

PROVISIONAL LEGISLATIVE COUNCIL BRIEF

HOLIDAYS (AMENDMENT) BILL 1998

INTRODUCTION

At the meeting of the Executive Council on 23 June 1998, the Council ADVISED and the Chief Executive ORDERED that

- (a) two of the general holidays observed in 1997 and 1998, i.e. Sino-Japanese War Victory Day (the third Monday in August) and 2 October (the day after National Day) should be replaced by Labour Day and the Buddha's Birthday from 1999 onwards; and
- (b) the Holidays (Amendment) Bill 1998 (copy at Annex A) should be introduced into the Legislative Council to stipulate the general holidays for 1999 onwards.

BACKGROUND AND ARGUMENT

2. General holidays are provided in the Schedule to the Holidays Ordinance (Cap 149). These holidays are kept by all banks, schools, public offices and government departments.

Proposed new general holidays

3. Following a decision of the Executive Council on 18 November 1997, we announced that:

- (a) our policy would be to cap the maximum number of general holidays (other than Sundays) under the Holidays Ordinance at the level of 17 days in a year;
- (b) 1 May (Labour Day) and Buddha's Birthday (the eighth day of the fourth lunar month) should be designated general holidays from 1999 onwards; and
- (c) we would consult employers' and employees' organisations and the financial services sector to determine which existing general but not statutory holidays should be used to offset 1 May and Buddha's Birthday when these were made new general holidays.

Consultation Exercise

4. In December 1997, we sought views on which two general but not statutory holidays might be deleted to make way for the new proposed general holidays. A list of the 1998 general holidays is at Annex B. The general holidays which could be offset in this way are:

- Good Friday
- The day after Good Friday

- Easter Monday
- Sino-Japanese War Victory Day (the third Monday in August)
- 2 October
- The first weekday after Christmas Day (Boxing Day)

5. We wrote to 34 organisations covering the major employers' and employees' groups, as well as the financial services and religious sectors. Of these, 33 (97%) have responded. An additional three organisations which we had not contacted sent us unsolicited submissions. Of the 33 respondents, five had no special preferences, leaving a total of 28 respondents who indicated clear preferences as to which two days should be deleted.

SUMMARY OF VIEWS EXPRESSED IN THE CONSULTATION

EXERCISE

6. The main views expressed in the consultation exercise are as follows: -

- The general public has become accustomed to longer breaks at Easter and Christmas, so holidays at these times should not be deleted.
- Our holidays should be brought into line with those celebrated by our major trading partners, thus reducing disruption to the financial markets. Holidays to be deleted should be those which

are not celebrated in most other places. (A note on the status of these six holidays for our major trading partners is at Annex C).

- According to overseas experience, it is unusual for a National Day holiday to be celebrated over more than one day.

7. The results of the consultation exercise are as follows : 19 (68%) opted for the deletion of Sino-Japanese War Victory Day as a general holiday, 15 (54%) opted for 2 October, 10 (35%) opted for the Day after Good Friday, 6 (21%) opted for Good Friday, 5 (18%) opted for Easter Monday and 1 (3.6%) opted for the first weekday after Christmas Day (Boxing Day). Details of the consultation exercise are at Annex D.

THE VIEWS OF THE PROVISIONAL LEGISLATIVE COUNCIL (PLC) MANPOWER PANEL

8. On 23 March 1998, we consulted the Manpower Panel of the Provisional Legislative Council on the matter, in the light of the outcome of the targeted consultation exercise. Most members raised no objection to abiding by the views of the majority in the consultation exercise and deleting Sino-Japanese War Victory Day and 2 October.

CONCLUSION

9. In the light of the views expressed in the consultation exercise, and the views of the PLC Manpower Panel, we have agreed that

the two general holidays on Sino-Japanese War Victory Day (the third Monday in August) and 2 October (the day after National Day) should be deleted. This is reflected in the Holidays (Amendment) Bill 1998.

THE BILL

10. The main provisions of the Bill are:

- (a) Clauses 1 and 2 amend the short title of the Ordinance to clarify its scope;
- (b) Clause 3 designates as an additional general holiday the day following two general holidays that fall on the same day unless the Chief Executive in Council appoints another day in substitution; and
- (c) Clause 4 provides for a new schedule of general holidays for 1999 onwards.

LEGISLATIVE TIMETABLE

11. The legislative timetable is:

Publication in the Gazette

26 June 1998

First Reading and
commencement of
Second Reading Debate

8 July 1998

Resumption of Second
Reading Debate, Committee
Stage and Third Reading

To be notified

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law carrying no human rights dimensions.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the Bill has no human rights implications.

BINDING EFFECT OF THE BILL

14. The provisions of the Holidays Ordinance which are amended by this amendment Bill do not bind the State by express provision. However, "general holiday" is defined in the Holidays Ordinance to be a day which shall be kept as a holiday by all banks, educational establishments, public offices and Government departments.

FINANCIAL AND STAFFING IMPLICATIONS

15. The Bill will not result in any financial or staffing implications for the Government.

ECONOMIC IMPLICATIONS

16. The Bill will not give rise to any net change in cost implications for the economy as a whole.

PUBLIC CONSULTATION

17. The selection of which two general holidays should be deleted was determined in part from the result of a public consultation exercise. This subject was also discussed at a meeting of the Provisional Legislative Council Manpower Panel, when the recommendation was endorsed as it reflected the majority view in the consultation exercise.

PUBLICITY

18. In addition to this Brief, we are issuing a press release to announce our intention to introduce the Bill into the Legislative Council.

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Annexes

Annex A	The Holidays (Amendment) Bill 1998
Annex B	The list of general holidays in 1998
Annex C	Holidays in other countries
Annex D	Result of the consultation exercise on which two holidays to be deleted to offset the new holidays

A BILL

To

Amend the Holidays Ordinance.

Enacted by the Legislative Council.

1. Short title and application

- (1) This Ordinance may be cited as the Holidays (Amendment) Ordinance 1998.
- (2) The amendment in section 4 applies in relation to 1999 and all subsequent years.

2. Short title amended

Section 1 of the Holidays Ordinance (Cap. 149) is amended by repealing "Holidays Ordinance" and substituting "General Holidays Ordinance".

**3. Additional or substituted general holidays
and amendment of Schedule**

Section 6 is amended -

- (a) in subsection (1)(b)(iii) by repealing "public holiday" and substituting "general holiday";
- (b) by repealing subsection (2) and substituting -
 - "(2) Subject to subsection (3), if in any year two general holidays fall on the same day, the next following day that is not itself a general holiday is to be

observed as an additional general holiday in that year.

(3) The Chief Executive in Council may, by order in the Gazette, appoint any day in any year to be observed as an additional general holiday in place of another day that would otherwise be an additional general holiday in that year under subsection (2).".

4. Schedule substituted

The Schedule is repealed and the following substituted -

"SCHEDULE	[ss. 3 & 6]
GENERAL HOLIDAYS	

- (a) every Sunday;
- (b) the first day of January (or if that day is a Sunday, then the following day);
- (c) Lunar New Year's Day (or if that day is a Sunday, then the day preceding Lunar New Year's Day);
- (d) the second day of Lunar New Year (or if that day is a Sunday, then the day preceding Lunar New Year's Day);
- (e) the third day of Lunar New Year (or if that day is a Sunday, then the day preceding Lunar New Year's Day);
- (f) Ching Ming Festival (or if that day is a Sunday,

then the following day);

- (g) Good Friday;
- (h) the day following Good Friday;
- (i) Easter Monday;
- (j) Labour Day, being the first day of May (or if that day is a Sunday, then the following day);
- (k) the Birthday of the Buddha, being the eighth day of the fourth lunar month (or if that day is a Sunday, then the following day);
- (l) Tuen Ng Festival (or if that day is a Sunday, then the following day);
- (m) Hong Kong Special Administrative Region Establishment Day, being the first day of July (or if that day is a Sunday, then the following day);
- (n) National Day, being the first day of October (or if that day is a Sunday, then the following day);
- (o) the day following the Chinese Mid-Autumn Festival (or if that day is a Sunday, then the day of that Festival) or such other day as the Chief Executive in Council may, by order in the Gazette, appoint in place of that day;
- (p) Chung Yeung Festival (or if that day is a Sunday, then the following day) or such other day as the Chief Executive in Council may, by order in the Gazette, appoint in place of that day;
- (q) Christmas Day (or if that day is a Sunday, then the second weekday after Christmas Day);
- (r) the first weekday after Christmas Day."

5. Consequential amendments

- (1) Section 39(1) of the Employment Ordinance (Cap. 57) is amended -
- (a) in paragraph (da) by adding "Labour Day, being" before "the first";
 - (b) in paragraph (e) by repealing ", Dragon Boat";
 - (c) in paragraph (j) by adding "Hong Kong Special Administrative Region Establishment Day, being" before "the first";
 - (d) in paragraph (k) by adding "National Day, being" before "the first".
- (2) The enactments set out in column 2 of the Schedule (other than item 7) are amended by repealing "Holidays Ordinance" and substituting "General Holidays Ordinance" in the provisions specified opposite to them in column 3.
- (3) The enactment set out in column 2 of item 7 of the Schedule is amended by repealing "Holidays Ordinance" and substituting "General Holidays Ordinance" in the provision specified opposite to it in column 3.

SCHEDULE

[s. 5(2) & (3)]

CONSEQUENTIAL AMENDMENTS

Item	Enactment	Provision
1.	Interpretation and General Clauses Ordinance (Cap. 1)	Section 3 (definitions of "general holiday" and "public holiday").
2.	Rules of the High Court (Cap. 4 sub. leg.)	Order 3, rule 2(5) and Order 64, rule 7(1)(e).

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| 3. | Bankruptcy Ordinance (Cap. 6) | Section 122(2). |
| 4. | Evidence Ordinance (Cap. 8) | Section 30. |
| 5. | Bills of Exchange Ordinance (Cap. 19) | Sections 2 (definition of "general holiday") and 51(4). |
| 6. | Births and Deaths Registration Ordinance (Cap. 174) | Section 14(1). |
| 7. | Births and Deaths Registration Ordinance (Cap. 174) | Second Schedule, back of Form 18. |
| 8. | Defences (Firing Areas) Ordinance (Cap. 196) | Section 4(8). |
| 9. | Criminal Procedure Ordinance (Cap. 221) | Section 65D(9). |
| 10. | Merchant Shipping (Fees) Regulations (Cap. 281 sub. leg.) | Regulation 2 (definition of "office hours"). |
| 11. | District Court Ordinance (Cap. 336) | Section 75A(9). |
| 12. | Merchant Shipping (Registration) (Fees and Charges) Regulations (Cap. 415 sub. leg.) | Regulation 2 (definition of "office hours"). |
| 13. | Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478 sub. leg.) | Section 2 (definition of "office hours"). |

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| 14. | Holidays (1997 and 1998) Ordinance
(111 of 1997) | Sections 2(2) and (3) and 3(1) and (2). |
| 15. | Coroners Rules (L.N. 261 of 1997) | Rule 9(1). |
| 16. | Hong Kong Court of Final Appeal
Rules (L.N. 384 of 1997) | Rule 63(1)(e). |

Explanatory Memorandum

This Bill amends the Holidays Ordinance (Cap. 149) -

- (a) to change its short title to "General Holidays Ordinance" so as to clarify the scope of that Ordinance;
- (b) to fix as an additional general holiday the day following two general holidays that fall on the same day unless the Chief Executive in Council appoints another day in substitution;
- (c) to provide for a new Schedule of general holidays for 1999 onwards.

A list of the General Holidays in 1998

Every Sunday		
*The first weekday in January	Thursday	1 January
*Lunar New Year's Day	Wednesday	28 January
*The second day of the Lunar New Year	Thursday	29 January
*The third day of the Lunar New Year	Friday	30 January
*The day following the Ching Ming Festival	Monday	6 April
Good Friday	Friday	10 April
The day following Good Friday	Saturday	11 April
Easter Monday	Monday	13 April
*Tuen Ng Festival	Saturday	30 May
*Hong Kong Special Administrative Region Establishment Day	Wednesday	1 July
Sino-Japanese War Victory Day	Monday	17 August
*National Day	Thursday	1 October
The day following National Day	Friday	2 October
*The day following the Mid-Autumn Festival	Tuesday	6 October
*Chung Yeung Festival	Wednesday	28 October
*Christmas Day	Friday	25 December
First weekday following Christmas Day	Saturday	26 December

* Also a statutory holiday

HOLIDAYS IN OTHER COUNTRIES

The status of the six general holidays in question for our major trading partners are as follows:

(a) Sino-Japanese War Victory Day

- A number of countries have holidays to commemorate liberation at the end of World War II or to remember the war dead. These include Australia Canada, France, Italy, the Netherlands, New Zealand and the USA.
- It is not an international holiday. Its deletion will to a certain extent bring out market more into line with other countries.

(b) 2 October

- Most countries only have one-day celebration on their National Day.
- It is not an international holiday. Its deletion will to a certain extent bring our market more into line with other countries.

(c) The Day following Good Friday

- As it is a Saturday, the stock markets in New York, London, Tokyo and Hong Kong will be closed in any case. However, to delete it as a holiday would allow the banks in Hong Kong to open, thus reducing to a certain extent disruption to banking activities.
- However, some may think that as the day falls between two general holidays, its deletion would be rather awkward.

(d) Good Friday

- It is a holiday in Australia, Canada, Germany, the Netherlands, New Zealand, the Philippines, Singapore and UK.
- The financial markets will remain open in Tokyo but not in London or New York on this day. Deletion of this holiday would therefore have limited effect in reducing disruption in the financial services sector.

(e) Easter Monday

- It is a holiday in such countries as Australia, France, Germany and the United Kingdom, but not in the United

States, Japan, Philippines and Singapore. Deletion of this holiday will bring our financial market more into line with several other major financial markets.

(f) The day following Christmas Day (Boxing Day)

- This is a holiday in England, Wales, Australia, New Zealand, Canada, the Netherlands, but not in the USA, other major countries in Europe and East and South-East Asia.
- This is a normal trading day in New York and Tokyo but not in London, so deletion would serve to reduce disruption in the financial services sector.

Results of the public consultation:
Existing general holidays to be deleted to offset the new general
holidays

- Total number of responses received: 33
- Number of respondents which have indicated no special preference: 5
- Number of respondents which have clearly indicated their preference for which two days to be deleted to offset the two new general holidays: 28
- Preferred days for deletion
(in descending order of priority, percentages in brackets represent the number of respondents who opted to delete this day compared with the number of respondents which have clearly indicated their preference):
 - (1) Sino-Japanese War Victory Day (19 opted for, 68%)
 - (2) 2 October (15 opted for, 54%)
 - (3) The day following Good Friday (10 opted for, 36%)
 - (4) Good Friday (6 opted for, 21%)
 - (5) Easter Monday (5 opted for, 18%)
 - (6) The first weekday after the Christmas Day (Boxing Day) (1 opted for, 3.6%)

- Analysis by type of organisations

Employers' organisations (14)

- 11 preferred deleting Sino-Japanese War Victory Day (79%)
- 9 preferred deleting 2 October (64%)
- 3 preferred deleting the Day following Good Friday
- 3 preferred deleting Easter Monday
- 1 preferred deleting Good Friday
- 1 preferred deleting Boxing Day

Financial services sector (5)

- 4 preferred deleting Sino-Japanese War Victory Day (80%)
- 3 preferred deleting the Day following Good Friday (60%)
- 2 preferred deleting 2 October (40%)
- 1 preferred deleting Good Friday

Religious organisations (11)

- 1 has not replied
- 2 had no special preference
- 4 preferred deleting Sino-Japanese War Victory Day (50%)
- 4 preferred deleting 2 October (50%)
- 3 preferred deleting Good Friday (38%)
- 3 preferred deleting the Day following Good Friday (38%)
- 2 preferred deleting Easter Monday (25%)

Employees' organisation (4)

- 3 have not indicated special preferences.
- One preferred deleting Good Friday and the Day following Good Friday.