For information

Legislative Council Panel on
Administration of Justice and Legal Services

Miscellaneous Amendments to Subsidiary Legislation under
the High Court Ordinance (Cap. 4) and
the District Court Ordinance (Cap. 336)

PURPOSE

This paper briefs Members on certain proposed miscellaneous amendments to a number of pieces of subsidiary legislation under the High Court Ordinance (Cap. 4) and the District Court Ordinance (Cap. 336).

BACKGROUND

2. In 2022, the Law Reform Commission Secretariat spearheaded the Systematic Review of Statutory Laws of Hong Kong which consists of work mainly in three aspects, i.e. (a) adaptation of laws; (b) consolidation of laws; and (c) repeal of obsolete laws. The adaptation of laws refers to the process of (i) first identifying provisions or references in statute books that were in force in Hong Kong before 1 July 1997 but must, for the time being, be construed with such modifications, adaptations, limitations and exceptions as may be necessary in compliance with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People's Republic of China ("**PRC**"), and (ii) thereafter amending them as necessary to properly reflect the relevant policy intent in the light of the resumption of the exercise of sovereignty over Hong Kong by the PRC. As far as the repeal of obsolete laws is concerned, the relevant provisions are not necessarily adaptation-related and, when ready for legislative action, are also included in this amendment exercise.

3. Since the resumption of the exercise of sovereignty over Hong Kong by the PRC, responsible policy bureaux have been identifying provisions or references as requiring adaptation with relevant legislative amendments introduced from time to time by the Government. In pushing ahead with the

continuing exercise to complete the adaptation of laws without undue delay, the Government, in response to the Systematic Review of Statutory Laws of Hong Kong, has adopted the approach of "dealing with simple issues before the difficult ones". The current target is, upon the responsible bureaux being able to resolutely have the drafting instructions issued as soon as practicable, to strive for the completion of the adaptation of laws exercise by the end of this term of Government (i.e. 30 June 2027). With further policy input or confirmation, as the case may be, from the responsible policy bureaux in relation to the outstanding provisions or references as well as additional provisions or references more recently identified as requiring attention, the opportunity is now taken to introduce the present batch of legislative proposals in order to effect the necessary textual amendments.

4. Most of the proposed amendments are terminological or technical in nature, having regard, where applicable, to the interpretative principles published by the Standing Committee of the National People's Congress in its decision on 23 February 1997, which are included in the Hong Kong Reunification Ordinance (110 of 1997) and are incorporated as section 2A of, and Schedule 8 to, the Interpretation and General Clauses Ordinance (Cap. 1). The key features of the proposed amendments in the Bill are highlighted in **Annex**.

WAY FORWARD

5. Members are invited to take note of the proposals in this paper. Given the technical and straightforward nature of the proposed amendments, it is intended that the relevant amendments be tabled at the Legislative Council for negative vetting before the end of 2026.

Department of Justice
Administration Wing, Chief Secretary for Administration's Office
Transport and Logistics Bureau
Judiciary Administration

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Annex

Key features of the proposed amendments

(1) References to "British consular authority", "British Consul", "British consular officer" or "British subject", etc.

1. There are references like "British consular authority", "British Consul", "British consular officer" or "British subject" in Order 11, rules 5 and 6; Order 39, rule 2; Order 41, rule 12 and Forms 35 to 37 in Appendix A under the Rules of the High Court (Cap. 4A). For adaptation of laws and related purposes, it is proposed that such references should be suitably adapted so as to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the PRC.

2. In addition, Order 11, rule 6(1) and Order 41, rule 12(1) of Cap. 4A confer privileges on the United Kingdom ("**UK**"), other Commonwealth countries or territories, and the Republic of Ireland on a non-reciprocal basis. It is proposed that such rules should be suitably adapted or repealed. These amendments are consistent with the Decision of the Standing Committee of the National People's Congress Concerning the Handling 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, and are intended to reflect Hong Kong's status as a Special Administrative Region of the PRC.

3. In consequence, corresponding amendments will be made to the Rules of the District Court (Cap.336H), to the extent that equivalent provisions are found therein, to align them with the above proposed adaptations.

(2) Definition for the term "Civil Procedure Convention" or "civil procedure convention"

4. The term "Civil Procedure Convention" or "civil procedure convention" currently appears in Order 11, rule 6(2), (3) & (5); Order 39, rule 2(2)(a); Order 69, rule 1 and Order 70, rules 3(b), 5(1)(b) and 7(2)(b) of Cap. 4A, without being defined.

5. It appears that the term was originally intended to encompass multilateral conventions or bilateral agreements on civil proceedings concluded between the UK and other countries[1]. However, the relevant conventions or agreements concluded by the UK no longer apply to the Hong Kong Special Administrative Region ("**HKSAR**"). The HKSAR has not entered into any bilateral agreements with foreign countries on service abroad of judicial documents, or on general taking of evidence abroad, in civil or commercial matters, and no bilateral agreements of the same nature concluded by the Central People's Government (if any) are made applicable to the HKSAR either. Currently,

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[1] See the English *Supreme Court Practice 1999* (Volume 1) (Sweet & Maxwell, London 1998)

the only multilateral conventions relating to civil procedure applicable to the HKSAR are the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention) and the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention).

6. In light of the aforesaid and the understanding and drafting of similar terms in the relevant laws of other common law jurisdictions like the UK[2] and Singapore[3], and in order to avoid ambiguity or dispute regarding the meaning of the term, it is proposed that a definition of "Civil Procedure Convention" be added for the relevant provisions. This also makes the understanding and application of the relevant substantive provisions clearer. In consequence, corresponding amendments will be made, to the equivalent provisions found in Cap. 336H as necessary.

(3) References to the provisions of the UK legislation

7. There are references in Order 11, rule 7 and Order 13, rule 7A of Cap. 4A to the UK State Immunity Act 1978, which is no longer applicable in Hong Kong. It is therefore necessary to make consequential textual amendments thereto. Certain textual amendments will also be made to Order 11, rule 7 and Order 13, rule 7A of Cap. 336H to achieve consistency.

(4) Provisions and references relating to admiralty jurisdiction

8. For adaptation of laws and related purposes, various amendments to Cap. 4A are proposed, including –

(a) Order 11, rule 1(4)(c) be suitably adapted;

(b) "Merchant Shipping Acts 1894 to 1979" be repealed in Order 18, rule 22, and the heading of the rule be consequentially amended;

(c) Order 62, rule 30(7)(b) be suitably adapted;

(d) "Merchant Shipping Acts 1894 to 1984" be repealed in Order 75, rule 1(2);

(e) The definition of "ship" be replaced in Order 75, rule 1(2) to include "any description of vessel used in navigation and a hovercraft which is used wholly, or partly, to navigate above or on the surface of or in the water";

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2 See Rule 6.31(1)(c) of UK Civil Procedure Rules: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06

3 See Order 1, rule 3(1) of Singapore Rules of Court 2021: https://sso.agc.gov.sg/SL-Supp/S914-2021/#P11-PO1-pr3-

(f) Order 75, rules 33(3) & 39(5) be suitably adapted; and

(g) "Supreme Court" be replaced with "High Court" in the first paragraph in Form No. 11 of Appendix B.

(5) Provisions relating to "Crown"

9. On 1 July 1997, the PRC resumed the exercise of sovereignty over Hong Kong. The relevant provisions in Cap. 4A and Cap. 336H relating to "Crown" and proceedings commenced by or against the "Crown", together with similar provisions in Cap. 300, have been construed in accordance with the Interpretation and General Clauses Ordinance (Cap. 1) to provide for bespoke court rules where a person sues the Government of the HKSAR in certain civil proceedings in Hong Kong.

10. The Government has proposed various amendments to bring Cap. 300 in line with the constitutional status of Hong Kong as a Special Administrative Region of the PRC in the Statute Law (Miscellaneous Provisions) Bill 2026. For the provisions in Cap. 300 which enable a person to sue the HKSAR Government, the Government proposed to adapt references to the "Crown" as the "Government"[4]. It was also proposed in the Statute Law (Miscellaneous Provisions) Bill 2026 that the reference to "Crown" in section 54(4) of the High Court Ordinance (Cap. 4) be adapted to "Government" such that the provision empowers the Rules Committee of the High Court to make rules of court as to proceedings by or against the "Government".[5]

11. Against this background, the references to "Crown", proceedings commenced by or against the "Crown", and "Crown Proceedings Ordinance" in the subsidiary legislation of Cap. 4 and Cap. 336 are also proposed to be adapted to "Government", proceedings by or against the "Government" and "Government Proceedings Ordinance" respectively.

(6) Miscellaneous references

12. For adaptation of laws and related purposes, various amendments to Cap. 4A are proposed, including –

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[4] The term "Government" is defined under section 3 of Cap. 1 to mean the Government of the Hong Kong Special Administrative Region.

[5] The District Court Rules Committee is also empowered to make rules of court as to proceedings by or against the Government in the District Court as per section 72(3) of the District Court Ordinance (Cap. 336).

(a) "大法官" be replaced with "法官" in the Chinese text; and

(b) "Order in Council" be repealed in the English text of Order 35, rule 12(1)(c);

(c) "女皇陛下" be repealed in the Chinese text of Order 35, rule 12(1)(c) & (d);

(d) "the Colony" be replaced with "Hong Kong" in the English text of Order 44A, rule 8(2);

(e) "立法局" be replaced with "立法會" in the Chinese text of Order 62, rule 29(1);

(f) "Supreme Court" be replaced with "High Court" in the heading of Order 64, rule 1;

(g) "Order in Council" be suitably adapted in Order 71, rules 3(3), 4, 11 and 12, by referring to the order made under the relevant ordinance, where appropriate; and

(h) the references to Hong Kong Coat of Arms be repealed in relevant forms in Appendices A and B.

(7) Other adaptation-related and miscellaneous amendments

13. For adaptation of laws and related purposes, other relevant provisions or references the amendment proposals for which are not already elaborated on under other sections of this paper are also proposed to be suitably amended.