

LEGISLATIVE COUNCIL BRIEF

Land Development Corporation Ordinance

(Chapter 15)

Sale of Land by Auction Ordinance

(Chapter 27)

Buildings Ordinance

(Chapter 123)

Foreshore and Sea-bed (Reclamations) Ordinance

(Chapter 127)

Land Acquisition (Possessory Title) Ordinance

(Chapter 130)

Town Planning Ordinance

(Chapter 131)

Aerial Ropeways (Safety) Ordinance

(Chapter 211)

Mass Transit Railway (Land Resumption and

Related Provisions) Ordinance

(Chapter 276)

Land Survey Ordinance

(Chapter 473)

ADAPTATION OF LAWS (NO. 11) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 1 December 1998, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No.11) Bill 1998, as set out at Annex I, should be introduced into the Legislative Council, to effect necessary adaptations to the above nine Ordinances relating to land matters and their subsidiary legislation.

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 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 “Governor” and the “Governor in Council” are replaced by the “Chief Executive” and the “Chief Executive in Council” respectively, and references to the “Colony” are replaced by “Hong Kong”. Those proposed amendments which are not covered by the general guidelines on adaptations are set out at Annex II, and those provisions the adaptation of which have been deferred are set out at Annex III. In addition, the following changes should also be specifically noted -

- (a) Section 3(4) of the Land Development Corporation Ordinance conferred power on the “Governor” to make subsidiary legislation. A reference to the “Chief Executive in Council” has been 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.
- (b) References to the “Crown” in paragraph 2 of the First Schedule of the Land Development Corporation Ordinance have been adapted to the “State”, i.e. “the Corporation shall not be regarded as a servant or agent of the State, or as enjoying any status, immunity or privilege of the State”.
- (c) References to the “Crown” in sections 5(5), 11(6), 33(6), 36(3) and 38(3)(b) of the Buildings Ordinance have been changed to the “Government” as that is the appropriate term in the context of each of those provisions. For example, in section 5(5), it will now read “office of emolument of the Government”.
- (d) References to the “Crown” in sections 10(1)(b) and 11 of the Foreshore and Sea-bed (Reclamations) Ordinance have been changed to the “Government” as the Chinese equivalent of the “Crown” has been rendered as “政府” in the original Chinese text, which suitably reflects the legislative intent that the right

is against the “Government” in the context of reclamations. Section 15(1) concerns compensation, costs and remuneration awarded by the Lands Tribunal against the Crown. The references to the “Crown” should also be adapted to the “Government”.

- (e) Section 10(1) of the Land Acquisition (Possessory Title) Ordinance concerns compensation, costs and remuneration awarded by the Lands Tribunal against the Crown, while section 12 concerns action against the Crown. Both references to the “Crown” should be adapted to the “Government”.
- (f) References to the “Crown” in sections 10(4), 17(5) and 31 of the Aerial Ropeways (Safety) Ordinance have been changed to the “Government” as that is the appropriate term in the context of each of those provisions. For example, section 10(4) will now read “recoverable as a debt to the Government”.
- (g) References to the “Crown” in sections 17, 18(1), 19(4), 20(3), 21(6)(a) and (6A)(c) and 27(b) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance have been changed to the “Government” as that is the appropriate term in the context of each of those provisions. For example, section 17 will now refer to an action “brought against the 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.

LEGISLATIVE TIMETABLE

6. The legislative timetable is -

Publication in the Gazette	11 December 1998
First Reading and commencement of Second Reading debate	6 January 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 do 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 11 December 1998.

ENQUIRIES

12. For enquiries, please contact Mr Anthony LI, Assistant Secretary for Planning, Environment and Lands at phone number 2848 2112.

Planning, Environment and Lands Bureau

December 1998

ADAPTATION OF LAWS (NO. 11) 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. 11) 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]

LAND DEVELOPMENT CORPORATION ORDINANCE

1. Section 3 of the Land Development Corporation Ordinance (Cap. 15) is amended -
 - (a) in subsection (2), by repealing “Governor” wherever it appears and substituting “Chief Executive”;
 - (b) in subsection (2)(d), by repealing “pleasure” and substituting “discretion”;
 - (c) In subsection (4), by repealing “Governor” and substituting “Chief Executive in Council”.
2. Section 4(c) is amended by repealing “Governor” and substituting “Chief Executive”.
3. Section 6(1)(a) is amended by repealing “立法局” and substituting “立法會”.
4. Section 8(1) is amended by repealing “立法局” and substituting “立法會”.
5. Section 11(5) is amended by repealing “立法局” and substituting “立法會”.
6. Section 14(5) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

7. Section 15(1) and (3) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

8. Section 18 is amended by repealing “Governor” and substituting “Chief Executive”.

9. Section 19(2)(c) is amended by repealing “立法局” and substituting “立法會”.

10. The First Schedule is amended -

- (a) in paragraph 2, by repealing “Crown” where it twice appears and substituting “State”;
- (b) in paragraph 3, by repealing “Governor” and substituting “Chief Executive”;
- (c) in paragraph 4 -
 - (i) in sub-paragraph (1) -
 - (A) by adding “of the Corporation” after “a Chief Executive”;
 - (B) by repealing “Governor” and substituting “Chief Executive”;
 - (ii) in sub-paragraphs (2) and (3), by adding “of the Corporation” after “Chief Executive”;
- (d) in paragraph 5(2), by repealing “Governor” and substituting “Chief Executive”;
- (e) in paragraph 7(2), by adding “of the Corporation” after “Chief Executive”;

- (f) in paragraph 8, by repealing “Governor” wherever it appears and substituting “Chief Executive”;
- (g) in paragraph 13 -
 - (i) in sub-paragraph (2)(b) and (c), by adding “of the Corporation” after “Chief Executive”;
 - (ii) in sub-paragraph (2)(g), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
- (h) in paragraph 15, by adding “of the Corporation” after “Chief Executive”.

SCHEDULE 2

[s. 3]

SALE OF LAND BY AUCTION ORDINANCE

1. Section 2 of the Sale of Land by Auction Ordinance (Cap. 27) is amended, in the definition of “land”, by repealing “the Colony” and substituting “Hong Kong”.

SCHEDULE 3

[s. 3]

BUILDINGS ORDINANCE

1. Section 2 of the Buildings Ordinance (Cap. 123) is amended -
 - (a) in subsection (1), in the definition of “owner”, by repealing “the Colony” and substituting “Hong Kong”;
 - (b) in subsection (3), by repealing “立法局” and

substituting “立法會”.

2. Section 5(5) is amended -
 - (a) by repealing “Crown” and substituting “Government”;
 - (b) by repealing “Governor” and substituting “Chief Executive”.

3. Section 5A(1) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 11(6) is amended -
 - (a) by repealing “Crown” and substituting “Government”;
 - (b) by repealing “Governor” and substituting “Chief Executive”.

5. Section 11A(1) is amended by repealing “Governor” and substituting “Chief Executive”.

6. Section 27(11)(a) is amended by repealing “the Colony” and substituting “Hong Kong”.

7. Section 33(6) is amended by repealing “Crown” and substituting “Government”.

8. Section 36(3)(a) is amended by repealing “Crown” and substituting “Government”.

9. Section 38 is amended -
 - (a) in subsections (1A) and (1B), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) in subsection (3)(b), by repealing “Crown” and substituting “Government”;
 - (c) in subsection (5), by repealing “Governor in Council” and substituting “Chief Executive in Council”.

10. Section 39A is amended by repealing “立法局” wherever it appears and substituting “立法會”.

11. Section 41(2) is amended by repealing “the Colony” and substituting “Hong Kong”.

12. Section 45(2), (3), (4) and (7) is amended by repealing “Governor” and substituting “Chief Executive”.

13. Section 48(1) and (5) is amended by repealing “Governor” and substituting “Chief Executive”.

14. Section 53A(1) is amended by repealing “院” and substituting “庭”.

15. The Second Schedule is amended -
 - (a) in section 114 -

- (i) in subsection (2), by repealing “大法官” where it twice appears and substituting “法官”;
 - (ii) in subsection (5) -
 - (A) by repealing “High Court” where it twice appears and substituting “Court of First Instance”;
 - (B) by repealing “大法官” wherever it appears and substituting “法官”;
 - (iii) in subsection (6), by repealing “High Court” and substituting “Court of First Instance”;
 - (iv) in subsection (7), by repealing and “大法官” substituting “法官”;
 - (v) in subsection (10), by repealing “Governor” and substituting “Chief Executive”;
- (b) in section 117(1), by repealing “大法官” and substituting “法官”;

SCHEDULE 4

[s. 3]

FORESHORE AND SEA-BED (RECLAMATIONS) ORDINANCE

1. Section 7 of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) is amended by repealing “Governor” and substituting “Chief Executive”.

2. Section 8(2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
3. Section 9(2)(b) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 10(1)(b) is amended by repealing “Crown” and substituting “Government”.
5. Section 11 is amended by repealing “Crown” and substituting “Government”.
6. Section 15(1) is amended by repealing “Crown” and substituting “Government”.

SCHEDULE 5

[s. 3]

LAND ACQUISITION (POSSESSORY TITLE) ORDINANCE

1. Section 2 of the Land Acquisition (Possessory Title) Ordinance (Cap. 130) is amended, in the definition of “acquisition for a public purpose”, in paragraph (d), by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 3 is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.

3. Section 10(1) is amended by repealing “Crown” and substituting “Government”.
4. Section 12 is amended by repealing “Crown” and substituting “Government”.

SCHEDULE 6

[s. 3]

TOWN PLANNING ORDINANCE AND ITS
SUBSIDIARY LEGISLATION

Town Planning Ordinance

1. Section 2(1) and (3) of the Town Planning Ordinance (Cap. 131) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 3(1) is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
3. Section 4(2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 7(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
5. Section 8(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

6. Section 9(1), (2) and (4) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
7. Section 10 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
8. Section 12(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
9. Section 13A is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
10. Section 14 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
11. Section 15 is amended -
 - (a) by repealing “Governor” and substituting “Chief Executive”;
 - (b) by repealing “立法局” and substituting “立法會”.
12. Section 17A(1), (2), (3), (4), (11) and (16)(b) is amended by repealing “Governor” and substituting “Chief Executive”.
13. Section 17B(4) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
14. Section 20 is amended -

- (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
- (b) in subsections (5) and (6A), by repealing “Governor in Council” and substituting “Chief Executive in Council”.

15. Section 26(1)(a) is amended by repealing “Governor” and substituting “Chief Executive”.

Town Planning Regulations

16. Regulation 2(1) of the Town Planning Regulations (Cap. 131 sub. leg.) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 7

[s. 3]

AERIAL ROPEWAYS (SAFETY) ORDINANCE

- 1. Section 4(1) and (2) of the Aerial Ropeways (Safety) Ordinance (Cap. 211) is amended by repealing “Governor” and substituting “Chief Executive”.
- 2. Section 10(4) is amended by repealing “Crown” and substituting “Government”.
- 3. Section 17(5) is amended by repealing “Crown” and substituting “Government”.

4. Section 24 is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.

5. Section 28(1A) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

6. Section 31 is amended by repealing “Crown” and substituting “Government”.

SCHEDULE 8

[s. 3]

MASS TRANSIT RAILWAY (LAND RESUMPTION AND
RELATED PROVISIONS) ORDINANCE

1. Section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) is amended by repealing “Governor” and substituting “Chief Executive”.

2. Section 5(3)(d) is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 6(1) and (3) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 7(3)(d) is amended by repealing “Governor” and substituting “Chief Executive”.

5. Section 8 is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
6. Section 10(1) is amended by repealing “Governor” and substituting “Chief Executive”.
7. Section 15(4) is amended by repealing “Governor” and substituting “Chief Executive”.
8. Section 17 is amended by repealing “Crown” and substituting “Government”.
9. Section 18(1) is amended by repealing “Crown” and substituting “Government”.
10. Section 19(4) is amended by repealing “Crown” and substituting “Government”.
11. Section 20 is amended -
 - (a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (3), by repealing “Crown” and substituting “Government”.
12. Section 21(6)(a) and (6A)(c) is amended by repealing “Crown” and substituting “Government”.

13. Section 26 is amended by repealing “立法局” and substituting “立法會”.
14. Section 27 is amended -
 - (a) by repealing “Crown” and substituting “Government”;
 - (b) by repealing “of the Colony”.

SCHEDULE 9

[s. 3]

LAND SURVEY ORDINANCE

1. Section 2 of the Land Survey Ordinance (Cap. 473) is amended, in the definition of “Secretary”, by repealing “(地政司)” and substituting “(局長)”.
2. Section 4(b) is amended by repealing “地政司” and substituting “局長”.
3. Section 6(1) is amended by repealing “地政司” and substituting “局長”.
4. Section 7 is amended by repealing “地政司” wherever it appears and substituting “局長”.
5. Section 19 is amended -
 - (a) in subsection (2), by repealing “Governor” and

- substituting “Chief Executive”;
- (b) in subsections (4) and (5), by repealing “地政司” and substituting “局長”;
 - (c) in subsection (6), by repealing “Governor” and substituting “Chief Executive”;
 - (d) in subsection (7), by repealing “地政司” and substituting “局長”
6. Section 21(2) and (3) is amended by repealing “地政司” and substituting “局長”.
7. Section 22 is amended by repealing “地政司” wherever it appears and substituting “局長”.
8. Section 37 is amended -
- (a) in subsection (1), by repealing “Governor in Council” and substituting “Chief Executive in Council”;
 - (b) in subsection (2), by repealing “地政司” and substituting “局長”.

Explanatory Memorandum

The purpose of this Bill is to adapt certain Ordinances and 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 9).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -
- | | |
|--|------------|
| Aerial Ropeways (Safety) Ordinance (Cap. 211) | Schedule 7 |
| Buildings Ordinance (Cap. 123) | Schedule 3 |
| Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127) | Schedule 4 |
| Land Acquisition (Possessory Title) Ordinance (Cap. 130) | Schedule 5 |
| Land Development Corporation Ordinance (Cap. 15) | Schedule 1 |
| Land Survey Ordinance (Cap. 473) | Schedule 9 |
| Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) | Schedule 8 |
| Sale of Land by Auction Ordinance (Cap. 27) | Schedule 2 |
| Town Planning Ordinance (Cap. 131) | Schedule 6 |
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).

Adaptation of Laws (No.11) Bill 1998
Provisions not Covered by the Guideline Adaptations

Item	Schedule & Section No.	Term or Passage Repealed	Term or Passage Added or Substituted	Remarks
1	Sch.1, s.1(b)	<p>“at the pleasure of the Governor”</p> <p>(s.3(2)(d) of the Land Development Corporation Ordinance (Cap.15)</p>	“at the discretion of the Chief Executive”	The repealed term “at the pleasure” is generally limited to instances of a common law prerogative. As adapted, the context is one of a simple discretion.
2	Sch.1 ss.10(c), (e), (g) & (h)	<p style="text-align: center;">-</p> <p>(First Schedule, Land Development Corporation Ordinance (Cap.15))</p>	adding “of the Corporation” after “Chief Executive”	The addition can distinct “Chief Executive of the Corporation” from “Chief Executive of HKSAR”.
3	Sch.9 ss.1, 2, 3, 4, 5, 6, 7 and 8	<p>“地政司” (Secretary)</p> <p>(ss.2, 4, 6, 7, 19, 21, 22 & 37 of the Land Survey Ordinance (Cap.473))</p>	“局長”	The Chinese characters used for the equivalent of “Secretary” in these occurrences are not covered by the Declaration of Changes of Titles (General Adaptation) Notice 1997 (L.N.362 of 1997)

Adaptation of Laws (No.11) Bill 1998
Provisions the Adaptation of which have been Deferred

Item	Cap. No. & Section No.	Remarks
1	s.2 (Cap.130)	Reference to “military or air forces of the Crown” will be dealt with by a separate Bill later.
2	s.41(1) (Cap.123)	Reference to “Her Majesty’s Forces” will be dealt with by a separate Bill later.
3	Reg.13 (Cap.211A sub.leg.)	Ditto