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GOVERNMENT SECRETARIAT
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本函檔號 OUR REF.: SBCR 4/1162/97 Pt. 27

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18 May 2011

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

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 and 28 February**

At the fourth and fifth meeting of the Bills Committee on Adaptation of Laws (Military References) Bill 2010 ("the Adaptation Bill") on 10 and 28 February, the Bills Committee requested the Administration to provide supplementary information on Sections 4, 5 and 8 of Schedule 1 to the Adaptation Bill, i.e. Defamation Ordinance, Antiquities and Monuments Ordinance and Pilotage Ordinance. Our response is set out in the attached note for Members' reference.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "David Lau".

(David LAU)
for Secretary for Security

Adaptation of Laws (Military References) Bill 2010

**Response to the Follow-up Actions of the
Meetings on 10 February 2011 and 28 February 2011**

Follow-up actions	Response
Section 8 of Schedule 1 to the Adaptation Bill / Section 10D of the Pilotage Ordinance (Cap. 84)	
<ul style="list-style-type: none">▪ A member requested the Administration to explain in detail the operation of the exemption from compulsory pilotage under the Pilotage Ordinance. <p>[See paragraph 36 of the minutes of the meeting on 10 February 2011 (LC Paper No. CB(2)1354/10-11) for details.]</p> <ul style="list-style-type: none">▪ A member would like to understand the implementation of the exemption under the Pilotage Ordinance after the Reunification, including the details of the Central People's Government (CPG) ships that had visited Hong Kong. <p>[See paragraph 8 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]</p>	<ul style="list-style-type: none">▪ After the Reunification, ships belonging to the Chinese People's Liberation Army or the CPG which call on Hong Kong for non-commercial purposes are exempted from compulsory pilotage in accordance with Section 10D of the Pilotage Ordinance.▪ Information of the four CPG ships that visited Hong Kong after the Reunification is set out at <u>Appendix 1</u> in detail.
<ul style="list-style-type: none">▪ A member would like to understand further Marine Department's criteria in granting exemption from compulsory pilotage, i.e.	<ul style="list-style-type: none">▪ The Marine Department will take into account the nature and type of a ship as well as its purpose of visiting Hong Kong in determining whether the

Follow-up actions	Response
<p>whether it would be based on the usage of the ships or the purpose of visiting Hong Kong, and requested the Administration to provide information on cases requiring advice from the Department of Justice and the details of the advice, if any.</p> <p>[See paragraph 10 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]</p>	<p>exemption from compulsory pilotage is applicable.</p> <ul style="list-style-type: none"> ▪ Regarding the CPG ships that visited Hong Kong after the Reunification, the purposes were mainly for duty visit, and educational promotion. The ships were opened to the public during their visits to Hong Kong. The purposes of the four CPG ships that visited Hong Kong after the Reunification are also set out at <u>Appendix 1</u>. ▪ The cases concerned do not require solicitation of legal advice.
<ul style="list-style-type: none"> ▪ Some Members requested the Administration to consider adapting the reference of “Her Majesty” in the Pilotage Ordinance to the “Hong Kong Special Administrative Region”, and amending or removing the proposed reference of “used only on non-commercial service”. <p>[See paragraphs 11-13 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]</p>	<ul style="list-style-type: none"> ▪ The adaptation proposals as set out in the Adaptation Bill in respect of the Pilotage Ordinance aim to clearly reflect the implementation of the relevant provisions all along, and to ensure that the legal effect of the provisions will not be affected as a result of adaptation. The present adaptation proposals have neither enhanced nor narrowed the application of the provisions. ▪ Nevertheless, having regard to the views of individual members, we are consulting the relevant bureau and department again on the references and

Follow-up actions	Response
	further examining the feasibility of the different suggestions.
<ul style="list-style-type: none"> A Member requested the Administration to provide the relevant provisions of the Merchant Shipping (Local Vessels) Ordinance which was referred to in section 10D(1)(c) of the Pilotage Ordinance for reference. <p>[See paragraph 15 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]</p>	<ul style="list-style-type: none"> The relevant provisions are at <u>Appendix 2</u>.
<ul style="list-style-type: none"> A Member would like to understand the legislative intent of exempting Her Majesty's ships from pilotage requirements before the Reunification. <p>[See paragraph 16 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]</p>	<ul style="list-style-type: none"> The Administration drafted the relevant bill on compulsory pilotage in 1984 with reference to relevant legislation on pilotage in the United Kingdom at that time (section 31(3) of the Pilotage Act 1983) (See <u>Appendix 3</u>), which provided exemption to "Her Majesty's ships" from compulsory pilotage in accordance with the actual implementation of the Act at that time.
Section 4 of Schedule 1 to the Adaptation Bill, Schedule to the Defamation Ordinance (Cap. 21)	
<ul style="list-style-type: none"> Suggested the Administration providing an editorial note in the legislation, stating that some references in the provisions still require adaptation. 	<ul style="list-style-type: none"> We have reflected the view to the Department of Justice. It is considered that such editorial note falls outside the scope of the Adaptation Bill, and is therefore not suggested to be

Follow-up actions	Response
[See paragraph 19 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]	added.
Section 5 of Schedule 1 to the Adaptation Bill, Section 2 of the Antiquities and Monuments Ordinance (Cap. 53)	
<ul style="list-style-type: none"> ▪ A member requested the Administration to list out the provisions in the Antiquities and Monuments Ordinance where the term "private land" appeared. <p>[See paragraph 20 of the minutes of the meeting on 28 February 2011 (LC Paper No. CB(2)1422/10-11) for details.]</p>	<ul style="list-style-type: none"> ▪ The term "private land" appears in sections 2, 2A, 2B, 2C, 3, 4, 14 and 22 respectively. The provisions concerned are set out in <u>Appendix 4</u> for Members' reference.

**Adaptation of Laws (Military References) Bill 2010
Response to the Follow-up Actions of the**

Meetings on 10 February 2011 and 28 February 2011

**Section 8 of Schedule 1 to the Adaptation Bill /
Section 10D of the Pilotage Ordinance (Cap. 84)**

**The ships of Central People's Government that visited Hong Kong for
non-commercial purpose after the Reunification**

	Ship Name	Date of visiting Hong Kong	Ship Type	Purpose of the Visit
1.	Xue Long	29-31 October 2004	Icebreaker and research ship for arctic expeditions	Educational promotion
2.	Hai Xun 31	(i) 20-22 April 2005 (ii) 29-31 October 2008	Patrol ship of Maritime Safety Administration of the People's Republic of China	Marine search and rescue exercise
3.	Da Yang Yi Hao	10-14 August 2007	Maritime science expedition ship	Invitation from the University of Hong Kong Science and Technology for educational promotion purposes
4.	Yuan Wang Liu Hao	29 April to 4 May 2009	National space tracking ship	Duty visit

Chapter: 84	Title:	PILOTAGE ORDINANCE	Gazette Number:	L.N. 282 of 2006
Section: 10D	Heading:	Exemption from compulsory pilotage	Version Date:	02/01/2007

(1) The following ships shall be exempted from compulsory pilotage-

- (a) ships belonging to Her Majesty;
- (b) ships for the time being used by the Government;
- (c) local vessels within the meaning of the Merchant Shipping (Local Vessels) Ordinance (Cap 548) other than-
 - (i) vessels regularly employed in trading to or from Hong Kong;
 - (ii) any vessel referred to in paragraph (e) of the definition of "local vessel" in section 2 of that Ordinance. (Replaced 43 of 1999 s. 91)

(2) The following ships, whether individually or as a class, may be exempted from compulsory pilotage by the Authority on application in writing to him-

- (a) vessels and dynamically supported craft engaged on ferry services for the conveyance of passengers (whether or not goods are also conveyed) between Hong Kong, Macau and other Chinese ports within river trade limits; and (Amended 64 of 1999 s. 3)
- (b) ships engaged in salvage or cable laying operations.

(3) The Authority may exempt a ship from compulsory pilotage if he is satisfied-

- (a) that no licensed pilot is available to pilot the ship; or
- (b) that compliance with the requirement of compulsory pilotage is unnecessary in the circumstances of the case.

(4) Notwithstanding subsections (1), (2) and (3), an exempted ship under this section other than one referred to in subsection (2)(a) or to which the Merchant Shipping (Local Vessels) Ordinance (Cap 548) applies, shall be subject to compulsory pilotage if it is a ship specified in item 5 of Schedule 1. (Amended 42 of 1987 s. 6; 43 of 1999 s. 91)

EXTRACT			
Chapter: 548	Title:	MERCHANT SHIPPING (LOCAL VESSELS) ORDINANCE	Gazette Number: 24 of 2005; L.N. 282 of 2006
Section: 2	Heading:	Interpretation	Version Date: 02/01/2007

"local vessel" (本地船隻) means-

- (a) any vessel used solely within the waters of Hong Kong, whether registered under the Merchant Shipping (Registration) Ordinance (Cap 415) or in a place outside Hong Kong;
- (b) any vessel regularly employed in trading to or from Hong Kong unless registered in a place outside Hong Kong;
- (c) any vessel possessed or used for pleasure purposes in the waters of Hong Kong;
- (d) any vessel employed in sea fishing plying regularly in the waters of Hong Kong, or using the waters of Hong Kong as a base; or
- (e) any vessel-
 - (i) registered in the Mainland of China or Macau;
 - (ii) employed in trading to or from Hong Kong; and
 - (iii) issued with any certificate by a government authority of the Mainland of China or Macau permitting its trading to Hong Kong other than any accepted convention certificate; (Replaced 24 of 2005 s. 2)

the charge relates the ship was being navigated in the pilotage district in question only so far as was necessary to avoid serious danger to the ship.

PART II

(7) This section shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.

(8) Without prejudice to the generality of subsection (7) above, an order under that subsection may appoint a day for the coming into force of this section in relation only to such pilotage districts as are specified in the order.

31.—(1) Every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of entering, leaving, or making use of any port in the district, and every ship carrying passengers (other than an excepted ship), while navigating for any such purpose as aforesaid in any pilotage district (whether pilotage is compulsory or not compulsory in that district) shall be either—

Compulsory pilotage;
transitory provisions.

(a) under the pilotage of a licensed pilot of the district; or

(b) under the pilotage of a master or mate possessing a pilotage certificate for the district who is bona fide acting as master or mate of the ship.

(2) If any ship (other than an excepted ship) in circumstances in which pilotage is compulsory under this section, is not under pilotage as required by this section, after a licensed pilot of the district has offered to take charge of the ship, the master of that ship shall be liable on summary conviction in respect of each offence to a fine not exceeding double the amount of the pilotage charges that (disregarding any increase in the charges attributable to failure to comply with the requirements of byelaws in force in the district about requests for pilots) would have been payable in respect of the ship if it had been under pilotage as so required.

(3) For the purposes of this Act the following ships are excepted ships:—

(a) ships belonging to Her Majesty;

(b) fishing vessels of which the registered length is less than 47.5 metres;

(c) ferry boats plying as such exclusively within the limits of a harbour authority;

(d) ships of less than fifty tons gross tonnage;

(e) ships exempted from compulsory pilotage by byelaw in force by virtue of paragraph 1 of Schedule 2 to this Act.

Antiquities and Monuments Ordinance (Cap.53)
Extract

Section: 2 Heading: Interpretation Version 01/07/2007
Date:

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In this Ordinance, unless the context otherwise requires-

"private land" (私人土地) means-

- (a) land held under lease, agreement for lease, tenancy agreement, licence, permit, deed or memorandum of appropriation, or other valid title from the Government; and (Amended 29 of 1998 s. 105)
- (b) land occupied by Her Majesty's forces, or for other purposes of the Crown in right of Her Majesty's Government in the United Kingdom, under lease, licence, permit, deed or memorandum of appropriation, requisition or other permanent or temporary title;

"Government land" (政府土地) means land other than private land; (Amended 29 of 1998 s. 105)

Section: 2A Heading: Declaration of Version 12/02/2005
proposed Date:
monuments etc. and
plans thereof

MONUMENTS

(1) For the purpose of considering whether or not any place, building, site or structure should be declared to be a monument the Authority may, after consultation with the Board, by notice in the Gazette declare it to be a proposed monument, proposed historical building, or proposed archaeological or palaeontological site or structure.

(4) The Authority shall, upon publication of a declaration under subsection (1)-

- (a) sign and deposit in the Land Registry a plan clearly showing the situation of the proposed monument; and (Amended 8 of 1993 s. 2; 20 of 2002 s. 5)
- (b) if the declaration relates to a proposed monument within private land-
 - (i) register the declaration in the Land Registry; (Amended 8 of 1993 s. 2)
 - (ii) serve on the owner and any lawful occupier of the private land a copy of the notice of declaration, together with a copy of the plan; and
 - (iii) fix to the private land a copy of the notice of declaration and a copy of the plan.

Section: 2B	Heading: Duration of declaration of proposed monument	Version Date:	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

(1) Subject to subsection (2), a declaration made under section 2A shall have effect for a period of 12 months from the making of it unless earlier withdrawn by the Authority.

(2) Except in the case of a declaration relating to a proposed monument within private land, the Authority may from time to time, after consultation with the Board and with the approval of the Chief Executive, extend the period referred to in subsection (1) by 12 months: (Amended 59 of 2000 s. 3)

Provided that no single extension shall exceed 12 months.

Section: 2C	Heading: Objection to declaration of proposed monument within private land	Version Date:	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

(1) The owner or any lawful occupier of **private land** within which a proposed monument has been declared may at any time apply to the Authority for withdrawal of the declaration.

Section: 3	Heading: Declaration of monuments and plans thereof	Version	12/02/2005
		Date:	

(1) Subject to section 4, the Authority may, after consultation with the Board and with the approval of the Chief Executive, by notice in the Gazette, declare any place, building, site or structure, which the Authority considers to be of public interest by reason of its historical, archaeological or palaeontological significance, to be a monument, historical building or archaeological or palaeontological site or structure. (Amended 38 of 1982 s. 4. 59 of 2000 s. 3)

(2) A declaration under subsection (1) may include as part of a monument any land adjoining the place, building, site or structure required for fencing, covering or protecting the monument or for providing or facilitating access thereto.

(3) A notice under subsection (1) shall include a reference to the appropriate plan deposited under subsection (4).

(4) The Authority shall, before publication of a declaration under subsection (1)-

- (a) sign and deposit in the Land Registry a plan clearly showing the situation of the place, building, site or structure intended by the Authority to be declared to be a monument; and (Amended 38 of 1982 s. 4; 20 of 2002 s. 5)
- (b) if the declaration relates to a monument within **private land**, register the declaration in the Land Registry. (Amended 8 of 1993 s. 2)

Section: 4	Heading: Objection to declaration of monument within private land	Version	01/07/1997
		Date:	

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

(1) If a place, building, site or structure intended by the Authority to be

declared a monument is within private land, then, prior to the making of the declaration, the provisions of this section shall have effect.

(2) The Authority shall serve on the owner and any lawful occupier of the private land a notice in writing of his intention to declare a monument therein, together with a plan clearly showing the situation of the intended monument.

(2A) The Authority shall fix to the private land a copy of the notice and plan served under subsection (2). (Added 38 of 1982 s. 5)

**Section: 14 Heading: Rights of licensee Version 01/07/1997
Date:**

Remarks:

Adaptation amendments retroactively made - see 29 of 1998 s. 105

(1) The holder of a licence may, subject to the conditions thereof, enter upon and excavate and search for antiquities, in, on or under-

(a) any Government land within the area specified in the licence; and (Amended 29 of 1998 s. 105)

(b) subject to subsection (2), any private land within the area specified in the licence.

(2) The holder of a licence shall not be entitled to enter upon, or excavate or search for antiquities in, on or under private land unless he first obtains the consent in writing of the owner and any lawful occupier of the land.

**Section: 22 Heading: Regulations Version 01/07/1997
Date:**

Remarks:

Adaptation amendments retroactively made - see 59 of 2000 s. 3

(1) The Chief Executive in Council may make regulations- (Amended 59 of 2000 s. 3)

- (a) prescribing the forms of licences and permits;
- (b) prescribing the manner in which applications for licences and permits shall be made;
- (c) prescribing the fees (if any) to be paid to the Authority upon the grant or renewal of licences;
- (d) regulating the conduct of excavations and searches for antiquities;

- (e) providing for the management and control of antiquities, proposed monuments and monuments; (Amended 38 of 1982 s. 15)
- (f) providing for the prohibition and control of access to excavations, proposed monuments, monuments and sites, and for the payment, restriction and regulation of entrance fees thereto; and (Amended 38 of 1982 s. 15)
- (g) generally for the better carrying out of the provisions of this Ordinance.

(2) No regulations made under this Ordinance shall-

- (a) prohibit or restrict the access to a proposed monument or monument of the owner or lawful occupier of the proposed monument or monument or of any person beneficially interested therein, or of any person authorized by the owner, occupier or such person; or (Amended 38 of 1982 s. 15)
- (b) confer upon a person any right which he would not otherwise have had to enter upon private land.