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By Fax (2524 3762)

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Dear Mr LAU,

Adaptation of Laws (Military References) Bill 2010

We are scrutinising the legal and drafting aspects of the Bill. We would be grateful if you could clarify the following points.

Clause 2(3)

It provides for a list of adaptation provisions set out in Schedule 1 to the Bill which will come into effect on the day on which the Adaptation of Laws (Military References) Ordinance, if enacted, is published in the Gazette. It is explained in paragraph 8(c) of the LegCo Brief on the Bill that an earlier commencement of those provisions may carry a negative effect and should not have retrospective effect.

Clause 5 is a savings and transitional provision relating to the amendments to the Defamation Ordinance (Cap. 21), various pensions regulations and the Adoption Rules.

Those affected items of legislation as set out in clause 5 are also set out in clause 2(3). If those affected items of legislation have already been set out in clause 2(3), what is the reason for singling them out in clause 5?

Schedule 1

Section 2

In sub-section (1), the reference to "officers employed on full pay in the naval, military or air services of her Majesty" in section 5(1)(j) of the Jury Ordinance (Cap. 3) is adapted as "members of the Chinese People's Liberation Army".

In sub-section (2), the reference to "spouses of members of the Armed Forces of Her Majesty's serving on full pay" in section 5(1)(p) of the Jury Ordinance is adapted as "spouses of members of the Chinese People's Liberation Army".

Is there any difference between "officers employed on full pay in the naval, military or air services of her Majesty" and "members of the Armed Forces of Her Majesty's serving on full pay"?

Why is the reference to "on full pay" omitted in both of the adapted terms?

Section 4

Would you consider the following formulation of the adapted term more appropriate:-

"of the Chinese People's Liberation Army held outside Hong Kong under any law of the Mainland"?

Section 6

Why is the reference to "a military hospital" added?

Section 8

Why is the reference to "or ships belonging to the Central People's Government and used only on non-commercial service" added in the adapted section 10D (Exemption from compulsory pilotage) of the Pilotage Ordinance (Cap. 84)?

Section 10(2)

Why is it necessary to adapt the term "a retired officer of the Armed Forces of the Crown" to "a retired officer of the Armed Forces of the United Kingdom and "service at any time between 3 September 1939 and 30 June 1950 in the Armed Forces of the Crown" to "service at any time between 3 September 1939 and 30 June 1950 in the Armed Forces of the United Kingdom"? These expressions in the existing

provisions of the Pensions Regulations (Cap. 89 sub. leg. A) are related to facts happening in the past.

Same query applies to the adaptation proposed in section 13.

Section 16

Why is it appropriate to adapt "The Ministry of Defence (The Navy Department), The Ministry of Defence (The Army Department)" to "the Hong Kong Garrison" not the Ministry of National Defence in the Central People's Government (see Annex B to LegCo Brief on the Bill)?

Section 17

Why is it appropriate to include "the Chinese People's Liberation Army" in the adapted term?

Section 18(4)

What is the reason for adding the new section 8(2A) to the Inland Revenue Ordinance (Cap. 112)?

Sections 21 and 22

What is the reason for not adapting sections 57A (Power of arrest by Her majesty's forces), 57B (Resisting arrest by, and obstruction of, Her Majesty's forces), 58 (Powers of Her Majesty's naval officers) and 58A (Powers of persons in charge of authorized vessels) of the Immigration Ordinance (Cap. 115) and the Authorization by the Governor under section 58A of the Immigration Ordinance (Cap. 115 sub. leg. F)?

Section 23

What is the reason for not adapting the reference to "or by any body or organization established primarily for defence purposes and designated by the Governor for the purposes of this section" in the definition of "military land" in section 36(4) of the Rating Ordinance (Cap. 116)?

Section 40(b)

What is the reason for omitting the reference to "full pay" in the adapted term?

Section 41

What is the reason for omitting the reference to "full pay" in the adapted term?

Section 42

What is the reason for omitting the reference to "full pay" in the adapted term?

Sections 49(2)

What is the reason for omitting "or any aircraft employed under The Ministry of Defence authority" in the adapted term in section 10(1)(e) of the Defences (Firing Areas) Ordinance (Cap. 196)?

Section 51

What is the reason for not adapting the term "the Royal Hong Kong Police Auxiliary Police Force" in section 7(1)(d) and the term "Her Majesty" in section 7(1) of the Crimes Ordinance (Cap. 200)?

Section 56

What would the arrangement be for application of sections 156 (anonymity of complaints) and 157 (offences and proceedings) of the Crimes Ordinance to trials by courts-martial after the repeal of section 158 of the Crimes Ordinance?

Section 61(1)

Why is it appropriate to adapt the term "the Crown ... in the United Kingdom" in section 5(1)(c) (Levy on motor vehicles) of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) to "the Hong Kong Garrison" not "the Central People's Government"?

Section 62(4)

Why is it appropriate to impose a levy to be payable by the Government instead of the Hong Kong Garrison in the new Section 6(1)(c) (Levy on licence holders) of the Traffic Accident Victims (Assistance Fund) Ordinance?

Section 71(2)

Would there be a difference between an employee of the Ministry of National Defence in the Central People's Government and a member of the Ministry of National Defence in the Central People's Government?

Section 72

In section 37(1) of the Public Order Ordinance (Cap. 245), why is "any commissioned officer in Her Majesty's forces" not adapted to "any member of the Chinese People's Liberation Army of or above the rank of second lieutenant (or ensign)" (see Annex B to LegCo Brief on the Brief)?

Section 74(3)

In the proposed new section 39(4)(ba) of the Public Order Ordinance, would you give examples to illustrate the "area or place" in the case of "a closed area which is an area or place occupied ... for other purposes of the Central People's Government ..."?

Section 76(2), (3) and (4)(b)

Why is it appropriate to adapt "Her Majesty's forces acting in aid of the civil power" in section 50(3), (4) and(5)of the Public Order Ordinance to "the Chinese People's Liberation Army acting under Article 14 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region ..."?

Section 80

Why is section 2(b) of the Protected Places (Safety) (Authorized Guards) Order (Cap. 260 sub. leg. C) not adapted?

Why is section 3(b) of the Protected Places (Safety) (Authorized Guards) Order not adapted?

Why is section 4(b) of the Protected Places (Safety) (Authorized Guards) Order not adapted?

Section 90

Why is rule 29(d) of the Adoption Rules (Cap. 290 sub. leg. A) not adapted?

Sections 93, 94, 95 and 96

Would it be necessary to specify clearly that warships used by Her Majesty's Government in sections 3(1) (Application), 11(b) (Application), 15(2)(a) (Port clearance to be obtained before departure) and 52(2) (Port dues and remissions) of the Shipping and Port Control Ordinance (Cap. 313) is confined to warships used by the Chinese People's Liberation Army (see Annex B to LegCo Brief on the Bill)?

Section 98

Would it be necessary to specify clearly that warships used by Her Majesty's Government in regulation 22(4) of the Shipping and Port Control Regulations (Cap. 313 sub. leg. A) is confined to warships used by the Chinese People's Liberation Army (see Annex B to LegCo Brief on the Bill)?

Section 106

Why is section 5 (Tax not payable in respect of certain motor vehicles) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) not adapted?

Section 112

Would you explain the terms "member of a civilian component of Her Majesty's forces" and "person who is attached to Her Majesty's forces" in regulation 4(2)(b) and (d) respectively (Application to State) of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B)? Why is it unnecessary to adapt the two provisions?

Section 118

Would it be necessary to provide for a savings provision consequent to the repeal of regulation 15 (Military service to count for pension benefit) of the Pension Benefits (Judicial Officers) Regulations (Cap. 401 sub. leg. A)?

Section 119

Why is it necessary to include "used only on non-commercial service" in the adapted section 5(3) (Application of part III) of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)?

Section 120(3)

Why is it appropriate to adapt "a Secretary of State" in the definition of "state of emergency" in section 2A(8) (Power to give effect to Chicago Convention and regulate air navigation) of the Civil Aviation Ordinance (Cap. 448) to "the Standing Committee of the National People's Congress"?

Section 132

Why is it appropriate to include "or ... ship belonging to the Central People's Government and used only on non-commercial services" in the adapted section 4(1)(a) (Application) of the Merchant Shipping (Seafarers) Ordinance (Cap. 478)?

Your earliest reply, in both languages, is appreciated.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

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