

*** Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in Accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China**

(Adopted at the Twenty Fourth Session of the Standing Committee of the Eighth National People's Congress on 23 February 1997)

Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "the Basic Law") stipulates:

"Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law."

Article 8 stipulates:

"The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

In accordance with the above provisions, the Standing Committee of the Eighth National People's Congress examined the proposals made by the Preparatory Committee of the Hong Kong Special Administrative Region on treatment of issues relating to the laws previously in force in Hong Kong, and decides at its Twenty Fourth Session as follows:

1. The laws previously in force in Hong Kong, which include the common law, rules of equity, ordinances, subordinate legislation and customary law, except for those which are in contravention of the Basic Law, are adopted as the laws of the Hong Kong Special Administrative Region.

2. Such of the ordinances and subordinate legislation previously in force in Hong Kong as set out in Annex 1 to this Decision are in contravention of the Basic Law and are not adopted as the laws of the Hong Kong Special Administrative Region.

3. Such provisions of the ordinances and subordinate legislation previously in force in Hong Kong as set out in Annex 2 to this Decision are in contravention of the Basic Law and those provisions are not adopted as the laws of the Hong Kong Special Administrative Region.

4. Such of the laws previously in force in Hong Kong which have been adopted as the laws of the Hong Kong Special Administrative Region shall, as from 1 July 1997, be applied subject to such modifications, adaptations, limitations or exceptions as are necessary so as to bring them into conformity with the status of Hong Kong after resumption by the People's Republic of China of the exercise of sovereignty over Hong Kong as well as to be in conformity with the relevant provisions of the Basic Law. For example, the New Territories Land (Exemption) Ordinance should conform with the above principles in its application.

Apart from conforming with the above principles, the following shall be observed, that is to say, in the ordinances and subordinate legislation previously in force:

(1) laws relating to foreign affairs in respect of the Hong Kong Special Administrative Region which are inconsistent with the national laws applied in the Hong Kong Special Administrative Region shall be subject to the national laws and shall be consistent with the international rights and obligations of the Central People's Government;

(2) provisions conferring privileges on the United Kingdom or other Commonwealth countries or territories, other than provisions relating to reciprocal arrangements between Hong Kong and the United Kingdom or other Commonwealth countries or territories, are not retained;

(3) provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom are retained subject to the provisions of the Basic Law and the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region of the People's Republic of China, and shall apply to the military forces stationed in the Hong Kong Special Administrative Region by the Central People's Government of the People's Republic of China;

(4) provisions relating to the superior legal status of the English language as compared with the Chinese language shall be construed as providing that both the Chinese and English languages are to be official languages;

(5) provisions applying any English law may continue to be applicable by reference thereto as a transitional arrangement pending their amendment by the Hong Kong Special Administrative Region, provided that they are not prejudicial to the sovereignty of the People's Republic of China and do not contravene the provisions of the Basic Law.

5. Subject to the provisions of paragraph 4, the names or expressions appearing in the laws previously in force in Hong Kong that are adopted as the laws of the Hong Kong Special Administrative Region shall, unless the context otherwise requires, be construed or applied in accordance with the principles of substitution provided for in Annex 3 to this Decision.

6. If any laws previously in force in Hong Kong which have been adopted as the laws of the Hong Kong Special Administrative Region are later discovered to be in contravention of the Basic Law, they shall be amended or shall cease to have force in accordance with the procedure as prescribed by the Basic Law.

Annex 1

The following ordinances and subordinate legislation previously in force in Hong Kong, which contravene the Basic Law, are not adopted as the laws of the Hong Kong Special Administrative Region:

1. Trustees (Hong Kong Government Securities) Ordinance (Cap 77, Laws of Hong Kong);
2. Application of English Law Ordinance (Cap 88, Laws of Hong Kong);
3. Foreign Marriage Ordinance (Cap 180, Laws of Hong Kong);
4. Chinese Extradition Ordinance (Cap 235, Laws of Hong Kong);
5. Colony Armorial Bearings (Protection) Ordinance (Cap 315, Laws of Hong Kong);
6. Secretary of State for Defence (Succession to Property) Ordinance (Cap 193, Laws of Hong Kong);
7. Royal Hong Kong Regiment Ordinance (Cap 199, Laws of Hong Kong);
8. Compulsory Service Ordinance (Cap 246, Laws of Hong Kong);
9. Army and Royal Air Force Legal Services Ordinance (Cap 286, Laws of Hong Kong);
10. British Nationality (Miscellaneous Provisions) Ordinance (Cap 186, Laws of Hong Kong);
11. British Nationality Act 1981 (Consequential Amendments) Ordinance (Cap 373, Laws of Hong Kong);
12. Electoral Provisions Ordinance (Cap 367, Laws of Hong Kong);

13. Legislative Council (Electoral Provisions) Ordinance (Cap 381, Laws of Hong Kong);
14. Boundary and Election Commission Ordinance (Cap 432, Laws of Hong Kong).

Annex 2

The following provisions in ordinances and subordinate legislation previously in force in Hong Kong, which are in contravention of the Basic Law, are not adopted as the laws of the Hong Kong Special Administrative Region:

1. the definition of “Hong Kong permanent resident” in section 2 of the Immigration Ordinance (Cap 115, Laws of Hong Kong) and the provisions relating to “Hong Kong permanent residents” in Schedule 1 to that Ordinance;
2. any provision giving effect to the British Nationality Act as applied in Hong Kong;
3. provisions relating to election in the Urban Council Ordinance (Cap 101, Laws of Hong Kong);
4. provisions relating to election in the Regional Council Ordinance (Cap 385, Laws of Hong Kong);
5. provisions relating to election in the District Boards Ordinance (Cap 366, Laws of Hong Kong);
6. the Urban Council, Regional Council and District Board Election Expenses Order (sub. leg. A) and the Resolution of the Legislative Council (sub. leg. C) made under the Corrupt and Illegal Practices Ordinance (Cap 288, Laws of Hong Kong);
7. provisions relating to the interpretation and application of the Ordinance in section 2(3), the effect on pre-existing legislation in section 3 and the interpretation of subsequent legislation in

section 4 of the Hong Kong Bill of Rights Ordinance (Cap 383, Laws of Hong Kong);

8. provisions relating to the overriding status of the Personal Data (Privacy) Ordinance (Cap. 486, Laws of Hong Kong) in section 3(2) of that Ordinance;
9. major amendments to the Societies Ordinance (Cap 151, Laws of Hong Kong) since 17 July 1992;
10. major amendments to the Public Order Ordinance (Cap 245, Laws of Hong Kong) since 27 July 1995.

Annex 3

Names or expressions in the laws previously in force in Hong Kong that are adopted as the laws of the Hong Kong Special Administrative Region shall generally be construed or applied in accordance with the following principles of substitution:

1. In the case of any provision in which any reference is made to “Her Majesty”, “the Crown”, “the British Government” or “the Secretary of State” or to a similar name or expression, where the content of the provision relates to title to land in Hong Kong or involves affairs provided for in the Basic Law for which the Central People’s Government is responsible or involves the relationship between the Central People’s Government and the Hong Kong Special Administrative Region, the name or expression shall be construed as the Central People’s Government or other competent authorities of the People’s Republic of China. In other cases, the name or expression shall be construed as the Government of the Hong Kong Special Administrative Region.
2. In the case of any provision in which any reference is made to “Her Majesty in Council” or “the Privy Council”, where the content of the provision relates to appellate jurisdiction, the name or expression shall be construed as the Court of Final

Appeal of the Hong Kong Special Administrative Region. In other cases, the name or expression shall be dealt with in accordance with the provisions of paragraph 1 hereof.

3. In the case of a Government agency or a semi-official agency bearing a name with the word “Royal”, the word “Royal” shall be removed from its name and the agency shall be construed as the corresponding agency of the Hong Kong Special Administrative Region.
4. Any reference to “the Colony” shall be construed as a reference to the Hong Kong Special Administrative Region and any description of the territories of Hong Kong shall be construed and applied by reference to the map of the administrative division of the Hong Kong Special Administrative Region published by the State Council.
5. Any reference to such name or expression as “the Supreme Court” or “the High Court” shall be construed respectively as a reference to the High Court or the Court of First Instance of the High Court.
6. Any reference to such name or expression as “the Governor”, “the Governor in Council”, “the Chief Secretary”, “the Attorney General”, “the Chief Justice”, “the Secretary for Home Affairs”, “the Secretary for Constitutional Affairs”, “the Commissioner of Customs and Excise” and “Justice” shall be construed respectively as a reference to the Chief Executive of the Hong Kong Special Administrative Region, the Chief Executive in Council, the Administrative Secretary, the Secretary for Justice, the Chief Justice of the Court of Final Appeal or Chief Judge of the High Court, the Secretary for Home Affairs, the Secretary for Constitutional Affairs, the Commissioner of Customs and Excise or Judge of the High Court.
7. Any reference in the Chinese text of any law previously in force in Hong Kong to such name or expression as the Legislative

Council, the Judiciary or the Executive Authorities or the officers of those bodies shall be construed and applied in accordance with the relevant provisions of the Basic Law.

8. In the case of any provision in which any reference is made to “the People’s Republic of China” or “China” or to a similar name or expression, such reference shall be construed as a reference to the People’s Republic of China as including Taiwan, Hong Kong and Macau; and in the case of any provision in which any reference is made to such name or expression as the Mainland, Taiwan, Hong Kong or Macau, whether separately or concurrently, such reference shall be construed respectively as a reference to the Mainland, Taiwan, Hong Kong or Macau, as a part of the People’s Republic of China.
9. In the case of any provision in which any reference is made to “foreign state” or “foreign country” or to a similar term or expression, such reference shall be construed as a reference to any state, country or territory other than the People’s Republic of China, or as a reference to “any place other than the Hong Kong Special Administrative Region”, as the context of the relevant law or provision requires; and in the case of any provision in which any reference is made to “alien” or to a similar term or expression, such reference shall be construed as a reference to a person other than a citizen of the People’s Republic of China.
10. Any reference in any provision to “nothing in this Ordinance shall affect or be deemed to affect the rights of Her Majesty the Queen, Her heirs or successors” shall be construed as a reference to “nothing in this Ordinance shall affect or be deemed to affect the rights of the Central People’s Government or the Government of the Hong Kong Special Administrative Region under the Basic law or other laws”.

Note:

* This English translation text is prepared by the Department of Justice, Government of the Hong Kong Special Administrative Region. It is for reference purposes and has no legislative effect.