



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China




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LEGISLATIVE COUNCIL SECRETARIAT  
LEGAL SERVICE DIVISION

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15 June 2009

Director of Administration  
Administration Wing  
Chief Secretary for Administration's Office  
12<sup>th</sup> floor, West Wing  
Central Government Offices  
11 Ice House Street  
Central  
HONG KONG  
via Mr Jimmy MA, Legal Adviser 

Dear Madam,

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

We note that in response to the request of the Subcommittee on Subsidiary Legislation Relating to Consular Matter, the Administration has undertaken to amend the Chinese text of section 3 of the Administration of Estates by Consular Officer Ordinance (Cap. 191) to improve its drafting.

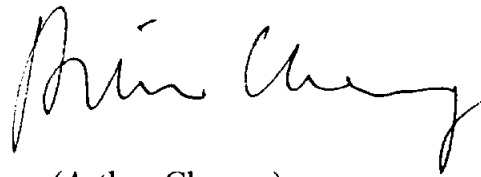
The Administration, in Senior Assistant Law Draftsman's reply to our Clara TAM's letter of 6 May 2009 and before the Subcommittee, has interpreted the English text of the Ordinance as requiring a two step approach that is better carried out by two instruments in the gazette i.e. a Legal Notice and a Government Notice. This is a rather unusual arrangement and makes one question the rationale for such a design, if indeed that is the effect of the section. In fact, a Member of the Subcommittee has expressed a contrary view.

It would appear that section 3 was drafted before the enactment of the Interpretation and General Clauses Ordinance (Cap.1) and as such, is couched in terms different from how a similar provision would have been drafted now, given the provision in section 62 of Cap. 1 on signification of orders of the Chief Executive. We are unable to find a similar example providing for signification in the gazette of a Chief Executive's order by a specified public officer.

We therefore invite the Administration to take the opportunity of making drafting improvement to the Chinese text of section 3 to consider whether there is a need to modernise the section so that the more usual gazettal requirements of orders made by the Chief Executive would apply, at the same time removing any possible problem over its interpretation.

We would be grateful if we could have your response before 22 June 2009 so that it could be copied to members of the Subcommittee for their reference.

Yours sincerely,



(Arthur Cheung)  
Senior Assistant Legal Adviser

c.c. Department of Justice  
Senior Assistant Law Draftsman  
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Clerk to the Subcommittee on Subsidiary Legislation Relating to Consular Matters  
(for copying to members of the Subcommittee)