

立法會
Legislative Council

LC Paper No. LS 3/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 26 November 1999**

**Legal Service Division Further Report on
Adaptation of Laws (No. 7) Bill 1998**

Members may recall that the Legal Service Division made a report to the House Committee on 20 November 1998 on the Bill (LC Paper No. LS64/98-99 refers). Annexes A and B of the report are attached for Members' ease of reference. Members agreed to defer decision on the Bill pending the outcome of the deliberations on the general principles to be applied in the adaptation of laws exercise then under consideration by Bills Committees on other Adaptation of Laws Bills.

Sections 9 and 17(1) of the Lands Resumption Ordinance

2. The Bill proposes to adapt the term "Crown" to "Government" in sections 9 and 17(1) of the Lands Resumption Ordinance (Cap. 124) ("the Ordinance"). Section 9 provides that subject to the provisions of the Ordinance, no action or suit shall lie against the Crown or against any other person for any loss or damage suffered by any person as a result of the resumption of any land under the Ordinance. Under section 17(1), all sums of money agreed or determined as compensation, and all costs and remuneration awarded against the Crown, shall be paid out of the general revenue.

3. The proposed adaptation follows the principle laid down in Article 7 of the Basic Law, i.e., that the Government of the HKSAR shall be responsible for the management, use and development of land and natural resources within the HKSAR.

Crown Proceedings Ordinance (Cap. 300)

4. One of the concerns was whether the proposed adaptation should be considered after adaptation of the Crown Proceedings Ordinance (Cap. 300) has been made. The Bills Committee on the Adaptation of Laws (No. 9) Bill 1999 agreed at the meeting on 2 September 1999 that where an Ordinance provides for an independent mechanism to enable affected parties to initiate claims against the Crown, adaptation of those provisions could be proceeded with before adaptation of the Crown Proceedings Ordinance.

5. Under the Ordinance, an owner, any person having an estate or interest in the land immediately before reversion or any other persons claiming compensation by reason of the resumption of land may submit a claim in writing to the Director of Lands. If any such person and the Director do not agree as to the amount of compensation to be paid, either party may submit a claim to the Lands Tribunal for determination of the amount of compensation. Since the Ordinance provides for an independent mechanism to initiate claims against the Crown, the Bill could be proceeded with before adaptation of the Crown Proceedings Ordinance.

Retrospective effect on civil claims

6. The Bill, if passed, would be deemed to have come into operation on 1 July 1997 and would have retrospective effect on claims for compensation under the Ordinance. The Administration has been asked to provide more information on the claims for compensation made under the Ordinance since 1 July 1997 so that we may assess the impact of retrospective legislation on such claims. According to the Administration, since 1 July 1997 :

- (a) notices for resumption of land under the Ordinance have been published in the Gazette;
- (b) there have been claims for compensation;
- (c) the claimants and the Director of Lands have entered into agreements pursuant to which compensation has been paid under the Ordinance; and
- (d) claims have been submitted to the Lands Tribunal where agreements could not be reached.

7. The Administration has supplied us with copies of notices in the Gazette and forms of agreements where the land has been reverted on or before 30 June 1997 but compensation is to be paid after 1 July 1997, as well as forms of agreements entered into after 30 June 1997. We note :

- (a) that it is specified in the notices that the land shall be resumed and revert to the Government of the HKSAR;
- (b) that in both forms of agreement, the claimants agree that the payment of compensation shall be in full and final satisfaction of all claims against the Government and its officers under the Ordinance or otherwise in respect of the resumption of land; and
- (c) that in both forms of agreement, payment of professional fee shall be in full and final satisfaction of all claims which the claimants may have against the Government and its officers under the Ordinance in respect of all costs or remuneration reasonably incurred by the claimants in

employing persons to act in a professional capacity for him in connection with the claim for compensation.

8. According to the Administration, in the claims for compensation made under the Ordinance after 1 July 1997, all references to "Crown" have been construed in accordance with section 1 of Schedule 8 of the Interpretation and General Clauses Ordinance (Cap. 1). Since the adaptation of "Crown" to "Government" proposed in the Bill is consistent with such interpretation, there would not be any legal consequence for the adaptation to apply retrospectively to these claims.

Committee Stage Amendments

9. The Administration proposes to introduce Committee Stage Amendments to the Bill to the effect that the term "Governor" will be adapted to "Chief Executive" where the provisions relate to the power to make subsidiary legislation. A copy of the draft Committee Stage Amendments is at Annex C. The proposed amendments are along the same lines as the amendments made to other Adaptation of Laws Bills.

10. With the proposed Committee Stage Amendments, we are satisfied that the legal and drafting aspects of the Bill are in order. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

Encl

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23 November 1999

Adaptation of Laws (No. 7) Bill 1998
Summary of the proposed amendments

Original Terms	Proposed Amendments
renewable Crown lease ¹	renewable Government lease
Crown ²	Government
Governor/Governor in Council	Chief Executive/Chief Executive in Council
Colony	Hong Kong
a lease is granted by or on behalf of the Governor, any extension of the term of a lease, a lease that is varied, an agreement to grant a lease	a Government lease is granted ³
立法局	立法會
地方法院	區域法院
大法官	法官

Notes :

- ¹ The Bill proposes to adapt the term “renewable Crown lease” in section 9(9) of the Government Leases Ordinance (Cap. 40) which was inadvertently left out in the last adaptation exercise.
- ² References to “Crown” are made in the following provisions:
- (a) section 20 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) - relating to the savings of rights and powers;
 - (b) section 9 of the Lands Resumption Ordinance (Cap. 124) - relating to the barring of actions against the Crown; and
 - (c) section 17 of the Lands Resumption Ordinance (Cap. 124) - relating to the payment and compensation of interest.

Since all of these provisions relate to the management of Government land, the adaptation of the word “Crown” to “Government” in all three cases is legally correct in light of Article 7 of the Basic Law.

- ³ The proposed amendment is made because the term “Government lease” has been defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1). It is essentially a technical drafting amendment that involves no policy change.

List of Ordinances affected by the Adaptation of Laws (No. 7) Bill 1998

Item No.	Ordinances
1.	Land (Miscellaneous Provisions) Ordinance (Cap. 28)
2.	Government Leases Ordinance (Cap. 40)
3.	Crown Lease (Pok Fu Lam) Ordinance (Cap. 118)
4.	Lands Resumption Ordinance (Cap. 124)
5.	Government Rent and Premium (Apportionment) Ordinance (Cap. 125)
6.	Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126)
7.	Government Rent (Assessment and Collection) Ordinance (Cap. 515)

ADAPTATION OF LAWS (NO. 7) BILL 1998

COMMITTEE STAGE

**Amendments to be moved by the Secretary for Planning,
Environment and Lands**

Clause	<u>Amendment Proposed</u>
Schedule 1, section 1	By deleting “in Council”.
Schedule 2, section 1	By deleting “in Council”.
Schedule 5, section 1	By deleting “in Council”.