

LEGISLATIVE COUNCIL BRIEF

INSURANCE COMPANIES ORDINANCE (CAP. 41)
PROFESSIONAL ACCOUNTANTS ORDINANCE (CAP. 50)
CHIT-FUND BUSINESSES (PROHIBITION) ORDINANCE (CAP. 262)
CENSUS AND STATISTICS ORDINANCE (CAP. 316)
EXCHANGES (SPECIAL LEVY) ORDINANCE (CAP. 351)
OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE (CAP. 426)
MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CAP. 485)

ADAPTATION OF LAWS (NO.7) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 9 February 1999, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No. 7) Bill 1999, at the Annex, should be introduced into the Legislative Council, to effect necessary adaptations to seven Ordinances relating to financial services 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."

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 "立法局" are replaced by "立法會". Similarly, a reference 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 still 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 Executive Council will still have to be consulted if the Chief Executive is to exercise this legislative function.

5. In Section 55A of the Insurance Companies Ordinance (Cap.41), the "Crown" is exempted from any liability incurred by things done by public officers in the performance of their functions under the Ordinance. Since the matter concerned is action done by public officers, and this is an affair for which the HKSARG is solely responsible, the reference to "Crown" is proposed to be adapted to "Government" in accordance with section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1).

COMMENCEMENT

6. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, most of the proposed adaptations shall, when passed into law, take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region. Adaptations which introduce provisions that are yet to come into operation shall take effect as from the date when the relevant provisions come into operation.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follow -

Publication in the Gazette	26 February 1999
First Reading and commencement of Second Reading debate	10 March 1999
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 OF THE LEGISLATION

9. The amendments will not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

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 26 February 1999 and a spokesman will be available to handle media enquiries.

ENQUIRIES

13. For enquiries, please contact Mr. Hermes Chan, Acting Assistant Secretary for Financial Services at 2527 1893.

Financial Services Bureau
23 February 1999

ADAPTATION OF LAWS (NO. 7) 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. 7) Ordinance 1999.

2. Commencement

- (1) (a) This Ordinance, other than Schedule 7, 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) (a) Section 1 of Schedule 7 shall come into operation on the day appointed for the commencement of section 187(2) (a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.).
- (b) Section 2(a) of Schedule 7 shall come into operation on the day appointed for the commencement of item 35 (in so far as it relates to the new section 17B(8)) of Schedule 1 to the Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (4 of 1998).
- (c) Section 2(b) of Schedule 7 shall come into operation on the day appointed for the commencement of item 63

(in so far as it relates to the new section 34A(7)) of Schedule 1 to the Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (4 of 1998).

3. Amendment of Ordinances

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

SCHEDULE 1

[s. 3]

INSURANCE COMPANIES ORDINANCE

1. Section 4 of the Insurance Companies Ordinance (Cap. 41) is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
2. Section 44(4) is amended by repealing “法院” and substituting “法庭”.
3. Section 53(1) and (2) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 53A(3C) is amended by repealing “立法局” and substituting “立法會”.
5. Section 54(1) and (2) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.
6. Section 55A is amended by repealing “Crown” and substituting “Government”.

7. Section 59(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 2

[s. 3]

PROFESSIONAL ACCOUNTANTS ORDINANCE

1. Section 8(1) and (2) of the Professional Accountants Ordinance (Cap. 50) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

2. Section 10(3) is amended by repealing “Governor” and substituting “Chief Executive”.

3. Section 13(1) (c) and (2) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 14 is amended by repealing “Governor” and substituting “Chief Executive”.

5. Section 18(1) (h) is amended by repealing “other countries” and substituting “places outside Hong Kong”.

6. Section 28D(9) (d) (ii) and (e) (ii) is amended by repealing “法院” wherever it appears and substituting “法庭” .

7. Section 46 is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 3

[s. 3]

CHIT-FUND BUSINESSES (PROHIBITION) ORDINANCE

1. Section 5(4) of the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262) is amended by repealing “立法局” and substituting “立法會”.

SCHEDULE 4

[s. 3]

CENSUS AND STATISTICS ORDINANCE

1. Section 3(1) of the Census and Statistics Ordinance (Cap. 316) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 8 is amended by repealing “Governor” where it twice appears and substituting “Chief Executive”.
3. Section 9(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 26(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
5. Section 27 is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 5

[s. 3]

EXCHANGES (SPECIAL LEVY) ORDINANCE

1. Section 4A(6) of the Exchanges (Special Levy) Ordinance (Cap. 351) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 9(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 6

[s. 3]

OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE

1. Section 2 of the Occupational Retirement Schemes Ordinance (Cap. 426) is amended, in the definitions of “director”, “domicile”, “offshore scheme” and “partner”, by repealing “territory” wherever it appears and substituting “place”.
2. Section 3(4) is amended by repealing “territory” and substituting “place”.
3. Section 7(4) (a) is amended by repealing “territory” where it twice appears and substituting “place”.
4. Section 61 is amended -
 - (a) in subsections (2), (5) and (7), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in subsection (8), by repealing “立法局” and substituting “立法會” .
5. Section 64(2) is amended by repealing “Governor” and substituting “Chief Executive”.

6. Section 71 is amended by repealing “Governor” and substituting “Chief Executive”.
7. Section 72 is amended by repealing “立法局” and substituting “立法會”.
8. Section 73(3) is amended by repealing 立法局 “” and substituting “立法會”.
9. Section 78(1) is amended -
 - (a) in paragraph (d), by repealing “Governor” and substituting “Chief Executive”;
 - (b) in paragraph (e), by repealing “territory” wherever it appears and substituting “place”.
10. Schedule 1 is amended, in section 4 of Part 3, by repealing “territory” and substituting “place”.

SCHEDULE 7

[ss. 2 & 3]

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE AND ITS SUBSIDIARY LEGISLATION AND RELATED ORDINANCE

Mandatory Provident Fund Schemes (General) Regulation

1. Section 187(2) (a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) is amended by repealing “Supreme Court Ordinance” and substituting “High Court Ordinance”.

Provident Fund Schemes Legislation (Amendment) Ordinance 1998

2. Schedule 1 to the Provident Fund Schemes Legislation (Amendment) Ordinance 1998

(4 of 1998) is amended -

- (a) in item 35, in the new section 17B(8), by repealing “Supreme Court Ordinance” and substituting “High Court Ordinance”;
- (b) in item 63, in the new section 34A(7), by repealing “Supreme Court Ordinance” and substituting “High Court Ordinance”.

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 7).

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

Census and Statistics Ordinance (Cap. 316)	Schedule 4
Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262)	Schedule 3
Exchanges (Special Levy) Ordinance (Cap. 351)	Schedule 5
Insurance Companies Ordinance (Cap. 41)	Schedule 1
Mandatory Provident Fund Schemes Ordinance (Cap. 485)	Schedule 7
Occupational Retirement Schemes Ordinance (Cap. 426)	Schedule 6
Professional Accountants Ordinance (Cap. 50)	Schedule 2

3. The Bill provides that most of the proposed adaptations shall when passed into law take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region. Adaptations which introduce provisions that are yet to come into operation shall take effect as from the date when the relevant provisions come into operation (clause 2).