

Bills Committee on Land Titles Bill Indemnity

Purpose

This paper provides supplementary information on indemnity as requested by members of the Bills Committee at the eighth meeting held on 30 June 2003.

Judicial review of the constitutionality of the cap on indemnity

2. Members of the Bills Committee at the above meeting discussed the following scenario: a person, as a result of fraud by a third party, has lost ownership of his land which is worth \$10 billion and is entitled to be indemnified by the Government up to \$30 million (the cap on the indemnity as currently planned). The person then challenged the cap on the indemnity in court in reliance on BL 6 and 105, and the cap was subsequently ruled by the court to be inconsistent with the above constitutional provisions. The Administration was asked if this scenario occurred, whether it would seek an interpretation of BL 6 and 105 from the Standing Committee of the National People's Congress ("Standing Committee").

Constitutionality of the indemnity cap

3. As explained in our previous papers (LC Paper No. CB(1)1664/02-03(01) and LC Paper No. CB(1)2089/02-03(02)), the Administration is of the view that the cap on the indemnity is fully consistent with BL 6 and 105. Particularly, the Bill does not involve any "deprivation"/"徵用"(zhengyong) for the purposes of BL 105, with the result that the principle of real value compensation under BL 105 is not applicable to the question of indemnity. In this regard, the Administration notes that the Legal Service Division of the Legislative Council Secretariat is also of the view that "the cap and the limitation would not constitute a deprivation for the purposes of BL 105." It has also advised that the Bill is consistent with BL 6.

4. Hence, the scenario referred to in paragraph 2 above would not, in our view, arise.

Interpretation of the Basic Law

5. The interpretation of the Basic Law is provided for in BL 158. Paragraph 1 of that article states that the power of interpretation of the Basic Law shall be vested in the Standing Committee. Paragraphs 2 and 3 of the article go on to deal with the powers of the courts of the Hong Kong Special Administrative Region (“HKSAR”). In summary, they provide that the courts may, in adjudicating cases, interpret provisions of the Basic Law. However, if three criteria are satisfied, the courts must, according to BL 158(3), seek an interpretation of the relevant provision from the Standing Committee, and must follow that interpretation. The three criteria are –

- (a) the provision concerns affairs which are the responsibility of the Central People’s Government or the relationship between the Central Authorities and the HKSAR;
- (b) the court needs to interpret the provision and such interpretation will affect the judgment of the case; and
- (c) the court’s final judgment is not appealable.

6. In *Lau Kong Yung v Director of Immigration* [1999] 3 HKLRD 778, the Court of Final Appeal decided that the Standing Committee’s power under BL 158(1) applies to all provisions in the Basic Law. We would, however, emphasize that the Standing Committee is unlikely to exercise this power save in wholly exceptional circumstances.

7. As stated previously, the Administration is fully committed to upholding the principles of “one country, two systems”, a high degree of autonomy and judicial independence. It will not seek an interpretation under BL 158(1) lightly.