

立法會
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**Subcommittee on Subsidiary Legislation
Relating to Consular Matters**

Background brief prepared by Legislative Council Secretariat

Purpose

This paper provides background information on previous discussion of Members on subsidiary legislation relating to privileges and immunities of consular posts and their personnel in the Hong Kong Special Administrative Region (HKSAR).

Subcommittee formed in 2003 to consider subsidiary legislation relating to consular matters

2. A Subcommittee was formed in October 2003 to consider the following four items of subsidiary legislation relating to privileges and immunities of consular posts and International Organisations –
- (a) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191);
 - (b) the Consular Conventions (Application of Section 3) Order made under section 5 of the Consular Conventions Ordinance (Cap. 267);
 - (c) the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558); and
 - (d) the Registration of Persons (Amendment) Regulation 2003 made under section 7 of the Registration of Persons Ordinance (Cap. 177).

The two Orders stated in (a) and (b) above sought to confer additional consular functions on the consular post of Canada in Hong Kong. The four items of subsidiary legislation came into effect in November 2003.

3. The Subcommittee noted that consular posts established in the HKSAR enjoyed the privileges and immunities accorded under the Vienna Convention on Consular Relations (VCCR), which the People's Republic of China (PRC) acceded to in 1979. In line with the established practice under common law, the provisions of the VCCR which affected private rights and obligations or which required exceptions to be made to the existing laws of the HKSAR had been set out in local legislation by way of the Consular Relations Ordinance (Cap. 557) enacted in 2000. Apart from the provisions of the VCCR, the PRC had applied to the HKSAR bilateral agreements with foreign States providing for matters not covered in the VCCR, such as additional consular functions and privileges and immunities.

Panel on Administration of Justice and Legal Services

4. At the meeting on 28 February 2005, the Administration briefed the Panel on –

- (a) the grant of privileges and immunities as the pre-requisite for the establishment of consular relations between sovereign States; and
- (b) the Administration's programme of preparing subsidiary legislation, in the form of Orders, relating to the privileges and immunities conferred on the consular posts of Australia, the United Kingdom, the United States of America and Vietnam in the HKSAR. The Orders would be submitted to the Legislative Council (LegCo) for scrutiny under the negative vetting procedure.

5. The Administration explained to the Panel that the Central People's Government had so far applied to HKSAR eight bilateral agreements with separate sovereign States, providing for matters not covered in the VCCR. These included additional privileges and immunities accorded to consular posts and their personnel which were broadly comparable to those provided for diplomatic agents in the Vienna Convention on Diplomatic Relations (VCDR). The Orders mentioned in paragraph 4(b) above sought to underpin the relevant provisions in the bilateral agreements signed by the CPG with Australia, the United Kingdom, the United States of America and Vietnam. The Orders for the other agreements would be submitted to LegCo in batches, as soon as the drafting and consultation with the signatories of the agreements had been completed.

6. In response to the Panel's request at the meeting on 28 February 2005, the Administration has set out at Annex I of the Legislative Council Brief a comparison of the consular and diplomatic privileges and immunities provided for in the VCCR

and the VCDR respectively. Members may wish to make reference to the texts of the relevant Articles of the VCCR and VCDR separately provided by the Administration in considering the comparison.

7. An extract from the minutes of the Panel's meeting on 28 February 2005 is in **Appendix**.

Council Business Division 2
Legislative Council Secretariat
9 May 2005

**Extract from minutes of meeting on
Panel on Administration of Justice and Legal Services on 28 February 2005**

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V. Subsidiary legislation relating to consular matters

(LC Paper No. CB(2)916/04-05(01) – Paper provided by the Administration)

30. At the invitation of the Chairman, DD of Adm briefed members on the Administration's paper, which explained –

- (a) the grant of privileges and immunities in the context of the establishment of consular relations between sovereign States; and
- (b) the Administration's programme of preparing subsidiary legislation relating to the privileges and immunities conferred by the Central People's Government (CPG) on the consular posts and their personnel of Australia, the United Kingdom, the United States of America and Vietnam in the Hong Kong Special Administrative Region (HKSAR).

31. DD of Adm informed members that the 1963 Vienna Convention on Consular Relations (VCCR) was a multilateral international convention which codified the relevant international laws on consular relations, matters relating to the establishment and maintenance of consular posts, and consular privileges and immunities. The People's Republic of China was a party to the VCCR. Under the provisions of the VCCR, a State might conclude bilateral international agreements with other States regarding the establishment of or facilitation for consular posts to deal with matters not covered in the VCCR, including the grant of consular privileges and immunities and functions exceeding those provided for in the VCCR. Aside from the VCCR, the CPG had so far applied to the HKSAR eight bilateral agreements with separate sovereign States, providing for matters not covered in the VCCR including, inter alia, additional privileges and immunities accorded to consular posts and personnel, which were broadly comparable to those provided for diplomatic agents in the Vienna Convention on Diplomatic Relations.

32. DD of Adm further explained that at present, the relevant provisions of these international agreements concerning additional consular privileges and immunities were given legal effect in the HKSAR generally by the Regulation of the People's Republic of China concerning Consular Privileges and Immunities.

In line with the established practice under common law, provisions of international agreements applicable to the HKSAR would be underpinned by way of local legislation, should they affect private rights and obligations or required exceptions to be made to the existing laws of HKSAR. In this regard, with the Consular Relations Ordinance (Cap. 557) enacted in 2000 to provide a flexible legislative framework, the Administration had embarked on a programme of preparing the necessary subsidiary legislation in the form of Orders to underpin the relevant provisions in the international agreements signed by the CPG. The Orders relating to the additional consular functions conferred on the consular post of Canada in the HKSAR were enacted in November 2003. The Administration would shortly submit to the Legislative Council (LegCo) the Orders relating to the privileges and immunities conferred on the consular posts of the United Kingdom, the United States of America, Vietnam and Australia. The Orders for the remaining agreements would be submitted in batches, as soon as the drafting and consultation with the signatories of the agreements had been completed.

33. The Chairman said that the relevant subsidiary legislation would be subject to the negative vetting procedure of LegCo and a subcommittee might be formed to scrutinize the provisions. She suggested that the Administration should provide the relevant provisions of the VCCR and the international agreements to the subcommittee in due course to facilitate its deliberation.

Adm 34. Mr Albert HO asked whether privileges and immunities similar to those accorded to consular posts and personnel applied to offices set up by the CPG in the HKSAR. The Chairman requested the Administration to coordinate a written reply to Mr HO's enquiry.

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