

立法會
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**Paper for the House Committee Meeting
on 29 April 2005**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 22 April 2005**

Date of tabling in LegCo : 27 April 2005

Amendment to be made by : 25 May 2005 (or 15 June 2005 if extended by resolution)

Consular Relations Ordinance (Cap. 557)

Consular Relations (Additional Privileges and Immunities) (United Kingdom) Order (L.N. 51)

Consular Relations (Additional Privileges and Immunities) (United States of America) Order (L.N. 52)

Consular Relations (Additional Privileges and Immunities) (Vietnam) Order (L.N. 55)

Administration of Estates by Consular Officers Ordinance (Cap. 191)

Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2005 (L.N. 53)

Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) (No. 2) Order 2005 (L.N. 56)

Consular Conventions Ordinance (Cap. 267)

Consular Conventions (Application of Section 3) Order 2005 (L.N. 54)

Consular Conventions (Application of Section 3) (No. 2) Order 2005 (L.N. 57)

The Consular Relations Ordinance (Cap.557) was passed in 2000 to provide a flexible legislative framework to underpin the implementation of consular privileges and immunities in the HKSAR.

2. The Orders contained in L.N. 51 to 57 give effect to the bilateral agreements made between the People's Republic of China with the UK, the USA, Australia and Vietnam which accord to the consular posts and personnel of these states additional privileges and immunities and/or functions in relation to the

administration of estates in the HKSAR. The relevant provisions of these agreements are currently implemented in the HKSAR by the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, which is the national law applicable to the HKSAR by promulgation under Article 18 of the Basic Law.

3. L.N. 51 declares that the additional privileges and immunities accorded to the consular post of the United Kingdom of Great Britain and Northern Ireland in Hong Kong, or to persons connected with the consular post, or to both, as specified in the Order, shall have the force of law in the HKSAR.

4. L.N. 52 declares that the additional privileges and immunities accorded to the consular post of the USA in Hong Kong, or to persons connected with the consular post, or to both, as specified in the Order, shall have the force of law in the HKSAR.

5. L.N. 53 provides for the application of section 2 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) to consular officers of the Consulate General of Australia and gives effect to the provision in the Agreement on Consular Relations between the PRC and Australia signed on 8 September 1999 relating to the custodian and transmission of personal effects of deceased Australian nationals.

6. L.N. 54 provides for the application of section 3 of the Consular Conventions Ordinance (Cap. 267) to consular officers of the Consulate General of Australia and gives effect to the provision in the Agreement on Consular Relations between the PRC and Australia signed on 8 September 1999 which empowers such officers to represent Australian nationals in inheritance proceedings and to transmit estates in the HKSAR to Australian nationals.

7. L.N. 55 declares that the additional privileges and immunities accorded to a consular post of the Socialist Republic of Vietnam, or to persons connected with the consular post, or to both, as specified in the Order, shall have the force of law in the HKSAR.

8. L.N. 56 provides for the application of section 2 of Cap. 191 to consular officers of the Consulate General of the Socialist Republic of Vietnam and gives effect to the provision in the Consular Convention between the Socialist Republic of Vietnam and the PRC done on 19 October 1998 relating to the protection of estates left in the HKSAR by deceased Vietnamese nationals.

9. L.N. 57 provides for the application of section 3 of Cap. 267 to consular officers of the Consulate General of the Socialist Republic of Vietnam and gives effect to the provision in the Consular Convention between the Socialist Republic of Vietnam and the PRC done on 19 October 1998 relating to the protection of interests of Vietnamese national who have a right to property left in the HKSAR by a deceased.

10. Members may refer to the LegCo Brief issued by the Chief Secretary for Administration's Office on 20 April 2005 (ref: CSO/ADM CR 3/2071/97(05)) for background information about these Orders. According to the Administration, the making of these Orders is in line with the established practice under common law because provisions of the relevant bilateral agreements affect private rights and obligation or require exceptions to be made to the existing laws of the HKSAR and they should be underpinned by way local of legislation (ref: para. 7 of LegCo Brief).

11. The Administration has consulted the Consulates General concerned on the draft Orders (ref: para. 16 of LegCo Brief).

12. Members may recall that a Subcommittee was formed to examine the Orders relating to the additional consular functions conferred on the consular post of Canada when the same were made in July 2003 (L.N. 167 to 168 of 2003). The Subcommittee supported these Orders and no amendments were made to them and they came into operation in November 2003.

13. At the meeting of the Panel on Administration of Justice and Legal Services Administration on 28 February 2005, the Administration gave a briefing on the grant of consular privileges and immunities as the pre-requisite for the establishment of consular relations between sovereign States.

14. The AJLS Panel noted (amongst other things) the following at the meeting -

- (a) the Orders relating to the additional consular functions conferred on the consular post of Canada were enacted in November 2003;
- (b) the Administration would shortly submit to the Legislative Council the Orders relating to the privileges and immunities conferred on the consular posts of the UK, the USA, Australia and Vietnam in the HKSAR; and
- (c) the Orders for other agreements would be submitted in batches, as soon as the drafting and consultation with the signatories of the agreements had been completed.

15. The above Orders shall come into operation on 11 July 2005.

Prepared by

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