

LEGISLATIVE COUNCIL BRIEF

Probate and Administration Ordinance (Cap. 10)
Wills Ordinance (Cap.30)
Intestates' Estates Ordinance (Cap. 73)
Hong Kong War Memorial Pensions Ordinance (Cap. 386)

ADAPTATION OF LAWS (NO. 24) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 29 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No. 24) Bill 1999, at the Annex, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. There are provisions in the Ordinances which are inconsistent with the Basic Law or with Hong Kong's status as a Special Administrative Region of the People's Republic of China. The Adaptation of Laws (No. 24) Bill 1999 seeks to adapt these provisions with a view to bringing them into conformity with the Basic Law and Hong Kong's present status.

THE BILL

3. Most of the proposed amendments are merely terminological changes, e.g. references to "the Colony" and "立法局" will be replaced by "Hong Kong" and "立法會" respectively. Similarly, references to the "Governor" will be replaced by the "Chief Executive". Where a provision previously conferred power on the "Governor" to make

subsidiary legislation, the reference to the "Governor" will be adapted to the "Chief Executive". Although the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation is then not expressly set out, the Council will still have to be consulted if the Chief Executive is to exercise this legislative function.

4. Explanations for some particular amendments are set out below -

(a) **s. 3(3), 48, 49 & 49A, Probate and Administration Ordinance (Cap. 10)**

Section 2A(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that provisions conferring privileges on the United Kingdom or other Commonwealth countries or territories, other than provisions giving effect to reciprocal arrangements between Hong Kong and the United Kingdom or other Commonwealth countries or territories, shall have no further effect. In line with this principle, it is proposed to replace the previous system for resealing of Commonwealth grants by resealing on the basis of reciprocity. The Department of Justice is seeking clarification from various Commonwealth jurisdictions as to whether the grant of probate and letters of administration issued in the HKSAR can be resealed there. To date, we have heard from the United Kingdom, Tasmania, Victoria and Northern Territory of Australia, Singapore and Sri Lanka that grants in the HKSAR can be resealed in their jurisdictions. The relevant amendments are to come into operation on the day they are enacted and published in the Gazette.

(b) **s. 12(2) & (3), Probate and Administration Ordinance (Cap. 10)**

The section provides for the consular officer of the United States to be notified of the death of an American national and the right of the consular officer to appear in proceedings on behalf of the absent heirs or creditors. This implemented the Consular Convention between the United Kingdom and the United States done in Washington on 6 June 1951. As the

Convention has ceased to apply to Hong Kong since 1 July 1997, references to the United States are repealed.

(c) **Rule 11, Non-Contentious Probate Rules (Cap.10 sub. leg)**

The amendment under s.12 of Schedule 1 will extend treatment applicable to the English language to the Chinese language. As a result, the Registrar of the High Court will be required to satisfy himself that the testator has literate knowledge of the Chinese language under certain circumstances e.g. in the case of a will in the Chinese language that appears to have been made by a blind testator. This requirement should not affect wills already admitted to proof and is to come into operation on the day the amendment is enacted and published in the Gazette.

(d) **R. 37, Non-Contentious Probate Rules (Cap. 10 sub. leg.)**

The rule requires notice of application for a grant of representation be given to the official administrator in any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person. Given that the Ordinance provides for the handling of probate and letters of administration in Hong Kong by the High Court of Hong Kong, r. 37 concerns cases potentially of interest to the Government of the HKSAR only. Therefore, the reference to “the Crown” is replaced by “the Government”.

(e) **ss.13(9), 17, 18 and 19(1)(a) of the Hong Kong War Memorial Pensions Ordinance (Cap. 386)**

References to “the Crown” are replaced by “the Government” in these sections which concern award of costs in appeal proceedings regarding the Hong Kong War Memorial Pensions, recovery of pension paid by mistake or on the basis of false information, and attachment of a debt or claim upon a pension. These matters are within the responsibility of the SAR Government.

COMMENCEMENT

5. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region except as stated in paragraph 4(a) and (c) above.

LEGISLATIVE TIMETABLE

6. The proposed legislative timetable is as follow :

Publication in the Gazette	2 July 1999
First Reading and commencement of Second Reading debate	14 July 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified.

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT

8. The amendments in the Bill will not affect the current binding effect of the existing provisions of 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. A press release will be issued on 30 June 1999 and the Bill will be gazetted on 2 July 1999.

OTHERS

12. Enquiries concerning the Bill and this brief can be directed to Miss Anne TENG, Assistant Secretary for Home Affairs (tel no : 2835 1580).

ADAPTATION OF LAWS (NO. 24) BILL 1999

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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. 24) Ordinance 1999.

2. Commencement

(1) (a) This Ordinance, except as provided in subsection (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) Sections 1, 6, 7, 8, 9, 10, 11, 12 and 14 of Schedule 1 shall come into operation at the beginning of the day on which this Ordinance is published in the Gazette.

3. Amendment of Ordinances

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

SCHEDULE 1

[ss. 2 & 3]

PROBATE AND ADMINISTRATION ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Probate and Administration Ordinance

1. Section 3(3) of the Probate and Administration Ordinance (Cap. 10) is amended by repealing everything from "any part of the Commonwealth" to "or otherwise)" and substituting "any designated country or place".
2. Section 12 is amended -
 - (a) in subsection (2), by repealing "or of the United States of America";
 - (b) by repealing subsection (3).
3. Section 15(2) is amended by repealing "of the Colony".
4. Section 23B(2)(b) and (3) is amended by repealing "of the Colony".
5. Section 23C is amended by repealing "of the Colony".
6. The heading of Part IV is repealed and substituted by "SEALING OF GRANTS BY COURTS IN DESIGNATED COUNTRIES, ETC.".

7. Section 48 is amended -
- (a) by repealing the definition of "British court in a foreign country";
 - (b) by adding -
 ""designated country or place"(指定國家或地方) means a country or place specified in Schedule 2;"
 - (c) by repealing the definitions of "probate" and "letters of administration" and substituting ""probate" (遺囑認證) and "letters of administration" (遺產管理書) mean any instrument having in any designated country or place the same effect which under the laws of Hong Kong is given to probate and letters of administration respectively."
8. Section 49 is amended by repealing "any part of the Commonwealth, or a British court in a foreign country," and substituting "a designated country or place".
9. The following is added -
- "49A. Amendment of Schedule 2
- (1) The Chief Executive in Council may, by order in the Gazette, add to or delete from Schedule 2 the name of a country or place if he is satisfied that the condition in subsection (2) is complied with or has ceased to be complied with (as the case may be) in respect of that country or place.
 - (2) The condition referred to in subsection (1) is that, in the event of the benefits conferred by this Part being applied to probate and letters of administration granted by the court of a country or place outside Hong Kong, similar benefits will in

that country or place be applied to probate and letters of administration granted by the court of Hong Kong."

10. Section 63(1) and (3) is amended by repealing "the Schedule" and substituting "Schedule 1".
11. The Schedule is amended by repealing "SCHEDULE" and substituting "SCHEDULE 1".
12. The following is added -

"SCHEDULE 2
49A]

[ss. 48 &

DESIGNATED COUNTRY OR PLACE

The Australian States of Tasmania and Victoria and the Northern Territory of
Australia
Singapore
Sri Lanka
United Kingdom".

Non-Contentious Probate Rules

13. Rule 8 of the Non-Contentious Probate Rules (Cap. 10 sub. leg.) is amended, in the second proviso, by repealing "language a translation" and substituting "or Chinese language a translation into one of those languages".
14. Rule 11 is amended -
 - (a) by adding "or Chinese" after "in the English";

(b) by repealing "of the English" and substituting "of that".

15. Rule 37 is amended by repealing "Crown" and substituting "Government".

SCHEDULE 2

[ss. 2 & 3]

WILLS ORDINANCE

1. Section 30(3)(c) of the Wills Ordinance (Cap. 30) is amended by adding "non-adopted" before "Application of English Law Ordinance (Cap. 88)".

SCHEDULE 3

[s. 3]

INTESTATES' ESTATES ORDINANCE

1. Section 4(13) of the Intestates' Estates Ordinance (Cap. 73) is amended by repealing "立法局" and substituting "立法會".

SCHEDULE 4

[s. 3]

HONG KONG WAR MEMORIAL PENSIONS ORDINANCE

1. Section 3(2) and (4)(a), (b) and (c) of the Hong Kong War Memorial Pensions Ordinance (Cap. 386) is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".

2. Section 12(2), (4) and (6) is amended by repealing "Governor" and substituting "Chief Executive".

3. Section 13(9) is amended by repealing "Crown" and substituting "Government".
4. Section 14(1) is amended by repealing "Governor" and substituting "Chief Executive".
5. Section 15(2) is amended by repealing "院" and substituting "庭".
6. Section 17 is amended by repealing "Crown" and substituting "Government".
7. Section 18 is amended by repealing "Crown" and substituting "Government".
8. Section 19(1)(a) is amended by repealing "Crown" and substituting "Government".
9. Section 21 is amended by repealing "Governor" and substituting "Chief Executive".

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 4).

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

Hong Kong War Memorial Pensions Ordinance (Cap. 386)	Schedule 4
Intestates' Estates Ordinance (Cap. 73)	Schedule 3
Probate and Administration Ordinance (Cap. 10)	Schedule 1
Wills Ordinance (Cap. 30)	Schedule 2

3. The Bill also provides that the adaptations (except those referred to in clause 2(2)) when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (clause 2).