

## Brief for New Governor

### Bill of Rights

#### Background

The question of a Bill of Rights (BOR) Ordinance was first examined by Government in 1987 partly in response to calls for human rights legislation in HK and partly because Article 39 of the then draft Basic Law (BL) provided for the application of the International Covenant on Civil and Political Rights (ICCPR) to HK.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. In line with the JD and the BL (see JD 156 and BL 39), the Hong Kong BOR Ordinance closely follows the language of the ICCPR making the rights provided therein justiciable in HK courts. In parallel, the Letters Patent has been amended to ensure that no future legislature (before 1997) could validly enact any law which was inconsistent with the ICCPR as applied to HK. This mirrors Article 39 of the BL which will in effect entrench the Covenant after 1997.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] BOR Ordinance regarding the in drainage changes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### Post-Enactment Matters

#### The "freeze"

6. The BOR Ordinance provides that six ordinances relating to Immigration, Societies, Crimes, Prevention of Bribery, the Independent Commission Against Corruption and the Police Force are exempted from its effect for one year from 8 June 1991. This is to avoid disruption of operations in vital areas in the event of findings by the court that provisions of any of these laws are inconsistent with the BOR Ordinance and therefore repealed.

7. Amendment bills have been or are about to be introduced into LegCo before the "freeze" period expires on 8 June 1992. Even if some of the amendments were not enacted in time, the Secretary for Security's assessment is that we could live with a short gap between the expiry of the "freeze" and the enactment of all the amendments hopefully before the end of the current legislative session in July.

#### Overall impact

8. There is not yet a sufficient body of precedents to indicate how the appellate courts may construe particular articles of the BOR Ordinance. However, to

date, the BOR Ordinance has not resulted in any fundamental change in the operation of the legal system, nor have the courts become clogged with issues raised under the legislation. Nevertheless, there has been a slowing down in the process of disposing of cases as a result of issues raised under the BOR Ordinance.

#### Human Rights Commission

9. The major issue following the enactment of the BOR Ordinance is the proposal to establish a Human Rights Commission (HRC) with an investigation, arbitration, mediation and enforcement role. The motivation behind this idea from human right activists is not so much the lack of confidence in the capability of existing institutions to protect human rights but rather the desire to put in place an additional safeguard for the post-1997 years.

10. [REDACTED]

[REDACTED] we believe that the functions of a HRC are being adequately met by the present system (i.e. the courts, existing avenues for redressing grievances and efforts to promote human rights education). [REDACTED]

[REDACTED] A certain amount of pressure for the establishment of a HRC will however continue.

11. In a similar mood, women's groups, mainly expatriate dominated, have been pressing Government for the extension of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to Hong Kong. The local women's groups are however more eager to see a policy package to improve conditions for working women, and have asked for the establishment of a "Women's Commission" to "co-ordinate" women's affairs. In response, a working group chaired by the Secretary for Education and Manpower has been set up to study the problem of possible discrimination against women in employment and to consider the way forward.

Constitutional Affairs Branch

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