

立法會
Legislative Council

LC Paper No. LS82/14-15

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 September 2015**

Tabling in LegCo : Council meeting of 14 October 2015

Amendment to be made by : Council meeting of 11 November 2015 (or
2 December 2015 if extended by resolution)

CONSULAR MATTERS

**Consular Relations (Additional Privileges and Immunities)
(Cambodia) Order** (L.N. 177)

**Consular Relations (Additional Privileges and Immunities)
(Philippines) Order** (L.N. 180)

Background

The Consular Relations Ordinance (Cap. 557) makes provisions for the implementation in Hong Kong of certain provisions of the Vienna Convention on Consular Relations and of other agreements concerning consular relations to which the Government of the People's Republic of China (PRC) is a party and which are applied to Hong Kong by the Central People's Government.

2. At present, the bilateral consular agreements are given legal effect in Hong Kong by the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, which is a national law applicable to Hong Kong by promulgation under Article 18 of the Basic Law.

3. According to item 11 on the List of the Bilateral Agreements between the Central People's Government and Foreign States Relating to Privileges and Immunities Conferred on Consular Post (the List) in Annex G to the LegCo Brief (File Ref: SF (10) in PROT CR 6/1126/98) issued by the Administrative Wing of the Chief Secretary for Administration's Office on 23 September 2015, the Consular Convention Between PRC and the Kingdom of Cambodia (the Consular Convention), which was done on 25 February 2010, was applied to Hong Kong on 12 January 2011. According to item 12 on the List, the Consular Agreement Between PRC and the Republic of the Philippines (the Consular Agreement), which was done on 29 October 2009, was applied to Hong Kong on 13 July 2013.

L.N. 177 and L.N. 180

4. Under section 4(1) of Cap. 557, the Chief Executive in Council may by order in the Gazette, declare that the additional privileges and immunities accorded to a State under an international agreement, and specified in the order, shall have the force of law in Hong Kong.

5. L.N. 177 and L.N. 180 are made by the Chief Executive in Council under section 4(1) of Cap. 557 respectively to declare that the additional privileges and immunities accorded to a consular post of the Kingdom of Cambodia and of the Republic of the Philippines, or to persons connected with the consular post, or to both, as specified in the respective order, shall have the force of law in Hong Kong.

6. The additional privileges and immunities include, inter alia -

- (a) the acting head of a consular post shall enjoy the same rights, facilities, privileges and immunities as enjoyed by a head of a consular post;
- (b) inviolability of consular premises and the residences of consular officers;
- (c) inviolability of the consular archives and documents;
- (d) personal inviolability of consular officers and their family members;
- (e) immunity from any form of requisition of consular premises, their furnishings and the property and means of transport of the consular post;
- (f) immunity from the judicial and administrative jurisdiction except in certain civil proceedings for a consular officer, a member of the administrative and technical staff and of the service staff of the consular post, and their family members; and
- (g) in the event of the death of a member of a consular post or a member of his family, exemption of the movable property of the deceased from estate duties and all duties concerned.

**Administration of Estates by Consular Officers Ordinance
(Amendment of Schedule: Cambodia) Order 2015 (L.N. 178)**

**Administration of Estates by Consular Officers Ordinance
(Amendment of Schedule: Philippines) Order 2015 (L.N. 181)**

L.N. 178 and L.N. 181

7. Under section 3(1)(a) of the Administration of Estates by Consular Officers Ordinance (Cap. 191), the Chief Executive in Council may by order

published in the Gazette vary the Schedule to Cap. 191 by adding thereto any State with whom the PRC Government has entered into an agreement or arrangement which or any provision of which provides for the administration of estates by consular officers and which applies to Hong Kong.

8. L.N. 178 and L.N. 181 are made under section 3 of Cap. 191 to add to the Schedule to Cap. 191 two States, namely the Kingdom of Cambodia and the Republic of the Philippines, to -

- (a) give effect to the provisions in the Consular Convention and the Consular Agreement between PRC and the two States, done on 25 February 2010 and 29 October 2009 respectively, relating to the administration of estates of deceased Cambodian and Philippine nationals; and
- (b) enable section 2 of Cap. 191 to apply to consular officers of the Consulate General of these two States.

9. The effect of L.N. 178 and L.N. 181 is that consular officers of the two States will be empowered to administer the estates of their respective nationals who die within Hong Kong, or die outside Hong Kong, leaving property within Hong Kong, and no person is present in Hong Kong at the time of the national's death who is rightfully entitled to administer the estate of the deceased.

**Consular Conventions (Application of Section 3)
(Amendment of Schedule: Cambodia) Order 2015 (L.N. 179)**

**Consular Conventions (Application of Section 3)
(Amendment of Schedule: Philippines) Order 2015 (L.N. 182)**

L.N. 179 and L.N. 182

10. Section 3 of the Consular Conventions Ordinance (Cap. 267) confers on the consular officers powers to apply for grant of representation on behalf of their national not resident in Hong Kong to the estate of a deceased in Hong Kong and to receive payment of money or other property in Hong Kong forming part of the estate of a deceased. Under section 5 of Cap. 267, the Chief Executive may by order signified in the Gazette direct that section 3 shall apply to any foreign State. The States to which section 3 of Cap. 267 applies are set out in the Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267B).

11. L.N. 179 and L.N. 182 are made under section 5 of Cap. 267 to amend Cap. 267B to add to the Schedule two States, namely the Kingdom of Cambodia and the Republic of the Philippines.

12. The purpose of the amendments is to -
- (a) give effect to the relevant provisions in the Consular Convention and the Consular Agreement between PRC and the two States, done on 25 February 2010 and 29 October 2009 respectively, which confer powers on the consular officers of the States concerned to represent Cambodian and Philippine nationals respectively in inheritance proceedings and to transmit estates in Hong Kong to their respective nationals; and
 - (b) enable section 3 of Cap. 267 to apply to consular officers of the Consulate General of these two States.
13. Members may refer to the LegCo Brief for further information.

Commencement

14. L.N. 177 to L.N. 182 come into operation on 11 December 2015.

Consultation with LegCo Panel

15. As advised by the Clerk to the Panel on Administration of Justice and Legal Services (the Panel), the items of subsidiary legislation relating to privileges and immunities conferred on consular posts of the Kingdom of Cambodia and the Republic of the Philippines have not been discussed at the meeting of the Panel in the 2014-2015 session. An information paper "Subsidiary Legislation relating to Privileges and Immunities Conferred on Consular Posts" provided by the Administration Wing of the Chief Secretary for Administration's Office (LC Paper No. CB(4)1084/14-15(01)) was issued to Panel members for their reference on 1 June 2015.

Concluding Observations

16. No difficulties have been identified in the legal and drafting aspects of the Orders in L.N. 177 to L.N. 182.

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2 October 2015