

BRIEF FOR THE LEGISLATIVE COUNCIL

Lands Tribunal Ordinance
(Chapter 17)
Labour Tribunal Ordinance
(Chapter 25)
Municipal Services Appeals Boards Ordinance
(Chapter 220)
Magistrates Ordinance
(Chapter 227)
Administrative Appeals Board Ordinance
(Chapter 442)
Coroners Ordinance
(Chapter 504)

ADAPTATION OF LAWS (NO. 5) BILL

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. 5) Bill (copy 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.”

3. 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.”

4. The Standing Committee of the National People’s Congress , on 23 February 1997, published a decision which set out a number of principles for interpreting the laws which were adopted by the NPCSC to continue to remain in force as laws of the HKSAR. These principles were included in the Hong Kong Reunification Ordinance and were subsequently incorporated as section 2A and Schedule 8 of the Interpretation and General Clauses Ordinance (Chapter 1).

5. Despite the guiding principles under the Interpretation and General Clauses Ordinance on construing terminology inconsistent with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People’s Republic of China and the subsequent adaptation of court-related nomenclature and titles of judges under the Adaptation of Laws (Courts and Tribunals) Ordinance (Ordinance No. 25 of 1998), it is considered unacceptable to retain these terminology in our Statute Book after the Reunification. We, therefore, need to introduce the Adaptation of Laws (No. 5) Bill to bring necessary textual amendments to the Lands Tribunal Ordinance, the Labour Tribunal Ordinance, the Municipal Services Appeals Boards Ordinance, the Magistrates Ordinance, the Administrative Appeals Board Ordinance and the Coroners Ordinance.

THE BILL

6. The Bill comprises mainly terminological changes, for example, references to "the Governor" and "Governor in Council"

COMMENCEMENT

7. 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.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows -

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

9. The Department of Justice has confirmed that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

10. 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

11. The Bill will not affect public expenditure or public service staffing requirements.

PUBLIC CONSULTATION

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

ENQUIRIES

13. For enquires on the brief, please contact Ms Rosanna Law, Assistant Director of Administration (2) on 28102576.

Administration Wing
Chief Secretary for Administration's Office
22 October 1998

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. 5) Ordinance 1998.

2. Commencement

(1) This Ordinance shall be deemed to have come into operation on 1 July 1997.

(2) Subsection (1) 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).

3. Amendment of Ordinances

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

SCHEDULE 1

[s. 3]

LANDS TRIBUNAL ORDINANCE

1. Section 15 of the Lands Tribunal Ordinance (Cap. 17) is amended by repealing "Chief Executive" and substituting "Chief Executive in Council".

SCHEDULE 2

[s. 3]

LABOUR TRIBUNAL ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Labour Tribunal Ordinance

1. Section 35(2) and (3) of the Labour Tribunal Ordinance (Cap. 25) is amended by repealing “高等法院” and substituting “原訟法庭”.
2. Paragraph 1(a) of the Schedule is amended by repealing “an overseas contract as defined in the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78)” and substituting “a contract to which the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78) applies”.

Labour Tribunal (Forms) Rules

3. Form 17 of the Schedule to the Labour Tribunal (Forms) Rules (Cap. 25 sub. leg.) is amended -
 - (a) by repealing “地方法院” and substituting “區域法院”;
 - (b) by repealing “地方法院” and substituting “區域法院”.

SCHEDULE 3

[s. 3]

MUNICIPAL SERVICES APPEALS BOARDS ORDINANCE

1. Section 6(1), (2) and (4) of the Municipal Services Appeals Boards Ordinance (Cap. 220) is amended by repealing “Governor” and substituting “Chief Executive”.

2. Section 20 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 4

[s. 3]

MAGISTRATES ORDINANCE AND ITS SUBSIDIARY LEGISLATION

MAGISTRATES ORDINANCE

1. Section 81B(5) of the Magistrates Ordinance (Cap. 227) is amended by repealing “法院” and substituting “法庭”.
2. Section 115(2) is amended by repealing “Attorney General’s chambers” and substituting “Department of Justice”.
3. Section 128 is amended by repealing “法院” and substituting “法庭”.
4. Paragraph 9 of the Third Schedule is amended by repealing “人民”.

MAGISTRATES (FORMS) RULES

5. The Schedule to the Magistrates (Forms) Rules (Cap. 227 sub. leg.) is amended -
 - (a) in Form 98 -
 - (i) by repealing “上訴法院” where it twice appears and substituting “上訴法庭”;
 - (ii) by repealing “法院” wherever it appears except “裁判法院” and substituting “法庭”;
 - (b) in Form 99 -

- (i) by repealing “上訴法院” where it twice appears and substituting “上訴法庭”;
- (ii) by repealing “法院” wherever it appears except “裁判法院” and substituting “法庭”.

SCHEDULE 5

[s. 3]

ADMINISTRATIVE APPEALS BOARD ORDINANCE

1. Section 4(1) and (3) of the Administrative Appeals Board Ordinance (Cap. 442) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 6(1), (2), (5) and (6) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 7(1) is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 8(1) is amended by repealing “Governor” and substituting “Chief Executive”.
5. Section 22(4) (b) is amended, in the Chinese text, by repealing “District Court Civil Procedure (Costs) Rules” and substituting “《區域法院民事訴訟程序(訟費)規則》”.

SCHEDULE 6

[s. 3]

CORONERS ORDINANCE

1. Section 35(2) (a) of the Coroners Ordinance (Cap. 504) is amended by repealing “人民”.

Explanatory Memorandum

The purpose of this Bill is to adapt the Ordinances specified in Schedule 1 to Schedule 6 so as to ensure conformity of those Ordinances 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 6).

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

the Bill	Ordinance
1.	Lands Tribunal Ordinance (Cap. 17)
2.	Labour Tribunal Ordinance (Cap. 25)
3.	Municipal Services Appeals Boards Ordinance (Cap. 220)
4.	Magistrates Ordinance (Cap. 227)
5.	Administrative Appeals Board Ordinance (Cap. 442)
6.	Coroners Ordinance (Cap. 504)

3. The Bill also 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 (clause 2).