

LEGISLATIVE COUNCIL BRIEF

LAND REGISTRATION ORDINANCE

(CAP. 128)

ALIENS (RIGHTS OF PROPERTY) ORDINANCE

(CAP. 185)

CONVEYANCING AND PROPERTY ORDINANCE

(CAP. 219)

LAND TRANSACTIONS (ENEMY OCCUPATION) ORDINANCE

(CAP. 256)

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) ORDINANCE

(CAP. 301)

LIFTS AND ESCALATORS (SAFETY) ORDINANCE

(CAP. 327)

DEMOLISHED BUILDINGS (RE-DEVELOPMENT OF SITES) ORDINANCE

(CAP. 337)

ELECTRICITY NETWORKS (STATUTORY EASEMENTS) ORDINANCE

(CAP. 357)

SEWAGE TUNNELS (STATUTORY EASEMENTS) ORDINANCE

(CAP. 438)

LAND DRAINAGE ORDINANCE

(CAP. 446)

ADAPTATION OF LAWS (NO. 5) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 9 February 1999, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No.5) Bill 1999, as set out at Annex, should be introduced into the Legislative Council, to effect necessary adaptations to ten Ordinances

relating to lands and buildings matters and their subsidiary legislation.

BACKGROUND AND ARGUMENT

2. Article 160 of the Basic Law states that -

"Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law."

Article 8 of the Basic Law states that -

"The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

3. On 23 February 1997, the Standing Committee of the National People's Congress published a decision on the treatment of laws previously in force in Hong Kong. It provides, among other things, that the existing Hong Kong laws are to be adopted as laws of the Hong Kong Special Administrative Region and these laws shall, unless the context otherwise requires, be construed in accordance with specified principles of interpretation. These interpretative principles are included in the Hong Kong Reunification Ordinance (Ord. No. 110 of 1997) and are now incorporated as section 2A and Schedule 8 in the Interpretation and General Clauses Ordinance (Cap. 1). However, although the Interpretation and General Clauses Ordinance laid down how terminology inconsistent with

the Basic Law or with the status of Hong Kong as a Special Administrative Region of the People's Republic of China are to be construed, it is considered unacceptable to retain such terminology in our laws. Accordingly, we now need to introduce further legislation to effect the necessary textual amendments.

THE BILL

4. Most of the proposed amendments are merely terminological changes, e.g. references to "the Colony" and "立法局" are replaced by "Hong Kong" and "立法會" respectively. Similarly, a reference to the "Governor" will be replaced by the "Chief Executive". Where a provision previously conferred power on the "Governor" to make subsidiary legislation, the reference to the "Governor" will still be adapted to the "Chief Executive". Although the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation is then not expressly set out, the Executive Council will still have to be consulted if the Chief Executive is to exercise this legislative function.

5. The following proposed amendments should however be specifically noted -

(a) Section 2 and 3 of the Aliens (Rights of Property) Ordinance (Cap. 185)

The object of the Aliens (Rights of Property) Ordinance (Cap. 185) is to remove doubts regarding the right of aliens to hold and transfer immovable property in Hong Kong. Under the definition contained in the Interpretation and General Clauses Ordinance (Cap. 1) in force immediately before 1 July 1997, an alien means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland. However, that definition has been amended and an alien now means a person other than a Chinese citizen. Similarly, under paragraph 20 of Schedule

8 to the Interpretation and General Clauses Ordinance (Cap. 1), any reference to an alien contained in any law in force immediately before 1 July 1997 and adopted as the laws of the HKSAR shall be construed as a reference to a person other than a citizen of the People's Republic of China. In the light of the new meaning of an alien, it is considered that the references to "Commonwealth citizen" contained in sections 2 and 3 of the Aliens (Rights of Property) Ordinance (Cap. 185) should be adapted to "Chinese citizen" so that an alien (as the word now means) would have the same rights to hold and transfer immovable property in Hong Kong as if he were a Chinese citizen residing therein.

(b) Section 12 of the Conveyancing and Property Ordinance (Cap.219)

The Conveyancing and Property Ordinance (Cap. 219) deals with conveyancing and the law of property. As such, the reference to the Crown in section 12 is a reference to the "Government" in its role of administering the land resource on behalf of the State (section 6 of the Interpretation and General Clauses Ordinance refers) and it will read "compensation payable by the Government ...".

(c) Section 16(6) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)

At present, section 16 of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) provides that where the Director of Buildings carries out certain building works, he may recover the cost of such works from the owner of the building on which the works are carried out. Such cost shall, under subsection (6) of that section, be recoverable as a debt due to the "Crown". As the provision regulates matters which the HKSAR Government is responsible, it is considered appropriate to replace the reference to "Crown" with "Government".

(d) Sections 3(1A)(a) and 46(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327)

Section 3(1A)(a) of the Lifts and Escalators (Safety) Ordinance (Cap. 327) provides, among other things, that certain provisions of the Ordinance shall not apply to a lift or escalator installed in any building belonging to the government of any member of the Commonwealth or over which such government has control and management. Section 46(1) of the Ordinance provides, among other things, that where the lessee or sub-lessee of any building is responsible for any lift or escalator which forms part of the building, the Ordinance shall, where the lessee or sub-lessee is not a government of any member of the Commonwealth, apply as if any references to the owner of a lift or escalator were a reference to such lessee or sub-lessee. It is necessary to replace the references to the government of any member of the Commonwealth in this context by references to the Central People's Government. The government of any member of the Commonwealth will now fall in the category of "foreign governments" referred to in section 3(1A)(d).

(e) Section 12(3) of the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337)

Section 12(3) of the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337) contains references to the United Kingdom Law of Property Act 1925 and laws in England relating to real property. These references are not in conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China, and need to be adapted. Extensive research by the Lands Department and the advice from the Department of Justice reveal that the powers and remedies under the relevant English laws are sufficiently covered by the Conveyancing and Property Ordinance (Cap. 219) and the common law. Accordingly, the references will be substituted by references to the Conveyancing and Property Ordinance (Cap. 219) and the relevant common law in Hong Kong.

(f) Sections 12(1), (8) and (13) and 13(4) of the Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438)

(i) Section 12 of the Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438) provides for compensation by the "Crown" to a person who has suffered loss or damage to land or property situated on land as a result of the creation of rights, or the exercise of rights created under the Ordinance. As the purpose of the Ordinance is to provide for the creation of easements and other rights over land in favour of the HKSAR Government for the purpose of the construction, maintenance and operation of sewage tunnels, it is considered appropriate to replace the references to "Crown" in subsections (1), (8)(a) and (13) with "Government" and the reference to "官方" in subsection (8)(b) with "政府".

(ii) Section 13 deals with claims out of time. The claims referred to in that section means the claims for compensation under section 12. Subsection (4) of section 13 provides that the Lands Tribunal may extend the period within which the notice of the claim must be delivered to the Director of Lands if it considers that the "Crown" is not materially prejudiced in the conduct of its case or otherwise by the delay in delivering of the notice. It is also considered appropriate to replace the reference to the "Crown" with the "Government" in that subsection.

(g) Sections 30(9), 34, 35, 36, 37, 38(4), 43 and 49(1) and section 10 of Part I of the Schedule to the Land Drainage Ordinance (Cap. 446)

(i) The Land Drainage Ordinance (Cap. 446) provides for the constitution of Drainage Authority Areas and the carrying out of drainage works within the areas. Section 30 deals with the nomination of a Drainage Appeal Board to review the decision of the Drainage Authority or to hear appeals, and subsection (9)

of that section provides that a member of the Board, other than a person who is in full-time employment in any office of remuneration under the "Crown", may be remunerated at such rate as the Financial Secretary may determine. As the Ordinance regulates matters which the HKSAR Government is responsible, it is considered appropriate to replace the reference to the "Crown" in that subsection with the "Government".

- (ii) Sections 34, 35, 36, 37, 38, 43 and 49 and section 10 of Part I of the Schedule provide for the resumption of land, and compensation and other matters in relation to works executed or anything done by the Drainage Authority and authorised under the Ordinance. As the matters dealt with are those for which the HKSAR Government is responsible, it is considered appropriate to replace the references to the "Crown" and "官方" in these provisions with the "Government" and "政府" respectively.

COMMENCEMENT

6. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region.

LEGISLATIVE TIMETABLE

7. The legislative timetable is -

Publication in the Gazette	26 February 1999
First Reading and commencement of Second Reading debate	10 March 1999
Resumption of Second Reading	

debate, committee stage and
Third Reading

to be notified

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

9. None of the Ordinances covered by the Bill bind the State by way of express provisions. The amendments in the Bill do not affect the current binding effect of the existing provisions of these Ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

10. There are no financial or staffing implications arising from the Bill.

PUBLIC CONSULTATION

11. Since the amendments are essentially straightforward adaptations, consultation with the public is not considered necessary.

PUBLICITY

12. A press release will be issued on 26 February 1999.

ENQUIRIES

13. For enquiries, please contact Mr Anthony LI, Assistant Secretary

for Planning, Environment and Lands at phone number 2848 2112.

Planning, Environment and Lands Bureau
February 1999

ADAPTATION OF LAWS (NO. 5) BILL 1999

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A BILL

To

Adapt certain Ordinances to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws (No. 5) Ordinance 1999.

2. Commencement

(1) This Ordinance shall be deemed to have come into operation on 1 July 1997.

(2) Subsection (1) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

3. Amendment of Ordinances

The Ordinances specified in the Schedules are amended in the manner indicated in those Schedules.

SCHEDULE 1

[s. 3]

LAND REGISTRATION ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Land Registration Ordinance

1. Section 27(1) of the Land Registration Ordinance (Cap. 128) is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

2. Section 30 is amended by adding -

“(1B) The First Schedule has been amended by the Adaptation of Laws (Courts and Tribunals) Ordinance (25 of 1998) and the Adaptation of Laws (No. 5) Ordinance 1999 (of 1999) to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People’s Republic of China.”.

3. The First Schedule is amended, in sections 2(1), 6, 7(b) and 13(2)(b), by repealing “the Colony” and substituting “Hong Kong”.

Land Registration Regulations

4. Regulation 7(e) of the Land Registration Regulations (Cap. 128 sub. leg.) is amended by repealing “首席大法官” and substituting “終審法院首席法官”.

SCHEDULE 2

[s. 3]

ALIENS (RIGHTS OF PROPERTY) ORDINANCE

1. The long title to the Aliens (Rights of Property) Ordinance (Cap. 185) is amended by repealing “the Colony” and substituting “Hong Kong”.

2. The preamble is repealed.

3. Section 2 is amended -
 - (a) by repealing “the Colony” where it twice appears and substituting “Hong Kong”;
 - (b) by repealing “Commonwealth citizen” and substituting “Chinese citizen”.

4. Section 3 is amended by repealing “Commonwealth citizen” and substituting “Chinese citizen”.

SCHEDULE 3

[s. 3]

CONVEYANCING AND PROPERTY ORDINANCE

1. Section 12(1) of the Conveyancing and Property Ordinance (Cap. 219) is amended by repealing “Crown” and substituting “Government”.

2. Section 15(e) is amended, in the definition of “Government”, by repealing “Hong Kong” and substituting “the Hong Kong Special Administrative Region”.

3. Section 64 is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 4

[s. 3]

LAND TRANSACTIONS (ENEMY OCCUPATION) ORDINANCE

1. Section 9(1) of the Land Transactions (Enemy Occupation) Ordinance (Cap. 256) is amended by repealing “立法局” and substituting “立法會”.
2. Section 10 is amended by repealing “the Colony” and substituting “Hong Kong”.

SCHEDULE 5

[s. 3]

HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) ORDINANCE

1. Section 2(1) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) is amended, in the definition of “owner”, by repealing “the Colony” and substituting “Hong Kong”.
2. Section 3 is amended -
 - (a) in subsection (1), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) in subsections (2) and (3), by repealing “行政局秘書” and substituting “行政會議秘書”.
3. Section 8(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 9 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

5. Section 10(3) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

6. Section 16(6) is amended by repealing “Crown” and substituting “Government”.

SCHEDULE 6

[s. 3]

LIFTS AND ESCALATORS (SAFETY) ORDINANCE

1. Section 3(1A)(a) of the Lifts and Escalators (Safety) Ordinance (Cap. 327) is repealed and the following substituted -

“(a) belonging to the Government or the Central People’s Government or over which either Government has control and management;”.

2. Section 46(1) is amended by repealing “a government of any member of the Commonwealth” and substituting “the Central People’s Government”.

3. Section 49(1) and (5) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 7

[s. 3]

DEMOLISHED BUILDINGS (RE-DEVELOPMENT OF SITES) ORDINANCE

1. Section 12(3) of the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337) is amended -

- (a) by repealing “Law of Property Act 1925 (1925 c. 20 U.K.)” and substituting “Conveyancing and Property Ordinance (Cap. 219)”;
- (b) by repealing “England to a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases, and of appointing a receiver, and the provisions of the said Act” and substituting “Hong Kong to a mortgagee under a legal charge or equitable mortgage by deed, and the provisions of the said Ordinance”.

SCHEDULE 8

[s. 3]

ELECTRICITY NETWORKS (STATUTORY EASEMENTS) ORDINANCE

1. Section 3 of the Electricity Networks (Statutory Easements) Ordinance (Cap. 357) is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.
2. Section 7 is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (2), by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 9

[s. 3]

SEWAGE TUNNELS (STATUTORY EASEMENTS) ORDINANCE

1. Section 2 of the Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438) is amended, in the definition of “Secretary”, by repealing “(地政司)” and substituting “(局長)”.
2. Section 3 is amended by repealing “地政司” and substituting “局長”.
3. Section 4(1) is amended by repealing “地政司” and substituting “局長”.
4. Section 6(1) and (2) is amended by repealing “地政司” and substituting “局長”.
5. Section 7 is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.
6. Section 9 is amended by repealing “地政司” and substituting “局長”.
7. Section 11 is amended -
 - (a) in subsection (1) -
 - (i) by repealing “Governor” and substituting “Chief Executive”;
 - (ii) by repealing “地政司” and substituting “局長”;
 - (b) in subsection (2), by repealing “地政司” and substituting “局長”;
 - (c) in subsection (4) -

- (i) by repealing “Governor” and substituting “Chief Executive”;
- (ii) by repealing “地政司” and substituting “局長”;
- (d) in subsection (5), by repealing “地政司” and substituting “局長”.

8. Section 12 is amended -

- (a) in subsection (1), by repealing “Crown” and substituting “Government”;
- (b) in subsection (8) -
 - (i) in paragraph (a), by repealing “Crown” and substituting “Government”;
 - (ii) in paragraph (b), by repealing “官方” and substituting “政府”;
- (c) in subsection (13), by repealing “Crown” and substituting “Government”.

9. Section 13(4) is amended by repealing “Crown” and substituting “Government”.

SCHEDULE 10

[s. 3]

LAND DRAINAGE ORDINANCE

1. Section 2 of the Land Drainage Ordinance (Cap. 446) is amended -

- (a) in the definition of “approved plan”, by repealing “Governor in Council” and substituting “Chief Executive in Council”;

- (b) in the definition of “Secretary”, by repealing “(地政司)” and substituting “(局長)”.
- 2. Section 3(1) is amended by repealing “地政司” and substituting “局長”.
- 3. Section 6(1)(c) is amended -
 - (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) by repealing “地政司” and substituting “局長”.
- 4. Section 8(12)(b) is amended by repealing “地政司” and substituting “局長”.
- 5. Section 9 is amended by repealing “地政司” wherever it appears and substituting “局長”.
- 6. Section 10 is amended -
 - (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) by repealing “地政司” where it twice appears and substituting “局長”.
- 7. Section 11 is amended -
 - (a) in subsection (1) -
 - (i) by repealing “Governor in Council” and substituting “Chief Executive in Council”;

- (ii) in paragraph (c), by repealing “地政司” and substituting “局長”;
 - (b) in subsection (2), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (c) in subsection (3), by repealing “地政司” and substituting “局長”.
8. Section 12 is amended by repealing “地政司” and substituting “局長”.
9. Section 13(1) is amended -
- (a) by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”;
 - (b) by repealing “地政司” and substituting “局長”.
10. Section 14(1) and (3) is amended by repealing “地政司” wherever it appears and substituting “局長”.
11. Section 15 is amended by repealing “地政司” and substituting “局長”.
12. Section 17(1) is amended -
- (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) in paragraph (b), by repealing “地政司” and substituting “局長”.

13. Section 29(1), (2), (3), (4) and (6) is amended by repealing “Governor” and substituting “Chief Executive”.
14. Section 30 is amended -
 - (a) in subsections (6) and (7), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (9), by repealing “Crown” and substituting “Government”.
15. Section 34 is amended by repealing “Crown” and substituting “Government”.
16. Section 35 is amended by repealing “Crown” and substituting “Government”.
17. Section 36(1) is amended by repealing “Crown” and substituting “Government”.
18. Section 37 is amended -
 - (a) in subsections (1) and (2), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) in subsection (3) -
 - (i) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (ii) by repealing “地政司” where it twice appears and substituting “局長”;

- (c) in subsection (5)(b), by repealing “官方” and substituting “政府”;
 - (d) in subsection (7) -
 - (i) by repealing “地政司” and substituting “局長”;
 - (ii) by repealing “官方” and substituting “政府”.
19. Section 38(4) is amended by repealing “Crown” and substituting “Government”.
20. Section 43(b) is amended by repealing “Crown” and substituting “Government”.
21. Section 47 is amended by repealing “地政司” and substituting “局長”.
22. Section 49(1) is amended by repealing “Crown” and substituting “Government”.
23. The Schedule is amended, in Part I, in section 10, by repealing “Crown” and substituting “Government”.

Explanatory Memorandum

The purpose of this Bill is to adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with Hong Kong’s status as a Special

Administrative Region of the People's Republic of China (clause 3, Schedules 1 to 10).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -

Aliens (Rights of Property) Ordinance (Cap. 185)	Schedule 2
Conveyancing and Property Ordinance (Cap. 219)	Schedule 3
Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337)	Schedule 7
Electricity Networks (Statutory Easements) Ordinance (Cap. 357)	Schedule 8
Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)	Schedule 5
Land Drainage Ordinance (Cap. 446)	Schedule 10
Land Registration Ordinance (Cap. 128)	Schedule 1
Land Transactions (Enemy Occupation) Ordinance (Cap. 256)	Schedule 4
Lifts and Escalators (Safety) Ordinance (Cap. 327)	Schedule 6
Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438)	Schedule 9

3. The Bill also provides that the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (clause 2).