

ADAPTATION OF LAWS
NON-ESSENTIAL ITEMS

ADAPTATION OF REFERENCES TO THE “CROWN”

BACKGROUND

In accordance with Articles 8 and 160 of the Basic Law, Ordinances of Hong Kong (with the exception of 24 Ordinances or parts of Ordinances) were adopted as the laws of the Hong Kong Special Administrative Region under the *Decision of the Standing Committee of the National People’s Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China adopted on 23 February 1997*.

2. The Decision sets out the principles on which the previous laws are adopted and how various expressions inconsistent with the status of Hong Kong as a special administrative region of the People’s Republic of China are to be construed. Such principles have been enacted as part of the local laws under 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)*. In line with such general principles, more detailed principles of interpretation have been added to *Cap. 1* by the amendments under the *Adaptation of Laws (Interpretative Provisions) Ordinance (Ord. No. 26 of 1998)*.

PRINCIPLES

3. In relation to references to “the Crown”, the relevant principles of interpretation are in sections 1, 2 and 21 of Schedule 8 and section 7 of Schedule 9 to *Cap. 1*, which are set out below -

“Schedule 8

CONSTRUCTION ON AND AFTER 1 JULY 1997 OF WORDS AND EXPRESSIONS IN LAWS PREVIOUSLY IN FORCE

1. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision -
 - (a) relates to title to land in the Hong Kong Special Administrative Region;
 - (b) involves affairs for which the Central People’s Government of the People’s Republic of China has responsibility
 - (c) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,shall be construed as a reference to the Central People’s Government or other competent authorities of the People’s Republic of China.

2. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in section 1 shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.

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21. Any provision saving the rights of Her Majesty, Her Heirs and Successors shall be construed as saving the rights of the Central People’s Government of the People’s Republic of China and the rights of the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws.”

“Schedule 9

TEMPORARY PROVISIONS

7. Construction of certain references to Crown
 - (1) Where it is expressly provided in an Ordinance that the Ordinance -
 - (a) affects or does not affect the right of; or
 - (b) is or is not binding on,

the Crown, then that reference to the Crown shall be construed as a reference to the State.

(2) Subsection (1) does not prejudice the operation of section 2A(2)(c) of this Ordinance, whether before, on or after the commencement of this section.”

APPLICATION OF PRINCIPLES

4. Under the current Adaptation of Laws programme, references to “the Crown” will be adapted on the basis of the above principles.

References to “the Crown” relating to land

5. Section 1(a) of Schedule 8 of Cap. 1 quoted above reflects the first part of Article 7 of the Basic Law which states that land shall be State property. Article 7 further states that the HKSARG shall be responsible for the management, use, development of land and for its lease or grant. Provisions in various Ordinances, where references to “the Crown” in relation to land are found, deal with the management, use, development, lease and grant of land (as opposed to its title). Accordingly, the Adaptation of Law (Crown Land) Ordinance (Ord. No.29 of 1998) has adapted references to “the Crown” in relation to land to “the Government” (defined in Cap.1 to mean the HKSARG). Section 6 of Cap.1 eliminates any possible implication that the HKSARG owns land and is set out below -

“6. References to Government property

(1) Where reference is made in any Ordinance to property and the expressions used in relation thereto imply that the property is owned by, belongs to, or reverts to, the Government, or convey a similar meaning, the reference shall be construed in accordance with Article 7 of the Basic Law.

(2) In this section, “property” () means any of the land and natural resources within the Hong Kong Special Administrative Region.”

Matters under the Sole Responsibility of the HKSARG

6. In provisions which confer powers over matters for which the HKSARG is solely responsible, references to “the Crown” will be changed to “the Government” (defined as above-mentioned) in accordance with section 2 to Schedule 8 to Cap.1 quoted above. Examples of such provisions include include -

- (a) Debt Due to the Crown: Provisions to the effect that an unpaid fine, penalty, contractual payment, etc., is recoverable as a debt due to the Crown should be adapted so that it is recoverable as a debt due to the HKSARG
- (b) Forfeiture to the Crown: Provisions to the effect that property, money, etc., is to be forfeited to the Crown (in the course of enforcement of drug control legislation, for example) should be adapted so that it is forfeited to the HKSARG.

Ordinances applying to/binding on the Crown

7. Provisions to the effect that an Ordinance (or part of it) -

- (a) is binding or not binding on the Crown; or
- (b) applies or does not apply to the Crown,

should be adapted in accordance with section 7 of the Schedule 9 of Cap.1.

8. However, each provision should be considered individually in case there is any reason to adapt it differently (for example, in the case where the original provision does not truly serve the same purpose as a binding effect provision).

9. In selecting the appropriate adaptation, the various principles in Schedules 8 and 9 of Cap.1 should not be applied mechanically if this would produce a result that does not make sense in the context of other adaptations or would lead to inconsistencies within the Ordinance concerned or with other Ordinances.

Department of Justice

October 1998