

立法會
Legislative Council

LC Paper No. CB(2)2048/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/SS/12/08

**Subcommittee on
Subsidiary Legislation Relating to Consular Matters**

**Minutes of meeting
held on Friday, 5 June 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon Margaret NG
Hon LAU Kong-wah, JP
Dr Hon Priscilla LEUNG Mei-fun

Public Officers attending : Miss Agnes WONG
Deputy Director of Administration

Mr Y K LEE
Deputy Director of Protocol

Mr W P LUNG
Senior Government Counsel (Acting)

Mr Lawrence PENG
Senior Assistant Law Draftsman

Ms Angie LI
Government Counsel

Clerk in attendance : Ms Betty FONG
Chief Council Secretary (2)2

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Janet SHUM
Senior Council Secretary (2)2

Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Confirmation of minutes

[LC Paper No. CB(2)1742/08-09]

The minutes of the meeting held on 22 May 2009 were confirmed.

II. Meeting with the Administration

[Explanatory notes on the additional consular privileges and immunities set out in the Consular Relations (Additional Privileges and Immunities) (India) Order (L.N. 73 of 2009) (LC Paper No. CB(2)1752/08-09(01))]

[Explanatory notes on the additional consular functions set out in the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: India) Order (L.N. 74 of 2009) (LC Paper No. CB(2)1752/08-09(02))]

[Explanatory notes on the additional consular functions set out in the Consular Conventions (Application of Section 3) (India) Order (L.N. 75 of 2009) (LC Paper No. CB(2)1752/08-09(03))]

[Explanatory notes on the additional consular privileges and immunities set out in the Consular Relations (Additional Privileges and Immunities) (Italy) Order (L.N. 76 of 2009) (LC Paper No. CB(2)1752/08-09(04))]

[Explanatory notes on the additional functions set out in the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: New Zealand) Order (L.N. 77 of 2009) [LC Paper No. CB(2)1752/08-09(05)]]

[Explanatory notes on the additional consular functions set out in the Consular Conventions (Application of Section 3) (New Zealand) Order (L.N. 78 of 2009) (LC Paper No. CB(2)1752/08-09(06))]

[Explanatory notes on the additional consular privileges and immunities set out in the Consular Relations (Additional Privileges and Immunities) (Russia) Order (L.N. 79 of 2009) (LC Paper No. CB(2)1752/08-09(07))]

Action

[Explanatory notes on the additional consular functions set out in the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: Russia) Order (L.N. 80 of 2009) (LC Paper No. CB(2)1752/08-09(08))]

[Explanatory notes on the additional consular functions set out in the Consular Conventions (Application of Section 3) (Russia) Order (L.N. 81 of 2009) (LC Paper No. CB(2)1752/08-09(09))]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Clause by clause examination of the subsidiary legislation

3. The Subcommittee completed clause by clause examination of the following Orders -

- (a) Consular Relations (Additional Privileges and Immunities) (India) Order (in respect of the Consular Convention between the People's Republic of China (PRC) and India) (L.N.73);
- (b) Administration of Estates by Consular Officers Ordinance (Variation of Schedule: India) Order (in respect of the Consular Convention between PRC and India) (L.N. 74);
- (c) Consular Conventions (Application of Section 3) (India) Order (in respect of the Consular Convention between PRC and India) (L.N. 75);
- (d) Consular Relations (Additional Privileges and Immunities) (Italy) Order (in respect of the Consular Agreement between PRC and Italy) (L.N.76);
- (e) Administration of Estates by Consular Officers Ordinance (Variation of Schedule: New Zealand) Order (in respect of the Consular Agreement between PRC and New Zealand) (L.N. 77);
- (f) Consular Conventions (Application of Section 3) (New Zealand) Order (in respect of the Consular Agreement between PRC and New Zealand) (L.N. 78);
- (g) Consular Relations (Additional Privileges and Immunities) (Russia) Order (in respect of the Consular Convention between PRC and the Russian Federation) (L.N.79);

Action

- (h) Administration of Estates by Consular Officers Ordinance (Variation of Schedule: Russia) Order (in respect of the Consular Convention between PRC and the Russian Federation) (L.N. 80); and
- (i) Consular Conventions (Application of Section 3) (Russia) Order (in respect of the Consular Convention between PRC and the Russian Federation) (L.N. 81).

4. The Administration undertook to -

- (a) provide a written response to clarify the meaning and coverage of "the means of transport of the consular post and of consular officers" as set out in Article 28 (2) of the PRC/India Convention, and remind the law enforcement agencies of the Hong Kong Special Administrative Region Government of the interpretation of the provision;
- (b) provide a written response to specify the circumstances under which the receiving state should take measures to prevent any attack on the personal freedom and dignity of consular officers who should enjoy personal inviolability under Article 33 of the PRC/Russia Convention, and explain the meaning of "dignity" referred to in this provision; and
- (c) amend the Chinese text of section 3 of the Administration of Estates by Consular Officers Ordinance (Cap.191) to align its meaning with the English text.

(Post-meeting note: The Administration's reply in response to paragraph 4(a) & (b) above was circulated to members vide CB(2)1834/08-09 on 10 June 2009.)

Report to the House Committee

5. The Subcommittee supported the nine items of subsidiary legislation and agreed to submit a written report to the House Committee on 12 June 2009.

6. The meeting ended at 10:03 am.

Council Business Division 2
Legislative Council Secretariat
26 June 2009

**Proceedings of the meeting of the
Subcommittee on
Subsidiary Legislation Relating to Consular Matters
on Friday, 5 June 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000841	Chairman Dr Margaret NG	Opening remark Requirement for the Administration to only highlight additional consular privileges and immunities (Ps&Is) set out in the relevant subsidiary legislation in comparison with Ps&Is under the Vienna Convention on Consular Relations (VCCR) to facilitate members' scrutiny of similar legislation in future	
000842 - 001154	Admin Chairman Dr Margaret NG	Schedule to Consular Relations (Additional Privileges And Immunities)(India)Order (L.N. 73) Schedule to L.N. 73 relating to Article 28 of the 1991 Consular Convention between the People's Republic of China (PRC) and the Republic of India (the PRC/India Convention) on inviolability of consular premises and residences of members of consular post	
001155- 002452	Admin Chairman Dr Margaret NG Dr Priscilla LEUNG	Request for the Administration to clarify the meaning and coverage of the term "the means of transport of the consular post and of consular officers" under Article 28(2) of the PRC/India Convention Definition of "members of a consular post" as specified in the Schedule to L.N.73	The Admin to provide a written response
002453 - 002610	Chairman Admin	Schedule to L.N. 73 relating to Article 29 of the PRC/India Convention on immunity from requisition of consular premises	
002611 - 002700	Admin Chairman	Schedule to L.N. 73 relating to Article 31 of the PRC/India Convention on freedom of communication	
002701 - 003024	Admin Chairman	Schedule to L.N. 73 relating to Article 34 of the PRC/India Convention on personal inviolability of consular officers Extension of personal inviolability to family members under Article 41 of the PRC/India Convention Definition of "family members" as specified in the Schedule to L.N. 73	

Time marker	Speaker	Subject	Action required
003025 - 003928	Admin Chairman Dr Priscilla LEUNG	<p>Schedule to L.N. 73 relating to Article 35 of the PRC/India Convention on immunity from jurisdiction</p> <p>"Grave crime" referred to under Article 34 and section 3 of the Consular Relations Ordinance (Cap. 557)</p> <p>Scope of "consular functions" under Article 35 Chapter IV of the PRC/India Convention on consular functions</p> <p>Civil proceedings to which immunity for consular members were not applicable being specified under Article 35 (3)</p> <p>Requirement for all persons enjoying Ps&Is to respect the laws and regulations of the receiving State under Article 46 of the PRC/India Convention (and Article 55 of VCCR)</p>	
003929 - 004019	Chairman Admin	Schedule to L.N. 73 relating to Article 36 of the PRC/India Convention on liability to give evidence	
004020 - 004118	Admin Chairman	Schedule to L.N. 73 relating to Article 38 of the PRC/India Convention on exemption of properties from taxation	
004119 - 004219	Admin Chairman	Schedule to L.N. 73 relating to Article 40 of the PRC/India Convention on exemption from customs duties and inspection	
004220 - 004251	Admin	Schedule to L.N. 73 relating to Article 41 of the PRC/India Convention on privileges and immunities of family members	
004252 - 004410	Admin Chairman	<p>Schedule to L.N. 73 relating to Article 43 of the PRC/India Convention on estate of member of the consular post</p> <p>Schedule to L.N. 73 relating to Article 44 of the PRC/India Convention on beginning and end of privileges and immunities</p> <p>Schedule to L.N. 73 relating to Article 45 of the PRC/India Convention on waiver of privileges and immunities</p>	

Time marker	Speaker	Subject	Action required
004411 - 004838	Chairman Admin Dr Priscilla LEUNG	Schedule to L.N. 76 relating to Article IV (1) of the 1997 agreement between the Government of the Republic of Italy and the Government of the PRC (the Agreement) on exemption from taxation of consular premises Definition of "means of transport" under Article IV (1) (b) of the Agreement Request for the Administration to remind the law enforcement agencies of the HKSAR Government of the interpretation of Article 28(2) under the PRC/India Convention	The Admin to provide a written response
004839 - 004859	Chairman Admin	Article IV (5) of the Agreement on personal inviolability of head of consular post and consular officers	
004900 - 005532	Admin Chairman Dr Priscilla LEUNG	Article IV (6) of the Agreement on immunity from jurisdiction and exceptions Elaboration on the term "expressly or impliedly" in the provision under Article IV (6)(iii)(a) of the Agreement	
005533 - 005654	Admin Chairman	Schedule to L.N. 79 relating to Article 20 of the 2002 Consular Convention between the PRC and the Russian Federation (the PRC/Russia Convention) on assistance to wrecked vessels of the sending State Schedule to L.N. 79 relating to Article 21 of the PRC/Russia Convention on aircraft of the sending State	
005655 - 005709	Admin Chairman	Schedule to L.N. 79 relating to Article 28 of the PRC/Russia Convention on inviolability of the consular premises	
005710 - 010153	Admin Chairman Dr Priscilla LEUNG	Schedule to L.N. 79 relating to Article 29 of the PRC/Russia Convention on inviolability of the consular archives Meaning of "consular archives"	
010154 - 010205	Admin Chairman	Schedule to L.N. 79 relating to Article 30 of the PRC/Russia Convention on freedom of communication	
010206 - 010739	Admin Chairman	Schedule to L.N.79 relating to Article 33 of the PRC/Russia Convention on personal inviolability of consular officers Request for the Administration to provide a written response specifying the circumstances under which the receiving state should take measures to prevent any attack on the personal freedom and dignity of consular officers under Article 33 and the meaning of "dignity" referred to in this provision	The Admin to provide a written response

Time marker	Speaker	Subject	Action required
010740 - 010828	Admin Chairman	Schedule to L.N. 79 relating to Article 34 of the PRC/Russia Convention on immunity from jurisdiction	
010829 - 010949	Admin Chairman	Schedule to L.N. 79 relating to Article 35 of the PRC/Russia Convention on liability to give evidence	
010950 - 011008	Chairman Admin	Schedule to L.N. 79 relating to Article 37 of the PRC/Russia Convention on exemption of properties from taxation	
011009 - 011046	Admin Chairman	Schedule to L.N. 79 relating to Article 39 of the PRC/Russia Convention on exemption from customs duties and customs inspection Schedule to L.N. 79 relating to Article 40 of the PRC/Russia Convention on privileges and immunities of family members Schedule to L.N. 79 relating to Article 41 of the PRC/Russia Convention on persons who shall not enjoy privileges and immunities Schedule to L.N.79 relating to Article 42 of the PRC/Russia Convention on estate of member of the consular post Schedule to L.N. 79 relating to Article 43 of the PRC/Russia Convention on beginning and end of privileges and immunities	
011047 - 011209	Chairman Admin	The Administration of Estates by Consular Officers Ordinance (Variation of Schedule: New Zealand) Order 2009 (L.N. 77) The Consular Conventions (Application of Section 3) (New Zealand) Order 2009 (L.N.78)	
011210 - 011247	Chairman Admin	Report to the House Committee on the deliberation of the Subcommittee on 12 June 2009	
011248 - 013528	ALA9 Chairman Admin Dr Priscilla LEUNG	Proposal of the Administration to adopt two instruments (i.e. An order by the CE and a notice by the CS of the order) to carry out the empowering mechanism under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) Undertaking of the Administration to amend the Chinese text of section 3 of Cap 191 to align its meaning with the English text	The Adm to follow