

立法會
Legislative Council

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**Paper for the House Committee meeting
on 15 October 1999**

**Report of the Bills Committee on
Adaptation of Laws (No. 5) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on Adaptation of Law (No. 5) Bill 1999.

The Bill

2. The Bill aims to adapt ten ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. These ordinances and subsidiary legislation deal with land and building matters. They are the following -

- (a) Land Registration Ordinance (Cap. 128) and Land Registration Regulations (Cap. 128 subsidiary legislation);
- (b) Aliens (Rights of Property) Ordinance (Cap. 185);
- (c) Conveyancing and Property Ordinance (Cap. 219);
- (d) Land Transactions (Enemy Occupation) Ordinance (Cap. 256);
- (e) Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301);
- (f) Lifts and Escalators (Safety) Ordinance (Cap. 327);
- (g) Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337);
- (h) Electricity Networks (Statutory Easements) Ordinance (Cap. 357);
- (i) Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438); and
- (j) Land Drainage Ordinance (Cap. 446).

The Bills Committee

3. Members agreed at the House Committee meeting on 30 April 1999 to form a Bills Committee on the Bill. Hon Andrew WONG Wang-fat was

elected Chairman of the Bills Committee. The Bills Committee has held two meetings with the Administration. A membership list of the Bills Committee is at **Appendix I**.

Deliberations of the Bills Committee

4. The Bills Committee has taken note that the proposed amendments to seven of the ten Ordinances and their subsidiary legislation are terminological changes. These include the replacement of the reference to the "Crown" by "Government", the reference to the "Governor" by the "Chief Executive", and the reference to "the Colony" by "Hong Kong". The proposed adaptations to three Ordinances are of particular concern to members. They are the Lifts and Escalators (Safety) Ordinance, the Aliens (Rights of Property) Ordinance and the Demolished Buildings (Redevelopment of Sites) Ordinance. The deliberations of the Bills Committee on these three Ordinances are set out below.

Lifts and Escalators (Safety) Ordinance

5. The existing section 3(1A)(a) of the Ordinance provides amongst other things that certain provisions of the Ordinance shall not apply to a lift or escalator installed in any building belonging to the government of any member of the Commonwealth or over which such government has control and management. The relevant provisions relate to safety requirements, inspection and examination of lifts and escalators. A lift or escalator installed in any building which belongs wholly to the government of a foreign country is also exempted from the application of these provisions under section 3(1A)(d). Prior to 1 July 1997 the Central People's Government enjoyed exemption under the category of "government of a foreign country". The Bill proposes to adapt the reference to the "government of any member of the Commonwealth" in the Ordinance to the "Central People's Government".

6. Members consider the proposed adaptation necessary because after the change of sovereignty the Central People's Government is no longer a foreign government and has ceased to be exempted under this category. The proposed adaptation will enable the Central People's Government to be exempted from the application of the relevant provisions. Members also take note that the proposed amendment will not affect the government of any member of the Commonwealth who will continue to enjoy exemption but under the category of "government of a foreign country".

Aliens (Rights of Property) Ordinance

7. Noting that the Ordinance was enacted in 1853 pursuant to the United Kingdom Act for the Naturalization of Aliens and that the Act has ceased to

apply to Hong Kong after the reunification, members of the Bills Committee have examined whether it is appropriate to retain and adapt the Ordinance. The Administration's explanations are that the object of the Ordinance is to remove doubt regarding the right of aliens to hold and transfer immovable property in Hong Kong. This doubt arises from the fact that an alien could not hold land under common law. The Administration's view is that as English common law stills applies to Hong Kong, there is thus a need to retain and adapt the Ordinance.

8. The Bills Committee notes that the two cases quoted by the Administration were decided over hundreds of years ago and are only of persuasive authority to the Hong Kong courts. Since there is no authority as to how far this common law principle is applicable to the circumstances of Hong Kong or its inhabitants, the extent to which it is in force in Hong Kong is doubtful. Nevertheless, the majority of members of the Bills Committee consider it necessary to retain the Ordinance from the conveyancing point of view. These members are concerned that the repeal of the Ordinance may give rise to the doubt of the right of aliens to hold property after the change of sovereignty. Retaining the Ordinance will allay any worries aliens may have over their continued right to hold and transfer immovable property in the Hong Kong Special Administrative Region.

9. Hon Margaret NG has expressed reservation about the retention of the Ordinance. She is of the view that since there has never been doubt on the right of aliens to hold property in Hong Kong, the repeal of the Ordinance should not create such doubt. Miss NG has pointed out that section 23 of the Interpretation and General Clauses Ordinance, Cap 1 provides that the repeal of an ordinance will not revive anything which is not in force or existing at the time before the repeal takes effect.

10. Apart from the issue of retention or otherwise of the Ordinance, the content of the proposed adaptations to the Ordinance has been another subject of concern to the Bills Committee. The Bill proposes to repeal the preamble of the Ordinance which sets out the background to its enactment and the power upon which it was enacted. Members accept the Administration's explanation that since the background to the enactment of the Ordinance is a historical fact which cannot be adapted and that the preamble has no legal effect, the proposed deletion of the preamble is appropriate.

11. The Bills Committee has also examined the proposal to adapt the reference to "Commonwealth citizen" in sections 2 and 3 of the Ordinance to "Chinese citizen". These sections provide for the right of an alien to hold and transfer immovable property in Hong Kong as if he were a Commonwealth citizen. The Administration's explanations for the proposed adaptation are that under the definition in Cap.1 in force immediately before 1 July 1997, an alien meant a person who was neither a Commonwealth citizen nor a British

protected person nor a citizen of the Republic of Ireland. This definition has already been amended to mean a person other than a Chinese citizen on and after 1 July 1997. Paragraph 20 of Schedule 8 to Cap. 1 provides that any reference to an alien contained in any law in force immediately before 1 July 1997 and adopted as a law of the Hong Kong Special Administrative Region shall be construed as a reference to a person other than a citizen of the People's Republic of China. In the light of the new meaning of an alien, the Bill therefore proposes to adapt the reference to "Commonwealth citizen" in sections 2 and 3 of the Ordinance to "Chinese citizen". Members consider the proposed adaptation appropriate.

12. Members of the Bills Committee have identified the inconsistent Chinese renditions for "alien" under Cap. 1 and the Ordinance. The Chinese rendition for "alien" in Cap. 1 is "外籍人士", whereas that in the Ordinance is "外國人". Since the definition of "alien" in Cap. 1 applies to the Ordinance, for the purpose of removing confusion, the Administration has taken on board the Bills Committee's suggestion to amend the Chinese rendition for "alien" in the Ordinance as that in Cap 1.

Demolished Buildings (Re-development of Sites) Ordinance

13. The Ordinance provides amongst other things that upon registration in the Land Registry of a final award for the compensation payable to protected tenants of a building on which a re-development notice has been served, the amount of such compensation and interest thereon shall constitute a charge on the property in favour of the Financial Secretary Incorporated in trust for the person(s) entitled until payment has been made. Section 12(3) of the Ordinance confers on the Financial Secretary Incorporated the powers and remedies of a mortgagee by deed under the Law of Property Act 1925 (LPA) and otherwise available in England, i.e. the common law powers and remedies. The Bill proposes to replace the references to LPA and England in section 12(3) with the Conveyancing and Property Ordinance (Cap. 219) (CPO) and Hong Kong.

14. Members have taken note that the powers and remedies of a mortgagee by deed under the common law in England are similar to those of a mortgagee under a legal charge or equitable mortgage by deed under the common law in Hong Kong. However, the powers and remedies of a mortgagee by deed under CPO are slightly wider than those under LPA. In this context the proposed amendment is not a straight-forward law adaptation. Nevertheless, having considered that the only party affected by the proposed amendment is the Financial Secretary Incorporated and that section 12(3) has not been invoked over the past 15 years, members accept the proposal.

Recommendation

15. Subject to the moving of the Committee Stage amendment by the Administration, the Bills Committee recommends the resumption of the Second Reading debate on the Bill on 27 October 1999.

Committee Stage amendment

16. A copy of the Committee Stage amendment to be moved by the Administration is at **Appendix II**.

Advice sought

17. Members are requested to support the recommendation of the Bills Committee at paragraph 15 above.

Legislative Council Secretariat

11 October 1999

Appendix I

Bills Committee on Adaptation of Laws (No. 5) Bill 1999

Membership list

Hon Andrew WONG Wang-fat, JP (Chairman)

Hon David CHU Yu-lin

Hon Margaret NG

Hon Ronald ARCULLI, JP

Hon James TO Kun-sun

Hon Jasper TSANG Yok-sing, JP

Hon Mrs Miriam LAU Kin-yee, JP

Total : 7 members

ADAPTATION OF LAWS (NO. 5) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Planning.

Environment and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 2, section 1	By deleting “by repealing “the Colony” and substituting “Hong Kong”. “and substituting - ” - (a) by repealing “the Colony” and substituting “Hong Kong”; (b) by repealing ” 外國人 ” and substituting” 外籍人士” .”.
Schedule 2	By adding - “2A. Section 1 is amended by repealing” 外國人” and substituting “外籍人士” .”.
Schedule 2, section 3	(a) In paragraph (b) by deleting the full stop and substituting a semicolon. (b) By adding - “(c) by repealing “外國人” where it twice appears and substituting” 外籍人士” .”.

Schedule 2,
section 4

By deleting “by repealing “Commonwealth citizen” and substituting “Chinese citizen”.” and substituting -
”-

- (a) by repealing “Commonwealth citizen” and substituting “Chinese citizen”;
- (b) by repealing ” 外國人 ” and substituting” 外籍人士” .”.