sections, the relevant bureau/department has also confirmed that they have all along been providing exemption to members of the former British Garrison (irrespective of rank) and their spouses since operation, and members of the former British Forces and their spouses were not included in the list of jurors. Therefore, it is proposed that such exemption should be applied to members of the Chinese People’s Liberation Army after the Reunification.
<ul style="list-style-type: none"> ▪ A member enquired whether the adaptation proposal from “any Act” to “any law” is appropriate, and whether the adaptation proposal would 	<ul style="list-style-type: none"> ▪ According to Schedule 9 of the Interpretation and General Clauses Ordinance (Cap.1), “British enactment, imperial enactment” are interpreted as

Follow-up Action	Response
<p>expand the scope of the Ordinance. (Section 3 of Schedule 1 of the Adaptation Bill/Section 17 of the Probate and Administration Ordinance (Cap.10))</p> <p>[Paragraph 35 of the minutes of meeting refers.]</p>	<p>one of the followings-</p> <p>(a) any Act of Parliament;</p> <p>(b) any Order in Council;</p> <p>(c) any rule, regulation, proclamation, order, notice, rule of court, by-law, or other instrument made under or by virtue of any such Act or Order in Council.</p> <ul style="list-style-type: none"> ▪ At the same time, section 5 of Schedule 9 stipulates the “references to subsidiary legislation under British enactment”, which says- <ul style="list-style-type: none"> - “A reference in any law to any British enactment shall include a reference to any Order in Council, rule, regulation, proclamation, order, notice, rule of court, by-law or other instrument made under or by virtue thereof and having legislative effect.” ▪ Regarding the reference of “any Act” in the Ordinance, apart from referring to the Act passed by the Parliament of the United Kingdom, it can also be generally understood as the rule, regulation, rule of court by virtue of any such Act or Order in Council, etc., it is therefore proposed to be adapted as “any law of the Mainland”.