

**Bills Committee on
District Court (Amendment) Bill 1999**

Applicability of the District Court Ordinance

The Issue

At the Bills Committee meeting on 5 April, Members requested information on the following issues:

- (a) the implications of adopting “the Government”, instead of “the State” in proposed new sections 72(4), 72(5) and 72D(6); and
- (b) the timetable for the adaptation of the Crown Proceedings Ordinance (Cap. 300), and its binding effect with regard to Offices set up by the Central People’s Government in the HKSAR (“CPG Offices”) pending adaptation.

Background

2. The District Court Ordinance (Cap. 336) deals to some extent with the question of proceedings against “the Crown” or “the Government”, which should ideally be rationalised and modernised as soon as possible after Reunification. However, the question needs to be resolved within the overall context of the adaptation of the Crown Proceedings Ordinance (Cap. 300). In January 1999, we explained to the LegCo Panel on Administration of Justice and Legal Services that we could either proceed with the introduction of the District Court (Amendment) Bill and leave unamended the provisions relating to proceedings against “the Crown” or “the Government”, or defer the amendment bill till after Cap. 300 had been adapted. We also explained that it would be in the public interest, and consistent with our policy on the adaptation of laws, to proceed with the introduction of the Bill. The Panel did not raise any objection to this approach.

3. In preparing the District Court (Amendment) Bill 1999, it came to our notice that amendments to section 72 of the District Court Ordinance were required for the District Court Rules Committee to be empowered properly to make rules to give effect to the proposed new financial jurisdictional limits of the

District Court, and introduce of a new Civil Procedural framework. Consistent with the approach in section 72 of the District Court Ordinance, which undergone adaptation once in April 1998, we decided to prepare new sections 72(4), 72(5) and 72D(6) to make them applicable to proceedings relating to the Government. It remains our intention to revisit all court-related Ordinances (including the District Court Ordinance) and proceed with their full adaptation, after the adaptation of Cap. 300 has completed.

Implication of adopting “the Government” in proposed new sections 72(4), 72(5) and 72D(6)

4. Under section 11 of the Crown Proceedings Ordinance (Cap. 300), civil proceedings by or against “the Crown” may generally be instituted in the District Court, provided that they are within the jurisdictional limits of that court. To the extent that Cap. 300 now enables proceedings to be brought against CPG Offices, section 11 therefore provides the District Court with jurisdiction over them.

5. It is not considered that the reference to “the Government” in the existing or proposed rule-making powers as set out in section 72 of the District Court Ordinance has the effect of excluding from that court’s jurisdiction claims by or against CPG Offices that can be brought under Cap. 300.

Timetable for the adaptation of Cap. 300 and its binding effect pending adaptation

6. The Department of Justice advises that there is no specific timetable for the adaptation of Cap. 300 at this stage, as priority is currently being given to more straightforward adaptations.

7. Pending adaptation, the application of Cap. 300 to CPG Offices (whether in respect of the District Court or other courts) would be a matter for the courts themselves to decide in the circumstances of a particular case, having regard to -

- (a) the manner in which “the Crown” was affected by Cap. 300 before Reunification;
- (b) the position of CPG Offices under the Basic Law;

(c) the Garrison Law; and

(d) the Reunification Ordinance.

Administration Wing

Chief Secretary for Administration's Office

April 2000