

LETTERHEAD OF Hong Kong Bar Association

Your Ref: CB2/BC/5/98

21st November 1998

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 Bill 1998

We have considered this Bill. We agree that the amendments are largely technical ones and non-controversial. However, we believe that some changes need to be further explained and justified.

We see that *Schedule 3* deals with the *Prisons Ordinance* and subsidiary legislation. Paragraphs 1 and 22 introduce the new concept of *government regulations* and *relevant government orders*. These replace Colonial Regulations, Regulations of Her Majesty's Civil Service and Regulations of the Hong Kong Government. The source of these instruments as a matter of colonial constitutional law was well known. It would be of assistance if the promoter of the bill could identify the new source of power to regulate the employment of public officers and explain the difference between *government regulations* and *relevant government orders*. We assume that it is Article 48 BL but it would be better if this is confirmed by the Administration.

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We also note that in adapting the *Transfer of Prisoners Ordinance (Schedule 13)* the references in that ordinance to the 'Secretary of State' are to be replaced by a reference to the 'Central People's Government'. It seems to us that this particular adaptation may not be necessary. We know that the *Transfer of Prisoners Ordinance* was meant to replace a scheme for transfer established under the UK *Repatriation of Offenders Act 1984* ("ROPA") which was applied to Hong Kong and other colonies by orders in council. There was a requirement in the Orders in Council for a reference to be made to the Secretary of State about a transfer. This was reproduced in the new ordinance on the basis, we assume, that the new arrangements had to be compatible with ROPA because of the requirements of the *Colonial Laws Validity Act 1865*. ROPA and the *Colonial Laws Validity Act 1865* no longer apply. In the circumstances, we do not see that there is a need to adapt this provision. Under the 'one country, two systems' principle we reckon that the high degree of autonomy enjoyed by the HKSAR extends to the Government making decisions about the transfer of prisoners without hand-holding by the Central People's Government.

In any event, even if the amendments were made it would be desirable to know what protocols exist that ensure that a decision-maker is identified in the Central People's Government. It would not be in anyone's interest, least of all the prisoner's, leaving finding a decision-maker to bureaucratic chance.

Yours sincerely,

Audrey Eu, S.C.
Chariman