

LEGISLATIVE COUNCIL BRIEF

Probate and Administration Ordinance
(Chapter 10)

PROBATE AND ADMINISTRATION ORDINANCE (AMENDMENT OF SCHEDULE 2) ORDER 2003

INTRODUCTION

At the meeting of the Executive Council on 18 February 2003, the Council ADVISED and the Chief Executive ORDERED that the Probate and Administration Ordinance (Amendment of Schedule 2) Order 2003, at Annex A, should be made under section 49A(1) of the Probate and Administration Ordinance, to empower the High Court to reseal grants of probate and letters of administration granted by the court of probate in New Zealand.

JUSTIFICATIONS

2. Under the Probate and Administration Ordinance (Cap. 10) (“the Ordinance”), a successor and personal representative of the estate of a deceased person has to obtain a grant of probate or letter of administration sealed by a court in Hong Kong Special Administrative Region (“HKSAR”) before he could acquire the property or administer the estate of the deceased. If the property is situated in overseas jurisdictions where a grant of probate or letter of administration sealed by the HKSAR court is not recognised, the successor or personal representative would need to apply for a grant of probate or letter of administration afresh in the jurisdiction concerned. Similarly, a foreigner who wishes to acquire the property or administer the estate of the deceased which is situated in Hong Kong has to apply for a grant of probate or letter of administration afresh, unless a grant from an overseas jurisdiction is resealed in the court of the HKSAR under section 49 of the Ordinance.

3. To relieve the successors or personal representatives of the inconvenience, it is desirable to have as many as possible overseas courts to recognise and enforce the grants of

probate and letters of administration made by the HKSAR court, and vice versa. In this regard, section 49A of the Ordinance provides that grants of probate and letters of administration will be recognised on a reciprocal basis between designated overseas countries or places and the HKSAR. Under section 49A(1), the Chief Executive in Council may, by order in the Gazette, add to Schedule 2 of the Ordinance the name of a foreign country or place to enable the grants of probate and letters of administration of that country or place to be recognised in the HKSAR, if it is satisfied that the condition in section 49A(2) is complied with. For instance, it may be so satisfied if an overseas jurisdiction unilaterally recognises grants of probate and letters of administration made by the HKSAR courts, or, if a reciprocal arrangement is made between the HKSAR and an overseas jurisdiction under Article 96 of the Basic Law.

4. With effect from 1 July 2002, by the Administration (Declared Country) Order 2002 of New Zealand, section 71 of the New Zealand Administration Act 1969 became applicable to the HKSAR, enabling a grant of probate or letter of administration made by a court in the HKSAR to be resealed in New Zealand.

5. New Zealand is not designated in Schedule 2 pursuant to section 49A of the Ordinance. In order to enable the HKSAR courts to recognise the grants of probate and letters of administration made by New Zealand courts, it is necessary for the Chief Executive in Council to make an order to add New Zealand to Schedule 2. In fact, a similar exercise was conducted in April 2000 in respect of South Australia.

OTHER OPTIONS

6. There is no feasible option other than making an order under section 49A(1) of the Ordinance to enable grants of probate and letters of administration made by New Zealand courts to be resealed in the HKSAR.

THE ORDER

7. The Order amends Schedule 2 to the Ordinance to provide for the inclusion of New Zealand as a designated place for the purposes of sections 48 and 49A of the Ordinance.

B

The existing Schedule 2 is at Annex B.

LEGISLATIVE TIMETABLE

8. The legislative timetable will be –
- | | |
|------------------------------------|------------------|
| Publication in the Gazette | 28 February 2003 |
| Tabling at the Legislative Council | 5 March 2003 |

IMPLICATIONS OF THE PROPOSAL

C 9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. Its implications under the Basic Law are set out in Annex C. The amendment will not affect the current binding effect of the Ordinance. It has no financial, civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

10. As this is a technical exercise, public consultation on the Order is not considered necessary.

PUBLICITY

11. A spokesman will be available to handle media enquiries.

BACKGROUND

12. Before 1 July 1997, under section 49 of the Ordinance, a grant of probate or letter of administration made by a court in a Commonwealth country or a British court was treated as if it was made by a Hong Kong court. This treatment was not accorded to other countries. According to section 2A(2)(b) of the Interpretation and General Clause Ordinance (Cap. 1), “provisions conferring privileges on the United Kingdom or other Commonwealth countries or territories, other than provisions giving effect to reciprocal arrangements between Hong Kong and the United Kingdom or other Commonwealth countries or territories, shall have no further effect”. As a result, New Zealand was removed from Schedule 2 of the Ordinance in an adaptation of laws exercise in 1999. Section 49A was added to the Ordinance to provide that the sealing of grants would be recognised on a reciprocal basis between overseas countries or places and the HKSAR. If an overseas jurisdiction recognises grants of probate and letters of administration made by the HKSAR courts, the Chief Executive in Council may, by order in the Gazette, add to Schedule 2 of the Ordinance the name of the country or place that could fulfil the conditions set out in section 49A(2). Following the reunification, seven

countries or places have been included in Schedule 2 to enable the reciprocal recognition of grants or probate and letters of administration.

OTHERS

13. For enquiries, please contact Mr. Andy Lam, Assistant Secretary (Administration) at 2810 2783.

Administration Wing

Chief Secretary for Administration's Office

26 February 2003

Probate and Administration Ordinance (Cap. 10)

PROBATE AND ADMINISTRATION ORDINANCE

(AMENDMENT OF SCHEDULE 2) ORDER 2003: ANNEXES

Annex A - Probate and Administration Ordinance (Amendment of Schedule 2)
Order 2003

Annex B - Schedule 2 to the Probate and Administration Ordinance

Annex C - Basic Law Implications

**PROBATE AND ADMINISTRATION ORDINANCE
(AMENDMENT OF SCHEDULE 2) ORDER 2003**

(Made by the Chief Executive in Council under section 49A(1)
of the Probate and Administration Ordinance (Cap. 10)
upon the Chief Executive in Council being satisfied
that the condition in section 49A(2) is complied
with in respect of the country added)

1. Designated country or place

Schedule 2 to the Probate and Administration Ordinance (Cap. 10)
is amended by adding -

"New Zealand".

Clerk to the Executive Council

COUNCIL CHAMBER

2003

Explanatory Note

This Order amends Schedule 2 to the Probate and Administration Ordinance (Cap. 10) and the effect of the amendment is to empower the High Court to reseal grants of probate and letters of administration granted by the court of probate in New Zealand.

Annex B

Chapter:	10	Title:	PROBATE AND ADMINISTRATION ORDINANCE	Gazette Number:	L.N. 98 of 2000
Schedule:	2	Heading:	DESIGNATED COUNTRY OR PLACE	Version Date:	20/04/2000

[sections 48 & 49A]

The Australian States of Tasmania, Victoria and South Australia and the Northern Territory of Australia
(Replaced L.N. 98 of 2000)

Singapore

Sri Lanka

United Kingdom

(Schedule 2 added 67 of 1999 s. 3)

BASIC LAW IMPLICATIONS

Article 96 of the Basic Law provides that, with the assistance or authorisation of the Central People’s Government (“CPG”), the Government of the HKSAR may make appropriate arrangements with foreign states for reciprocal juridical assistance. Since the legislative measure taken by New Zealand was a unilateral act and did not amount to an arrangement between the HKSAR and New Zealand, CPG’s authorisation under Article 96 of the Basic Law is not required.