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Report of the Bills Committee on Adaptation of Laws Bill 2009

Purpose

This paper reports on the deliberations of the Bills Committee on Adaptation of Laws Bill 2009.

Background

Offices set up by the Central People's Government (CPG offices) in the Hong Kong Special Administrative Region (HKSAR)

2. Article 22(2) and 22(3) of the Basic Law provides that -

"If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government.

All 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."

3. There are three CPG offices in HKSAR, namely -

- (a) the Liaison Office of the Central People's Government in HKSAR (the Liaison Office);
- (b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in HKSAR (OCMFA); and
- (c) the Hong Kong Garrison of the Chinese People's Liberation Army (the Hong Kong Garrison).

4. A gazette notice was published on 21 January 2000 to list the setting up of these three offices in HKSAR by CPG.

Applicability of HKSAR laws to CPG offices

Adaptation of "Crown" to "State"

5. The Reunification has necessitated the adaptation of legislative provisions to bring the laws of Hong Kong into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China. With regard to the applicability of ordinances to CPG offices in HKSAR, the adaptation programme has involved the adaptation of section 66 of the Interpretation and General Clauses Ordinance (Cap. 1) referring to the "Crown".

6. Under section 66(1) of the Interpretation and General Clauses Ordinance as at 30 June 1997, "no Ordinance shall in any manner whatsoever affect the right of or be binding on the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby". By way of the Adaptation of Laws (Interpretative Provisions) Bill passed on 7 April 1998, the reference to "Crown" in section 66(1) of Cap.1 was adapted to "State". The definition of "State" in section 3 of Cap. 1 is in **Appendix I**.

Adaptation of Laws Bill 2009

7. In the course of scrutinizing the Adaptation of Laws (Interpretative Provisions) Bill in 1997 by the relevant Bills Committee, the Administration undertook to conduct a review of the 17 Ordinances (**Appendix II**) that expressly bound the Government, but were otherwise silent on their applicability to CPG offices. Among them, the Administration considered that there was no need to amend the Social Workers Registration Ordinance (Cap. 505).

8. The Administration has been studying and discussing with the relevant authorities of CPG on whether and how these ordinances which expressly bind the Hong Kong Government but are silent on their applicability to CPG offices can be made applicable to these offices. The application formula as provided in the Adaptation of Laws Bill 2009 (the Bill) is that the relevant Ordinance "applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region". According to the Administration, this formula has been agreed between the HKSAR Government and the relevant authorities of CPG.

9. The objects of the Bill are -

- (a) to add a definition of "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" to section 3 of Cap. 1 for the purpose of introducing a single definition for the three offices set up by CPG in HKSAR; and

- (b) to amend the application provisions of The Legislative Council Commission Ordinance (Cap. 443), the Plant Varieties Protection Ordinance (Cap. 490), the Patents Ordinance (Cap. 514) and the Registered Designs Ordinance (Cap. 522) to make the provisions of these Ordinances, apart from being applicable to the Hong Kong Government, also applicable to CPG offices.

The Bills Committee

10. At the House Committee meeting on 13 February 2009, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix III**.

11. Under the chairmanship of Hon WONG Ting-kwong, the Bills Committee has held one meeting with the Administration and completed the scrutiny work.

Deliberations of the Bills Committee

Relationship between the Bill and section 66(1) of Cap. 1

12. According to the observation of Dr Margaret NG, the Bill has no legal effect other than adding a definition of "Offices set up by CPG in HKSAR" to Cap. 1 and making the provisions of the four specified Ordinances applicable to the CPG offices so defined. The legal adviser to the Bills Committee shares Dr NG's view that the Bill has no direct legal relationship with section 66(1) of Cap. 1, given that the term "Offices set up by CPG in HKSAR" as defined in clause 2 of the Bill is found neither in section 66(1) nor in the definition of "State" in section 3 of Cap. 1.

13. In response to Dr NG's request for confirmation of her view, the Administration has explained that pursuant to section 66(1) of Cap. 1, an ordinance shall not bind the State, including the CPG offices, unless it is expressly provided therein or by necessary implication that it is so intended. The Bill seeks to amend the four ordinances which at present expressly bind the Government but are silent on their applicability to the CPG offices in HKSAR. After the Bill has been enacted and has come into operation, the four ordinances will expressly apply to the HKSAR Government and the offices set up by CPG in HKSAR. The applicability of the four ordinances to the offices set up by CPG in HKSAR can then be affirmed clearly pursuant to section 66(1) of Cap. 1. According to the Administration, this is where the link between the amendment proposals in the Bill and section 66(1) of Cap. 1 lies.

Definition of CPG offices and its scope

14. Clause 2 of the Bill defines the term "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region" in the application

formula to mean the three CPG offices currently set up in HKSAR, namely, the Liaison Office, OCMFA and the Hong Kong Garrison.

15. Some members, including Dr Margaret NG and Mr James TO, have queried whether the scope of the definition of CPG offices in the Bill is too narrow. While Dr NG has expressed agreement with the approach adopted in the Bill for implementing Article 22(3) of the Basic Law, i.e. the application formula, she has reservations about the use of the word “means” in the drafting of the definition of CPG offices. Dr NG is concerned that conceptually there can be State organs which are not among the three CPG offices listed in the Bill but come within the definition of “State” in section 3 of Cap. 1, and hence they and their personnel will be exempted from the application of the relevant ordinances which are stated expressly to apply to the three CPG offices.

16. The Administration has explained that there are only three offices set up by CPG in Hong Kong pursuant to the Basic Law. They are the three offices covered by the term “Offices set up by CPG in HKSAR” and fall within the definition of “State” under Cap. 1. 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, according to which CPG offices in HKSAR and their personnel shall abide by the laws in HKSAR. The use of the term “Offices set up by CPG in HKSAR” also reflects the policy intention of the relevant ordinances. The Administration has further pointed out that CPG at present has set up only three offices in HKSAR, and there is no current plan to set up any other offices in HKSAR. As such, the Administration considers that the proposed amendment to the four ordinances as set out in the Bill is adequate to address the present situation.

17. Mr James TO has expressed concern that the scope of the term “CPG offices” as defined in the Bill does not cover State organs, such as the Public Security Bureau and the State Security Bureau, including their personnel, which have not set up offices in HKSAR. He has enquired about the situation of Mainland officials taking law enforcement actions in HKSAR. The Administration has explained that both before and after the establishment of 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 comply strictly with the relevant legal requirements and respect the jurisdiction of the respective places during such cooperation. The Administration has also stressed that it is a fundamental principle of the legal system in HKSAR that everyone is subject to the law. As stipulated in Article 42 of the Basic Law, all Hong Kong residents and other persons in Hong Kong have the obligation to abide by the laws in force in HKSAR.

18. Mr Paul TSE has suggested adding a general proviso to clause 2 of the Bill to the effect that it would not be necessary to amend the definition of CPG offices under section 3 of Cap. 1 every time a new CPG office is set up in HKSAR.

19. The Administration has explained that the current approach of listing out exhaustively all the offices set up by CPG in HKSAR will provide clarity in law. The Administration has further pointed out that since the reunification, only three CPG offices have been set up in HKSAR pursuant to Article 22 of the Basic Law, and for the time being, it is not envisaged that another CPG office will be set up in HKSAR.

Applicability of HKSAR laws to CPG Offices

20. Mr IP Kwok-him has asked why it has taken so long to introduce legislative amendments to make the four ordinances also applicable to the CPG offices in HKSAR, considering that the four ordinances do not involve complex issues.

21. The Administration has explained that the reunification has necessitated the adaptation of legislative provisions to bring the laws of Hong Kong into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China. As a related matter, the Administration has undertaken to review 17 Ordinances which expressly apply to the Government but are silent on their applicability to the CPG offices, to see if their application should be extended. The Administration has been studying and discussing with the relevant authorities of CPG on whether and how these Ordinances can be applicable to the CPG offices in HKSAR. In accordance with the consensus reached and as a start, the Bill has been drawn up for introduction in the 2008-2009 legislative session to amend the four ordinances, which are related to protection of ownership rights and operation of statutory body, to expressly provide that they will also apply to the offices set up by CPG in HKSAR.

22. Dr Margaret NG has expressed the view that the review on the applicability of HKSAR laws to CPG offices should not be confined only to the 17 Ordinances identified by the Administration which expressly bind the HKSAR Government but are silent on their applicability to the CPG offices.

Resumption of Second Reading debate

23. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill.

Consultation with the House Committee

24. The Bills Committee reported its deliberations to the House Committee on 17 April 2009. The House Committee noted that the Administration intended to give notice for resumption of the Second Reading debate on the Bill at the Council meeting on 29 April 2009.

The definition of ‘State’ in Cap. 1

“‘State’ includes only -

- (a) the President of the People’s Republic of China;
- (b) the Central People’s Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People’s Republic of China that exercise functions for which the Central People’s Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People’s Government that -
 - (i) on its behalf, exercise executive functions of the Central People’s Government or functions for which the Central People’s Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions,when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
- (f) subordinate organs of the Central Authorities of the People’s Republic of China referred to in paragraph (d), that -
 - (i) on behalf of those Central Authorities, exercise executive functions of the Central People’s Government or functions for which the Central People’s Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions,when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned;”

Appendix II

17 Ordinances that expressly bind the Government (but are silent on the binding effect on the CPG Offices)

	Cap.
1. Gas Safety Ordinance	Cap. 51
2. Arbitration Ordinance	Cap. 341
3. Ozone Layer Protection Ordinance	Cap. 403
4. The Legislative Council Commission Ordinance	Cap. 443
5. Dumping at Sea Ordinance	Cap. 466
6. Marine Parks Ordinance	Cap. 476
7. Sex Discrimination Ordinance	Cap. 480
8. Mandatory Provident Fund Schemes Ordinance	Cap. 485
9. Personal Data (Privacy) Ordinance	Cap. 486
10. Disability Discrimination Ordinance	Cap. 487
11. Plant Varieties Protection Ordinance	Cap. 490
12. Environmental Impact Assessment Ordinance	Cap. 499
13. Social Workers Registration Ordinance	Cap. 505
14. Occupational Safety & Health Ordinance	Cap. 509
15. Patents Ordinance	Cap. 514
16. Registered Designs Ordinance	Cap. 522
17. Family Status Discrimination Ordinance	Cap. 527

Bills Committee on Adaptation of Laws Bill 2009

Membership list

Chairman Hon WONG Ting-kwong, BBS

Deputy Chairman Hon IP Wai-ming, MH

Members Dr Hon Margaret NG
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEUNG Kwok-hung
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun

Total : 13 Members

Clerk Miss Flora TAI

Legal Adviser Miss Kitty CHENG

Date 4 March 2009