

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

**The Administration's Responses to Issues raised at  
the Meeting on 13 October 2003**

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**Administration of Estates by Consular Officers Ordinance  
(Amendment of Schedule) Order 2003**

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*Q1 Whether there was a Schedule listing the foreign states with which the Government had entered into an agreement or arrangement which provided for the administration of estates by consular officers and which applied to Hong Kong prior to the amendment to the Administration of Estates by Consular Officers Ordinance (Cap. 191) in 1999, and if so, provide the Schedule for the Subcommittee's reference.*

A1 Prior to the amendment of Cap. 191 in 1999, the Schedule to that Ordinance listed seven foreign states with which the United Kingdom had entered into separate treaties, and the Ordinance provided for the administration of estates by consular officers of those States. The Schedule applied to Hong Kong before 1 July 1997. A copy of the relevant Schedule is attached.

As part of the Adaptation of Law programme, the Schedule was replaced by the present Schedule through the Adaptation of Laws (No. 35) Ordinance (Ord. No. 81 of 1999) enacted in December 1999. By virtue of section 2 of the Adaptation of Laws (No. 35) Ordinance, the amendment was deemed to have come into operation on 1 July 1997.

**Consular functions of safeguarding the interests of deceased  
nationals in the HKSAR**

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*Q2 Whether Canadian consular officers, who are 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 case of dispute or litigation between the two parties over the right to estate property in Hong Kong.*

A2 Article 5(g) of the Vienna Convention on Consular Relations 1963 (the VCCR) requires that consular activities concerning safeguarding the interests of nationals in cases of succession mortis causa in the territory of the receiving State, must be conducted “in accordance with the laws and regulations of the receiving State”. Article 10(6) of the Consular Agreement between Canada and the People’s Republic of China, which deals with functions concerning estates under Article 10(3) to (5), also provides that a consular officer “shall comply with the law of the receiving State”. If a consular officer performs acts under section 2 of Cap. 191, he/she is obliged to act in accordance with the laws of Hong Kong. The same apply if a consular officer performs acts under section 3 of the Consular Conventions Ordinance (Cap. 267). Section 4 of that Ordinance is also relevant.

**International Organizations (Privileges and Immunities) (Office of the Commission of European Communities) Order**

*Q3 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 Hong Kong, will enjoy privileges and immunities similar to that conferred upon consular officers.*

A3 Section 4 of the PRC/EC Agreement provides for, inter alia, the EC Office to enjoy privileges and immunities corresponding to those enjoyed by consular posts in accordance with the provisions of the VCCR. In the case of immunity from jurisdiction, Article 43 of the VCCR provides for certain members of a consular post to enjoy immunity from jurisdiction in respect of acts performed in the exercise of consular functions, but does not provide for immunity from jurisdiction for the Consulate itself. Correspondingly, the EC Agreement does not confer jurisdictional immunity on the EC Office in respect of contracts entered into by it.