

立法會

Legislative Council

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by the Administration)

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**Subcommittee on
subsidiary legislation relating to consular matters**

**Minutes of first meeting
held on Monday, 13 October 2003 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Audrey EU Yuet-mee, SC , JP

Public Officers attending : Miss Eliza LEE
Deputy Director of Administration

Mr David LEUNG
Assistant Director of Administration

Miss S K LEE
Senior Government Counsel
International Law Division

Mr Davis HUI
Deputy Director of Protocol

Ms Francoise LAM
Senior Government Counsel
Law Drafting Division

Ms Betty CHEUNG
Senior Government Counsel
Law Drafting Division

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Paul WOO
Senior Assistant Secretary (2)3

Action

I. Election of Chairman

Miss Margaret NG was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(Legislative Council Brief issued by the Administration Wing of the Chief Secretary for Administration's Office in June 2003 (Ref : CSO/ADM CR/3/2071/97(02); LC Paper No. LS171/02-03; LC Paper No. CB(2)50/03-04)

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

Localization of international and bilateral agreements

3. Ms Audrey EU asked whether the Administration should have introduced the relevant subsidiary legislation earlier to underpin the relevant provisions of the following two bilateral agreements -

- (a) the Consular Agreement Between the Government of the People's Republic of China And the Government of Canada (the PRC/Canada Agreement) which came into force on 11 March 1999; and
- (b) the Agreement Constituted by Exchange of Letters Between the Government of the People's Republic of China and the Commission of the European Communities Concerning the Maintenance of the Office of the Commission of European Communities in the Hong Kong Special Administrative Region of the People's Republic of China (the PRC/EC Agreement) which came into force on 1 July 1997.

Action

4. Deputy Director of Administration (DD of A) advised that the relevant provisions of the above two Agreements were given legal effect in the Hong Kong Special Administrative Region (HKSAR) generally by the following national laws applicable to HKSAR by promulgation under Article 18 of the Basic Law -

- (a) Regulation of the People's Republic of China concerning Consular Privileges and Immunities; and
- (b) Regulation of the People's Republic of China concerning Diplomatic Privileges and Immunities.

Moreover, the Consular Relations Ordinance (Cap. 557) and the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) were enacted in 2000 to provide a more flexible framework for the localization of relevant international agreements signed by the Central People's Government. With the legislative framework in place and having regard to Hong Kong's common law tradition, the Administration considered that the best means of underpinning the relevant provisions in the bilateral agreements between the People's Republic of China (PRC) and consular posts/international organizations (IOs) was to enact local legislation setting them out expressly and specifically in the laws of Hong Kong.

5. The Administration undertook to provide the Chinese and English versions of the PRC/Canada and PRC/EC Agreements for the Subcommittee's reference.

6. In response to the Chairman, DD of A said that the Administration was embarking on a programme of preparing the necessary subsidiary legislation to cover 11 bilateral agreements between PRC and foreign States/IOs. The Administration would introduce the subsidiary legislation into the Legislative Council (LegCo) in batches for negative vetting. She added that some of the remaining items of subsidiary legislation were presently in the drafting stage and some were under consultation.

Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 (L.N. 167 of 2003)
Consular Conventions (Application of Section 3) order (L.N. 168 of 2003)

7. Members noted that the purpose of the Schedule to Cap. 191 was to set out the foreign states with which the PRC Government had entered into an agreement applicable to Hong Kong which provided for the administration of estates of deceased nationals left in Hong Kong by the consular officers in HKSAR. At the request of the Chairman, the Administration agreed to provide the Schedule, if any, listing the foreign states with which the United Kingdom had entered into treaties providing for the administration of estates by consular officers prior to the amendment of Cap. 191 in 1999, for the reference of the Subcommittee.

Action

8. Mr James TO said that there could be cases where both a Canadian national not resident in HKSAR and a party in Hong Kong claimed a right to the estate left in HKSAR by a deceased Canadian national. The Administration was requested to explain in writing whether Canadian consular officers, who were entitled to exercise estate-related consular functions under the PRC/Canada Agreement, would be accorded with any privileges and immunities not available to an ordinary Hong Kong citizen in the event of dispute or litigation between the two parties over the right to the estate in Hong Kong.

International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (L.N. 166 of 2003)

9. Referring to the Schedule on Provisions of Office Agreement Having the Force of Law in Hong Kong, Mr James TO asked the Administration to clarify whether the European Communities (i.e. the European Coal and Steel Community, the European Community and the European Atomic Energy Community), in concluding contracts as legal personality in HKSAR, would enjoy privileges and immunities similar to that conferred upon consular posts.

10. In response to Mr James TO, the Administration advised that under Article 4 set out in the Schedule to the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order, the EC Office, its Head and accredited members and their families shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the Vienna Convention. In this connection, in case of civil or criminal proceedings, the privileges and immunities accorded to consular officers, consular employees and members of the service staff were different and Articles 41, 43 and 44 of the Vienna Convention on Consular Relations were cited as examples for illustration purpose.

(Post-meeting note : The Administration's written response to the issues raised at the meeting was circulated vide LC Paper Nos. CB(2)105/03-04 (01) - (03) on 17 October 2003.)

Clause by clause examination of the subsidiary legislation

11. The Subcommittee completed clause by clause examination of L.N. 167 and L.N. 168.

Other issues

12. Assistant Legal Adviser advised members that although the four items of subsidiary legislation were subject to the negative vetting procedure under section

Action

34 of Cap 1, LegCo could only repeal them or make some limited linguistic amendments, but not amend their substantive contents, as they were related to foreign affairs relating to the HKSAR.

13. The Clerk advised members that the Chairman of the House Committee would move a motion to extend the scrutiny period of the four items of subsidiary legislation from 15 October 2003 to 5 November 2003. The subcommittee should report to the House Committee not later than 31 October 2003.

III. Next meetings

14. The second and third meetings of the Subcommittee were scheduled for 20 October 2003 at 4:30 pm and 27 October 2003 at 10:45 am respectively.

(Post-meeting note : The meeting scheduled for 27 October 2003 at 10:45 am was subsequently cancelled.)

15. The meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
31 October 2003

**Proceedings of the first meeting of the Subcommittee on
subsidiary legislation relating to consular matters
on Monday, 13 October 2003 at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001-000010	Ms Cyd HO Ms Audrey EU Miss Margaret NG	Election of Chairman of the Subcommittee.	
000011-000551	Chairman ALA Admin Ms Cyd HO	Brief introduction on the four items of subsidiary legislation relating to consular matters.	
000552-001317	Admin	The Vienna Convention on Consular Relations and international agreements between the Central People's Government and foreign states/international organizations relating to privileges and immunities. Introduction on Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 (L.N. 167) and Consular Convention (Application of Section 3) Order (L.N. 168). (Legislative Council Brief (Ref : CSO/ADM CR/3/2071/97(02)))	
001318-002156	Ms Audrey EU Admin Chairman	Timing for introduction of the relevant items of subsidiary legislation. Subsidiary legislation to be introduced into the Legislative Council to underpin the relevant provisions in the respective bilateral agreements.	
002157-002308	ALA Chairman	The PRC/Canada and PRC/EC Agreements.	Admin to provide the Chinese and English versions of the Agreements for reference.
002309-002731	Mr James TO Admin ALA Chairman	Schedule listing the foreign states with which the United Kingdom had entered into treaties providing for the administration of estates by consular officers prior to the amendment of the Administration of Estates by Consular Officers Ordinance (Cap. 191) in 1999.	Admin to provide the Schedule for reference.

Time marker	Speaker	Subject(s)	Action required
002732-003532	Mr James TO Admin Chairman ALA	Administration of estates of deceased nationals by consular officers where no person was present in Hong Kong who was rightfully entitled to administer the estate of the deceased.	
003533-004454	Ms Cyd HO Admin Chairman	Applicability of international agreements entered into with foreign states and international organizations to Hong Kong and enactment of local legislation to underpin the relevant provisions of the agreements.	
004455-004742	Admin Chairman Mr James TO	Article 151 of the Basic Law.	
004743-005637	Mr James TO Admin ALA Chairman Ms Audrey EU	Powers of consular officers in relation to administration of estates in Hong Kong under the Administration of Estates by Consular Officers Ordinance and the Consular Conventions Ordinance. Administration of estates left in Hong Kong by deceased overseas nationals where no persons were rightfully entitled to the estates (the bona vacantia principle).	
005638-005909	Admin Chairman	Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 (L.N. 167)	
005910-010401	Mr James TO Admin ALA Ms Cyd HO	Articles 10(3), (4) and (5) of the PRC/Canada Agreement.	
010402-010530	Chairman	Clause by clause examination of Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 (L.N. 167). Marked-up copy of L.N. 167 (LC Paper No. CB(2)50/03-04(03)).	
010531-010945	Admin Chairman	Consular Convention (Application of Section 3) Order (L.N. 168). Powers of consular officers under section 3(1) of the Consular Conventions Ordinance (Cap. 267) in relation to property in Hong Kong of deceased persons.	

Time marker	Speaker	Subject(s)	Action required
010946-012659	Mr James TO Admin ALA Ms Cyd HO Chairman	Consular functions of safeguarding the interests of deceased nationals in HKSAR in relation to estate left in HKSAR, in cases where both a Canadian national not resident in HKSAR and a party in Hong Kong claimed a right to the property left by the deceased. Section 3 of the Consular Conventions Ordinance (Cap. 267) and section 2 of the Administration of Estates by Consular Officers Ordinance (Cap. 191).	Admin to explain in writing whether in cases of dispute or litigation over the right to the estate property in Hong Kong, the Canadian consular officers would be accorded with any privileges and immunities not available to an ordinary Hong Kong citizen involved in the dispute.
012700-012805	Chairman	Clause by clause examination of Consular Convention (Application of Section 3) Order (L.N. 168).	
012806-013352	Admin Chairman	Brief introduction on International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (L.N. 166). Section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558).	
013353-014022	Chairman Admin	Clause by clause examination of International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (L.N. 166).	
014023-014530	Mr James TO Chairman Admin	Privileges and immunities of "members of the Commission of the European Communities" - Clause 3(4) of L.N.166. Article 1 of the Vienna Convention on Consular Relations (Vienna Convention) on definitions of members of a consular post.	
014531-014730	Admin Chairman Mr James TO	Article 41 of the Vienna Convention on personal inviolability of consular officers and Article 44 on liability to give evidence.	
014731-015253	Chairman Admin ALA	Clause 4 of L.N. 166 on authorized refund of duties paid on hydrocarbon oils. Correspondence between the Admin and ALA on legal basis of and need for clause 4 of L.N. 166 (Appendix III to LC Paper No. CB(2)50/03-04(02)).	

Time marker	Speaker	Subject(s)	Action required
015254-015743	Chairman Mr James TO Admin ALA	Capacity of the European Communities (i.e. the European Coal and Steel Community, the European Community and the European Atomic Energy Community) to conclude contracts as legal personality in Hong Kong.	Admin to explain whether the European Communities, in concluding contracts in Hong Kong, would enjoy privileges and immunities similar to that conferred upon consular officers.
015744-015906	Chairman Clerk	Legislative timetable.	
015907-020155	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
31 October 2003