

立法會
Legislative Council

LC Paper No. CB(1) 1014/98-99

Ref : CB1/BC/5/98

Paper for the House Committee meeting on 19 March 1999

**Report of the Bills Committee on
Adaptation of Laws (No. 6) Bill 1998**

Purpose

This paper reports on the deliberations of the Bills Committee on Adaptation of Laws (No. 6) Bill 1998 (the Bill) and seeks members' support for the Bill to resume its Second Reading debate at the Council meeting on 31 March 1999.

The Bill

2. The purpose of the Bill is to adapt certain Ordinances and their subsidiary legislation 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. Although the Interpretation and General Clauses Ordinance (Cap. 1) has specified 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 is to be construed, the Administration considers it unacceptable for such terminology in the laws to be retained and has proposed further legislation to effect the necessary textual amendments. The Bill also provides that the adaptations when passed into law shall take retrospective effect from the date of the establishment of the Hong Kong Special Administrative Region (HKSAR). A list of Ordinances affected by the Bill and their respective Schedule numbers under the Bill is at **Appendix I**.

The Bills Committee

3. At the meeting of the House Committee on 13 November 1998, Members decided to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix II**.

4. Under the chairmanship of Hon Margaret NG, the Bills Committee held two meetings with the Administration.

Deliberations of the Bills Committee

5. The Bills Committee notes that the proposed Bill is part of the exercise to adapt the laws previously in force in Hong Kong as laws of the HKSAR. In conducting this adaptation exercise, the Administration has applied a guiding principle across the board: any provision to be adapted is to be made consistent with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China. Each provision, after adaptation, shall as far as possible have the same legal effect as before. Any amendment that is neither related to the Basic Law nor necessitated by Hong Kong's new status is outside the scope of the adaptation of laws programme. While the adaptation of each provision is to be made in accordance with the relevant provisions of the Interpretation and General Clauses Ordinance (Cap. 1) where applicable, the adaptation must be considered in the context of the particular Ordinance concerned and other related Ordinances.

6. The Bills Committee has examined in detail the provisions of the Bill and the individual schedules. Concerns expressed by members of the Bills committee are summarized in the following paragraphs.

Schedule 2 - Dutiable Commodities Ordinance (DCO) and its subsidiary legislation

Definition of "export" (section 2(1) of the DCO)

7. In accordance with the DCO, the term "export" has been defined to mean transshipment from one country to another country. Under the Bill, this definition is to be changed to "export (出口) means to carry or cause to be carried out of Hong Kong by land, air or water and includes the export of anything carried or sent from a place outside Hong Kong and brought into Hong Kong by land, air or water for the sole purpose of being carried to another place outside Hong Kong after transshipment into another conveyance, but does not include transit cargo". The Bills Committee has reservation on the proposed amendment as this will effectively change the scope of the definition of transshipment to cover transshipment between two different places within the same country.

8. According to the Administration's explanation, the definition of "export" is divided into two parts. The first part refers to all goods which are carried out of Hong Kong and hence covers a very wide range of situations. The second part refers expressly to a special situation, i.e. transshipment, which may otherwise be taken as outside the definition of export. The inclusion of this second part does not affect the scope of application of the first part which is general in nature. With the present interpretation of the definition of "export", goods exported to the United Kingdom, the

Mainland of China or even Taiwan are all covered by the first part, but not the second part, of the definition.

9. Notwithstanding the above and in view of members' reservation, the Administration has reviewed the proposed amendments and concluded that whilst the amendments can improve the text of the definition, it may not necessarily be dealt with under the Adaptation of Laws Programme. As such, the Administration will move a Committee Stage amendment (CSA) to delete the proposed amendments from the Bill.

Amendments to the definition of "A.T.A. Carnet" under section 2(1) of the DCO

10. The Bills Committee notes that A.T.A. Carnet is a document issued under the Customs Convention for the Temporary Admission of Goods which authorizes temporary admission of goods into a custom territory without the payment of import duties.

11. Noting that references to "Government of the United Kingdom" will normally be proposed to be substituted by "Central People's Government", the Bills Committee has asked for the reasons for departing from the guiding principles in adapting the definition of A.T.A. Carnet, where reference to "in such other form as may from time to time be provided by any amendment to the A.T.A. Convention, so long as the United Kingdom adheres to it, or by any amendment to the Convention on Temporary Admission so long as Hong Kong remains a contracting party to it" has been proposed to be adapted to "... the A.T.A. Convention, so long as it applies to Hong Kong, or by". The Administration has explained that in accordance with Article 153 of the Basic Law of the HKSAR, the application to the HKSAR of international agreements to which the People's Republic of China is a party shall be decided by the Central People's Government after seeking the views of the Government of the HKSAR. As such, the application of the A.T.A. Convention to the HKSAR is not automatic. The proposed adaptation by replacing "so long as the United Kingdom adheres to it" by "so long as it applies to Hong Kong" is, therefore, more appropriate than a straight-forward adaptation. The Bills Committee also notes that the People's Republic of China has made a declaration to the effect that the Convention is applicable to the HKSAR, and that the proposed amendments would better reflect the procedural events which have taken place. The Administration further assures members that Hong Kong's obligations to other parties of the A.T.A. Convention will not be affected.

Amendments to section 12(1)(p) and (pa) of the Dutiable Commodities Regulations

12. The Bills Committees notes that the policy intent of regulations 12(1)(p) and (pa) is to exempt from duty the fuel in the fuel tank of motor vehicles driven across the border into Hong Kong. With this interpretation, vehicles which arrive in Hong Kong from Macau and Taiwan are not covered by the regulations and hence fuel in such vehicles are not exempt from duty. Since the term "People's Republic of

China”, as defined in the Interpretation and General Clauses Ordinance (Cap. 1), also includes Hong Kong, Macau and Taiwan, the Administration has proposed to replace the term “People’s Republic of China” by “Mainland of China” so as to preserve the policy intent and the original meaning of the regulations.

Proposal to repeal two Resolutions of the Legislative Council made under the DCO

13. Explaining the rationale for the proposal to repeal the two Resolutions, the Administration has advised that one of the Resolutions grants duty exemption on rum issued to Gurkha troops who were employed by the United Kingdom Government to serve in Hong Kong. This employment arrangement for Gurkha troops to serve in Hong Kong has ceased after 1 July 1997. The other Resolution grants duty exemption to the Royal Nepalese Liaison Officer on the basis that a reciprocal exemption was given to the British Army serving in Nepal. Likewise, this reciprocity is no longer relevant after 1 July 1997, and the Administration has proposed to repeal the two Resolutions.

Schedule 3 - Estate Duty Ordinance (EDO) and its subsidiary legislation

Amendments to section 21 of the EDO

14. The Bills Committee notes that the section exempts estate duty arising from the estate of those who die from active service against the enemy during the war time between 8 December 1941 and 16 September 1945. For the sake of clarity, the phrase “against the enemy” shall be adapted to “against a state then at war with the United Kingdom” to preserve the policy intent and original meaning of the provisions. The Bills Committee also agrees with adapting the term “His Majesty” to “the United Kingdom” because the term “His Majesty” will be subject to interpretation after 1 July 1997.

Schedule 4 - Inland Revenue Ordinance (IRO)

Amendments to section 8(2)(h) of the IRO

15. The Bills Committee notes that if the proposed adaptation of section 8(2)(h) of the IRO is enacted, persons in the temporary service of the Central People’s Government working in Hong Kong will be granted salaries tax exemption. The Bills Committee is concerned with whether any persons are currently eligible for such exemption since adaptation of the section may not be necessary if the amended section will not be applicable to any person. The Administration explains that prior to the collection of tax returns, it will not be possible for the Administration to ascertain whether any persons are eligible for such tax exemption under the amended section 8(2)(h) and the Administration cannot rule out such possibility. Moreover, as the tax exemption made available to the United Kingdom Government is a standing arrangement prior to the transfer of sovereignty, the Administration considers that the

arrangement should be retained for the Central People's Government and has accordingly proposed adaptation of the section.

16. The Bills Committee has queried a difference in approach by the Administration in that whilst it has proposed to repeal two Legislative Council Resolutions related to exemption of duty payable on dutiable commodities by the Gurkha troops and the Royal Nepalese Liaison Officer respectively under the DCO, the Administration has, instead of a simple repeal, proposed to grant exemption in respect of emoluments payable by the Central People's Government under similar circumstances after the change of sovereignty.

17. The Administration has explained that the two situations are different. The purposes of the two Resolutions are to exempt in Hong Kong the Gurkha troops and the Royal Nepalese Liaison Officer respectively from duty payable on certain dutiable commodities. As such persons are no longer entitled to the exemption after the transfer of sovereignty, the Administration has proposed to repeal the Resolutions. As regards the amendments to section 8(2)(h) of the IRO, the Administration has advised that section 8(2)(h) is on the granting of salaries tax exemption to staff employed temporarily by the United Kingdom Government to serve in Hong Kong. Replacement of references to "Government of the United Kingdom" and "United Kingdom" by "Central People's Government" and "Mainland of China" have been proposed respectively in order to be consistent with the arrangement before the transfer of sovereignty whereby staff employed temporarily by the Government of the United Kingdom on United Kingdom based terms to serve in Hong Kong are eligible for such tax exemption.

Amendments to the definition of "operator of a Hong Kong aircraft" in section 39E(5) of the IRO

18. The Bills Committee notes that section 39E(5) of the IRO makes reference to a United Kingdom Order, i.e. the Air Navigation (Overseas Territories) Order 1977. The Administration has proposed to adapt the section to ensure that it will be consistent with Hong Kong's status as a Special Administrative Region of the People's Republic of China. While the reference may either be deleted or replaced by an appropriate reference, the Administration does not recommend the former as this would affect the operation of the section, which concerns the claiming of allowances for leased machinery and plant by taxpayers (including aircraft operators). The Administration has proposed to adopt the alternative of replacing it with an appropriate reference. As the United Kingdom Order was localised as the Air Navigation (Hong Kong) Order 1995 (section 11 of the Civil Aviation (Amendment) Ordinance (66 of 1997) which is now the subsidiary legislation of the Civil Aviation Ordinance (Cap. 448)), the Administration has proposed to replace reference to the United Kingdom Order by the "Air Navigation (Hong Kong) Order 1995". As to whether it is appropriate to introduce an amendment in the adaptation exercise to rectify an omission which should have been done in 1995 when the Air Navigation (Hong Kong)

Order 1995 was made, the Administration has explained that although the proposed amendments could have been taken up in 1995 when the United Kingdom Order was replaced by the Air Navigation (Hong Kong) Order 1995, the Administration considers that the amendments still fall within the scope of adaptation of laws as the proposal deals with the adaptation of an United Kingdom Order which shall not be retained in Hong Kong's legislation.

Schedule 9 - Tax Reserve Certificates Ordinance (TRCO)

Adaptation to references to "Governor" in relation to Article 56 of the Basic Law

19. Regarding the adaptation of references to "Governor" under section 3(1) of the TRCO, the Administration has originally proposed to adapt references to "Governor", where they appear in the context of a power to make subsidiary legislation, as "Chief Executive in Council" so as to tally with Article 56 of the Basic Law. The Article stipulates, inter alia, that the Chief Executive will consult the Executive Council before making subsidiary legislation; in all other cases the term "Governor" is to be adapted as "Chief Executive". On this basis, the Administration had proposed to replace reference to "Governor" in section 3(1) of the TRCO by "Chief Executive in Council".

20. Members of the Bills Committee have reservations on such a principle of adaptation and agree that the wider guiding principles governing the adaptation of laws programme shall be examined by the Bills Committees on the Adaptation of Laws Bill 1998 and Adaptation of Laws (No. 2) Bill 1998 (the concerned Committees). The concerned Committees held a joint meeting to discuss the subject matter with the Administration where it has been agreed that all references to "Governor" would be adapted as "Chief Executive" irrespective of the character of the instruments to be made by the Chief Executive. The Bills Committee is in support of the latest proposal and notes that the Administration will move a CSA to this effect.

Remaining Schedules

21. Apart from the above, the Bills Committee has no particular comments on the proposed adaptations in respect of the following Ordinances and their subsidiary legislation:

- (a) Schedule 1 - Betting Duty Ordinance and its subsidiary legislation
- (b) Schedule 5 - Rating Ordinance
- (c) Schedule 6 - Stamp Duty Ordinance
- (d) Schedule 7 - Air Passenger Departure Tax Ordinance
- (e) Schedule 8 - Cross-Harbour Tunnel (Passage Tax) Ordinance
- (f) Schedule 10 - Business Registration Ordinance
- (g) Schedule 11 - Motor Vehicles (First Registration Tax) Ordinance
- (h) Schedule 12 - Hotel Accommodation Tax Ordinance

Related Issues

22. During the course of scrutiny, the Bills Committee has also taken note of the fact that:

- (a) adaptation of references to “Her Majesty’s forces” will not be dealt with in the Bill for the individual Ordinances in which they are found but will instead be dealt with in separate Bills;
- (b) historical references to certain terms, such as “立法局” in the definition of “政府獎券基金” in section 4E of the Betting Duty Ordinance (Cap. 108), and “Governor in Council” appearing in the Prescription Forms under section 28 of the Estate Duty Ordinance (Cap. 111) are not adapted in accordance with the normal practice; and
- (c) none of the Ordinances cover by the Bill binds the State (which includes the HKSAR) by express provision. The Administration has advised that the adaptation of laws exercise has a limited scope of adapting the ordinances as they stand, and it will be outside the scope of the exercise to investigate or debate the reason for enactment of the ordinance with such binding effect. In other words, the adaptation exercise does not involve any change to the binding effect of ordinances, except to reflect the change in sovereignty.

Committee Stage Amendments

23. The CSAs to be moved by the Administration as highlighted in paragraphs 9 and 20, and which have been agreed by the Bills Committee, are in **Appendix III**.

Recommendation

24. The Bills Committee supports the Bill, subject to the amendments to be moved by the Administration, and recommends resumption of the Second Reading debate of the Bill on 31 March 1999.

Advice Sought

25. Members are invited to note the deliberations of the Bills Committee and support the recommendation in paragraph 24 above.

Legislative Council Secretariat

17 March 1999

Appendix I

List of Ordinances affected by the Adaptation of Laws (No. 6) Bill 1998

Item No.	Ordinances
1.	Betting Duty Ordinance and its subsidiary legislation (Cap. 108)
2.	Dutiable Commodities Ordinance and its subsidiary legislation (Cap. 109)
3.	Estate Duty Ordinance and its subsidiary legislation (Cap. 111)
4.	Inland Revenue Ordinance (Cap. 112)
5.	Rating Ordinance (Cap. 116)
6.	Stamp Duty Ordinance (Cap. 117)
7.	Air Passenger Departure Tax Ordinance (Cap. 140)
8.	Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274)
9.	Tax Reserve Certificates Ordinance (Cap. 289)
10.	Business Registration Ordinance (Cap. 310)
11.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)
12.	Hotel Accommodation Tax Ordinance (Cap. 348)

立法會
《1998 年法律適應化修改(第 6 號)條例草案》委員會
Legislative Council
Bills Committee on
Adaptation of Laws (No. 6) Bill 1998

委員名單
Membership List

吳靄儀議員 (主席)	Hon Margaret NG (Chairman)
夏佳理議員	Hon Ronald ARCULLI, JP
涂謹申議員	Hon James TO Kun-sun
單仲偕議員	Hon SIN Chung-kai
黃宏發議員	Hon Andrew WONG Wang-fat, JP
曾鈺成議員	Hon Jasper TSANG Yok-sing, JP
劉健儀議員	Hon Mrs Miriam LAU Kin-ye, JP
劉漢銓議員	Hon Ambrose LAU Hon-chuen, JP

合共： 8 位議員
Total: 8 Members

日期： 1998 年 12 月 4 日
Date: 4 December 1998

ADAPTATION OF LAWS (NO. 6) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause

Amendment Proposed

Schedule 2,
section 1 By deleting paragraph (d).

Schedule 9,
section 1 By deleting "in Council".