

Adaptation of Laws (No. 24) Bill 1999
Summary of the proposed amendments

A. Amendments

Original Terms	Proposed Amendments
<p>any part of the Commonwealth or by a British court having jurisdiction outside the Commonwealth in pursuance of an Order in Council (whether made under any Act of the Parliament of the United Kingdom or otherwise)</p> <p>- section 3(3) of the Probate and Administration Ordinance</p> <p>由英聯邦地區的遺囑認證法院所作出或由依據樞密院頒令而對英聯邦以外地方有司法管轄權的英國法院所作出（不論是否根據聯合王國國會法令而作出）</p> <p>- 《遺囑認證及遺產管理條例》第3(3)條</p>	<p>any designated country or place¹</p> <p>由任何指定國家或地方的遺囑認證法院所作出</p>
<p>Sealing of Grants by British Courts outside Hong Kong</p> <p>- The heading to Part IV of the Probate and Administration Ordinance</p> <p>香港以外的英國法院所作出的授予書的蓋章</p> <p>- 《遺囑認證及遺產管理條例》第IV部的標題</p>	<p>Sealing of Grants by Courts in Designated Countries, etc.¹</p> <p>指定國家等的法院所作出的授予書的蓋章</p>

<p>"British court in a foreign country" (在外國的英國法院) means any British court having jurisdiction out of the Commonwealth in pursuance of an Order in Council.</p> <p>- section 48 of the Probate and Administration Ordinance</p> <p>"在外國的英國法院" (British court in a foreign country)指依據樞密院頒令而在英聯邦以外地方有司法管轄權的英國法院。</p> <p>- 《遺囑認證及遺產管理條例》第48條</p>	<p>"designated country or place"(指定國家或地方) means a country or place specified in Schedule 2.¹</p> <p>"指定國家或地方"(designated country or place)指附表2指明的國家或地方。</p>
<p>"probate" (遺囑認證) and "letters of administration" (遺產管理書) include confirmation in Scotland, and any instrument having in any other part of the Commonwealth the same effect which under English law is given to probate and letters of administration respectively.</p> <p>- section 48 of the Probate and Administration Ordinance</p> <p>"遺囑認證" (probate) 及"遺產管理書"(letters of administration)包括蘇格蘭的遺囑確證，以及在英聯邦其他地方具有與英國法律分別賦予遺囑認證及遺產管理書的相同效力的文書。</p> <p>- 《遺囑認證及遺產管理條例》第48條</p>	<p>"probate"(遺囑認證) and "letters of administration" (遺產管理書) mean any instrument having in any designated country or place the same effect which under the laws of Hong Kong is given to probate and letters of administration respectively.¹</p> <p>"遺囑認證" (probate) 及"遺產管理書"(letters of administration)指任何文書，但該文書在任何指定國家或地方所具有的效力，必須與香港法律分別賦予遺囑認證及遺產管理書的效力相同。</p>

<p>any part of the Commonwealth, or a British court in a foreign country</p> <ul style="list-style-type: none">- section 49 of the Probate and Administration Ordinance <p>英聯邦任何地方的遺囑認證法院或在外國的英國法院</p> <ul style="list-style-type: none">- 《遺囑認證及遺產管理條例》第49條	<p>a designated country of place¹</p> <p>指定國家或地方的遺囑認證法院</p>
<p>A will which is not in the English language a translation certified to the satisfaction of the Registrar of the High Court shall also be filed with the original will.</p> <ul style="list-style-type: none">- rule 8 of the Non-Contentious Probate Rules <p>如遺囑所用語文並非英文，則須將經核證至高等法院司法常務官滿意的譯本連同遺囑正本一併提交。</p> <ul style="list-style-type: none">- 《無爭議遺囑認證規則》第8條	<p>A will which is not in the English language or Chinese language a translation into one of those languages certified to the satisfaction of the Registrar of the High Court shall also be filed with the original will.²</p> <p>如遺囑所用語文並非中文或英文，則須將經核證至高等法院司法常務官滿意的中文或英文譯本連同遺囑正本一併提交。</p>
<p>The Registrar of the High Court is required to satisfy himself that the testator has literate knowledge of the Chinese language under certain circumstances, for example in the case of a will in the Chinese language that appears to have been made by a blind testator.</p> <ul style="list-style-type: none">- rule 11 of the Non-Contentious Probate Rules <p>在某些情況下(例如某份中文遺囑看似是由失明的立遺囑人所立)，高等法院司法常務官須信納立遺囑人確諳中文。</p> <ul style="list-style-type: none">- 《無爭議遺囑認證規則》第11條	<p>Treatment of the English language is proposed to extend to the Chinese language.³</p> <p>建議將適用於英文的規定引伸至適用於中文。</p>

<p>Crown 官方</p>	<p>Government⁴ 政府</p>
<p>Application of English Law Ordinance (Cap. 88) - section 30 of the Wills Ordinance</p> <p>《英國法律應用條例》（第88章） - 《遺囑條例》第30條</p>	<p>Non-adopted Application of English Law Ordinance (Cap. 88)⁵</p> <p>不獲採用的《英國法律應用條例》（第88章）</p>
<p>立法局</p>	<p>立法會</p>
<p>Governor 總督</p>	<p>Chief Executive 行政長官</p>

B. Repeals

1. Section 12(2) of the Probate and Administration Ordinance is amended by repealing "or of the United States of America". Section 12(3) of the Probate and Administration Ordinance is repealed.⁶
2. Sections 15(2), 23B(2)(b) and (3), and 23C of the Probate and Administration Ordinance are amended by repealing "of the Colony" after "the general revenue".

C. Additions

<p>New section 49A of the Probate and Administration Ordinance¹</p>	<p>49A. Amendment of Schedule 2</p> <p>(1) The Chief Executive in Council may, by order in the Gazette, add to or delete from Schedule 2 the name of a country or place if he is satisfied that the condition in subsection (2) is complied with or has ceased to be complied with (as the case may be) in respect of that country or place.</p> <p>(2) The condition referred to in subsection (1) is that, in the event of the benefits conferred by this</p>
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	<p>Part being applied to probate and letters of administration granted by the court of a country or place outside Hong Kong, similar benefits will in that country or place be applied to probate and letters of administration granted by the court of Hong Kong.</p>
<p>《遺囑認證及遺產管理條例》新增第49A條</p>	<p>49A. 附表2的修訂</p> <p>(1) 行政長官會同行政會議如信納就任何國家或地方而言，第(2)款的條件已獲得或不再獲得符合，可藉在憲報刊登的命令將該國家或地方的名稱加入附表2或自附表2刪除(視屬何情況而定)。</p> <p>(2) 第(1)款提述的條件指在本部授予的利益適用於香港以外任何國家或地方授予的遺囑認證及遺產管理書時，在該國家或地方相類的利益亦會適用於香港法院授予的遺囑認證及遺產管理書。</p>
<p>New Schedule 2 to the Probate and Administration Ordinance¹</p> <p>《遺囑認證及遺產管理條例》新增附表2</p>	<p style="text-align: center;">SCHEDULE 2 DESIGNATED COUNTRY OR PLACE</p> <p>The Australian States of Tasmania and Victoria and the Northern Territory of Australia Singapore Sri Lanka United Kingdom</p> <p style="text-align: center;">附表2 指定國家或地方</p> <p>斯里蘭卡 新加坡 澳洲的塔斯曼尼亞省、維多利亞省及北領地 聯合王國</p>

Notes:

- ¹ Section 2A(2)(b) of the Interpretation and General Clause Ordinance (Cap. 1) provides 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. In line with this principle, it is proposed to amend the Probate and Administration Ordinance to replace the previous system for resealing of Commonwealth grants by resealing on the basis of reciprocity. The Administration is seeking clarification from various Commonwealth jurisdictions as to whether the grant of probate and letters of administration issued in the Hong Kong Special Administrative Region can be resealed there. To date, the Administration has heard from the United Kingdom, Tasmania, Victoria and Northern Territory of Australia, Singapore and Sri Lanka that grants in the Hong Kong Special Administrative Region can be resealed in their jurisdictions. The names of those countries are listed in new Schedule 2 to the Ordinance. The relevant amendments are to come into operation on the day they are enacted and published in the Gazette.
- ² Under the existing rule 8, the Probate Registry will only accept a will which is written in English or another language being accompanied by English translation. It is proposed that a translation is only required in the circumstance where a will is written in a language other than English or Chinese.
- ³ This requirement does not affect wills already admitted to proof and is to come into operation on the day the amendment is enacted and published in the Gazette.
- ⁴ Rule 37 of the Non-Contentious Probate Rules. It requires notice of application for a grant of representation be given to the official administrator in any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person. Given that the Probate and Administration Ordinance provides for the handling of probate and letters of administration in Hong Kong by the High Court of Hong Kong, the Administration is of the view that rule 37 concerns cases potentially of interest to the Government of the Hong Kong Special Administrative Region only. Therefore, the reference to "the Crown" is replaced by "the Government".

Section 13(9) and 17, 18 and 19(1)(a) of the Hong Kong War Memorial Pensions Ordinance (Cap. 386). References to "the Crown" are replaced by "the Government" in these sections which concern award of costs in appeal proceedings regarding the Hong Kong War Memorial Pensions, recovery of pension paid by mistake or on the basis of false information, and attachment of a debt or claim upon a pension. The Administration is of the view that these matters are within the responsibility of the Special Administrative Region Government.
- ⁵ According to the Decision of the NPCSC on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted by the Standing Committee of the 8th National People's Congress at its 24th Session on 23 February 1997), the Application of English Law Ordinance (Cap. 88) is not adopted as the law of the Hong Kong Special Administrative Region.
- ⁶ The provisions require the consular officer of the United States to be notified of the death of an American national and the right of the consular officer to appear in proceedings on behalf of the absent heirs or creditors. This implemented the Consular Convention between the United Kingdom and the United States done in Washington on 6 June 1951. As the Convention has ceased to apply to Hong Kong since 1 July 1997, references to the United States are repealed.