

立法會秘書處法律事務部的信頭

Letterhead of Legislative Council Secretariat Legal Service Division

Your Ref: FIN CR 1/3221/91
Our Ref: LS/B/20/98-99
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By Fax No. 28014023

5 November 1998

Miss Amy TSE
Principal Assistant Secretary for the Treasury (Revenue)
Finance Bureau
4/F Main and East Wings
Central Government Offices
Ice House Street
Central
Hong Kong

Dear Miss Tse,

Adaptation of Laws (No. 6) Bill 1998

I am scrutinizing the legal and drafting aspects of the above Bill with a view to advising Members. I have made some observations and shall be grateful if you can clarify the following:

1. *Betting Duty Ordinance and its subsidiary legislation (Schedule 1 to the Bill)*

In the definition of “政府獎券基金” in section 4E of the Ordinance, the term “立法局” has not been amended.

2. *Dutiable Commodities Ordinance and its subsidiary legislation (Schedule 2 to the Bill)*

In section 3(4) of this Ordinance, it is stated that “this Ordinance does not apply to goods which are the property of or imported or purchased for the Government of the United Kingdom or of Hong Kong”. Should this section be textually amended?

3. *Estate Duty Ordinance and its subsidiary legislation (Schedule 3 to the Bill)*

In the subsidiary legislation on Prescription of Forms under Section 28, the term “the Governor in Council” still appears.

4. Inland Revenue Ordinance (Schedule 4 to the Bill)

- (a) In section 8(2)(d), it is stated that “emoluments payable by the Governments of the Members of the Commonwealth, other than the Government of Hong Kong, to members of Her Majesty’s forces and to persons in the permanent service of those Governments in Hong Kong in respect of their offices under those Governments” are exempted from Hong Kong salaries tax. Should this be textually adapted?
- (b) Please explain the purpose and effect of item 5 in amending section 8(2)(h).
- (c) In section 16B(6), should the reference of “the Government of Hong Kong” be changed to “the Government of the Hong Kong Special Administrative Region”? (Item 4 to Schedule 3 makes similar amendment.)
- (d) In section 77(1) and (7), should “人民入境事務處處長” be amended to “入境事務處處長”? (It is noted that similar amendment is made in item 4 to Schedule 4 of the Adaptation of Laws (No. 5) Bill 1998.)

5. Rating Ordinance (Schedule 5 to the Bill)

- (a) In section 36(1)(f) of the Ordinance, the term “立法局行政管理委員會” has not been adapted.
- (b) In section 36(4), the term “military land” (軍事用地) means “any land and any building thereon occupied by Her Majesty’s Forces,designated by the Governor.....” still appears. Has the Administration considered adapting this term?
- (c) In the subsidiary legislation, “立法局決議” has not been changed to “立法會決議”.

6. Stamp Duty Ordinance (Schedule 6 to the Bill)

It is noted that the term “Central People’s Government” is added to various sections. Please explain the purpose of the amendments in items 12, 13 and 14.

7. Air Passenger Departure Tax Ordinance (Schedule 7 to the Bill)

- (a) In the definition of the “airport” in this Ordinance, it means “the Hong Kong International Airport”. In Hong Kong Airport (Regulations) Ordinance (Cap. 292), “airport” means the Hong Kong International Airportin Kowloon and New Kowloon within the boundaries on the

approved plan.” i.e. the Kai Tak Airport. In the Airport Authority Ordinance (Cap.483), “airport” means the airport referred to in section 5(1)(a), i.e. the airport at the vicinity of Chek Lap Kok. The term “Hong Kong International Airport” is not used in this Ordinance. In the Hong Kong Airport (Control of Obstructions) Ordinance (Cap.301), “Hong Kong Airport” means the Hong Kong International Airport at Kowloon peninsula and the airport built or to be built at and in the vicinity of Chek Lap Kok, Lantau, New Territories. The term “airport” in this Air Passenger Departure Tax Ordinance is quite unclear. Does it refer to the old Kai Tak Airport or the new Chek Lap Kok Airport? Has the Administration considered tidying up the definition of “airport” in various ordinances?

- (b) In paragraph 5 of the Second Schedule, it is provided that “Passengers departing from Hong Kong by civilian aircraft who are members of Her Majesty’s forces.....” and their family members are exempted from liability to pay tax. Should this be textually amended?

8. Business Registration Ordinance (Schedule 10 to the Bill)

In section 16(d), the term “Governor in Council” has not been adapted.

9. Motor Vehicles (First Registration) Ordinance (Schedule 11 to the Bill)

In section 5(1) of the Ordinance, it is stated that “Tax shall not be payable in respect of any motor vehicle imported into Hong Kong by a person who is a member of Her Majesty’s naval, military or air force service, being a motor vehicle in respect of which there has been paid in any country of the Commonwealth a tax.....”. Should this again be textually amended?

I enclose herewith relevant extracts for your easy reference. I shall be most grateful if you can let my have a reply before 10 November 1998 in both Chinese and English languages so that your reply can be submitted to the Members for their consideration in the House Committee.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

Encl.

- c.c. D of J (Attn: Miss Josephine CHUNG, Govt Counsel)
D of J (Attn: Mr. Byron LEUNG, Govt Counsel)
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BY FAX

庫務局的信頭

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11 November 1998

Your Ref. :

Miss Anita Ho 2877 5029
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Miss Ho,

Adaptation of Laws (No.6) Bill 1998

Thank you for your letter of 5 November. I enclose our comments (English and Chinese versions) to clarify the points you have raised in respect of the Adaptation of Laws (No. 6) Bill 1998. Please let me know if you have further queries concerning the Bill.

Yours sincerely,

(Miss Amy Tse)
for Secretary for the Treasury

c.c. D of J (Attn: Mr. Byron Leung, Miss Josephine Chung)
25235104 25368154

Comments on LegCo Assistant Legal Adviser's Letter of 5 November 1998

1. *Betting Duty Ordinance and its subsidiary legislation (Schedule 1 to the Bill)*

The term “立法局” in the definition of “政府獎券基金” in section 4E of this Ordinance is a historical reference and no adaptation is required.

2. *Dutiable Commodities Ordinance and its subsidiary legislation (Schedule 2 to the Bill)*

The British Forces were exempt from the application of the Dutiable Commodities Ordinance by virtue of the reference to the United Kingdom Government in section 3(4). The adaptation of section 3(4) would involve the Garrison and hence it will be included in an adaptation of laws bill relating to the Garrison. The purpose of the bill is to adapt the various references to the British Armed Forces or the military contained in approximately 80 ordinances or pieces of subsidiary legislation in Hong Kong laws so as to bring them in line with the provisions of the Basic Law and the Garrison Law. It will be presented to the Legislative Council in due course.

3. *Estate Duty Ordinance and its subsidiary legislation (Schedule 3 to the Bill)*

The term “Governor in Council” appearing in the Prescription Forms under section 28 is a historical reference and no adaptation is required.

4. *Inland Revenue Ordinance (Schedule 4 to the Bill)*

- (a) The adaptation of section 8(2)(d) would involve the Garrison and will be included in the adaptation of laws bill relating to the Garrison mentioned in para. 2 above.
- (b) Prior to 1 July 1997, exemption was given in respect of emoluments payable by the United Kingdom (UK) Government to persons in the temporary service of the UK Government who are serving in Hong Kong on UK based terms or are recruited in the UK specially for service in Hong Kong. The purpose of the amendment is to grant exemption in respect of emoluments payable by the Central People's Government under similar circumstances after the change of sovereignty. The effect is that

emoluments payable by the Central People's Government to persons who satisfy the conditions as set out in section 8(2)(h), as amended, would be exempted from tax in Hong Kong.

- (c) There is no need to adapt "Government of Hong Kong" in general. Item 4 to Schedule 3 of the Bill refers to the cheque payable to "Hong Kong Government" which is a specialised scenario.
- (d) The title "人民入境事務處處長" has been changed to "入境事務處處長" by virtue of the Declaration of Change of Titles (General Adaptation) Notice 1997 (L.N. 362 of 1997) and the amendment to section 77 can be dealt with editorially.

5. Rating Ordinance (Schedule 5 to the Bill)

- (a) All references to the term "立法局行政管理委員會" has been amended as "立法會行政管理委員會" by section 12 of the Legislative Council Commission (Amendment) Ordinance, Ord.No.115 of 1997 and they will be amended editorially in due course.
- (b) The whole section 36(4) will be dealt with by the adaptation of laws bill relating to the Garrison mentioned in para. 2 above.
- (c) We agree that the reference "立法局決議" in the subsidiary legislation will need to be adapted. We suggest to deal with it by miscellaneous amendment to the Rating Ordinance when the opportunity arises.

6. Stamp Duty Ordinance (Schedule 6 to the Bill)

The United Kingdom Government was exempt from payment of stamp duty under Part V of the Stamp Duty Ordinance (sections 38, 41(1), 42(1) and 43(2)). By this amendment, the Central People's Government will get the same exemption as that previously available to the United Kingdom Government.

7. Air Passenger Departure Tax Ordinance (Schedule 7 to the Bill)

- (a) The new airport at Chek Lap Kok is officially named as the Hong Kong International Airport. There is no need to amend the definition of "airport" in this Ordinance which refers specifically to the Hong Kong International Airport. Different ordinances may have different definitions

for the term “airport” for various reasons. For example, the Hong Kong Airport (Regulations) Ordinance (Cap.292) was intended to apply to the then Kai Tak Airport whereas the Airport Authority Ordinance refers to the new airport at Chek Lap Kok. On the other hand, the Hong Kong Airport (Control of Obstructions) Ordinance (Cap.301) provides the power to impose, among other things, restriction of heights of buildings in respect of both the then Kai Tak Airport and the new airport at Chek Lap Kok and nearby areas. We consider that there are practical reasons for having different definitions of “airport” in the concerned ordinances, but we will be happy to review the definition(s) of the this term in any particular ordinance(s) should the need arise.

- (b) Adaptation of paragraph 5 of the Second Schedule would involve the Garrison and will be included in the adaptation of laws bill relating to the Garrison mentioned in para. 2 above.

8. *Business Registration Ordinance (Schedule 10 to the Bill)*

The adaptation of “Governor in Council” in section 16(d) has been taken up by the Business Registration (Amendment) Bill 1998 which has been gazetted on 30.10.98.

9. *Motor Vehicles (First Registration Tax) Ordinance (Schedule 11 to the Bill)*

Adaptation of section 5(1) would involve the Garrison and will be included in the adaptation of laws bill relating to the Garrison mentioned in para. 2 above.