

政府總部民政事務局的信頭

Letterhead of GOVERNMENT SECRETARIAT HOME AFFAIRS BUREAU

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16 May 2000

Miss Flora Tai
Clerk to Bills Committee
Legislative Council Secretariat
Jackson Road
Hong Kong

Dear Miss Tai,

Family Status Discrimination (Amendment) Bill 2000

At the last Bills Committee meeting on 12 May 2000, the Administration undertook to provide examples of retrospective provision in civil law for members' reference. Please find enclosed at Annex a list of such examples in Chinese and English for your circulation to members before the next meeting.

Yours faithfully,

(C M Wong)
for Secretary for Home Affairs

Examples of retrospective legislation

- Immigration (Amendment) Ordinance, No. 52 of 1991

Section 2(3) of this Ordinance confers power on the Director of Immigration to transfer Vietnamese detainees between detention centres. This provision was “deemed” to have come into operation on 16 June 1988. This was introduced to counteract the wider effects of a possible adverse outcome of legal proceedings to challenge the power of the Director of Immigration to transfer Vietnamese detainees between detention centres. However, the rights of litigants in proceedings begun before ExCo approved the introduction of the Bill were preserved and therefore it does not impair any vested rights on affected persons.

- Societies (Amendment) (No. 3) Ordinance, No. 71 of 1988

This Ordinance was introduced to address a problem raised by a client of a large law firm of over 50 partners. That client refused to pay a bill on the grounds that the firm was an unlawful society, since at that time an unincorporated association of 20 persons or more had to be registered under the Societies Ordinance (Cap.151). The Ordinance then repealed the application of the Societies Ordinance to partnerships of 20 persons or more. The amendment was “deemed” to have come into operation on 7 July 1978. This Ordinance intends to validate innocent and inadvertent breaches of technical rules of law which do not inflict any detriment on the affected class of persons and for this reason can be justified.

- Inland Revenue (Amendment) (No. 4) Ordinance, No. 47 of 1992

This was introduced to exempt shipowners of Hong Kong registered ships from profits tax on income derived from the international operations of those vessels. The exemption was to come into force on the establishment of the independent Hong Kong Shipping Register on 3 December 1990 and the amending ordinance was deemed to come into operation on that date. The proposal to give the exemption had previously been announced in conjunction with the establishment of the shipping register. This Ordinance confers a benefit, not a burden on the affected class of persons.

- Lands Tribunal (Amendment) Ordinance, No. 102 of 1995

This was introduced to recognise retrospectively the jurisdiction of the Lands Tribunal to make orders for vacant possession founded on termination of tenancies in respect of notices of termination served pursuant to Part IV or V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). The object of this Ordinance is to validate orders previously made by the Tribunal and to allow litigants who had mistakenly begun proceedings in the Tribunal to proceed with the original action which would otherwise be void. This legislation intends to correct the previous procedural errors. It does not inflict any detriment on individuals. On the contrary, the affected persons may benefit by it.

- Employees' Compensation (Amendment) Ordinance, No. 24 of 2000

The purpose of the amendment to section 5(4)(f) of the Employees' Compensation Ordinance (Cap. 282) is to include definitions of "gale warning" and "rainstorm warning" instead of making reference to the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62). This will restore the protection afforded to employees against accidents occurring during travelling to and from work when the Red rainstorm warning signal is issued. The amendment was deemed to have come into operation on 5 July 1999. The reason for this is that that date is the date when the amendment to exclude Red rainstorm warning signal from the definition of "rainstorm warning" contained in the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62) took effect.

有追溯效力的法例例子

- **入境（修訂）條例，1991 年第 52 號條例**

這條例的第 2(3)條賦予入境事務處處長將被羈留的越南人仕由一個羈留中心轉往另一羈留中心的權力。這條文當作在 1988 年 6 月 16 日生效。這條文是爲了應付由於挑戰入境事務處處長將被羈留的越南人仕從一個羈留中心轉往另一羈留中心的權力的法律訴訟可能帶來的不良結果。但是，在行政局批准條例草案前已展開的訴訟的訴訟人的權利不受影響。因此，這條例並不損害受影響人仕的既得權利。

- **社團（修訂）（第 3 號）條例，1988 年第 71 號條例**

這條例目的是爲解決一個由一所有超過 50 位合夥人的大規模律師行的客戶提出的問題。由於當時一個有 20 人或以上的非法團組織必須按社團條例（第 151 章）登記，該客戶因該律師行是非合法組織而拒絕支付賬單。這條例廢除社團條例對於有 20 人或以上的合夥的適用規定。這修訂當作在 1978 年 7 月 7 日生效。這條例旨在使無意和不慎的技術性法律規定違反行爲有效。由於這些行爲並沒有對受影響人仕造成損害，因此是有理由支持這條條例的。

- **稅務（修訂）（第 4 號）條例，1992 年第 47 號條例**

這條例旨在豁免在香港註冊的船舶的船東繳交關於該些船舶從國際運作中取得利潤的利得稅責任。該豁免於 1990 年 12 月 3 日即香港成立獨立的船舶登記當日生效。這條修訂條例也當作是在該天生效。該豁免的建議以前已和成立船舶登記一起提出。這條例賦予受影響人仕利益而並不是對他們施加負擔。

- **土地審裁處（修訂）條例，1995 年第 102 號條例**

這條例旨在追溯確認土地審裁處具有藉《業主與租客（綜合）條例》（第 7 章）第 IV 部或第 V 部所指的終止租賃通知書可作出收回管有的命令的司法管轄權。這條例的目的是使土地審裁處已作出的命令有效和使錯誤地在土地審裁處提起訴訟的訴訟人能夠繼續原來的訴訟，否則該些訴訟便會無效。這條例旨在糾正以前的程序錯誤。它沒有損害任何人。相反地，受影響的人會因此而得益。

- **僱員補償（修訂）條例，2000 年第 24 號條例**

這條例旨在修訂《僱員補償條例》（第 282 章）第 5(4)(f)條以加入“烈風警告”及“暴雨警告”的定義，從而代替參照《司法程序（烈風警告期間聆訊延期）條例》（第 62 章）所載的定義。此舉將恢復給予僱員在紅色暴雨警告訊號發出時往返工作地點期間因遭遇意外而獲給予的保障。本條例當作 1999 年 7 月 5 日起實施，原因為該日是對《司法程序（烈風警告期間聆訊延期）條例》（第 62 章）所載“暴雨警告”一詞的定義作出刪除紅色暴雨警告訊號的修訂的生效日期。