

**LETTERHEAD OF DEPARTMENT OF JUSTICE Legal Policy Division**

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來函檔號 Your Ref:

電話號碼 Tel. No.: 2867 4226

10 November 1998

Mr. Stephen Lam  
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Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

via Mr. Michael Scott, DSG (Ag)

Dear Mr Lam,

**Adaptation of Laws (No.4) Bill 1998**

I refer to your fax to us dated 9 November 1998 and 10 November 1998 respectively in respect of the above Bill. Our answers to your queries are as follows:-

**Legal Officers Ordinance**

- a) Legal officers of the SARG do not have a role with respect to content of the provision mentioned in para. 1 of Schedule 8 of the Interpretation and General Clauses Ordinance (Cap. 1). Therefore under para. 2 of Schedule 8, the correct adaptation should be "Government" as proposed in Consultation Paper No. 41 in relation to this Ordinance.
- b) Pursuant to s.2A of Cap. 1, provisions conferring privileges on the U.K. other than provisions giving effect to reciprocal arrangements between Hong Kong and the U.K. shall have no further effect. The deletion of the reference to "the Trade Commissioner for the United Kingdom or any territory forming part of the Commonwealth" in s.4(1)(d)(ii) is made pursuant to

the Consultation Paper No.41 and the recommendation of the Director of Administration.

- c) It is provided in s.24(2) of the Hong Kong Reunification Ordinance that those prerogative powers (including rights, privileges and immunities) exercisable by a public officer immediately before 1 July 1997, except for those that are inconsistent with the Basic Law, shall on and after that date continue in existence, vest in the Chief Executive and be exercisable by the corresponding public officer in the HKSAR. Therefore the new section 5 is worded to ensure consistency with s.24(2) of the Hong Kong Reunification Ordinance.
- d) The same case applies to the new s.6 of the Legal Officers Ordinance.
- e) Section 11 provides for amendment of the Schedule to the Legal Officers Ordinance by the Governor. As the Schedule is subsidiary legislation, "Governor" should be substituted by "Chief Executive in Council" to ensure consistency with Art. 56 of the Basic Law.

#### **Legal Practitioners Ordinance**

It is recommended in the Consultation Paper No.41 in relation to this Ordinance that section 3(3) should be repealed. It was considered that the deletion of s.3(3) should not affect the inherent jurisdiction of the court.

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

The substitution of section 99 of the Mental Health Act 1983 by section 11 of the Mental Health Ordinance is consistent with the amendment of s.26A(1)(g) contained in Ordinance No.25 of 1998. We are also advised by the Commissioner for Rehabilitation that "Appointment of committee" under s.11 of the Mental Health Ordinance is intended to be a parallel mechanism of "Appointment of a receiver" under s.99 of the Mental Health Act.

**Official Solicitor Ordinance**

We are aware that there are differences and similarities between “Colonial Regulations” and “government regulations”. We are also aware that there are discussions in the Bills Committee to the Adaptation of Laws Bill 1998 about this issue. Therefore we shall ultimately follow the term adopted in Adaptation of Laws Bill 1998.

Yours sincerely,

(Ms Kitty FUNG)  
Government Counsel  
Legal Policy Division