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**Paper for the House Committee meeting
on 3 December 1999**

**Report of the Bills Committee on
Adaptation of Laws (No. 10) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on the Adaptation of Laws (No. 10) Bill 1999 (the Bill) and seeks members' support for the Second Reading debate on the Bill to resume.

Background

2. The purpose of the Bill is to adapt references in certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People's Republic of China (PRC). A list of the Ordinances and subsidiary legislation is at **Appendix I**.

3. The Bill, if enacted, shall be deemed to have come into effect on 1 July 1997.

The Bills Committee

4. At the meeting of the House Committee on 30 April 1999, members decided to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix II**.

5. Under the chairmanship of Hon Andrew WONG, the Bills Committee held two meetings with the Administration.

Deliberations of the Bills Committee

6. The Bills Committee notes that the majority of the adaptations proposed in the

Bill are straightforward technical amendments, with the exception of some proposed adaptations in Schedule 2 to the Bill relating to the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) and its subsidiary legislation.

Substitution of "England" by "the People's Republic of China"

7. In regard to the substitution of "England" by "the People's Republic of China" in section 6 and paragraphs 2 and 3 of Part I, paragraph 1 of Part II, and paragraphs 1 and 2 of Part IV of the First Schedule of Cap. 190, the Assistant Legal Adviser to the Bills Committee points out that the substitution would have the effect that what was in force or accorded in the PRC would be in force or accorded in Hong Kong, as opposed to "what was in force or accorded in England would be in force or accorded in Hong Kong" prior to the reunification. The Assistant Legal Adviser is of the view that the change which seems to suggest that Hong Kong is not part of the PRC would not be appropriate as Hong Kong is an indivisible part of the PRC.

8. The Administration has explained that the substitution should not cause any ambiguity as the references to the PRC in the relevant provisions in Cap. 190 impliedly refer to the jurisdiction of the PRC and the references to Hong Kong impliedly refer to the jurisdiction of Hong Kong. The Administration takes the view that the fact that Hong Kong is part of the PRC should not cause any difficulty in understanding the provisions.

Meaning of "custom" in the long title and section 6 of Cap. 190

9. Members point out that the use of the word "custom" in the long title and section 6 of Cap. 190 appears to be incongruous with the fact that PRC does not have customary law. They also express reservation about the reference to "custom for the time being in force in the People's Republic of China" in the long title and section 6 of Cap. 190, having regard to the fact that there is no customary law in China and that international custom would be accepted and observed by the PRC Government but would not be enforced by the courts in China.

10. The Administration has advised that the word "custom" in the context of the long title and section 6 of Cap. 190 should be taken to mean international custom. As the PRC recognizes and accepts international custom, the PRC has an international obligation to provide privileges and immunities according to international customs. The Administration therefore considers it necessary to continue to spell out in Cap. 190 the fact that such international customs shall have the force of law in Hong Kong.

11. In response to the Bills Committee's suggestion, the Administration has agreed to move Committee Stage amendments to reflect the situation in the PRC.

Substitution of "British citizen, British Dependent Territories citizen or British Overseas citizen" by "Chinese national"

12. Members note that in the 15 subsidiary legislation made under Cap. 190, references to "British citizen(s), British Dependent Territories citizen(s) or British Overseas citizen(s)" are replaced by "Chinese national(s)". They ask whether such a change would result in Hong Kong permanent residents being treated differently because of their difference in nationality, i.e. Hong Kong permanent residents who are not Chinese nationals but are British Dependent Territories citizens (BDTCs) or British Overseas citizens (BOCs) would now enjoy privileges and immunities in Hong Kong as staff of the international organizations, which they previously would not enjoy.

13. The Administration has explained that the legislative intent of Cap. 190 will remain unchanged after the proposed adaptation in that the principle that the national of one country is not given diplomatic privileges and immunities when he is in his own country will be maintained. The Administration has pointed out that some Hong Kong permanent residents who were not entitled to enjoy privileges and immunities in Hong Kong as staff of the international organizations would, after the reunification, become eligible to enjoy such privileges and immunities. This category of Hong Kong permanent residents includes the 8 000 persons of ethnic minority who would not become Chinese citizens after the establishment of the Hong Kong Special Administrative Region (HKSAR).

14. A member enquires whether Hong Kong residents holding Canadian or United States passports would enjoy privileges and immunities in Hong Kong as staff of the international organizations concerned.

15. The Administration has advised that Hong Kong residents who are of Chinese descent and born in Hong Kong or other parts of China would be regarded as Chinese nationals in the HKSAR, regardless of whether they hold or have held Hong Kong BDTC passports, British National (Overseas) passports or any other foreign passports. If such Hong Kong residents choose to be treated as foreign nationals in the HKSAR, they will have to make a declaration of change of nationality to the HKSAR Immigration Department. After their declarations have been approved, these persons will be regarded as foreign nationals in the HKSAR and will be eligible for consular protection. And if they are staff of international organizations concerned, they will also be able to enjoy privileges and immunities to which staff of such organizations are entitled.

16. The Administration has further advised that all foreign governments represented in Hong Kong have signed agreements with the PRC after reunification for the maintenance or establishment of consulates in the HKSAR. The agreements signed with Canada and the United States vary slightly from the Vienna Convention on Consular Relations, in that these two agreements have provisions dealing with the nationality issue. Under the terms of these two agreements, the national of the

sending State entering the receiving State with valid documents of the sending State would, during the period for which his status has been accorded on a limited basis by visa or lawful visa-free entry, be considered as a national of the sending State by the appropriate authorities of the receiving State with a view to ensuring consular access and protection by the sending State.

17. The Administration has also stated that under the visa-free arrangements with Canada and the United States, visitors from these two countries may stay in Hong Kong for three months without a visa, provided that they fulfil the normal immigration requirements. Therefore, in accordance with the terms of the consular agreements signed with these two countries, nationals of Canada and the United States who are Hong Kong residents of Chinese descent and born in Chinese territories will be considered as nationals of their respective countries during the three-month period. They will not be treated as Chinese nationals even if they have not declared a change of nationality within a period of three months from the date they have entered Hong Kong.

Repeal of subsidiary legislation under the Consular Relations Ordinance (Cap. 259 sub. leg.) and Consular Conventions Ordinance (Cap. 267 sub. leg.)

18. In response to a member's enquiry, the Administration has explained that the subsidiary legislation made under Cap. 259 and Cap. 267 are to be repealed since the underlying bilateral agreements between the United Kingdom and other countries are no longer applicable to Hong Kong after the change of sovereignty.

Committee Stage Amendments

19. The Committee Stage Amendments to be moved by the Administration as highlighted in paragraph 11 are at **Appendix III**.

Recommendation

20. The Bills Committee supports the Bill and recommends that, subject to the amendments at Appendix III to be moved by the Administration, the Second Reading debate on the Bill be resumed.

**List of Ordinances and subsidiary legislation
affected by the Adaptation of Laws (No. 10) Bill 1999**

1. Privileges and Immunities (Joint Liaison Group and Land Commission) Ordinance (Cap. 36).
2. International Organizations and Diplomatic Privileges Ordinance (Cap. 190) and its subsidiary legislation.
3. Administration of Estates by Consular Officers Ordinance (Cap. 191).
4. Chinese Visa Office (Privileges and Immunities) Ordinance (Cap. 224).
5. Consular Relations Ordinance (Cap. 259) and its subsidiary legislation.
6. Consular Conventions Ordinance (Cap. 267) and its subsidiary legislation.

Bills Committee on Adaptation of Laws (No. 10) Bill 1999

Membership list

Hon Andrew WONG Wang-fat, JP (Chairman)

Hon David CHU Yu-lin

Hon Margaret NG

Hon James TO Kun-sun

Hon HUI Cheung-ching

Hon Jasper TSANG Yok-shing, JP

Hon Howard YOUNG, JP

Hon Emily LAU Wai-hing, JP

Hon CHOY SO-yuk

Total : 9 members

Appendix III

#DMA13816/Sunny Chan

1st draft: 19.10.99

2nd draft: 16.11.99

ADAPTATION OF LAWS (NO. 10) BILL 1999

COMMITTEE STAGE

Amendments to be moved by [_____]

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 2, section 1	By deleting "custom for the time being in force in" and substituting "international custom for the time being recognized by".
Schedule 2, section 6	(a) In paragraph (a), by adding "international" after "Ordinance, the". (b) By deleting paragraphs (b) and (c) and substituting - "(b) by repealing "in force in England" and substituting "recognized by the People's Republic of China"; (c) by repealing "and be enforced in the Colony" and substituting "in Hong Kong".".