

Review of the 17 Ordinances

Policy considerations for proposing to extend the applicability of Ordinances to the “State” organs in Hong Kong

The Administration has earlier reported to the Legislative Council Administration of Justice and Legal Services Panel the progress of the review of the 17 Ordinances. Upon request by the Panel, this paper explains the policy considerations by the relevant Bureaux for proposing to extend the applicability of Ordinances to the “State” organs in Hong Kong.

2. The relevant Bureaux have advised that 15 of the 17 Ordinances under review should be amended so that they are applicable to the “State” organs in Hong Kong and their personnel. The Social Workers Registration Ordinance applies to individuals and not their employers. As such, it has no relevance to either the “Government” or the “State” organs in Hong Kong. The remaining Personal Data (Privacy) Ordinance is more complicated. We need to examine the Ordinance carefully before making any recommendations. The Administration has already started discussions with the Central People’s Government on this Ordinance.

Policy Considerations

3. Each Bureau examines from the policy angle whether individual Ordinances should be extended to apply to the “State” organs in Hong Kong.

4. As to the 15 Ordinances, the different policy considerations are as follows -

(a) Gas Safety Ordinance (Cap. 51)

The purpose of the Gas Safety Ordinance is to control, in the interests of safety, the importation, manufacture, storage, transport, supply and use of gases used as fuel. Fuel gases are potentially dangerous and lack of care in handling or using them may result in serious accidents. It is in the interests of those directly involved in storing, distributing or using significant quantities of fuel gas, and the community generally, that safe working practices should be defined and observed so as to minimise the potential for accidents. We propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(b) Occupational Safety and Health Ordinance (Cap. 509)

The legislative intent of the Occupational Safety and Health Ordinance and its subsidiary legislation is to safeguard the safety and health at work of employees in workplaces. The provisions of the International Labour Organisation Occupational Safety and Health Convention 1981 apply to all branches of economic activity, including the public service. The same also holds true for similar legislation in many countries including the PRC, the United Kingdom, Canada and Singapore. As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(c) Sex Discrimination Ordinance (Cap. 480)

The Sex Discrimination Ordinance prohibits discrimination on the ground of sex, marital status or pregnancy, and sexual harassment. Equality between men and women is a fundamental human right enshrined in international conventions/covenants applicable to

HKSAR, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(d) Disability Discrimination Ordinance (Cap. 487)

The Disability Discrimination Ordinance seeks to ensure equal opportunities for people with disabilities so as to facilitate their integration into the community to the fullest extent possible. The guarantee of equal rights for people with disabilities forms an integral element in the protection of human rights. This fundamental principle is enshrined in international conventions/covenants applicable to the HKSAR, such as ICCPR and ICESCR. The People’s Republic of China is already governed by a law on the protection of disabled persons. As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(e) Family Status Discrimination Ordinance (Cap. 527)

The Family Status Discrimination Ordinance prohibits discrimination on the ground of family status, i.e. the status of having responsibility for the care for an immediate family member. The elimination of discrimination on the ground of family status forms an integral element in the protection of human rights. This fundamental principle is enshrined in international conventions/covenants applicable to HKSAR, such as CEDAW,

ICCPR, and ICESCR. As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(f) Ozone Layer Protection Ordinance (Cap. 403)

The policy intention of the Ozone Layer Protection Ordinance is to enable the Hong Kong Special Administrative Region (HKSAR) to comply with its international obligations under the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer by prohibiting the manufacture of substances or of products containing or made with those substances that deplete the ozone layer, and by controlling the importation and exportation of all such substances and products within the HKSAR. As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(g) Dumping at Sea Ordinance (Cap. 466)

To enable Hong Kong to meet its international obligations under the “Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters” by preventing the dumping of controlled articles and substances, the Ordinance applies to all public and private organs in the HKSAR. The extension of the application of the Ordinance to “State” organs will enable us to have a comprehensive and effective control scheme for the protection of the marine environment.

(h) Marine Parks Ordinance (Cap. 476)

To ensure proper enforcement of controls on development and certain activities in designated marine parks and marine reserves, the Ordinance applies to all public and private organs in the HKSAR. The extension of the application of the Ordinance to “State” organs will enable us to have a comprehensive and effective control scheme for the protection and conservation of marine resources.

(i) Environmental Impact Assessment Ordinance (Cap. 499)

The policy intention of the Environmental Impact Assessment Ordinance is to protect the environment by requiring the environmental impact of all public and private designated projects to be thoroughly assessed and that only those projects which are considered to be environmentally acceptable would be allowed to proceed. It is important that all designated public and private development projects within the HKSAR be subject to the provisions of the Ordinance. As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(j) Plant Varieties Protection Ordinance (Cap. 490)

The purpose of the Plant Varieties Protection Ordinance is to provide for the protection of proprietary rights in respect of plant varieties (except indelible algae and fungi). To extend the applicability of the Ordinance to the “State” organs would enable them to be accorded the same protection and subject to the same liabilities under the Ordinance.

(k) Patents Ordinance (Cap. 514)

The Patents Ordinance provides for the grant of standard and short-term patents in the HKSAR. The Ordinance sets out the rights of patent proprietors and the various civil remedies available in case their rights are infringed. If the “State” organs want to seek patent protection in the HKSAR, they would need to go through the same criteria and procedures as other organisation and individuals. It is important that the “State” organs should be accorded the same protection and subject to the same liabilities as other entities in HKSAR. As such, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(l) Registered Designs Ordinance (Cap. 522)

The Registered Designs Ordinance provides for the registration and protection of designs. The Ordinance sets out the registration criteria and defines the rights of the owners of registered designs; it also provides for the civil remedies that are available to design owners if their rights are infringed. We propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(m) Arbitration Ordinance (Cap. 341)

The Arbitration Ordinance seeks to make provisions for arbitration in civil and commercial matters, to set out procedures for local and international arbitration, and to incorporate the relevant international convention into the laws of Hong Kong. Since State organs in Hong Kong and their personnel may enter into commercial contracts with other organs and/or individuals, and may include in the relevant contract arrangements for resolving disputes arising from those contracts by way of arbitration, we

propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(n) Legislative Council Commission Ordinance (Cap. 443)

The Legislative Council Commission Ordinance seeks to make provisions for establishing a Legislative Council Commission and to provide for matters ancillary to and connected with such purpose. The functions of the Commission are to provide through the Secretariat administrative support and services to the Council, provide office accommodation to the members of the Council and staff of the Secretariat, supervise the operation of the Secretariat, produce an official report of all proceedings in the Council and in any committee of the whole Council, and perform such other duties as the Council may by resolution determine.

The Ordinance came into effect on 1 April 1994 and was all along applicable to “the Crown”. The amendment to the applicability included in the Legislative Council Commission (Amendment) Ordinance 1997 was a drafting measure in the light of the imminent reunification rather than a change in policy. The likelihood of the “State” organs in Hong Kong and their personnel holding documents of the LegCo Commission, directing or controlling the LegCo Commission or using the name of the LegCo Commission is very remote. Nevertheless, we propose to give full effect to the original policy intention by extending the applicability of the Ordinance to the “State” organs in Hong Kong.

(o) Mandatory Provident Fund Schemes Ordinance (Cap. 485)

The main purpose of the Ordinance is to provide the labour force of Hong Kong with retirement protection. Extension of the

legislation's applicability to the "State" organs will be in line with the spirit of the MPF system so that applicable employees of the "State" organs will also be given retirement protection.

5. Policy Bureau have started work regarding amendments to the 15 Ordinances to bring them in line with the above policy considerations. During the process, the Bureaux will examine whether the proposed amendments should include any exemptions. When the drafting of the amendment bills has been completed, the Bureaux will follow up with the relevant Legislative Council Panels.

Constitutional Affairs Bureau
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