

LEGISLATIVE COUNCIL BRIEF

Bills of Sale Ordinance
(Chapter 20)
Companies Ordinance
(Chapter 32)
Limited Partnerships Ordinance
(Chapter 37)
Money Lenders Ordinance
(Chapter 163)

ADAPTATION OF LAWS (NO. 10) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 10 November 1998, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No. 10) Bill 1998, as set out at the Annex, should be introduced into the Legislative Council, to effect necessary adaptations to the above four Ordinances.

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."

and 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 contravene 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 a decision on the treatment of laws previously in force in Hong Kong. It provides, among other things, that 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 (Ord. No. 110 of 1997) and are now incorporated as section 2A and Schedule 8 in the Interpretation and General Clauses Ordinance (Cap. 1). 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. e.g. references to "the Colony" and "立法局" are replaced by "Hong Kong" and "立法會" respectively. Similarly, a reference to "the Governor" will, in the usual case, be replaced by "the Chief Executive". Where a provision previously conferred power on "the Governor" to make subsidiary legislation, a reference to "the Chief Executive in Council" will be substituted to comply with the requirement under Article 56 of the Basic Law that the Chief Executive shall consult the Executive Council before making subordinate legislation.

5. Other amendments include -

(a) **Section 265(1)(d) of the Companies Ordinance**

At present, section 265(1)(d) of the Companies Ordinance gives priority to statutory debt due from the company being wound-up to the Crown under any Ordinance or imperial enactment. It is proposed to adapt the reference to Crown to "Government" because priority given to debts owing to the UK Crown is a privilege on the UK. Giving priority to the debts to the Government of HKSAR can be justified on the basis that the debts in effect constitute a debt to the Hong Kong public and were incurred in connection with the discharge of a governmental function performed in the interest of the Hong Kong public. Debts owing to the UK Crown under any imperial enactment and debts owing to the State (other than the Government of the HKSAR) under any national law applying to Hong Kong cannot be said to fall into the same category. Section 265(1)(d) of the Companies Ordinance, insofar as it gives priority to debts owing to the UK Crown, should be treated as conferring a privilege on the UK. It should be amended so that it has no further effect in accordance with section 2A(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1).*

(b) **Sections 294(1) and 295(2) of the Companies Ordinance**

At present, sections 294(1) and 295(2) of the Companies Ordinance empower the Official Receiver to invest any surplus fund standing to the credit of the account of any company in the Companies Liquidation Account in securities issued by the Government of HKSAR or United Kingdom. Since investment in securities issued by the Government of the United Kingdom is no longer appropriate and in fact the Official Receiver has not invested in such securities for many years, such references are proposed to be deleted.

* Section 2A(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1) states 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".

(c) **Sections 290C and 290D of the Companies Ordinance**

Sections 290B and 292 deal with the property of a dissolved company and provide that such property shall be deemed to be bona vacantia and shall belong to the "Government". Given this background, the reference to "Crown" in section 290C is proposed to be adapted to "Government" as it deals with the disclaiming of property other than immovable property vested in the "Government" under section 290B or 292. Section 290D specifies the effect of the disclaimer under section 290C and accordingly, the reference to "Crown" in that section is also proposed to be adapted to "Government". As the same subject matter is involved, it is appropriate to adopt a consistent approach in adaptation.

COMMENCEMENT

6. 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

7. The legislative timetable is as follow -

Publication in the Gazette	20 November 1998
First Reading and commencement of Second Reading debate	2 December 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

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

BINDING EFFECT

9. The amendments in the Bill do not affect the current binding effect of the existing provisions of various Ordinances covered by the Bill, except provisions conferring privileges on the United Kingdom will be removed without replacement in accordance with section 2A(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1). These exceptions are referred to in paragraphs 5(a) and (b).

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

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

PUBLICITY

12. A press release will be issued on 20 November 1998 and a spokesman will be available to handle media enquiries.

ENQUIRIES

13. For enquiries, please contact Miss Julina CHAN, Principal Assistant Secretary for Financial Services at 2527 3909.

Financial Services Bureau
17 November 1998

ADAPTATION OF LAWS (NO. 10) BILL 1998

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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. 10) 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]

BILLS OF SALE ORDINANCE

1. Section 23 of the Bills of Sale Ordinance (Cap. 20) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 2

[s. 3]

COMPANIES ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Companies Ordinance

1. Section 2(1) of the Companies Ordinance (Cap. 32) is amended in the definition of “prescribed” by repealing “Governor in Council” and substituting “Chief Executive in Council”.

2. Section 20 is amended -

- (a) in subsection (1)(c) and (d) by repealing “Governor” and substituting “Chief Executive”;
- (b) in subsection (2) -
 - (i) by repealing “Governor” where it twice appears and substituting “Chief Executive”;
 - (ii) in paragraph (a) by repealing “Her Majesty’s” and substituting “the Central People’s”.

3. Section 22B is amended -

- (a) in subsection (1) -

- (i) by repealing “Governor” and substituting “Chief Executive in Council”;
 - (ii) in paragraph (a), by repealing “his approval” and substituting “the approval of the Chief Executive”;
 - (b) in subsection (5) by repealing “Governor” and substituting “Chief Executive in Council”.
4. Section 22C(2) is amended by repealing “Governor” and substituting “Chief Executive in Council”.
5. Section 30(2C) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
6. Section 38(7) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
7. Section 38D(2)(c) and (7)(a)(iv) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
8. Section 43(7) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
9. Section 49Q is amended -

- (a) in subsections (1), (2) and (3) by repealing “Governor, in Council” wherever it appears and substituting “Chief Executive in Council”;
- (b) in subsection (4) by repealing “立法局” where it twice appears and substituting “立法會” .

10. Section 103(1) is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.

11. Section 106 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

12. Section 141D(3)(f) is amended by repealing “外地” and substituting “香港以外地方” .

13. Section 222A(2)(a) and (b), (3) and (4) is amended by repealing “大法官” wherever it appears and substituting “法官” .

14. Section 265 is amended -

- (a) in subsection (1)(d), by repealing “Crown” and substituting “Government”;
- (b) in subsection (6), in the definition of “statutory debt”, by repealing “or imperial enactment”.

15. Section 289(2) is amended by repealing “大法官” where it twice appears and substituting “法官” .

16. Section 290C is amended -
 - (a) in subsection (1) -
 - (i) by repealing “Crown” and substituting “Government”;
 - (ii) by repealing “Crown’s” and substituting “Government’s”;
 - (b) in subsection (2), by repealing “Crown” and substituting “Government”;
 - (c) in subsections (3) and (4), by repealing “官方” and substituting “政府”.
17. Section 290D(1) is amended by repealing “Crown” and substituting “Government”.
18. Section 293(1) is amended by repealing “Governor” and substituting “Chief Executive”.
19. Section 294(1) is amended by repealing “(including securities issued by the Government of the United Kingdom)”.
20. Section 295(2) is amended by repealing “(including securities issued by the Government of the United Kingdom)”.
21. Section 296(1) and (3) is amended by repealing “立法局” and substituting “立法會”.

22. Section 303 is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (2), by repealing “Governor” and substituting “Chief Executive”;
 - (c) in subsection (4), by repealing “Governor” and substituting “Chief Executive”.

23. Section 312(b) is amended by repealing “英式” .

24. Section 313(b) is amended by repealing “英式” .

25. Section 333C(1)(a) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

26. Section 342C(2)(c) and (7)(a)(iv) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

27. Section 345(2)(d) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

28. The heading before section 359A is amended by repealing “**Governor in Council**” and substituting “**Chief Executive in Council**”.

29. Section 359A is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.

30. Section 360(1) and (2) is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.
31. Section 360B is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.
32. Section 360C(1) is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.
33. Section 360K(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.
34. Section 360L(1) is amended by repealing “Governor” and substituting “Chief Executive”.
35. Section 360M(2) is amended by repealing “Governor” and substituting “Chief Executive”.
36. Section 360N is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.

Companies (Specification of Names) Order

37. Paragraph 2 of the Companies (Specification of Names) Order (Cap. 32 sub. leg.) is amended by repealing “Governor’s” and substituting “Chief Executive’s”.

Companies (Winding-up) Rules

38. Rule 2 of the Companies (Winding-up) Rules (Cap. 32 sub. leg.) is amended in the definition of “Official Receiver” by repealing “Governor” and substituting “Chief Executive”.
39. Rule 191(1) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.
40. Rule 192 is amended by repealing “Governor” and substituting “Chief Executive”.
41. Rule 194 is amended by repealing “Governor” and substituting “Chief Executive”.
42. Rule 195 is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 3

[s. 3]

LIMITED PARTNERSHIPS ORDINANCE

1. Section 2(2) of the Limited Partnerships Ordinance (Cap. 37) is repealed and the following substituted -

“(2) This Ordinance shall apply to partnerships carrying on business in Hong Kong.”.

2. Section 5(5) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
3. Section 15 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 16(2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 4

[s. 3]

MONEY LENDERS ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Money Lenders Ordinance

1. Section 4(1) of the Money Lenders Ordinance (Cap. 163) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 24(3) is amended by repealing “立法局” and substituting “立法會”.
3. Section 25(9) is amended by repealing “立法局” and substituting “立法會”.
4. Section 33C is amended by repealing “立法局” and substituting “立法會”.

5. Section 34 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

6. Schedule 1 is amended, in Part 2, in paragraph 8(a), by repealing “立法局” and substituting “立法會”.

Money Lenders Regulations

7. Regulation 2(a)(ii) of the Money Lenders Regulations (Cap. 163 sub. leg.) is amended

-

(a) by adding “or Chinese” after “in the English”;

(b) by repealing “, or in both the English and Chinese languages”.

8. Schedule 3 is amended, in the “*Summary of Part IV of the Ordinance - Excessive interest rates*”, by repealing “立法局” where it twice appears and substituting “立法會”.

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 -

Bills of Sale Ordinance (Cap. 20)	Schedule 1
Companies Ordinance (Cap. 32)	Schedule 2
Limited Partnerships Ordinance (Cap. 37)	Schedule 3
Money Lenders Ordinance (Cap. 163)	Schedule 4

3. The Bill also provides that 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).