

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 (Adopted at the 24th  
Meeting of the Standing Committee of the Eighth National People's Congress on  
February 23, 1997)

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Instrument A206

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Special Administrative Region of the People's Republic  
of China**

**(Adopted at the 24th Meeting of the Standing  
Committee of the Eighth National People's Congress on  
February 23, 1997)**

Editorial Notes:

1. This instrument was not given a chapter number under the Legislation Publication Ordinance (Cap. 614). An unofficial reference number, however, is assigned to this instrument in Hong Kong e-Legislation (<http://www.elegislation.gov.hk>) for identification purposes. This also enables users to carry out a search by reference to the unofficial reference number.
2. This English translation is reproduced from "The Laws of the People's Republic of China 1997" compiled by the Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China. It is for reference only and has no legislative effect.

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It is provided in 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 for short) that “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 of the Basic Law 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 or are subject to any amendment by the legislature of the Hong Kong Special Administrative Region.” In accordance with the provisions mentioned above, the Standing Committee of the Eighth National People's Congress at its 24th Meeting deliberated the proposal of the Preparatory Committee for the Hong Kong Special Administrative Region on handling the laws previously in force in Hong Kong and adopted the decision as follows:

1. The laws previously in force in Hong Kong, including the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be adopted as laws of the Hong Kong Special Administrative Region, except for any that contravene the Basic Law.

2. The ordinances and subordinate legislation previously in force in Hong Kong, listed in Appendix I of this Decision, which are in contravention of the Basic Law shall not be adopted as laws of the Hong Kong Special Administrative Region.

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3. Since some provisions of the ordinances and subordinate legislation, which are previously in force in Hong Kong and listed in Appendix II of this Decision, contravene the Basic Law, they shall not be adopted as provisions of laws of the Hong Kong Special Administrative Region.

4. The laws previously in force in Hong Kong, which have been adopted as laws of the Hong Kong Special Administrative Region, shall be applied as of July 1, 1997 with such modifications, adaptations restrictions and exceptions as may be necessary for making them conform with the status of Hong Kong after the People's Republic of China resumes the exercise of sovereignty over it and with the relevant provisions of the Basic Law, for example, the New Territories Land (Exemption) Ordinance shall be applied in accordance with the principle mentioned above.

In addition to the above-mentioned principle, the following provisions shall be conformed with when applying the provisions of the ordinances and subordinate legislation previously in force:

(1) Where the provisions relating to the diplomatic affairs of the Hong Kong Special Administrative Region are found inconsistent with the national laws coming into effect in the Hong Kong Special Administrative Region, the national laws shall prevail, and the provisions shall be made in keeping with the international rights enjoyed by the Central People's Government and the international obligations it undertakes.

(2) No provisions which accord privileges to the United Kingdom or any other countries or regions of the British Commonwealth shall be maintained with the exception of the reciprocity provisions in connection with Hong Kong and the United Kingdom or any other countries or regions of the British Commonwealth.

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(3) The provisions regarding the rights, immunities and obligations of the British troops stationed in Hong Kong shall be maintained provided that they do not contravene the provisions of the Basic Law and the Law of the People's Republic of China on Garrisoning the Hong Kong Special Administrative Region and shall be applicable to the troops stationed in Hong Kong by the Central People's Government of the People's Republic of China.

(4) The provision that the English language is superior to the Chinese language in terms of legal effect shall be construed as that both the Chinese and English language are the official languages.

(5) If the provisions in the British laws that are quoted in Hong Kong ordinances and subordinate legislation do not jeopardize the sovereignty of the People's Republic of China or contravene the provisions of the Basic Law, they may, as a transitional arrangement, continue to be applied *mutatis mutandis* before they are amended by the Hong Kong Special Administrative Region.

5. On condition that the provisions in Article 4 are conformed with, the substitution rules prescribed in Appendix III of this Decision shall be followed when interpreting or applying the words and expressions in the laws previously in force in Hong Kong which are adopted as laws of the Hong Kong Special Administrative Region, except that they mean otherwise.

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

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## Appendix I

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

1. Trustees (Hong Kong Government Securities) Ordinance (Cap. 77);
  2. Application of English Law Ordinance (Cap. 88);
  3. Foreign Marriage Ordinance (Cap. 180);
  4. Chinese Extradition Ordinance (Cap. 235);
  5. Colony Armorial Bearings (Protection) Ordinance (Cap. 315);
  6. Secretary of State for Defence (Succession to Property) Ordinance (Cap. 193);
  7. Royal Hong Kong Regiment Ordinance (Cap. 199);
  8. Compulsory Service Ordinance (Cap. 246);
  9. Army and Royal Air Force Legal Services Ordinance (Cap. 286);
  10. British Nationality (Miscellaneous Provisions) Ordinance (Cap. 186);
  11. British Nationality Act 1981 (Consequential Amendments) Ordinance (Cap. 373);
  12. Electoral Provisions Ordinance (Cap. 367);
  13. Legislative Council (Electoral Provisions) Ordinance (Cap. 381);
  14. Boundary and Election Commission Ordinance (Cap. 432).
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## **Appendix II**

Some provisions of the following ordinances and subordinate legislation in the laws previously in force in Hong Kong are in contravention of the Basic Law and therefore shall not be adopted as provisions of laws of the Hong Kong Special Administrative Region:

1. The provisions regarding the definition of “Hong Kong permanent resident” in s2 and the provisions regarding “the Hong Kong permanent resident” in Schedule 1 of the Immigration Ordinance (Cap. 115);

2. Any provisions made for implementing the British Nationality Act applicable in Hong Kong;

3. Provisions for election in the Urban Council Ordinance (Cap. 101);

4. Provisions for election in the Regional Council Ordinance (Cap. 385);

5. Provisions for election in the District Boards Ordinance (Cap. 366);

6. Subsidiary legislation A: “Urban Council, Regional Council and District Boards Election Expenses Order” and subsidiary legislation C: “Resolution of the Legislative Council” in the Corrupt and Illegal Practices Ordinance (Cap. 288);

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7. The provisions in s2(3) regarding the purpose of this ordinance for the purpose of its interpretation and application, in s3 regarding the effect on pre-existing legislation and in s4 regarding interpretation of subsequent legislation in the Hong Kong Bill of Rights Ordinance (Cap. 383);

8. The provisions in s3 (2) that the ordinance acquires an overriding position in the Personal Data (Privacy) Ordinance (Cap. 486);

9. Major amendments to the Societies Ordinance (Cap. 151) made since July 17, 1992; and

10. Major amendments to the Public Ordinance (Cap. 245) made since July 27, 1995.

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### **Appendix III**

The words and expressions in the laws previously in force in Hong Kong which are adopted as laws of the Hong Kong Special Administrative Region, when construed or applied, shall be subject to the following substitution rules:

1. Any reference to “Her Majesty”, “Crown”, “The British Government, U.K.” and “Secretary of State” and other similar names or expressions, if the provision relates to the ownership of the land in Hong Kong or involves the affairs within the responsibilities of the Central Authorities and relationship between the Central Authorities and the Region as prescribed by the Basic Law, shall be construed correspondingly as a reference to the Central Authorities or other competent organs, and under other circumstances, as the Government of the Hong Kong Special Administrative Region;

2. Any reference to “Her Majesty in Council” or “Privy Council”, if the provision relates to the matter of right of appeal, shall be construed as a reference to the Court of Final Appeal of the Hong Kong Special Administrative Region, and under other circumstances, shall be dealt with in accordance with Item 1;

3. Any reference to the government organs or semi-official organs with the word “Royal” in their names shall be construed as reference to the corresponding organs of the Hong Kong Special Administrative Region with the word “Royal” being deleted;



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4. Any reference to “the colony” shall be construed as a reference to the Hong Kong Special Administrative Region; any description of the territory of Hong Kong shall be applicable after being correspondingly interpreted in accordance with the administrative division map of the Hong Kong Special Administrative region promulgated by the State Council;

5. Any reference to “the Supreme Court” and “High Court” shall be correspondingly construed as a reference to the High Court and the Court of First Instance of the High Court;

6. Any reference to “the Governor”, “Governor in Council”, “Chief Secretary”, “Attorney General”, “Chief Justice”, “Secretary for Home Affairs”, “Secretary for Constitutional Affairs”, “Commissioner of Customs and Excise”, and “justices” shall be correspondingly construed as a reference to the Chief Executive, Chief Executive in Council, Secretary of the Department of Administration, Secretary of the Department of Justice, Chief Justice of the Court of Final Appeal or Chief Judge of High Court, Secretary for Home Affairs, Secretary for Constitutional Affairs, Commissioner of Customs and Excise, and judges of the High Court of the Hong Kong Special Administrative Region;

7. Any reference to the Legislative Council, Judiciary or the Executive Authorities and their staff in the Chinese text of the laws previously in force in Hong Kong shall be construed or applied correspondingly in accordance with the relevant provisions of the Basic Law;

8. Any reference to “the People's Republic of China” and “China” or other similar names or expressions shall be construed as a reference to the People's Republic of China including Taiwan, Hong Kong and Macao; any reference to the Mainland, Taiwan, Hong Kong and Macao, separately or together, shall be correspondingly construed as a reference to a component

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part of the People's Republic of China;

9. Any reference to “ foreign country or foreign State” and other similar words or expressions shall be construed as a reference to any country or region other than the People's Republic of China or, in accordance with the contents of the law or the provision, shall be construed as a reference to “any place other than the Hong Kong Special Administrative Region”; and any reference to “foreign national” or other similar words or expressions shall be construed as a reference to any person other than the citizen of the People's Republic of China; and

10. Any reference 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 enjoyed by the Central Government or the Government of the Hong Kong Special Administrative Region in accordance with the provisions of the Basic Law and other enactments.”