

立法會

Legislative Council

LC Paper No. LS 4/99-00

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

Legal Service Division Further Report on Adaptation of Laws (No. 11) Bill 1998

Members may recall that the Legal Service Division made a report to the House Committee on 8 January 1999 on the Bill (LC Paper No. LS74/98-99 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 10(1)(b), 11 and 15 of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)

Sections 10(1) and 12 of the Land Acquisition (Possessory Title) Ordinance (Cap. 130)

Sections 17, 18(1), 19(4), 20(3), 21(6)(a) and (6A)(c) and 27(b) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) (collectively "the said provisions")

2. The Bill proposes to adapt the term "Crown" to "Government" in the said provisions. These provisions relate to the right to claim against the Crown for payment of compensation and interest in relation to (a) reclamation of land under Cap. 127, (b) acquisition of land required for a public purpose under Cap. 130, and (c) resumption of land, creation of easements or rights, and closure or alteration of streets for the purposes of and incidental to the Mass Transit Railway under Cap. 276.

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 said provisions, any person claiming compensation may submit a claim in writing to the Director of Lands stating the nature of his interest in the land, the amount which he seeks to recover and other particulars as may be required. If any such person and the Director do not agree as to the amount of compensation to be paid, either party may submit the claim to the Lands Tribunal for determination of the amount of compensation. Since the said provisions set out 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 said provisions. The Administration has been asked to provide more information on the claims for compensation made under the said provisions 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) there have been claims for compensation under the said provisions (see summary at Annex C);
- (b) the claimants and the Director of Lands have entered into agreements pursuant to which compensation has been paid under these Ordinances; and
- (c) claims have been submitted to the Lands Tribunal where agreements could not be reached.

7. The Administration has supplied us with standard 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 standard forms of agreements entered into after 30 June 1997. We note :

- (a) 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
- (b) 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 said provisions 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.

Paragraph 2, First Schedule to the Land Development Corporation Ordinance (Cap. 15)

9. Paragraph 2 of the First Schedule to the Land Development Corporation Ordinance (Cap. 15) provides that the Corporation shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. The Bill proposes to adapt the reference of "Crown" to "State". A similar adaptation has been proposed in the Adaptation of Laws (No. 16) Bill 1999 and Members of the House Committee have decided to set up a Bills Committee to study it in detail.

Committee Stage Amendment

10. The Administration proposes to introduce a Committee Stage Amendment to the Bill to the effect that the term "Governor" will be adapted to "Chief Executive" where the provision relates to the power to make subsidiary legislation. A copy of the draft Committee Stage Amendment is at Annex D. The proposed amendment is along the same line as previous amendments made to other Adaptation of Laws Bills.

Conclusion

11. Other than the outstanding issue referred to in paragraph 9 of this Report, we are satisfied that with the proposed Committee Stage Amendment, the legal and drafting aspects of the Bill are in order. It is recommended that resumption of Second Reading debate of this Bill should take place after the Bills Committee on the Adaptation of Laws (No. 16) Bill 1999 has made its report so that any recommendations by that Bills Committee could be considered in the context of this Bill.

Encl

Prepared by

Wong Sze-man, Bernice
Assistant Legal Adviser
Legislative Council Secretariat
25 November 1999

List of Ordinances affected by the Adaptation of Laws (No. 11) Bill 1998

Item No.	Ordinances
1.	Land Development Corporation Ordinance (Cap. 15)
2.	Sale of Land by Auction Ordinance (Cap. 27)
3.	Buildings Ordinance (Cap. 123)
4.	Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)
5.	Land Acquisition (Possessory Title) Ordinance (Cap. 130)
6.	Town Planning Ordinance (Cap. 131) and its subsidiary legislation
7.	Aerial Ropeways (Safety) Ordinance (Cap. 211)
8.	Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276)
9.	Land Survey Ordinance (Cap. 473)

Adaptation of Laws (No. 11) Bill 1998
Summary of the proposed amendments

Original Terms	Proposed Amendments
Colony	Hong Kong
Crown ¹	Government/State
Governor ²	Chief Executive/ Chief Executive in Council
Governor in Council	Chief Executive in Council
at the pleasure of the Governor ³	at the discretion of the Chief Executive
Chief Executive ⁴	Chief Executive of the Corporation
立法局	立法會
大法官	法官
法院	法庭
高等法院	原訟法庭
地政司	局長

Notes:

- ¹
- (a) paragraph 2 of the First Schedule to the Land Development Corporation Ordinance (Cap. 15) - The Land Development Corporation shall not be regarded as a servant or agent of the State, or as enjoying any status, immunity or privilege of the State.
 - (b) sections 5(5), 11(6) of the Buildings Ordinance (Cap. 123) - office or emolument of the Government.
 - (c) section 33(6) of the Buildings Ordinance (Cap. 123); section 10(4) and 17(5) of the Aerial Ropeways (Safety) Ordinance (Cap. 211) - recovered as a debt due to the Government.

- (d) section 36(3)(a) of the Buildings Ordinance (Cap. 123) -
claim of the Government to withhold document on the ground that its production would be contrary to public interest.
 - (e) section 38(3)(b) of the Buildings Ordinance (Cap. 123) -
deposit forfeited to the Government.
 - (f) sections 10(1)(b), 11 and 15 of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127);
sections 10(1) and 12 of the Land Acquisition (Possessory Title) Ordinance (Cap. 130);
sections 17, 18(1), 19(4), 20(3), 21(6)(a) and (6A)(c) and 27(b) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) -
right to claim against the Government for payment of compensation and interest.
 - (g) section 31 of the Aerial Ropeways (Safety) Ordinance (Cap. 211) -
limitation of public liability.
- 2
- (a) section 3(4) of the Land Development Corporation Ordinance (Cap. 15) -
order to amend the First Schedule.
 - (b) sections 4(1), 5(3)(d), 6, 7(3)(d), 8, 10(1) and 15(4) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) -
order for resumption of land, creation of easements or rights, and closure or substantial alteration of streets.
- 3
- section 3(2)(d) of the Land Development Corporation Ordinance (Cap 15).
- 4
- First Schedule to the Land Development Corporation Ordinance (Cap. 15) -
to distinguish “Chief Executive of the Land Development Corporation” from the “Chief Executive of HKSAR”.

Outstanding Claims for Compensation under Cap.124, Cap.127, Cap. 130 and Cap. 276 submitted after 30.6.1997

District	No. of Claims submitted against					Referred to the Lands Tribunal Respondent: D of L	Referred to High Court Respondent: D of L	Total No. of outstanding cases
	D of L	Land Registrar, Land Registry/The Registrar, Lands Dept.	DLO	CES/A or Acq. Section	HKSAR			
DLO/TP	-	-	-	-	-	-	-	NIL
DLO/TW	-	-	-	-	-	-	-	NIL
DLO/TM	-	-	-	-	-	-	-	NIL
DLO/SK	-	-	-	-	-	-	-	NIL
CES/NA	16	-	-	-	-	-	-	16
DLO/KT	3	-	-	-	-	1	-	3
DLO/N	-	-	-	-	-	-	-	30
DLO/Islands	2	-	-	-	-	1	-	2
DLO/ST	1	-	2	-	-	-	1	3
DLO/YL	33	-	-	-	-	3	-	33
CES/A(K)	11	-	-	11	-	4*	-	21*
CES/A(HK)	-	2	-	13	-	2	-	17
Grand Total:	66	2	2	24	-	11	1	125
* Out of the total no. of claims submitted, 1 case have been submitted to Lands Tribunal and settled on pursunat to a Consent Order by the Lands Tribunal						28.4.1999		

ADAPTATION OF LAWS (NO. 11) BILL 1998

COMMITTEE STAGE

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

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1, Section 1(c)	By deleting “in Council”.