

Section saving the rights of Her Majesty etc.

Under Clause XXVII of the Royal Instructions every private Bill was required to contain such a section. For ease of reference, Clause XXVII reads as follows -

“Private Bills

XXVII. Every Bill, not being a Government measure, intended to affect or benefit some particular person, association or corporate body shall contain a section saving the rights of Us, Our heirs and successors, all bodies politic and corporate, and all others except such as are mentioned in the Bill and those claiming by, from, and under them. No such Bill shall be introduced into the Legislative Council until due notice has been given by not less than two successive publications of the Bill in the Hong Kong Government Gazette, and in such other manner as may be required by the standing rules and orders for the time being in force; and the Governor shall not assent thereto in Our name until it has been so published. A certificate under the hand of the Governor shall be transmitted to Us with the Bill signifying that such publication has been made. *(Amended on 17.11.1967)*”

This Clause was reflected in the Standing Orders of the Legislative Council before Reunification. SO 38 read as follows -

“(7) In the case of a bill, not being a Government measure, intended to affect or benefit some particular person, association or corporate body, there shall be included in the bill a clause saving the rights of Her Majesty, Her heirs and successors, all bodies politic and corporate, and all others except such as are mentioned in the bill, and those claiming by, from and under them.”

2. The Royal Instruction ceased to apply on Reunification. However a large number of Ordinances that remained as part of our law contained this savings provision. The Standing Committee of the National People’s Congress, in its decision on the 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 at the 24th Session of the Standing Committee of the 8th National People's Congress on 23 February 1997), adopted these Ordinances but with the proviso that a reference in any provision to "nothing in this Ordinance shall affect or be deemed to affect the rights of Her Majesty the Queen, Her Heirs or successors" is to be construed as a reference to "nothing in this Ordinance shall affect or be deemed to affect the rights of the Central People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws".

3. The Standing Committee's Decision was enacted in section 6 of the Hong Kong Reunification Ordinance and is now, of course, in Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1).

4. There is a similar provision in Rule 50(8) of the Rules of Procedure of the Legislative Council.

5. The present position is that these Ordinances being adapted contain sections saving the rights of Her Majesty etc. Under the Interpretation and General Clauses Ordinance such sections are to be construed as saving the rights of the Central Peoples Government etc. The Adaptation Bills propose to change the wording in the Ordinances in question so that it is not necessary to refer to The Interpretation and General Clauses Ordinance to find out how these pre-reunification provisions are to be construed. The law remains the same whether or not the Adaptation Bills are enacted.

6. The Department of Justice is of the view that these savings provisions in private Bills were "absolutes". They were a constitutional requirement. They had to be there.

7. The reason for the original saving provision was the Royal prerogative. In the House of Commons the Queen's recommendation is required for motions which involve any public expenditure or grant of money not included in the annual estimates or which would have the effect of releasing or compounding any sum of money owing to the Crown. The Queen's consent is required in both Houses before any Bill affecting the prerogative, hereditary revenues, personal property or interests of the Crown, the Duchy of Lancaster and the Duchy of Cornwall. The origins of the savings provision may be in the House of Commons procedure.

8. The savings provisions were designed to ensure that no private Bill infringes in any way on any right that Her Majesty and her heir and successors might enjoy as legal persons. That is, they cover all rights that a legal person might enjoy. Her Majesty in Her Royal Instructions permitted private Bills to be introduced. But, those Bills were not to impinge on any rights of Her Majesty.

Department of Justice
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