

LEGISLATIVE COUNCIL BRIEF

Subsidiary Legislation relating to Consular Matters

INTRODUCTION

At the meeting of the Executive Council on 24 June 2003, the Council **ADVISED** and the Chief Executive **ORDERED** that –

- (a) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003, at **Annex A**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Chapter 191);
- (b) the Consular Conventions (Application of Section 3) Order, at **Annex B**, should be made under section 5 of the Consular Conventions Ordinance (Chapter 267);
- (c) the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order, at **Annex C**, should be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Chapter 558); and
- (d) the Registration of Persons (Amendment) Regulation 2003, at **Annex D**, should be made under section 7 of the Registration of Persons Ordinance (Chapter 177).

JUSTIFICATIONS

Privileges and Immunities and Consular Relations

2. Consular relations are established, on the basis of mutual consent, between sovereign States to facilitate the protection of the rights and interests of their nations and nationals, and to promote friendly relations and cooperation among them. Following the establishment of a consular post by a sending State, it is a well-established practice that the

post and its members will be accorded with privileges and immunities not made available to ordinary resident aliens in the receiving State.

3. The conferment of privileges and immunities on consular members, which is a cornerstone of the consular relations between sovereign States, is not meant for the personal benefit of individuals but rather, to ensure the efficient performance of functions by consular members on behalf of the sending State. Consular members could not effectively carry out their functions if their official acts or words in their consular districts would render them liable to prosecution. As a matter of principle, any act performed in the discharge of consular functions is in its nature an act of the sending State. Given the equality of sovereign States, such act lies outside the jurisdiction or competence of the law and authority of the receiving State.

4. In the international arena, the Vienna Convention on Consular Relations (Vienna Convention) codifies the international law on consular relations, matters relating to the establishment and maintenance of consular missions and consular privileges and immunities. 165 States are signatories to the Vienna Convention, including the PRC, which acceded in 1979.

5. Apart from the provisions in the international agreement, a state may also, if considered appropriate, conclude bilateral agreements with other states to facilitate the performance of consular functions and to deal with matters not covered in the Vienna Convention.

Privileges and Immunities and International Organizations

6. For International Organizations (IOs), which are not sovereign States and whose representatives are not covered under the Vienna Convention, their entitlements to privileges and immunities are provided for under their respective statutes, or relevant international agreements. In addition, a host country may also enter into bilateral agreements with IOs, providing them with tailor-made privileges and immunities. Similarly, privileges and immunities are not conferred on IO personnel for their personal benefit, but rather to ensure the independent exercise of their functions in connection with the IOs.

The PRC/Canada Agreement¹

7. The PRC/Canada Agreement came into force on 11 March 1999 and is applicable to Hong Kong. It provides for, amongst other things, *additional* consular functions for the Canadian consular officers relating to administration of estates, that are **not** provided for under the Vienna Convention. Specifically, under Article 10(3) of the Agreement, Canadian consular officers are entitled to protect and conserve the estates left in the HKSAR by deceased Canadian nationals. They are also entitled under Article 10(4) and (5) to safeguard the interest of Canadian nationals who have a right to property left in the HKSAR by a deceased, and to receive for transmission to Canadian nationals money or property in the HKSAR to which they are entitled as a consequence of the death of another person.

The PRC/EC Agreement²

8. The PRC/EC Agreement provides for the maintenance of the EC Office in the HKSAR from 1 July 1997. Under Article 4 of the agreement, the PRC has conferred on the EC Office, its accredited Head and accredited members (who are nationals of the Members States of the European Communities but are not permanent residents of the HKSAR) and their household families, consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the Vienna Convention. These include –

- (a) Inviolability of the EC Office, its archives and documents;
- (b) personal inviolability of the accredited personnel of the EC Office, except in the case of grave crime;
- (c) immunity from jurisdiction in respect of acts performed in the exercise of the functions of the EC Office;
- (d) exemption from giving evidence concerning matters connected with the exercise of the functions of the EC Office;

¹ The full name of the PRC/Canada Agreement is the “Consular Agreement Between the Government of the People’s Republic of China And the Government of Canada”.

² The full name of the PRC/EC Agreement is 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 European Communities in the Hong Kong Special Administration Region of the People’s Republic of China”.

and

- (e) exemption from taxation, customs duties, inspection and personal services and contributions, etc.

LOCALIZATION OF INTERNATIONAL AND BILATERAL AGREEMENTS

9. At present, the relevant provisions of the above two Agreements are given legal effect in the HKSAR generally by the following national laws applicable to the HKSAR by promulgation under Article 18 of the Basic Law –

- (a) Regulations of the People’s Republic of China concerning Consular Privileges and Immunities; and
- (b) Regulations of the People’s Republic of China concerning Diplomatic Privileges and Immunities.

10. Having regard to our common law tradition, provisions of international agreements applicable to Hong Kong is transformed onto the domestic legal plane, should they affect private rights and obligations, or require exceptions to be made to the existing laws of the HKSAR. In this regard, the Consular Relations Ordinance (Chapter 557) and the International Organizations (Privileges and Immunities) Ordinance (Chapter 558) were enacted in 2000 to provide a more flexible framework for the localization of the relevant international agreements signed by the CPG. In addition, the Administration of Estates by Consular Officers Ordinance (Chapter 191) and the Consular Conventions Ordinance (Chapter 267) provide a framework for giving effect to certain additional consular functions relating to administration of estates by consular officers in the HKSAR, as may be agreed between the CPG and the sending State concerned. With the legislative framework in place, we consider that the best means of underpinning the relevant provisions of the two bilateral agreements is to enact local legislation setting them out expressly and specifically in the laws of Hong Kong.

THE ORDERS AND THE AMENDMENT REGULATION

The Orders to be made in respect of the two Bilateral Agreements

11. The Order to be made under the Administration of Estates by Consular Officers Ordinance seeks to underpin Article 10(3) of the PRC/Canada Agreement by adding “Canada” to the Schedule to the Ordinance. The Schedule sets out the states with which the PRC Government has entered into an agreement providing for the administration of estates by their consular officers in the HKSAR.

12. The Order to be made under the Consular Conventions Ordinance seeks to underpin Article 10(4) and (5) of the PRC/Canada Agreement, by directing that section 3 of the Ordinance shall apply to Canada. Canada has signed a consular convention with the PRC, conferring upon the Canadian consular officers powers to administer property in the HKSAR of deceased persons.

13. The International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order seeks to declare Articles 3, 4 and 5 of the PRC/EC Agreement to have the force of law in the HKSAR and the Chief Executive may authorize the Commissioner of Customs and Excise to arrange the refund of duties paid on hydrocarbon oils, which are imported into Hong Kong for such purposes as would qualify for exemptions from the payment of custom duties, to be granted under Article 50 of the Vienna Convention, as read with Article 4 of the PRC/EC Agreement.

14. The relevant provisions of the PRC/Canada Agreement and the PRC/EC Agreement are extracted at **Annexes E and F** respectively.

The Amendment Regulation

15. Consular Corps Identity Cards (CCICs) are identity cards issued under Regulation 5 of the Registration of Persons Regulations in a form approved by the Chief Executive in respect of consuls, consular staff and their spouses and dependent children. For the accredited Head and accredited members of the EC Office, and their family members in the HKSAR, given that they do not fall within the meaning of “consul” and “consular staff”, as defined under Regulation 2 of the Registration of Persons Regulations, administrative arrangements in place since the establishment of the Office in 1993 provide that they are issued with ordinary identity cards with EC-prefixed identity card numbers.

16. Operational experience through these years nevertheless suggests that the existing administrative arrangements do not satisfactorily serve the purpose in making the relevant officials of the EC

Office easily identifiable. We recognize that the EC Office is different from other international organizations in the HKSAR, in that it is a supranational institution which performs certain governmental functions in relation to Member States of the European Union. The privileges and immunities accorded to the Office and its personnel are also comparable to those conferred upon their consular counterparts. In view of the distinctive functions of the EC Office and its personnel, we consider it appropriate to issue CCICs to the accredited Head and accredited members of the EC Office (and their family members) in the HKSAR, as in case of their consular counterparts. To achieve this policy objective, we propose to amend the Registration of Persons Regulations.

17. The Registration of Persons (Amendment) Regulation 2003 amends Regulation 2, 4, 5, 25 and Schedule 2 to the Registration of Persons Regulations so that the accredited Head and accredited members of the EC Office, and their family members in the HKSAR, may be issued with CCICs in the same manner as CCICs are issued to consuls, consular staff and their family members in the HKSAR. Existing provisions being amended are extracted at **Annex G**.

Implementation

18. The four pieces of subsidiary legislation will be gazetted on 4 July 2003. We propose that the Orders shall come into operation on 14 November 2003, taking into account the lead time required for negative vetting upon gazettal. We also propose that 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, to tie in with the work plan of Director of Immigration to issue CCICs to the EC personnel.

IMPLICATIONS OF THE PROPOSAL

19. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The Orders and the Amendment Regulation will not affect the current binding effect of the legislation being amended.

20. The privileges and immunities conferred upon the EC Office and its personnel under the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order in the HKSAR do not have significant financial implications for

the Government.

21. The proposals have no other civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

22. We have consulted the Consulate General of Canada and the EC Office in the HKSAR on the draft of the relevant subsidiary legislation. We have issued an information note to the Panel on Administration of Justice and Legal Services (AJLS) on the Administration's work programme on preparing the subsidiary legislation relating to privileges and immunities conferred on consular posts and specified international organizations. We shall brief the AJLS Panel on the matter at its meeting on 28 July 2003.

PUBLICITY

23. A spokesman will be available to answer possible media and public enquiries.

ENQUIRY

24. Any enquiries on the brief should be addressed to Mr David Leung, Assistant Director of Administration (3), on 2810 3946.

Administration Wing
Chief Secretary for Administration's Office
June 2003

Explanatory Note

This Order provides for the application of section 2 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) to consular officers of the Consulate General of Canada and gives effect to the provision in the Consular Agreement between the Government of the People's Republic of China and the Government of Canada signed on 28 November 1997 relating to the protection of estates left in the Hong Kong Special Administrative Region by deceased Canadian nationals.

CONSULAR CONVENTIONS (APPLICATION OF SECTION 3) ORDER

(Made under section 5 of the Consular Conventions Ordinance (Cap. 267) after consultation with the Executive Council)

1. **Commencement**

This Order shall come into operation on 14 November 2003.

2. **Application of section 3 of the Ordinance**

It is directed that section 3 of the Ordinance shall apply to any foreign State specified in the Schedule.

SCHEDULE

[s. 1]

FOREIGN STATE

1. Canada

Chief Executive

2003

Explanatory Note

This Order provides for the application of section 3 of the Consular Conventions Ordinance (Cap. 267) to consular officers of the Consulate General of Canada and gives effect to the provision in the Consular Agreement between the Government of the People's Republic of China and the Government of Canada signed on 28 November 1997 relating to the protection of interests of Canadian nationals who have a right to property left in the Hong Kong Special Administrative Region by a deceased.

INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES)(OFFICE OF THE COMMISSION OF THE EUROPEAN COMMUNITIES) ORDER

(Made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558))

1. Commencement

This Order shall come into operation on 14 November 2003.

2. Interpretation

In this Order –

“Commission” (委員會) means the Commission of the European Communities;

“Convention” (《公約》) means the Vienna Convention on Consular Relations done at Vienna on 24 April 1963;

“European Communities” (歐洲共同體) means the European Coal and Steel Community, the European Community and the European Atomic Energy Community;

“Office Agreement” (《辦事處協議》) means the agreement concluded by exchange of letters in June 1997 between the Government of the People's Republic of China and the Commission concerning the maintenance of the Office of the Commission of the European Communities in Hong Kong from 1 July 1997.

3. Provisions of Office Agreement

(1) The provisions set out in the Schedule (being Articles of the Office Agreement) shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2) to (4).

(2) In those Articles –

“Head” (主任) shall be construed as meaning the person charged with the duty of acting as the Head of the Office;

“Office” (辦事處) shall be construed as meaning the Office of the Commission of the European Communities in Hong Kong;

“permanent resident of the Hong Kong Special Administrative Region” (香港特別行政區永久性居民) shall be construed as meaning a person who belongs to a class or description of persons specified in Schedule 1 to the Immigration Ordinance (Cap. 115).

(3) The reference to any other law of the People’s Republic of China in Article 3 of the Office Agreement shall be construed as a reference to any national law of the People’s Republic of China listed in Annex III to the Basic Law and applied in Hong Kong by way of promulgation or legislation in accordance with Article 18 of the Basic Law.

(4) The reference to the members of the Office in Article 4 of the Office Agreement shall be construed as a reference to –

- (a) the officers of the Office (including the Head) entrusted in that capacity with the exercise of the functions of the Office;
- (b) the persons employed in the administrative or technical service of the Office; and
- (c) the persons employed in the domestic service of the Office.

(5) The reference to the provisions of the Convention in Article 4 of the Office Agreement shall be construed as a reference to paragraph 3 of Article 15, the Articles in Chapter II and Article 71 of the Convention as set out in the Schedule to the Consular Relations Ordinance (Cap. 557).

4. Authorized refund of duties paid on hydrocarbon oils

(1) The Chief Executive may authorize the Commissioner of Customs and Excise to make such arrangements as the Chief Executive thinks fit for

securing the refund of duties imposed on hydrocarbon oils under the Dutiable Commodities Ordinance (Cap. 109) where such hydrocarbon oils are –

- (a) imported into Hong Kong; and
- (b) used for such purpose that, had they been imported for that use, exemption from customs duty would have been required to be granted under Article 50 of the Convention as set out in the Schedule to the Consular Relations Ordinance (Cap. 557) as read with Article 4 of the Office Agreement.

(2) Any arrangements made under this section may impose conditions subject to which any refund shall be made.

(3) Any amount of money refunded under arrangements made under this section shall be paid from the general revenue.

SCHEDULE

[s. 3]

PROVISIONS OF OFFICE AGREEMENT HAVING THE FORCE OF LAW IN HONG KONG

3. The European Communities – the European Coal and Steel Community, the European Community and the European Atomic Energy Community – shall each have legal personality in the Hong Kong Special Administrative Region of the People's Republic of China.

Accordingly, the European Communities shall have the capacity to conclude contracts, to acquire and dispose of immovable and movable property as necessary for the effective fulfillment of their duties, in accordance with the procedural and administrative requirements imposed by the law of the Hong Kong Special Administrative Region of the People's Republic of China and by

any other law of the People's Republic of China, and to conduct legal proceedings, and shall be represented for that purpose by the Commission.

4. The Office, its Head and members accredited by the Commission of the European Communities 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, as well as the members of their families forming part of their respective households, shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963.

They will, consistent with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the other national laws of China applicable in the Hong Kong Special Administrative Region in accordance with the Basic Law, enjoy such rights and consular privileges and immunities as are necessary for the effective fulfillment of their duties.

5. The laissez-passer issued by the European Communities to officials and other servants of its institutions shall be recognized as a valid travel document.

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

The Government of the People's Republic of China and the Commission of the European Communities concluded an agreement in June 1997 concerning the maintenance by the Commission of its Office in Hong Kong from 1 July 1997. This Order gives effect to the privileges and immunities accorded to the Office and its Head and members in Hong Kong under the agreement.

REGISTRATION OF PERSONS (AMENDMENT) REGULATION 2003

(Made by the Chief Executive in Council under section 7 of the
Registration of Persons Ordinance (Cap. 177))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Chief Secretary for Administration by notice published in the Gazette.

2. Interpretation

Regulation 2(1) of the Registration of Persons Regulations (Cap. 177 sub. leg. A) is amended by adding -

"Head of the EC Office" (歐共體辦事處主任), and "a member of the EC Office" (歐共體辦事處人員), mean respectively the Head, and a member, of the Office of the Commission of the European Communities in Hong Kong within the meaning of subsection (2) or (4), as the case may be, of section 3 of the International Organizations (Privileges and Immunities)(Office of the Commission of the European Communities) Order (L.N. of 2003) who -

(a) is not engaged in private occupation for gain in Hong Kong; and

(b) is a national of a Member State of the European Communities but is not a permanent resident of the Hong Kong Special Administrative Region;".

3. Registration, issue and renewal requirements

Regulation 4(4) is repealed and the following substituted -

"(4) Notwithstanding subregulations (1) and (2) -

(a) an applicant who is a consul may furnish, and the registration officer may accept, suitable passport size photographs -

(i) of the consul and of the spouse and dependent children of the age of 11 years and above of the consul; and

(ii) of the consular staff of the consul and of their spouses and their dependent children of the age of 11 years and above; and

(b) an applicant who is the Head of the EC Office may furnish, and the registration officer may accept, suitable passport size photographs -

(i) of the Head of the EC Office and of the spouse and dependent children of the age of 11 years and above of the Head of the EC Office; and

(ii) of any member of the EC Office and of the spouse and dependent children of the age of 11 years and above of such member,

and the recording of their fingerprints shall not be required."

4. Delivery of identity cards

Regulation 5(1)(b) is amended by repealing everything after "respect" and substituting -

"of -

- (i) consuls, consular staff and their spouses and dependent children; and
- (ii) the Head and members of the EC Office and their spouses and dependent children."

5. Exemptions

Regulation 25(f) is repealed and the following substituted -

"(f) children under 11 years of age of consuls, consular staff and the Head and members of the EC Office;".

6. Fees

Schedule 2 is amended, in item 2, by adding "the Head and members of the EC Office," after "staff,".

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Regulation amends the Registration of Persons Regulations (Cap. 177 sub. leg. A) so that the Head and members of the Office of the Commission of the European Communities in Hong Kong, and members of their families, may be issued with identity cards in the same manner as identity cards are issued to consuls, their staff, and family members of the consuls and staff.

Extracts of the PRC/Canada Agreement

Article 10 Functions Concerning Estates

3. A consular officer is entitled to take appropriate measures to protect and conserve the estate left in the receiving State by a deceased national of the sending State. To this effect, a consular officer may approach the competent authorities of the receiving State with a view to protecting the interest of a national of the sending State who is not a permanent resident of the receiving State, unless that national is otherwise represented. A consular post may request the competent authorities of the receiving State to permit the presence of a consular officer at the inventorying and sealing and, in general, may also take an interest in the proceedings.
4. A consular officer is entitled to safeguard the interests of a national of the sending State who has, or claims to have, a right to property left in the receiving State by a deceased, irrespective of the latter's nationality, and if that national is not in the receiving State or does not have a representative there.
5. A consular officer is entitled to receive for transmission to a national of the sending State who is not a permanent resident of the receiving State any money or other property in the receiving State to which that national is entitled as a consequence of the death of another person, including shares in an estate, payment made pursuant to employee's compensation law, pension and social benefits in general and proceeds of insurance policies, unless the court, agency or person making distribution directs that transmission be effected in a different manner. The court, agency or person making distribution may require that a consular officer comply with conditions laid down with regard to:
 - (a) presenting a power of attorney or other authorization from that national;
 - (b) providing reasonable evidence of the receipt of such money or other property by that national; and
 - (c) returning the money or other property in the event the consular officer is unable to provide that evidence.

Extracts of the PRC/EC Agreement

Articles 3, 4 and 5

3. The European Communities – the European Coal and Steel Community, the European Community and the European Atomic Energy Community – shall each have legal personality in the Hong Kong Special Administrative Region of the People’s Republic of China.

Accordingly, the European Communities shall have the capacity to conclude contracts, to acquire and dispose of immovable and movable property as necessary for the effective fulfilment of their duties, in accordance with the procedural and administrative requirements imposed by the law of the Hong Kong Special Administrative Region of the People’s Republic of China and by any other law of the People’s Republic of China, and to conduct legal proceedings, and shall be represented for that purpose by the Commission.

4. The Office, its Head and members accredited by the Commission of the European Communities 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, as well as members of their families forming part of their respective households, shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963.

They will, consistent with the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and the other national laws of China applicable in the Hong Kong Special Administrative Region in accordance with the Basic Law, enjoy such rights and consular privileges and immunities as are necessary for the effective fulfilment of their duties.

5. The laissez-passer issued by the European Communities to officials and other servants of its institutions shall be recognized as a valid travel document.

(Date of download: 27/05/2003)

Chapter:	177A	REGISTRATION OF PERSONS REGULATIONS	Gazette Number	Version Date
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Regulation:	2	Interpretation	9 of 2003	12/05/2003
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- (1) In these regulations, unless the context otherwise requires-
- "consul" (領事) means a consul de carriere officially appointed as such by the government of the appropriate foreign state, who is not engaged in private occupation for gain in Hong Kong and who at the time of his appointment was not ordinarily resident in Hong Kong; (L.N. 158 of 1973; 23 of 1998 s. 2)
- "consular staff" (領事館職員) means those members of the staff of a consul who have been appointed to their positions by the government of the appropriate foreign state, who are not engaged in private occupation for gain in Hong Kong and who at the time of their appointment were not ordinarily resident in Hong Kong; (L.N. 158 of 1973; 23 of 1998 s. 2)
- "excluded person" (被排除的人) means a person referred to in regulation 25A; (L.N. 178 of 1987)
- "exempt person" (獲豁免的人) means a person referred to in regulation 25; (L.N. 178 of 1987)
- "portable identity card reader" (便攜式身分證閱讀器) means an instrument which-
- (a) can reproduce, from the data stored in the chip embodied in an identity card, any information specified in Schedule 1 but not other information;
 - (b) can scan a person's fingerprint for the purposes of matching with the template referred to in paragraph 1 of Schedule 1 and stored in the chip embodied in an identity card;
 - (c) cannot keep record of any fingerprint so scanned; and
 - (d) is of a type approved under regulation 11B; (9 of 2003 s. 8)
- "registration office" (人事登記處辦事處) means an office established or set up under section 2(3) of the Ordinance;
- "replacement identity card" (補領身分證) means a replacement identity card issued under regulation 13 or 14 in the place of an identity card; (L.N. 178 of 1987)
- "travel document" (旅行證件) has the meaning assigned to it by section 2(1) of the Immigration Ordinance (Cap 115). (L.N. 204 of 1979)
- (2) Save where the contrary expressly appears, any order or direction required to be made or given by these regulations may be given in writing or verbally.

Regulation:	4	Registration, issue and renewal requirements	9 of 2003	12/05/2003
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- (1) Subject to subregulation (1D), every person who applies for registration under regulation 3 or for an identity card under any of these regulations shall-
- (a) submit to all such steps as may be reasonably necessary for-
 - (i) the taking of photographs of himself in accordance with any directions given by a registration officer;
 - (ii) the taking and recording of-
 - (A) his left and right thumb-prints;
 - (B) where it is only possible to take one thumb-print from him, his only thumb-print and one other fingerprint;
 - (C) where it is not possible to take any thumb-print from him, his

- fingerprints of 2 other fingers; (9 of 2003 s. 9)
- (b) furnish to a registration officer, in such form as the registration officer may require, particulars of- (L.N. 382 of 1989)
- (i) the full personal name and surname of the applicant;
 - (ii) his residential and business addresses in Hong Kong, if any, and the address to which correspondence should be directed;
 - (iii) the nationality which he claims;
 - (iv) his place of birth;
 - (v) the date (if known) or the year of his birth and the number of his birth certificate or adoption certificate (if applicable);
 - (vi) his sex;
 - (vii) (Repealed 9 of 2003 s. 9)
 - (viii) whether he is married or unmarried and, if he is married, the full personal name and surname and the number of the identity card (if any) of his spouse;
 - (ix) (Repealed 9 of 2003 s. 9)
 - (x) his profession, occupation, trade or employment;
 - (xi) any-
 - (A) travel document bearing an endorsement to the effect that he is authorized under the Immigration Ordinance (Cap 115) to remain in Hong Kong; or
 - (B) document issued under that Ordinance authorizing him to remain in Hong Kong,
- held by him; (9 of 2003 s. 9)
- (xia) (where the applicant does not have a right of abode in Hong Kong) the conditions of stay (including a limit of stay) imposed in relation to him under section 11 of the Immigration Ordinance (Cap 115); (9 of 2003 s. 9)
 - (xii) such further particulars relating to any of the particulars furnished under this paragraph as the registration officer may consider necessary, and shall acknowledge the correctness of the contents of the particulars by signing in such place in the form as may be indicated. (L.N. 204 of 1979; L.N. 86 of 1983; L.N. 65 of 1986; L.N. 178 of 1987)

(1A) For the purposes of subregulation (1)(b), but subject to subregulations (1B) and (1C), the full personal name and surname of an applicant shall be his full personal name and surname entered-

- (a) on his birth certificate or adoption certificate (if applicable), in the case of an applicant born in Hong Kong;
- (b) on his travel document, in the case of an applicant who has landed in Hong Kong lawfully within the meaning of the Immigration Ordinance (Cap 115);
- (c) on the document issued under the Immigration Ordinance (Cap 115) authorizing him to remain in Hong Kong, in the case of an applicant who has landed in Hong Kong unlawfully within the meaning of the Immigration Ordinance (Cap 115);
- (d) on his identity card (if any) held by him; and
- (e) on his certificate of naturalization, in the case of a person who has been naturalized in Hong Kong as a Chinese national, (71 of 1999 s. 3)

except that the Commissioner may, if he is satisfied that the applicant is commonly known by another name, accept that name in respect of the applicant. (L.N. 204 of 1979; L.N. 178 of 1987)

- (1B)(a) When applying for an identity card under any of these regulations-
- (i) a married woman who was registered under her maiden name may, subject to production to the registration officer of her marriage certificate, apply in writing for her identity card to be issued or renewed in her married name; and
 - (ii) a divorced woman, or a woman whose marriage has been declared null and void, who was registered under her married name may, subject to production to the registration officer of a copy of the decree absolute or the decree of

nullity, as the case may be, apply in writing for her identity card to be issued or renewed in her maiden name.

- (b) The registration officer may grant or refuse an application made under paragraph (a) as he thinks fit.
- (c) In this subregulation the expressions "null and void" (作廢及無效), "decree absolute" (絕對判令) and "decree of nullity" (婚姻無效判令) have the same meaning as in the Matrimonial Causes Ordinance (Cap 179). (L.N. 86 of 1983)

(1C) Notwithstanding that an applicant has furnished particulars of his personal name and surname under this regulation, any identity card that is issued to him may-

- (a) where the applicant has satisfied the Commissioner under subregulation (1A) that he is commonly known by another name, bear that name;
- (b) bear initials in place of his personal name; and
- (c) where the personal name and surname are in Chinese, bear their first 6 characters only. (L.N. 178 of 1987)

(1D) A registration officer may waive-

- (a) subject to regulation 3A(2), in the case of an applicant who the registration officer is satisfied lives outside Hong Kong, all or any of the requirements of subregulation (1);
- (aa) in the case of an applicant who is aged, blind or infirm, and who satisfies a registration officer that compliance with the Ordinance and these regulations will injure his health or the health of others, all or any of the requirements of subregulation (1); (L.N. 260 of 1996)
- (b) in the case of a person under 11 years of age applying for a permanent identity card, the requirement for the applicant to submit to the steps specified in subregulation (1)(a);
- (c) the requirement for an applicant to furnish all or any of the particulars specified in subregulation (1)(b), if the registration officer considers that he already has in his possession sufficient details of those particulars. (L.N. 178 of 1987)

(2) If an applicant is unable to write, or if he so wishes, he shall dictate the particulars under subregulation (1)(b) to a registration officer or to any person authorized in writing by the Commissioner for the purpose, and, upon completion, the applicant shall acknowledge the correctness of the particulars by affixing his signature, fingerprint or mark in the presence of the registration officer or the person authorized as aforesaid in such place in the form as may be indicated. (L.N. 178 of 1987)

(3) (Repealed L.N. 178 of 1987)

(4) Notwithstanding subregulations (1) and (2), an applicant who is a consul may furnish, and the registration officer may accept, suitable passport size photographs of the consul, the spouse and dependent children of the age of 11 years and above of the consul and of the consular staff of the consul, their spouses and their dependent children of the age of 11 years and above, and the recording of their fingerprints shall not be required. (L.N. 33 of 1980; L.N. 178 of 1987; 9 of 2003 s. 9)

(L.N. 158 of 1973)

Regulation:	5	Delivery of identity cards	71 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) Subject to subregulation (1A), after due compliance by any applicant with the provisions of regulation 4 and the payment by him to the registration officer of the appropriate fee (if any) prescribed in Schedule 2, the registration officer shall cause to be prepared for collection by such applicant an identity card- (G.N.A. 55 of 1961; L.N. 158 of 1973; L.N. 204 of 1979;

L.N. 86 of 1983)

- (a) in a form approved by the Chief Executive in Council containing such of the information specified in Schedule 1 as is appropriate to an identity card of the type for which the applicant is eligible; or
- (b) in a form approved by the Chief Executive in respect of consuls, consular staff and their spouses and dependent children. (71 of 1999 s. 3)

(1A) The registration officer shall not cause an identity card to be prepared in the case of an applicant who-

- (a) has landed in Hong Kong unlawfully within the meaning of the Immigration Ordinance (Cap 115), unless the applicant is in possession of a document issued under that Ordinance authorizing him to remain in Hong Kong; or
- (b) is in Hong Kong in breach of a limit of stay imposed upon the applicant under that Ordinance. (L.N. 298 of 1981)

(1B) An identity card prepared under subregulation (1)-

- (a) shall be collected by the applicant within 120 days after the date of the application or such other period as the registration officer may specify by notice in writing served upon the applicant; or
- (b) may, in the discretion of the registration officer, after the expiry of the period provided for its collection under paragraph (a), be sent by post to the applicant.

(1C) At the time of collection of an identity card prepared under subregulation (1) the applicant shall surrender his perforated identity card (if any) to the registration officer and if he fails to do so the registration officer may refuse to deliver the identity card prepared under subregulation (1).

(2) Without prejudice to subregulation (1B)(b), if any identity card is not collected by the person to whom it refers from the office of the Commissioner or from such other place as the registration officer may specify by notice in writing served upon such person, within 30 days after the expiration of the period of 120 days referred to in subregulation (1B)(a) or such other period as the registration officer may have specified by notice in writing served upon such person, such identity card may be destroyed and such person shall be deemed not to have applied for registration under regulation 3 or for the issue of an identity card under any of these regulations. (G.N.A. 55 of 1961; L.N. 187 of 1974; L.N. 204 of 1979; L.N. 86 of 1983)

(3) (Repealed L.N. 178 of 1987)

(4) Notwithstanding that an applicant has committed an offence under these regulations or under an order by the Secretary for Security under the Ordinance by failing to apply for an identity card within the time prescribed, without prejudice to any prosecution for such an offence, the registration officer may, if he thinks fit, prepare an identity card for collection by such applicant. (L.N. 86 of 1983)

(L.N. 178 of 1987)

Regulation:	25	Exemptions	L.N. 338 of 1998	23/10/1998
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Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

None of the persons mentioned hereunder so long as he retains the status and qualifications hereinafter mentioned shall be required to register or apply for the issue of an identity card or for the renewal of an identity card under the Ordinance and these regulations- (L.N. 86 of 1983)

- (a) (Repealed 71 of 1999 s. 3)
- (b) persons-
 - (i) serving in Her Majesty's regular naval, military or air forces, other than those locally domiciled, in possession of the official identity card or document of identity normally issued to them, and their wives, and their sons and

- daughters under 18 years of age; or
- (ii) employed by Her Majesty's Government in the United Kingdom, other than those locally domiciled, their wives and their sons and daughters under 18 years of age; (G.N.A. 55 of 1961; L.N. 158 of 1973)
- (c) (Repealed L.N. 218 of 1983)
- (d) any persons who-
 - (i) is a bona fide traveller in transit through Hong Kong;
 - (ii) satisfies a registration officer, or in respect of whom a registration officer is satisfied, that he does not intend to remain in Hong Kong for more than 180 days or such longer period as a registration officer may approve; or (L.N. 178 of 1987)
 - (iii) has been granted permission to remain in Hong Kong by the Director of Immigration for a period of not more than 180 days, and is in possession of a valid travel document bearing the appropriate visa issued by a competent authority or of an official document of identity indicating that he normally lives outside Hong Kong; (L.N. 204 of 1979)
- (e) the aged, the blind and the infirm who satisfy a registration officer that compliance with the Ordinance and these regulations will injure their health or the health of others; (L.N. 158 of 1973; L. N. 178 of 1987)
- (f) children of consuls and consular staff who are under 11 years of age; (L.N. 158 of 1973; L.N. 382 of 1989)
- (g) children under 11 years of age: (L.N. 158 of 1973)

Provided that any of the above-mentioned persons may, if they so desire and if the Commissioner allows, or if they are applicants for Hong Kong Special Administrative Region Passports or certificates of identity and have the right of abode in Hong Kong, or if they are 11 years of age or above and are the holders of permanent identity cards that were issued on applications made from outside Hong Kong, register, apply for the issue of identity cards or for the renewal of identity cards and be issued with identity cards under the Ordinance and these regulations. (55 of 1971 Sch.; L.N. 86 of 1983; L.N. 178 of 1987; L.N. 382 of 1989; 127 of 1997 s. 17; 28 of 1998 s. 2)

Schedule:	2	FEES	9 of 2003	12/05/2003
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[section 10; regulations 5, 13, 14]
(9 of 2003 s. 21)

Item	Particular	Fee \$
1.	Identity card prepared under regulation 5(1)(a) in respect of an application under regulation 3, 3A, 3B, 6, 7A or 7B	Nil
2.	Identity card prepared under regulation 5(1)(b) in respect of consuls, consular staff, etc	Nil
3.	Lost or destroyed identity card replaced under regulation 13	395
4.	Damaged or defaced identity card replaced under regulation 13	395
5.	Identity card requiring alteration replaced under regulation 14(1)(a)	395
6.	Identity card replaced by permanent identity card under regulation 14(1)(b)	Nil
7.	Permanent identity card issued on an application from outside Hong Kong replaced by permanent identity card under regulation 14(1)(c)	Nil
8.	Certificate or a certified copy furnished under section 10 of the Ordinance (9 of 2003 s. 21)	395

(L.N. 70 of 1991; L.N. 206 of 1993; L.N. 339 of 1994; L.N. 195 of 1995; L.N. 229 of 1996;
L.N. 433 of 1997)