

Bills Committee on Adaptation of Laws Bill 2009

**The Administration's responses to issues
raised by Members at the meeting on 4 March 2009**

Introduction

This paper follows up the Bills Committee meeting held on 4 March 2009 and sets out the Administration's responses to the issues raised during the meeting.

The Bill and section 66(1) of the Interpretation and General Clauses Ordinance

2. The Bill seeks to amend four ordinances¹, which at present expressly bind the Government but are silent on their applicability to offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region (HKSAR). After the Bill has been enacted and come into operation, the four ordinances will expressly apply to the HKSAR Government and the offices set up by the CPG in the HKSAR. The applicability of the four ordinances to the offices set up by the CPG in the HKSAR can then be clearly affirmed pursuant to section 66(1) of the Interpretation and General Clauses Ordinance². This is where the link between the amendment proposal in the present Bill and section 66(1) of the Interpretation and General Clauses Ordinance lies.

The term "Offices set up by the CPG in the HKSAR" and the definition of "State" under the Interpretation and General Clauses Ordinance

3. At the Bills Committee meeting, Members noted that section 66(1) in the Interpretation and General Clauses Ordinance referred to "State", whereas the amendment proposal in the Adaptation of Laws Bill 2009 referred to "offices set up by the CPG in the HKSAR". Members asked whether the use of the term "offices set up by the CPG in the HKSAR" in the Bill was too narrow.

¹ The four ordinances are The Legislative Council Commission Ordinance, the Plant Varieties Protection Ordinance, the Patents Ordinance and the Registered Designs Ordinance.

² According to section 66 of the Interpretation and General Clauses Ordinance, a legislation does not bind the State unless it expressly says so or it appears by necessary implication that this was so intended. The principle is commonly adopted by some other common law jurisdictions, including the United Kingdom and New Zealand. Under the Basic Law, Hong Kong remains a common law jurisdiction and this principle continues to apply here.

4. According to Article 22(3) of the Basic Law, “[a]ll offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.”

5. There are only three offices set up by the CPG, pursuant to the Basic Law, in Hong Kong. They are the three offices covered by the term “offices set up by the CPG in the HKSAR”, namely the Liaison Office of the Central People’s Government in the HKSAR; the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the HKSAR; and the Hong Kong Garrison of the Chinese People’s Liberation Army. These three offices fall within the definition of “State” under the Interpretation and General Clauses Ordinance. Hence, the amendment proposal in the Bill, which seeks to extend the express scope of application of the four ordinances from the HKSAR Government to cover the CPG offices, is in line with Article 22(3) of the Basic Law.

6. At present, the CPG has set up only three offices in the HKSAR as listed in paragraph 5 above, and there is no current plan to set up any other offices in the HKSAR. As such, the proposed amendment to the four ordinances as set out in the Bill is adequate to address the present situation.

Other issues

7. At the Bills Committee meeting, a Member enquired about the situation of Mainland officials taking law enforcement actions in the HKSAR. Both before and after the establishment of the HKSAR, cooperation between Hong Kong and the Mainland on criminal matters is conducted in accordance with the international police cooperation mechanism formulated by the INTERPOL. Both parties must strictly comply with the relevant legal requirements and respect the jurisdiction of the respective places during such cooperation.

Conclusion

8. We consider that it is appropriate for the proposed amendment in the Bill to adopt the term “offices set up by the CPG in the HKSAR”. This could also reflect the policy intention of the relevant ordinances.

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