

# **立法會**

## ***Legislative Council***

LC Paper No. LS171/02-03

### **Paper for the House Committee Meeting on 3 October 2003**

### **Legal Service Division Report on Subsidiary Legislation tabled in the Legislative Council on 2 and 9 July 2003**

This paper annexes four Legal Service Division's reports (including one further report) on items of subsidiary legislation gazetted from 27 June 2003 to 8 July 2003. The subsidiary legislation included in these four reports were tabled in the Legislative Council at the meetings on 2 and 9 July 2003, but have not been considered by the House Committee as there has been no meeting of the House Committee since they were tabled. The four reports have separately been submitted to Members during the summer recess to enable Members to consider the relevant Gazette items as soon as possible. They are submitted again in this bundle to facilitate consideration by the House Committee.

2. Under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the scrutiny period of these items is deemed to extend to and expire on the day after the second meeting of the Legislative Council (i.e. 15 October 2003). The scrutiny period could be further extended under the Ordinance by resolution of the Council to its meeting to be held on 5 November 2003.

3. The Secretariat has circulated to Members the Gazettes which contain the subsidiary legislation covered by these four reports in the usual manner. Members may also view the relevant Gazettes at the following website : <http://www.info.gov.hk/pd/egazette>.

4. No difficulties relating to the legal and drafting aspects of the items covered by the four reports, have been identified.

5. Members may consider whether it is necessary to set up a subcommittee to study the subsidiary legislation.

Encl

Prepared by

Legal Service Division  
Legislative Council Secretariat  
29 September 2003

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 27 June 2003**

**Date of Tabling in LegCo** : 2 July 2003

**Amendment to be made by** : 15 October 2003 (or 5 November 2003 if extended by resolution)

**Ocean Park Corporation Ordinance (Cap. 388)**  
**Ocean Park Bylaw (L.N. 163)**

The Ocean Park Bylaw ("the Bylaw") was made by the Ocean Park Corporation ("the Corporation") on 17 June 2003 under section 39 of the Ocean Park Corporation Ordinance (Cap. 388) for the management and control of the Ocean Park ("the Park"). It governs the operation, use of facilities and conduct of persons in the Park.

2. The Corporation previously made a set of Ocean Park Bylaw on 10 December 2002 ("the 2002 Bylaw"). The 2002 Bylaw was gazetted as L.N. 1 of 2003 on 10 January 2003 and tabled in the LegCo on 15 January 2003. A Subcommittee was formed to study the 2002 Bylaw and raised issues and concerns about a number of provisions. The Subcommittee reported on 21 February 2003 and recommended that the 2002 Bylaw be repealed as more time was needed to consider the issues and concerns raised. The 2002 Bylaw was repealed by a LegCo resolution on 26 February 2003.

3. Another Subcommittee was formed by the House Committee to follow up the outstanding issues. In response to the views and concerns expressed by the Subcommittee, the Corporation made amendments to the 2002 Bylaw ("the amended 2002 Bylaw"). The Subcommittee reported to the House Committee on 30 May 2003 that it had no objection to the re-gazettal of the amended 2002 Bylaw. Members may wish to refer to the report of the Subcommittee to the House Committee dated 29 May 2003 (LC Paper No. CB(2)2239/02-03) for further information.

4. The content of the Bylaw is the same as the amended 2002 Bylaw. In the circumstances, the Bylaw may be taken to have been studied and accepted by Members.

5. The Bylaw shall come into operation on 1 August 2003.

**Interpretation and General Clauses Ordinance (Cap. 1)**

**Declaration of Change of Titles (Government Land Transport Agency, Government Land Transport Administrator, Government Supplies Department, Director of Government Supplies, Printing Department and Government Printer) Notice 2003 (L.N. 164)**

6. This Notice is made by the Chief Secretary for Administration under section 55 of the Interpretation and General Clauses Ordinance (Cap. 1) to declare the following change of titles of the public officers or government departments in the enactments specified in the Schedules to the Notice and wherever occurring in any instruments, contracts or legal proceedings made or commenced before 1 July 2003:

<u>Old Title</u>	<u>New Title</u>
(a) Government Land Transport Agency ("GLTA")	Government Logistics Department ("GLD")
(b) Government Supplies Department ("GSD")	Government Logistics Department
(c) Printing Department ("PD")	Government Logistics Department
(d) Government Printer (where it denotes a government department)	Government Logistics Department
(e) Government Land Transport Administrator	Director of Government Logistics
(f) Director of Government Supplies	Director of Government Logistics
(g) Government Printer (where it denotes a public officer )	Director of Government Logistics

7. At the meeting on 6 January 2003, the Panel on Financial Affairs ("FA Panel") was consulted on the Administration's proposal to merge GLTA, GSD and PD into the new GLD to be established on 1 July 2003. The Panel noted that organizationally, the professional functions of the three existing departments would be preserved under three specialist operational divisions in the new GLD while the departmental administrative, financial control and procurement functions of the three existing departments would be combined and re-organized under three new common services divisions. While Members welcomed the Administration's initiative to streamline the operation of the three existing departments to achieve better efficiency and economy in the provision of logistic support for Government bureaux and departments, some Members expressed concerns over the following issues:

- (a) implications of the merger proposal on staff of the three existing departments, in particular the Motor Driver Grade;

- (b) whether there were plans to outsource the service of Motor Drivers and Driving Instructors in GLTA in order to minimize costs;
- (c) whether there were plans to further outsource the services provided by the new GLD; and
- (d) outsourcing of Government services would adversely affect the employment of civil servants and contract staff, and the merger proposal might result in redundancy of contract staff.

8. Members may wish to refer to the minutes of the FA Panel meeting on 6 January 2003 (LC Paper No. CB(1) 919/02-03) for details.

9. The Administration's proposal to merge GLTA, GSD and PD into the new GLD was endorsed by the Establishment Subcommittee ("ESC") at its meeting on 19 February 2003 and by the Finance Committee ("FC") at its meeting on 7 March 2003. Members may refer to the minutes of the relevant ESC meeting (LC Paper No. ESC 31/02-03) and FC meeting (LC Paper No. FC117/02-03) for further details.

10. By this Notice, the Chief Secretary for Administration appoints 1 July 2003 as the day on which the above-mentioned change of titles comes into operation.

Prepared by  
LAI Shun-wo, Monna  
Assistant Legal Adviser  
Legislative Council Secretariat  
9 July 2003

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 4 July 2003**

**Date of Tabling in LegCo** : 9 July 2003

**Amendment to be made by** : 15 October 2003 (or 5 November 2003 if extended by resolution)

**PART I        SUBSIDIARY LEGISLATION RELATING TO CONSULAR  
MATTERS**

***Background***

The "Consular Agreement Between the Government of the People's Republic of China and the Government of Canada" was signed in 1997 and came into effect in March 1999 (the Canadian Consular Agreement). It contains provisions entitling consular officers to protect and conserve estates and safeguard the interests in and rights of property in China of Canadian nationals.

2. The Agreement Constituted by Exchange of Letters Between the Government of the People's Republic of China and the Commission of the European Communities Concerning the Maintenance of the Office of the Commission of the European Communities in the Hong Kong Special Administration Region of the People's Republic of China (the EC Agreement) was made in June 1997. Article 4 of the EC Agreement confers on the Office of the Commission of EC (the EC office), its accredited Heads and accredited members (who are nationals of the Members States of the EC but not permanent residents of the HKSAR) and their household family members certain consular privileges and immunities corresponding to those enjoyed by consular posts, Heads and members of consular posts under the Vienna Convention.

3. According to the Administration, both the Canadian Consular Agreement and the EC Agreement have since been applied to the Hong Kong Special Administrative Region by virtue of the national laws promulgated under Article 18 of the Basic Law. The relevant national laws are: the Regulations of the People's Republic of China concerning Consular Privileges and Immunities, and the Regulations of the People's Republic of China concerning Diplomatic Privileges and Immunities. The Administration now seeks to make the relevant

provisions of the two agreements part of the domestic law of the HKSAR by appropriate subsidiary legislation.

4. The accredited Head and accredited members (inclusive of their respective family members) of the EC Office in Hong Kong have since the establishment of the Office in 1993 been issued with ordinary identity cards with EC-prefixed identity card numbers. The Administration has found that the existing administrative arrangement has not made the relevant officials of the EC Office readily identifiable. Since they enjoy privileges and immunities comparable to those conferred on consular staff, it is decided that they should be issued Consular Corps Identity Cards (CCICs) in the same manner as CCICs are issued to consuls and consular members. Accordingly, the Registration of Persons Regulation (Cap. 177 sub. leg. A) has to be amended to implement the decision. Members may refer to the LegCo Brief (Ref.: CSO/ADM CR/3/2071/97(02)) issued in June 2003 by the Administration Wing of the Chief Secretary for Administration's Office for background and further information.

#### **Registration of Persons Ordinance (Cap. 177)**

#### **Registration of Persons (Amendment) Regulation 2003 (L.N. 165)**

5. By this Amendment Regulation made under section 7 of the Registration of Persons Ordinance (Cap. 177) by the Chief Executive in Council, the Registration of Persons Regulation (Cap. 177 sub. leg. A) (the Regulation) is amended to enable CCICs to be issued to the Head and members of the EC Office and their spouses and dependent children.

6. A definition of "Head of the EC Office" and "a member of the EC Office" is added to Regulation 2(1) of the Regulation. Regulation 4(4) is repealed and substituted by a new provision that includes a reference to the Head and any member of the EC Office and their spouses and dependent children. Regulations 5(1)(b) and 25(f) as well as item 2 in Schedule 2 are similarly amended.

7. The Amendment Regulation shall come into operation on a day to be appointed by the Chief Secretary for Administration by notice published in the Gazette. By reason of the fact that the definition of "Head of the EC Office" and "a member of the EC Office" makes reference to the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (L.N. 166 of 2003) that is to come into operation on 14 November 2003, the Amendment Regulation should not come into effect before that date.

**International Organizations (Privileges and Immunities) Ordinance (Cap. 558)  
International Organizations (Privileges and Immunities) (Office of the  
Commission of the European Communities) Order (L.N. 166)**

8. This Order is made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) by the Chief Executive in Council and is to come into operation on 14 November 2003.

9. The Order declares Articles 3, 4 and 5 of the EC Agreement to be part of the domestic law of the HKSAR. This gives each of the European Community, the European Coal and Steel Community and the European Atomic Community legal personality in the HKSAR together with the capacity to contract, to acquire and dispose movable and immovable property, and to conduct legal proceedings. The EC Office, its Head and members accredited by the Commission of EC as well as members of their family forming part of their respective households are conferred such rights, consular privileges and immunities as are corresponding to those enjoyed by consular post, its Heads and members in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963 (the Convention) and are necessary for the effective fulfilment of their duties. The laissez-passers issued by EC to officials and other servants of its institutions shall be recognized as a valid travel document.

10. The Order also empowers the Chief Executive to authorize the Commissioner of Customs and Excise to refund duties imposed on hydrocarbon oils under the Dutiable Commodities Ordinance (Cap. 109) where such hydrocarbon oils are imported into Hong Kong and used for such purpose that had they been imported for that use, exemption from custom duty would have been required to be granted under Article 50 of the Convention.

**Administration of Estates by Consular Officers Ordinance (Cap. 191)  
Administration of Estates by Consular Officers Ordinance (Amendment of  
Schedule) Order 2003 (L.N. 167)**

11. This Order is made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) (the Ordinance) by the Chief Executive after consultation with the Executive Council and is to come into operation on 14 November 2003.

12. The Order has varied the Schedule to the Ordinance by adding a reference to the Canadian Consular Agreement.

**Consular Conventions Ordinance (Cap. 267)**

**Consular Conventions (Application of Section 3) Order (L.N. 168)**

13. This Order is made under section 3 of the Consular Conventions Ordinance (Cap. 267) (the Ordinance) by the Chief Executive after consultation with the Executive Council and is to come into operation on 14 November 2003.

14. The Order directs that section 3 of the Ordinance shall apply to Canada. Section 3 of the Ordinance confers on consular officers the power -

- (a) to apply for grant of representation on behalf of a national of his country not resident in Hong Kong to the estate of a deceased in Hong Kong; and
- (b) to receive money or other property in Hong Kong forming part of the estate of a deceased or receive payment in Hong Kong of money due on the death of a deceased person, and to give a valid discharge for such money or property on behalf of a national of his country not resident in Hong Kong.

15 The Order gives effect to the provisions contained in the Canadian Consular Agreement relating to the protection of interests of Canadian nationals who has a right to property left in the HKSAR by a deceased.

Consultation

16. According to the Administration, the Consulate General of Canada and the EC Office in the HKSAR have been consulted on the draft of the relevant subsidiary legislation. The Administration of Justice and Legal Service Panel will be briefed of the matter at its meeting on 28 July 2003.

Conclusion

17. The Legal Service Division is seeking clarification from the Administration on a few legal and drafting matters. A further report will be issued if necessary.

**PART II DECLARATION OF PUBLIC CARGO WORKING AREA**

**Port Control (Cargo Working Areas) Ordinance (Cap. 81)**

**Port Control (Public Cargo Working Area) Order 2003 (L.N. 169)**

18. By this Order made under section 3(1) of the Port Control (Cargo Working Areas) Ordinance (Cap. 81) by the Secretary for Economic Development and Labour,



- (a) the area of unleased Government land situated at Chai Wan delineated and coloured pink on the plan numbered HKM 7069 signed by the Deputy Director of Lands (Survey and Mapping) on behalf of the Director of Lands on 26 June 2003 and deposited in the Urban Land Registry is declared to be a public cargo working area (Chai Wan Public Cargo Working Area);
- (b) the Port Control (Public Cargo Working Area) Order 1998 (L.N. 54 of 1998) in respect of the Wan Chai Public Cargo Working Area is repealed; and
- (c) the Port Control (Public Working Area) (Consolidation) Order (Cap. 81 sub. leg. B) is amended by repealing section 2 (i.e. the Wan Chai Public Cargo Working Area) and adding the description of the Chai Wan Public Cargo Working Area as the new section 13.

19. There has been no consultation with the Transport Panel. The Order shall come into operation on 1 September 2003 excepting the repeals which shall become effective on 1 December 2003. Members may refer to the LegCo Brief (Ref.: MA 40/4(99)) dated 4 July 2003 and issued by the Economic Development and Labour Bureau for further information.

### **PART III COMMENCEMENT NOTICE**

#### **Telecommunications Ordinance (Cap. 106)**

#### **Telecommunications (Carrier Licences) (Amendment) Regulation 2003 (L.N. 134 of 2003) (Commencement) Notice 2003 (L.N. 170)**

20. By this Notice made under section 1 of the Telecommunications (Carrier Licences) (Amendment) Regulation 2003 (the Amendment Regulation), the Telecommunications Authority has appointed 4 July 2003 as the day on which the Amendment Regulation is to come into operation.

21. The Amendment Regulation reduces the annual fixed fee for fixed carriers licences that permit external services only from \$1,000,000 to \$500,000. The Legal Service Division has reported on the Amendment Regulation at the House Committee meeting on 30 May 2003 (LC paper No. LS105/02-03). No queries have been raised by Members.

Prepared by

KAU Kin-wah  
Assistant Legal Adviser  
Legislative Council Secretariat  
10 July 2003

**立法會**  
***Legislative Council***

**Legal Service Division Further Report on  
Registration of Persons (Amendment) Regulation 2003 (L.N. 165 of 2003)  
International Organizations (Privileges and Immunities) (Office of the  
Commission of the European Communities) Order (L.N. 166 of 2003)  
gazetted on 4 July 2003**

In its report dated 10 July 2003, the Division reported that it was seeking clarification from the Administration on a few legal and drafting matters. Through the exchange of correspondence, the matters have since been clarified. Copies of the relevant correspondence are attached as Annex A for Members' reference.

2. The Division does not observe any difficulties in the drafting and legal aspects of the subsidiary legislation.

Encl

Prepared by

KAU Kin Wah  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
26 August 2003

CSO/ADM CR 2/2071/00(00)  
LS/S/38/02-03

Tel No. : 2810 3946  
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13 August 2003

Mr Kau Kin-wah  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mr Kau,

**Subsidiary Legislation relating to Consular Matters  
gazatted on 4th July 2003**

Thank you for your letter of 23 July 2003 which set out your further observations on the above subject. I now enclose the Administration's response for your necessary action please.

Yours sincerely,

( David Leung )  
for Director of Administration

Encl.

## **Registration of Persons (Amendment) Regulation 2003**

### Clause 1

The Amendment Regulation will become effective after the expiry of the negative vetting period and when the necessary preparatory work for the issue of identity cards is completed. We envisage that the Amendment Regulation will come into effect after the commencement of the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order.

### Clause 5

The expression “children under 11 years of age of consuls, consular staff and the Head and members of the EC Office” clearly means a group of persons comprising –

- (a) children of consuls;
- (b) children of consular staff;
- (c) children of the Head of the EC Office; and
- (d) children of members of the EC Office.

In addition to the examples given in our response of 21 July 2003, some examples are found in the Vienna Convention on Consular Relations itself (please see the Schedule to the Consular Relations Ordinance (Cap. 557)) –

- (a) Under Article 5(h), consular functions consist in safeguarding “the interests of minors and other persons lacking full capacity”, which means collectively –
  - (i) the interests of minors; and
  - (ii) the interests of other persons lacking full capacity,

but not necessarily the common interest of minors and others lacking full capacity.

- (b) In paragraph 1 of Article 45, the sending State may waive any of the “privileges and immunities provided for in Articles 41, 43 and 44”, which means collectively –

- (i) privileges and immunities provided for in Articles 41;
- (ii) privileges and immunities provided for in Articles 43; and
- (iii) privileges and immunities provided for in Articles 44,

but not necessarily privileges and immunities provided for in Article 41 and 43 and 44, all at the same time.

- (c) In paragraph 3 of Article 50, “personal baggage accompanying consular officers and members of the families forming part of their households” shall be exempt from inspection. The expression means –

- (i) personal baggage accompanying consular officers; and
- (ii) personal baggage accompanying members of the families forming part of the households of consular officers,

but not necessarily personal baggage accompanying both consular officers and members of their families at the same time.

#### Clause 6

We consider that the expression “the Head and members of the EC Office” is appropriate, as it is clear that under the revised Schedule 2 to the Registration of Persons Regulations, the issue of identity cards to these EC personnel requires no payment of fee. Similar expressions are used in existing legislation, for example –

- (a) “the Chairman and members of the Commission” in section 7(1) of the Public Service Commission Ordinance (Cap 93);
- (b) “the Chairman, Deputy Chairmen and members of the Board” in section 26(1) of the Administrative Appeals Board Ordinance (Cap 442); and
- (c) “the Chairman and members of the Appeal Board” in section 37 of the Entertainment Special Effects Ordinance (Cap 560).

## International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order

### Clause 4

#### *Class or group of persons entitled to refund*

A person's entitlement to refund of duty depends on whether he is exempted from duty. In the context of consular relations, exemption is provided for under the Vienna Convention. In the context of the EC Office, exemption is determined by Article 4 of the PRC/EC Agreement, which draws reference to the Vienna Convention. We therefore consider that the reference in Clause 4 to Article 4 of the PRC/EC Agreement is sufficient to show that the refund arrangement is intended for the EC Office.

#### *Legal basis of and need for Clause 4*

We consider that section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) gives the power to make Clause 4. Section 3 of Cap. 558 provides that the CE in Council may –

- “(a) by order in the Gazette, declare that the provisions of an international agreement relating to the status, privileges and immunities of an international organization and of persons connected with such organization, and which are specified in the order, shall have the force of law in Hong Kong; and
- (b) in such order make such provisions as the Chief Executive in Council may consider necessary for carrying into effect the provisions of any such agreement in connection with such privileges and immunities.”

Article 4 of the PRC/EC agreement provides that the EC Office, its head and members and their family members shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts etc in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963 which include exemption of duty on hydrocarbon oil (Article 50 of the Vienna Convention refers). The privilege of exemption of duty on hydrocarbon oil accorded to consular posts etc under the Vienna Convention is implemented by section 5 of the

Consular Relations Ordinance (Cap. 557). There is no similar provision under Cap. 558 or any other legislation that confers similar privilege on the EC Office and its personnel etc.

Regulation 15 of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) only provides refund to oil suppliers and not to the persons enjoying the privileges. In practice, the regulation is seldom invoked because of the arrangement (as described in our letter dated 21 July) under which the oil suppliers could sell duty-free oil to persons enjoying the privileges. Although the exemption may be given effect by this arrangement with the oil companies, it is only an administrative measure. Besides, there are circumstances (e.g. loss or mal-functioning of oil cards or termination of the administrative arrangement which was initiated by oil suppliers on a voluntary basis) which make it necessary to refund the duty paid on hydrocarbon oil to persons enjoying the privileges.

Clause 4 of the EC Order is therefore necessary for carrying into effect the provisions of Article 4 of the PRC/EC agreement and is intra vires section 3(b) of Cap. 558.

#### *Explicit exemption of duties on hydrocarbon oils*

Under the Dutiable Commodities Ordinance (Cap. 109), duties are assessed and payable on 4 types of dutiable goods, namely alcohol liquors, tobacco, hydrocarbon oils and methyl alcohol. The EC Office may directly import alcohol liquors, tobacco and methyl alcohol with duties exempted, or obtain them from the authorized sources, who import the goods on their behalf with duties exempted.

However, the amount of each single import of hydrocarbon oils far exceeds the demand of the EC Office and its personnel. Oil suppliers cannot arrange for the EC Office individually the import of duty-exempted hydrocarbon oils. Due to this operational problem, the EC Office cannot directly import hydrocarbon oils nor can they import the oil through the wholesalers with duties exempted. We therefore need to make a specific provision in the EC Order for the refund of duties paid on hydrocarbon oils.

LS/S/38/02-03  
2869 9467  
2877 5029

The Director of Administration  
Administration Wing  
Chief Secretary for Administration's Office  
(Attn: Mr LAI Yiu Kei, Samson  
AS (Admin)1)  
12/F, West Wing  
Central Government Offices  
Hong Kong

By Fax (2501 5779)

23 July 2003

Dear Mr LAI

**Subsidiary Legislation relating to Consular Matters  
gazatted on 4<sup>th</sup> July 2003**

Thank you for your letter of 21 July 2003 with the Administration's response attached.

Having perused the Administration's response, I have the following observations for your further consideration:-

*Registration of Persons (Amendment) Regulation 2003*

Clause 1

Please confirm that the Amendment Regulation will not come into operation before the International Organizations (Privileges and Immunities) (Office of the European Communities) Order (L.N. 166 of 2003).

Clause 5

The intention of the Administration is not in dispute. When the description is really to be understood disjunctively, it is not clear why the use of "and", a conjunction, is being insisted upon. The definition of "precincts of the Chamber" in section 2 of the Legislative Council Ordinance is not comparable to the provision under consideration.

Clause 6

The explanation offered is beside the point. In the context of item 2, separate description for "the Head" and "the member" of the EC office is both grammatically appropriate and drafting wise necessary to make clear that the identity card for each of



them requires no payment of fees.

*International Organizations (Privileges and Immunities) (Office of the Commission of European Communities) Order*

Clause 4

The Administration relies on the reference to Article 4 of the EC Agreement in subsection (1)(b) as sufficient to show that the refund arrangement is intended for the EC Office. We accept that this is arguable. However, the provision authorizes an appropriation of public revenue, it seems that it should be made very clear who are entitled to refund. We do not mean that individual persons should be specified but the class or group of persons entitled to refund should be sufficiently prescribed without ambiguity.

The clause has a further problem. The International Organizations (Privileges and Immunities) Ordinance (Cap. 558) (IOPIO) does not contain any enabling provision similar to section 5 of the Consular Relations Ordinance (Cap. 557). It is not clear on what legal basis the CE could make this clause 4.

We are given to understand that regulation 15 of the Dutiable Commodities Regulations (Cap. 109 sub. leg. A) (the Regulations) already serves the purposes of this clause 4. We have observed that (a) regulation 15 authorizes refund to **suppliers** of hydrocarbon oils, and (b) such refund is only permitted when the person or body supplied is exempted under one of the relevant ordinances. In the circumstances, what is needed is to provide that the EC Office and etc. are exempted from the duties imposed on hydrocarbon oils. That would be sufficient to cause regulation 15 to apply.

We are also given to understand that by virtue of the administrative measure of issuing "oil cards", the EC Office and its accredited staff are in fact not paying any duties on gasoline. This further supports our view that what is really needed is to include in the Order a provision allowing regulation 15 to apply.

We have further observed that regulation 12(1)(m) of the Regulations exempts from the payment of duties all goods which are shown to the satisfaction of the Commissioner of Custom and Excise to be for the use or consumption of any person who is entitled to be accorded immunities or exemptions from duties by the operation of the IOPIO. As clause 4 has only mentioned hydrocarbon oils, please clarify whether the Administration intends that the exemption from Cap. 109 of the EC Office is limited to hydrocarbon oils only. If not, it is not clear why only such oils are expressly mentioned.

I would be grateful if you could let me have the Administration's response at your earliest convenience so that I may prepare a further report to the House Committee.

Yours sincerely

(KAU Kin-wah)  
Assistant Legal Adviser

c.c. DoJ (Attn: Betty CHEUNG, SGC)  
LA  
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CSO/ADM CR 2/2071/00(01)

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21 July 2003

Mr Kau Kin-wah  
Assistant Legal Adviser  
Legislative Council  
8 Jackson Road  
Central  
Hong Kong

Dear Mr Kau

**Subsidiary Legislation relating to Consular Matters  
gazetted on 4 July 2003**

Thank you for your letters of 9 and 16 July 2003. Our response is enclosed for your consideration please.

Yours sincerely,

( LAI Yiu-kei, Samson )  
for Director of Administration

## **I. General**

***Q1 Please clarify when the People's Republic of China acceded to the Vienna Convention on Consular Relations.***

Our record confirms that the People's Republic of China acceded to the Vienna Convention on Consular Relations in 1979, as stated in the LegCo Brief issued on 2 July 2003.

***Q2 Please clarify when the Agreement by Exchange of Letters with the Commission of the European Communities came into force.***

The PRC/EC Agreement entered into force on 1 July 1997.

## **II. Registration of Persons (Amendment) Regulation 2003**

### **Clause 5**

***Q3 Please consider whether it is necessary to substitute “or” and “and” in the proposed new Regulation 25(f). This is to avoid the ambiguity that the children must have all the statuses described in paragraph (f) before they may be exempted.***

The proposed new Regulation 25(f) reads “children under 11 years of age of consuls, consular staff and the Head and members of the EC Office”. It is a collective description of a group of children, each being a child of –

- (i) a consul;
- (ii) a member of consular staff;
- (iii) the Head of the EC Office; or
- (iv) a member of the EC Office.

Similar references can be found in other existing legislation. For example, “children of Assistant Officers and equivalent grades” under section 3(3)(a) of the Correctional Services Children's Education Trust Ordinance (Cap. 1131) refers to a group of children each of which is a child of an Assistant Officer in the Correctional Services Department, or is a child of an officer of a grade equivalent to an Assistant Officer. The child needs not be a child of an Assistant Officer as well as of an officer of equivalent grade. Similarly, “representatives of the press, television and radio” in the definition of “precincts of the Chamber” under section 2 of the

Legislative Council Ordinance refers to three groups of representatives – one representing the press, one representing the television and one representing the radio. It does not however refer to persons representing the press, television and radio at the same time.

Therefore, we consider that the present drafting of the proposed new Regulation 25(f) is in order.

### **Clause 6**

***Q4 Please consider describing “Head of the EC Office” and “member of the EC Office” separately in the proposed addition as is done in the Chinese text.***

Clause 6 amends Schedule 2 to the Registration of Persons Regulations by adding “the Head and members of the EC Office” (“歐共體辦事處主任、歐共體辦事處人員” in the Chinese text) to item 2 of the Schedule.

In the English text, it is clear that both “Head” and “members” should be read together with “of the EC Office” in the phrase “the Head and members of the EC Office”. There is no need to say “the Head of the EC Office and the members of the EC Office”.

As regards the Chinese text, it is clearer to use “歐共體辦事處主任、歐共體辦事處人員” as proposed in the Amendment Regulation to avoid any doubt that may arise in the expression “(領事、領事館職員、)歐共體辦事處主任及人員” as to whether “歐共體辦事處” relates to “人員”.

Given the foregoing, we consider that no amendment to the Amendment Regulation is necessary.

### **Clause 2 (Chinese text)**

***Q5 In paragraph (b) of the definition of “Head of the EC Office” and “a member of the EC Office”, “but” has been rendered as “且” in Chinese. However, the usual rendering is “但”. Please clarify why the normal rendering is not followed in this instance.***

The wording in paragraph (b) of the “Head of the EC Office” and “a

member of the EC Office” are adopted from Article 4 of the PRC/EC Agreement, i.e. “... who are nationals of the Member States of the European Communities but not in their capacity as the permanent residents of the Hong Kong Special Administrative Region ...” in the English text or “... 具有歐洲共同體成員國國籍且不具有香港特別行政區永久性居民身份的 ...” in the Chinese text. While “but” is usually rendered as “但”, the present Chinese rendering (i.e. “且”) in this specific context does not affect the effect of the provision.

### **III. International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order**

#### **Clause 4**

***Q6 The provision appears to be incomplete. It has not specified whom would be entitled to the proposed refund. Nothing in the provision appears to relate it to the Office of the EU Commission. Please clarify.***

Clause 4 is a complete provision in that the clause “as read with Article 4 of the Office Agreement [i.e. the PRC/EC Agreement]<sup>1</sup>” in subsection (1)(b) has provided a reference to the EC Office and its personnel, as well as the members of their families forming part of their respective households such that they could be entitled to, among other things, the exemption of custom duties enjoyed by their consular counterparts under Article 50(1) of the Vienna Convention<sup>2</sup>.

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<sup>1</sup> Article 4 of the PRC/EC Agreement confers on the EC Office, its Head and members and their families consular privileges and immunities corresponding to those enjoyed by their consular counterparts in accordance with the Vienna Convention.

<sup>2</sup> Article 50(1) of the Vienna Convention provides that –

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

It is not necessary to specify in clause 4 to whom a refund should be made. This is because to “refund” means to “pay the money back”.

Separately, clause 4 authorizes the making of arrangements for securing refund. This includes the decision on details of the refund arrangements. Given that to “refund” means to “pay the money back”, the Commissioner of Customs and Excise would, in exercising the Chief Executive’s authorization under clause 4, construe that the person who pays the duties concerned should be entitled to the proposed refund.

***Q7 Please clarify whether the clause would have retrospective effect, i.e. the refund of duties would cover hydrocarbon oils consumed before the Order comes into effect. If not, please advise whether the Office of the EU Commission is entitled to any refund of duties. If yes, please state the legal basis for such refund.***

The clause does not have retrospective effect. That said, by virtue of the PRC/EC Agreement (as read with the Vienna Convention), the EC Office has been entitled to exemption from payment of duties on hydrocarbon oils since 1 July 1997. At present, this exemption is given effect through an arrangement, under which oil suppliers (through whom duties on hydrocarbon oils are collected) issue qualified personnel of the EC Office with oil cards. Upon presentation of the oil cards, duties will not be charged on the hydrocarbon oils purchased.

**立法會**  
***Legislative Council***

**Legal Service Division Report on  
Subsidiary Legislation gazetted on 8 July 2003**

**Date of tabling in LegCo** : 9 July 2003

**Amendment to be made by** : 15 October 2003 (or 5 November 2003 if extended by resolution)

**University of Hong Kong Ordinance (Cap. 1053)  
Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003  
(L.N. 186 )**

The Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003 were published on 8 July as Gazette Extraordinary and laid on the table of the Legislative Council on 9 July 2003. No Legislative Council Brief was issued. We have sought clarifications with the Administration, in particular, on the objects of these Amendment Statutes.

2. According to the reply from the University of Hong Kong (see Annex), the University Grants Committee (UGC) Report on Higher Education in Hong Kong has recommended that the governing body of each UGC-funded institutions should review the fitness for purpose of its governance and management structures. In response, an independent and international panel of external experts was appointed to undertake such a review. The panel submitted its report and was approved by the Council at its meeting on 29 April 2003 for immediate implementation. A number of statutory amendments are required to put the recommendations of the panel's report into effect. These amendments have been approved by the Chancellor on the recommendation of the Council and the Court in accordance with the University's normal due process.

3. It is noted that the amendments to the Statutes include the following:

- (a) the reduction of the size of the Council and the Senate;
- (b) the modes of appointment of the Dean of each Faculty and the Head of a Teaching Department;



- (c) the delegation to any person or committee of the Council's powers to adjudicate upon complaints from members and employees of the University and to deal with appeals from the Disciplinary Committee; and
- (d) some other technical amendments.

4. To enable the elections of some members of the Council and the Senate, some provisions have to come into operation on the day on which these Statutes are published in the Gazette. Other provisions are to come into operation on 1 November 2003.

5. The Panel on Education has not discussed the Statutes. However, the Panel was briefed by the Administration on the "Higher Education Review" at the special meeting on 2 December 2002. Members noted that the Administration supported the recommendation by UGC that university councils should review their governance and management structures.

Encl

Prepared by

HO Ying-chu, Anita  
Assistant Legal Adviser  
Legislative Council Secretariat  
5 August 2003

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29 July 2003

Ms Anita HO  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Ms Ho,

**Statutes of the University of Hong Kong (Amendment) (No. 2)  
Statutes 2003 (L.N. 186 of 2003)**

Thank you for your letter of 21 July. I attach HKU's letter in response to the two issues for your reference please.

Yours sincerely,

(Miss Linda PS So)  
for Secretary for Education and Manpower

c.c. Department of Justice (Attn : Miss Amy Chan)  
Registrar, The University of Hong Kong

July 23, 2003

Miss Linda P S So  
Assistant Secretary (Higher Education)  
Education and Manpower Bureau  
Government of the Hong Kong Special Administrative Region  
9/F CGO (West Wing)  
Ice House Street  
Central  
Hong Kong

Dear Linda,

Statutes of the University of Hong Kong (Amendment) (No.2)  
Statutes 2003 (L.N. 186 of 2003)

Thank you for your fax letter of July 22, 2003 in connection with the enquiry from the Legal Service Division of the Legislative Council Secretariat on the above-captioned Amendment Statutes. Our responses to the two issues are as follows:

In July 2002, HKU's Council responded to a key recommendation of the UGC report on *Higher Education in Hong Kong* that the governing body of each UGC-funded institution should review the fitness for purpose of its governance and management structures by appointing an independent and international panel of external experts to undertake such a review. The panel's report was submitted in February 2003 and, after a period of consultation with members of the University and other stakeholders, was approved by the Council at its meeting on April 29, 2003, for immediate implementation as a package. In the course of the implementation process, the Council has identified a number of statutory amendments that are necessary for the recommendations of the panel's report to take effect. These amendments have been approved by the Chancellor on the recommendation of the Council and the Court, in accordance with our normal due process.

在 2002 年 7 月，香港大學校務委員會因應大學教育資助委員會發表的「香港高等教育報告書」其中的一項主要建議 – 每所大學的管治組織應檢討其管治及管理架構是否切合所需 – 成立一個由校外專家組成的獨立及國際性檢討小組。小組於 2003 年 2 月提交報告，其後經過諮詢大學成員及其他有關人士，於 2003 年 4 月 29 日由校務委員會通過，並即時執行落實建議。在執行過程中，校務委員會確認部份大學規程需要修改，以落實報告中的建議，這些修改已循正常的程序，由校務委員會及校董會向校監作出建議，並獲得批准。

...../2

On the amended Statute XVII, it is not intended to empower the Court to make regulations. The regulations referred to in sub-subparagraph (ba) are regulations of the Council for elections to the Council, although the electorates, and those who are eligible to be elected, are members of the Court. It should be noted that the Court has been electing its own members to the Council for a number of years, and we intend to adopt similar procedures for such elections in future.

在修訂規程 XVII 中，並沒有授權予校董會制訂規例。在(ba)分節中提到的規例，是為選出成員加入校務委員會而制訂。雖然校董會成員均有選舉權及有資格候選，規例仍由校務委員會制訂。校董會選派代表加入校務委員會已有多年，將來我們仍會循類似的程序進行選舉。

I hope these comments clarify the issues. Please do not hesitate to contact me if there are any further queries.

Yours sincerely,

H W K Wai  
Registrar

HWKW/ESPN/yc

**Annex**

LS/S/39/02-03  
2869 9209  
2877 5029

Secretary for Education and Manpower  
(Attention: Miss Linda SO, Assistant Secretary (EM)1)  
Education and Manpower Bureau  
9th Floor West Wing  
Central Government Offices  
11 Ice House Street  
Hong Kong

21 July 2003

**BY FAX**

Fax No. : 2804 6499  
Total no. of page : (1)

Dear Miss So,

**Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003  
(L.N. 186 of 2003)**

The Statutes of the University of Hong Kong (Amendment) (No. 2) Statutes 2003 were gazetted on 8 July 2003 as Gazette Extraordinary and no Legislative Council Brief has been issued on it. What are the objects of these Amendment Statutes and is the enactment the result of any review on the governance and management structures of the University of Hong Kong?

2. On the amended Statute XVII, the Court is empowered "to elect, in accordance with regulations, its members to be members of the Council and to, on the recommendation of the Council, give the approval referred to in paragraph 2 of Statute XVIII". It is noted that both the Council and the Senate can make regulations but not the Court. What regulations have the Court to comply with?

3. It is appreciated that you can let me have a reply at your earliest convenience in both English and Chinese languages so that I can report to the House Committee.

Yours sincerely,

Anita HO  
Assistant Legal Adviser

c.c. Department of Justice (Attn: Miss Amy CHAN, GC)  
LA