

**Ref : XCC(98)129**

## **LEGISLATIVE COUNCIL BRIEF**

### **ADAPTATION OF LAWS (NO. 4) BILL 1998**

Legal Officers Ordinance (Cap. 87)

Legal Practitioners Ordinance (Cap. 159)

Official Solicitor Ordinance (Cap. 416)

## **INTRODUCTION**

At the meeting of the Executive Council on 13 October 1998, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No.4) Bill 1998, at the Annex , should be introduced into the Legislative Council.

## **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 on the treatment of laws previously in force in Hong Kong. It provides, among other things, that apart from the 24 Hong Kong Ordinances that are declared not to be adopted in whole or in part, 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 and are incorporated as section 2A and Schedule 8 in the Interpretation and General Clauses Ordinance. 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. References to "the Governor", "the Crown", "the Colonial Regulations", etc., as well as certain old titles of legal officers set out in the Legal Officers Ordinance, will be

suitably amended. Reference to "the Governor " will be substituted by "Chief Executive in Council " in s.11 of the Legal Officers Ordinance to ensure consistency with Article 56 of the Basic Law. References to UK Acts or authorities are proposed to be replaced by references to local legislation or authorities.

## **COMMENCEMENT**

5. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of the proposed adaptations shall when passed into law take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region. Adaptations which introduce provisions that are yet to come into operation shall take effect as from the date when the relevant provisions come into operation.

## **LEGISLATIVE TIMETABLE**

6. Subject to Members' approval of the introduction of this Bill into the Legislative Council, the legislative timetable will be -

Publication in the Gazette	23 October 1998
First Reading and commencement of Second Reading debate	11 November 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **HUMAN RIGHTS IMPLICATIONS**

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

### **BINDING EFFECT**

8. The amendments in the Bill do not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

### **FINANCIAL AND STAFFING IMPLICATIONS**

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

### **PUBLIC CONSULTATION**

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

### **PUBLICITY**

11. The Bill will be published in the Gazette on 23 October 1998, and a press release on the same day. A spokesman will be available to handle media enquiries.

October 1998

Department of Justice

**File Ref. : LP 5039/19/4C II**

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. 4) Ordinance 1998.

**2. Commencement**

(1) (a) This Ordinance, other than section 9(b) of Schedule 2, shall be deemed to have come into operation on 1 July 1997.

(b) Paragraph (a) 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).

(2) Section 9(b) of Schedule 2 shall come into operation on the day appointed for the commencement of sections 9 (in so far as it relates to the addition of new section 10D) and 10 of the Mental Health (Amendment) Ordinance 1997 (81 of 1997).

**3. Amendment of Ordinances**

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

## SCHEDULE 1

[s. 3]

## LEGAL OFFICERS ORDINANCE

1. Section 2 of the Legal Officers Ordinance (Cap. 87) is amended -
  - (a) in the definition of “legal officer”, by repealing “the Colony” and substituting “Hong Kong”;
  - (b) in the definition of “public body”, by repealing “Governor or Government of Hong Kong” and substituting “Chief Executive or the Government”.
  
2. Section 4(1) is amended -
  - (a) in paragraph (a), by repealing “the Colony” where it twice appears and substituting “Hong Kong”;
  - (b) in paragraph (b), by repealing “Crown” and substituting “Government”;
  - (c) in paragraph (d)(i), by adding “of China in Hong Kong” after “authorities”;
  - (d) by repealing paragraph (d)(ii).
  
3. Section 5 is repealed and the following substituted -

**“5. Rights of Secretary for Justice**

All rights which were enjoyed by the then Attorney General immediately before 1 July 1997 in the courts of Hong Kong, except for those that are inconsistent with the Basic Law, shall on and after that date be exercisable by the Secretary for Justice.”.
  
4. Section 6 is repealed and the following substituted -

**“6. Rights and duties of Secretary for Justice in proceedings under Matrimonial Causes Ordinance**

All rights and duties which were exercisable or dischargeable by the then Attorney General immediately before 1 July 1997 so far as regards any proceedings over which the courts of Hong Kong had jurisdiction by or by virtue of the Matrimonial Causes Ordinance (Cap. 179), except for those that are inconsistent with the Basic Law, shall on and after that date be exercisable or dischargeable by the Secretary for Justice.”.

5. Section 7(1) is amended by repealing “Governor” and substituting “Chief Executive”.
6. Section 10 is amended -
  - (a) in the proviso to subsection (1), by repealing “立法局” and substituting “立法會”;
  - (b) in subsection (2), by repealing “of the Colony”.
7. Section 11 is amended by repealing “Governor” and substituting “Chief Executive in Council”.
8. The Schedule is amended by repealing everything from “ATTORNEY GENERAL’S CHAMBERS” to “Assistant Crown Counsel.” and substituting -

“DEPARTMENT OF JUSTICE

**Secretary for Justice.**

Law Officer.  
Director of Public Prosecutions.  
Law Officer (Civil Law).  
Law Draftsman.  
Solicitor General.  
Principal Government Counsel.  
Deputy Director of Public Prosecutions.  
Deputy Law Officer (Civil Law).  
Deputy Law Draftsman.  
Deputy Solicitor General.  
Deputy Principal Government Counsel.  
Senior Assistant Director of Public Prosecutions.  
Senior Assistant Law Officer (Civil Law).  
Senior Assistant Law Draftsman.  
Senior Assistant Solicitor General.  
Assistant Principal Government Counsel.  
Assistant Director of Public Prosecutions.  
Assistant Law Officer (Civil Law).  
Assistant Law Draftsman.  
Assistant Solicitor General.  
Senior Government Counsel.  
Government Counsel.  
Assistant Government Counsel.”.

SCHEDULE 2

[ss. 2 & 3]

LEGAL PRACTITIONERS ORDINANCE AND ITS SUBSIDIARY LEGISLATION  
AND RELATED ORDINANCES

**Legal Practitioners Ordinance**



1. Section 2 of the Legal Practitioners Ordinance (Cap. 159) is amended by adding -  
“(1A) In this Ordinance, a reference to the Department of Justice shall, in relation to any period of time before 1 July 1997, be deemed to be a reference to the then Legal Department.”.
2. Section 3(3) is repealed.
3. The heading to Part IIIA is amended by repealing “外國” where it twice appears and substituting “外地”.
4. Section 72B is amended by repealing “立法局” and substituting “立法會”.
5. Section 74A(1), (2)(d), (5)(a) and (8) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
6. Section 75(1)(a) is amended by repealing “any member of Her Majesty’s Overseas Judiciary,”.

**Legal Services Legislation (Miscellaneous  
Amendments) Ordinance 1997**

7. Section 2 of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) is amended, in the new sections 7G(1) and 7I(2) and (3), by repealing “首席大法官” and substituting “終審法院首席法官”.
8. Section 13(c) is amended, in the new paragraph (e) -

- (a) by repealing “Governor” and substituting “Chief Executive”;
- (b) by repealing “Governor’s opinion” and substituting “opinion of the Chief Executive”.

9. Schedule 1 is amended -

- (a) in item 17, in the new subsection (2G), by repealing “Supreme Court” and substituting “High Court”;
- (b) in item 28, in the new subsection (2A)(g) -
  - (i) by repealing “section 98 of the Mental Health Act 1983 (1983 c. 20 U.K.) (Emergency powers)” and substituting “section 10 D of the Mental Health Ordinance (Cap. 136) (Court’s powers in cases of emergency)”;
  - (ii) by repealing “section 99 of that Act (Appointment of a receiver)” and substituting “section 11 of that Ordinance (Appointment of committee)”.

**Legal Practitioners (Amendment) Ordinance 1998**

10. Section 3 of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) is amended, in the new section 40M(1), by repealing “Rules of the Supreme Court” and substituting “Rules of the High Court”.

**Admission and Registration Rules**

11. Rule 8(3)(b) of the Admission and Registration Rules (Cap. 159 sub. leg.) is amended by repealing “首席大法官” where it twice appears and substituting “終審法院首席法官”.

12. Rule 13 is amended by repealing “首席大法官” wherever it appears and substituting “終審法院首席法官”.

### **Solicitors Disciplinary Tribunal Proceedings Rules**

13. Rule 4 of the Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159 sub. leg.) is amended by repealing “首席大法官” and substituting “終審法院首席法官”.

### **Barristers (Qualification) Rules**

14. Rule 2(1)(d) of the Barristers (Qualification) Rules (Cap. 159 sub. leg.) is amended by repealing “Attorney General’s Chambers” and substituting “Department of Justice”.

15. Rule 3(a)(ii) is amended by repealing “Attorney General’s Chambers” and substituting “Department of Justice”.

16. Rule 7(2) is amended by repealing “Attorney General’s Chambers” where it twice appears and substituting “Department of Justice”.

17. Rule 9(1)(b) and (4) is amended by repealing “Attorney General’s Chambers” and substituting “Department of Justice”.

### **Solicitors' Practice Rules**

18. Rule 2AA(2) of the Solicitors' Practice Rules (Cap. 159 sub. leg.) is amended by repealing “首席大法官” and substituting “終審法院首席法官”.

19. Rule 5C(3)(a)(i) and (ii) and (b), (4), (5) and (6)(b) is amended by repealing “首席大法官” and substituting “終審法院首席法官”.

### **Solicitors (Trade Marks and Patents) Costs Rules**

20. Rule 2(1) of the Solicitors (Trade Marks and Patents) Costs Rules (Cap. 159 sub. leg.) is amended, in the definition of “Registrar”, by repealing “Governor” where it twice appears and substituting “Chief Executive”.

### **Practising Certificate (Barristers) Rules**

21. Forms 1B and 4 in the Schedule to the Practising Certificate (Barristers) Rules (Cap. 159 sub. leg.) are amended by repealing “大法官” and substituting “法官”.

### **Barristers Disciplinary Tribunal Proceedings Rules**

22. Section 1 of the Barristers Disciplinary Tribunal Proceedings Rules (Cap. 159 sub. leg.) is amended, in the definition of “申請人”, by repealing “首席大法官” and substituting “終審法院首席法官”.

23. Section 2 is amended by repealing “首席大法官” and substituting “終審法院首席法官”.

### **Foreign Lawyers Practice Rules**

24. Section 3(2) of the Foreign Lawyers Practice Rules (Cap. 159 sub. leg.) is amended by repealing “首席大法官” and substituting “終審法院首席法官”.

25. The heading to the Schedule is amended by repealing “外國” and substituting “外地”.

### SCHEDULE 3

[s. 3]

### OFFICIAL SOLICITOR ORDINANCE

1. Section 2 of the Official Solicitor Ordinance (Cap. 416) is amended -
- (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
  - (b) in subsection (4), by repealing “Colonial Regulations” and substituting “government regulations”;
  - (c) in subsection (5), by repealing “立法局” and substituting “立法會”;
  - (d) in subsection (6), by repealing “Governor” and substituting “Chief Executive”;
  - (e) by adding -

“(9) In this section, “government regulations” (政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service.”.

2. Section 3(4) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 7 is amended -
  - (a) in subsection (2), by repealing “立法局” and substituting “立法會”;
  - (b) in subsection (4), by repealing “Governor” and substituting “Chief Executive”.
4. Section 8 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

#### 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 3).

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

Legal Officers Ordinance (Cap. 87)	Schedule 1
Legal Practitioners Ordinance (Cap. 159)	Schedule 2
Official Solicitor Ordinance (Cap. 416)	Schedule 3

3. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of the proposed adaptations shall when passed into law take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region. Adaptations which introduce provisions that are yet to come into operation shall take effect as from the date when the relevant provisions come into operation (clause 2).