

立法會
Legislative Council

LC Paper No. LS65/08-09

**Paper for the House Committee Meeting
on 8 May 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 30 April 2009**

Date of tabling in LegCo : 6 May 2009

Amendment to be made by : 3 June 2009 (or 24 June 2009 if extended by resolution)

PART I CONSULAR MATTERS

Consular Relations Ordinance (Cap. 557)

Consular Relations (Additional Privileges and Immunities) (India) Order (L.N. 73)

Consular Relations (Additional Privileges and Immunities) (Italy) Order (L.N. 76)

Consular Relations (Additional Privileges and Immunities) (Russia) Order (L.N. 79)

The Orders in L.N. 73, 76 and 79 are made under section 4(1) of the Consular Relations Ordinance (Cap. 557) by the Chief Executive in Council to declare that the additional privileges and immunities accorded to the consular posts and personnel of the Republic of India, the Republic of Italy and the Russian Federation, or to persons connected with the consular posts, or to both, under the relevant provisions of the respective bilateral consular agreements, shall have the force of law in the HKSAR. These additional privileges and immunities include, inter alia -

- (a) immunity from any form of requisition of consular premises, their furnishings and the property and means of transport;
- (b) in the event of the death of a member of a consular post or a member of his family, the movable property of the deceased shall be exempt from estate duties and all duties concerned; and
- (c) exemption from dues and taxes accorded to consular facilities and means of transport owned, leased or possessed by other lawful means exclusively for official purposes, as well as their acquisition, possession or maintenance.

2. Clarification is being sought from the Administration in respect of the Orders in L.N. 73, 76 and 79. A further report will be provided if necessary.

Administration of Estates by Consular Officers Ordinance (Cap. 191)

Administration of Estates by Consular Officers Ordinance (Variation of Schedule: India) Order (L.N. 74)

Administration of Estates by Consular Officers Ordinance (Variation of Schedule: New Zealand) Order (L.N. 77)

Administration of Estates by Consular Officers Ordinance (Variation of Schedule: Russia) Order (L.N. 80)

3. The Orders in L.N. 74, 77 and 80 are 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.

4. The Orders seek to add the Republic of India, New Zealand and the Russian Federation respectively to the Schedule to the Ordinance so that section 2 of the Ordinance shall apply to these States. Section 2 empowers consular officers of the States mentioned in the Schedule to administer the estates of a subject or citizen who dies within Hong Kong, or dies outside Hong Kong, leaving property within Hong Kong and no person who is rightfully entitled to administer the estate is present in Hong Kong.

5. Clarification is being sought from the Administration in respect of the form of the Orders in L.N. 74, 77 and 80. A further report will be provided if necessary.

Consular Conventions Ordinance (Cap. 267)

Consular Conventions (Application of Section 3) (India) Order (L.N. 75)

Consular Conventions (Application of Section 3) (New Zealand) Order (L.N. 78)

Consular Conventions (Application of Section 3) (Russia) Order (L.N. 81)

6. The Orders in L.N. 75, 78 and 81 are made by the Chief Executive under section 5 of the Consular Conventions Ordinance (Cap. 267) (the Ordinance) after consultation with the Executive Council.

7. The Orders respectively direct that section 3 of the Ordinance shall apply to consular officers of the Republic of India, New Zealand and the Russian Federation. Section 3 confers on the consular officers powers to apply for grant of representation on behalf of their nationals not resident in Hong Kong to the estate of a deceased in Hong Kong and to receive money or other property in Hong Kong forming part of the estate of a deceased.

8. Members may refer to the LegCo Brief issued by the Administration Wing of the Chief Secretary for Administration's Office on 28 April 2009 (File Ref: SF(1), SF(2) & SF(4) to PROT CR 6/1126/98) for background and further information.

9. No difficulties relating to the legal and drafting aspects of the Orders in L.N. 75, 78 and 81 have been identified.

10. According to the Administration, the Consulates General concerned have been consulted on the draft of the relevant Orders. The Administration issued a paper entitled "Subsidiary Legislation relating to Privileges and Immunities Conferred on Consular Posts" to the Panel on Administration of Justice and Legal Services in February 2009 for Members' information.

11. The Orders in L.N. 73 to L.N. 81 will come into operation on 17 July 2009.

PART II AVOIDANCE OF DOUBLE TAXATION

Inland Revenue Ordinance (Cap. 112)

Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with Respect to Taxes on Income) (Socialist Republic of Vietnam) Order (L.N. 82)

12. The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Socialist Republic of Vietnam signed an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (Agreement) together with a protocol to the Agreement (Protocol) on 16 December 2008. This Order, made by the Chief Executive in Council under section 49 of the Inland Revenue Ordinance (Cap. 112) (the Ordinance), specifies the arrangements in Articles 1 to 29 of the Agreement and Paragraphs 1 to 3 of the Protocol as double taxation relief arrangements under section 49 of the Ordinance and declares that it is expedient that those arrangements should have effect. The effect of such a declaration is that the arrangements have effect in relation to tax under the Ordinance notwithstanding anything in any enactment.

13. This Order will come into operation on 25 June 2009.

14. Members may refer to the LegCo Brief (File Ref: FIN CR 32/10/2041/46) issued by the Financial Services and the Treasury Bureau on 29 April 2009 for background information.

15. The Panel on Financial Affairs has not been consulted on this Order.

PART III ELECTRONIC TRANSACTIONS

Electronic Transactions Ordinance (Cap. 553)

Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2009 (L.N. 83)

Electronic Transactions (Exclusion) (Amendment) Order 2009 (L.N. 84)

16. L.N. 83 is made by the Secretary for Commerce and Economic Development under section 50 of the Electronic Transactions Ordinance (Cap. 553) (the Ordinance). It adds section 12(3)(a) and (b) of the Census and Statistics Ordinance (Cap. 316) to Schedule 3 to the Ordinance. The effect is that a document

permitted to be served on a person by personal service or post under that provision may be served in the form of an electronic record. The electronic record must be served to an information system designated by the person, and the information in it must be accessible so as to be usable for subsequent reference.

17. Section 5 of the Ordinance provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records satisfies that rule of law if the information contained in the electronic record is accessible so as to be usable for subsequent reference. The statutory provisions excluded from the application of section 5 of the Ordinance are listed in Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (the principal Order). L.N. 84, made by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) under section 11(1) of the Ordinance, deletes sections 10(1)(a), 12(1) and (2) of the Environmental Impact Assessment Ordinance (Cap. 499) from Schedule 1 to the principal Order. Those provisions will no longer be so excluded and electronic records can be used for the purposes of section 5 of the Ordinance.

18. L.N. 83 and L.N. 84 will come into operation on 24 June 2009.

19. Members may refer to the LegCo Brief (File Ref: GCIO/A 107/4/3 Pt. 21) issued by the Office of the Government Chief Information Officer, Commerce and Economic Development Bureau in April 2009 for background information.

20. The Panel on Information Technology and Broadcasting and the Panel on Commerce and Industry have not been consulted on these two Orders.

PART IV PUBLIC CARGO WORKING AREA

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

Port Control (Public Cargo Working Area) Order 2009 (L.N. 85)

21. This Order is made by the Secretary for Transport and Housing under section 3(1) of the Port Control (Cargo Working Areas) Ordinance (Cap. 81). It declares new boundaries for the Kwun Tong public cargo working area and repeals an earlier Order relating to that public cargo working area.

22. This Order will come into operation on 25 June 2009.

23. Members may refer to the LegCo Brief (File Ref: MA 40/4) issued by the Transport and Housing Bureau on 29 April 2009 for background information.

24. At its meeting on 24 November 2008, the Administration briefed the Panel on Economic Development on the re-allocation of berths in Public Cargo Working Areas. Members noted that the berths at the Kwun Tong public cargo working area had been re-aligned when the new Berth Licence Agreements were awarded to the successful tenderers in August 2008, and a 200-metre contiguous

seafrontage had been made available for conversion into a promenade. They had raised no objection.

PART V COMMENCEMENT NOTICES

Product Eco-responsibility Ordinance (32 of 2008)

Product Eco-responsibility Ordinance (Commencement) Notice (L.N. 86)

Product Eco-responsibility (Plastic Shopping Bags) Regulation (L.N. 70 of 2009)

Product Eco-responsibility (Plastic Shopping Bags) Regulation (Commencement) Notice (L.N. 87)

25. L.N. 86, made by the Acting Secretary for the Environment under section 1(2) of the Product Eco-responsibility Ordinance (32 of 2008) which was passed by the Legislative Council on 10 July 2008, appoints-

- (a) 30 April 2009 as the day on which the Ordinance (except sections 18(3), 19(3) and (4), 22(2) and (3), 23(1), (5) and (6) and 24 to 28 and Schedule 3) comes into operation; and
- (b) 7 July 2009 as the day on which sections 18(3), 19(3) and (4), 22(2) and (3), 23(1), (5) and (6) and 24 to 28 of, and Schedule 3 to, the Ordinance (mainly relating to the levy and restrictions on provision of plastic shopping bags, obligations of registered retailers, and related matters) come into operation.

26. L.N. 87, made by the Acting Secretary for the Environment under section 1 of the Product Eco-responsibility (Plastic Shopping Bags) Regulation (L.N. 70 of 2009) which was passed by the Legislative Council on 23 April 2009, appoints-

- (a) 30 April 2009 as the day on which the Regulation (except Part 4) comes into operation; and
- (b) 7 July 2009 as the day on which Part 4 of the Regulation (relating to the discharge of registered retailers' obligations) comes into operation.

27. At its first meeting on 19 February 2009, the Subcommittee on Product Eco-responsibility (Plastic Shopping Bags) Regulation noted the Administration's intention to publish in the Gazette the commencement notice for the Ordinance on 30 April 2009. At its meeting on 19 March 2009, the Subcommittee noted the Administration's intention to consult the trades on the commencement date of the levy scheme, which would probably be a weekday within the month of July 2009. There was lengthy discussion on the commencement arrangement for the Regulation, details of which have been set out in paragraphs 7 to 11 of the report of the Subcommittee on Product Eco-responsibility (Plastic Shopping Bags) Regulation (LC Paper No. CB(1)1218/08-09).

28. No difficulties relating to the legal and drafting aspects of L.N. 82 to 87 have been identified.

Encl.

Prepared by

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Department of Justice
Law Drafting Division
(Attention: Mr Lawrence Peng,
Sr Asst Law Draftsman)
8th Floor,
High Block,
Queensway Government Offices,
66 Queensway,
Hong Kong

Dear Mr Peng,

Subsidiary Legislation on Consular Matters (L.N. 74, 77 and 80 of 2009)

I refer to our telephone conversation yesterday concerning the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: India) Order (L.N. 74 of 2009).

L.N. 74 (also in the case of L.N. 77 and 80) was made under the hand of Chief Executive instead of that of the Chief Secretary for Administration as appears to be required in section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) (the Ordinance).

As the present form of the Legal Notice departs from the express provision of section 3 and the adopted practice in notifying similar orders under the Ordinance (e.g. L.N. 53 and 56 of 2005 in the last exercise), we are concerned over whether it may affect its validity.

I would be grateful for your elucidation of the change of practice and its legal effect to facilitate my reporting to the House Committee on 8 May 2009 (in both Chinese and English and with soft copy to Ms Christine LIU at ylliu@legco.gov.hk).

Yours sincerely,

(Clara TAM)
Assistant Legal Adviser

cc. Chief Secretary for Administration's Office
(Attn.: Ms Cyrena CHAN, EO/Protocol(2)) (By Fax: 2801 4642)
DoJ (Attn.: Ms Carmen CHU , SGC) (By Fax: 2845 2215) &
Ms Angie LI, GC (By Fax: 2869 1302))