Subcommittee on Subsidiary Legislation Relating to Consular Matters

The Administration's Responses to Issues raised at the Meeting on 12 May 2005

- Would the Administration provide a comparison of the privileges and immunities under the Vienna Convention on Consular Relations (VCCR) with the additional consular privileges and immunities set out in the relevant subsidiary legislation?
- A1 The seven pieces of subsidiary legislation are made under the Administration of Estates by Consular Officers Ordinance (Cap. 191), the Consular Conventions Ordinance (Cap. 267) and the Consular Relations Ordinance (Cap. 557) respectively.

We have prepared, at <u>Annex A</u>, an explanatory note which compares the relevant provisions in the VCCR with those set out in the Schedule to the Consular Relations (Additional Privileges and Immunities) (Vietnam) Order (L.N. 55) made under Cap. 557, concerning additional privileges and immunities.

For Members' reference, we have also prepared similar explanatory notes, at <u>Annexes B and C</u>, on the Consular Relations (Additional Privileges and Immunities) (United Kingdom) Order (L.N. 51) and the Consular Relations (Additional Privileges and Immunities) (United States of America) Order (L.N. 52). Members have completed scrutiny of the two Orders at the last Subcommittee meeting held on 12 May 2005.

We have also prepared, at Annexes D and E, explanatory notes which compare the relevant provisions in the VCCR concerning the safeguarding of the interests of nationals in cases of succession mortis causa with the relevant provisions underpinned by the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2005 (L.N. 53) and the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) (No. 2) Order 2005 (L.N. 56) made under Cap. 191; and the Consular Conventions (Application of Section 3) Order 2005 (L.N. 53) and the Consular Conventions (Application of Section 3) (No. 2) Order 2005 (L.N. 57) made under Cap. 267. A copy each of Cap. 191 and Cap. 267 is at Annexes F and G.

- Q2 What is the meaning of "residences of consular officers"? What action will be taken if a consular officer's residence is different from the residence on the official record?
- A2 The term "residences of consular officers" is not defined in the VCCR. To implement the privileges and immunities accorded by the Central People's Government to the consular officers in Hong Kong, the HKSARG requires the heads of consular posts to provide, upon installation of their consular officers, the personal particulars of these officers to the Protocol Division for record purpose. These personal particulars include the residential addresses of consular officers. The Protocol Division, in compiling a record of the residences of consular officers, requests the consular posts concerned to provide documentary proof (e.g. whether the deed or tenancy agreement of the residence is held or entered into in the name of the sending State or a representative of the sending State as the owner or lessee) for verification.

In case a consular officer's residential address is different from that on the Government's record, the Protocol Division will approach the head of the consular post concerned or his designee for verification.

- Q3 Would the Administration provide information on the number of members of the consular posts in the United Kingdom, the United States of America, Australia and Vietnam?
- A3 The number of members of the consular posts in Australia, the United Kingdom, the United States of America and Vietnam is listed in the following table:

Consular Post	Consular Officer	Family Members of Consular Officer	Consular Employee	Family Members of Consular Employee	Total
Australia	17	27	0	0	44
UK	36	46	11	0	93
USA	71	107	57	41	276
Vietnam	5	10	3	7	25
Total	129	190	71	48	438

(Note: According to the information provided by the consular posts concerned to the Protocol Division, no service staff is employed by these consular posts.)

- Q4 What is the purpose of signifying "Council Chamber" of the Executive Council at the end of the subsidiary legislation concerning additional consular privileges and immunities?
- A4 The words "Council Chamber" which appear in subsidiary legislation made by the Chief Executive in Council indicate where the power to make subsidiary legislation was exercised. We have adopted this long-standing practice for subsidiary legislation made by the Governor in Council before 1997, and those made by the Chief Executive in Council after 1997.

Subsidiary legislation made other than by the Chief Executive in Council does not bear the words "Council Chamber".

Annex A

CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES) (VIETNAM) ORDER

(Made by the Chief Executive in Council under section 4(1) of the Consular Relations Ordinance (Cap. 557))

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Interpretation

In this Order -

"Convention" (《條約》) means the Consular Convention between the Socialist Republic of Vietnam and the People's Republic of China done at Beijing on 19 October 1998;

"relevant provisions of the Convention" (《條約》有關條文) means the provisions of paragraph 1 of Article 12, Article 13, paragraphs 2 and 3 of Article 16, Articles 17 and 18, paragraphs 1 and 3 of Article 19, Article 25 (except sub-paragraphs (a) and (b) of paragraph 1 and paragraph 3), and Article 28, of the Convention as set out in the Schedule.;

Explanatory Notes

The proposed commencement date has taken into account the lead time required to complete the negative vetting process upon gazettal of the Orders.

The Convention has been published in the Gazette (Special Supplement No. 5) and uploaded onto the website of the Department of Justice for public's information.

3. Additional privileges and immunities

It is declared 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, under the relevant provisions of the Convention, as read with the provisions of Article 1 (except paragraphs 2, 8, 11, 14 and 15), Articles 20, 29 and 30, and paragraph 2 of Article 33, of the Convention as set out in the Schedule, shall have the force of law in Hong Kong.

In line with the established practice under common law, we have included in the Order the provisions of the Convention which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, to reflect that they have the force of law in local legislation.

Provisions which can be implemented by way of administrative arrangements under the existing legal framework or which have already been covered by the Vienna Convention on Consular Relations (VCCR) and set out in the Schedule to the Consular Relations Ordinance (Chapter 557) need not be included in the Order.

SCHEDULE [ss. 2 & 3]

PROVISIONS OF THE CONVENTION REFERRED TO IN THIS ORDER

Part I

Definitions

Article 1

Definitions

For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

1. "Consular post" means any consulate-general, consulate, vice-consulate or consular agency;

- 3. "Head of consular post" means the consul-general, consul, vice-consul or consular agent who is charged by the sending State to head a consular post;
- officer" consul-general, 4. "Consular means a vice consul-general, consul, vice-consul, consular attache or consular agent;
- 5. "Consular employee" means any person who performs administrative and technical service at a consular post;
- "Member of the service staff" means any person employed in the domestic service of a consular post;
- "Members of the consular post" means consular officers, consular employees and members of the service staff;

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the relevant provisions must be read with this provision, hence its inclusion in the Order.

As the provisions included in the Order do not contain the following expressions, it is not necessary to include them in the Order:

- "(2) Consular district"
- "(8) Members of the consular staff"
- Consular archives" "(11)
- "(14) Vessel of the sending State"
- Aircraft of the sending State" "(15)

- 9. "Member of the private staff" means any person who is employed in the private service of a member of the consular post;
- 10. "Consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

.....

- 12. "Official correspondence" of a consular post means all the correspondence relating to a consular post and its functions;
- 13. "Member of the family" means the spouse of a member of the consular post and their minor children who live with them in the same household;

[Article 2 (Establishment of a consular post), Article 3 (Appointment and admission of the head of a consular post), Article 4 (Temporary exercise of the functions of the head of consular post), Article 5 (Nationality of members of the consular post and members of the private staff), Article 6 (Persons declared "non grata" or unacceptable), Article 7 (Notification of arrivals and departures), Article 8 (Acquisition of consular premises and residences), Article 9 (Honorary consular officers), Article 10 (Protection of and facilities for the consular post and members of the consular post) and Article 11 (Use of national flag and emblem)]

These provisions can be implemented by way of administrative arrangements under the existing legal framework.

Part III Facilities, privileges and immunities

Article 12 Inviolability of the consular premises and the residences of consular officers

1. Consular premises and the residences of consular officers shall be inviolable. The authorities of the receiving State shall not enter the consular premises and the residences of consular officers without the consent of the head of the consular post or the head of the diplomatic mission of the sending State in the receiving State or of a person designated by one of them.

Article 31 of the VCCR provides that the authorities of the receiving State shall not enter the consular premises except with the consent of the head of the consular post or of his designee. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

Article 12 of the Convention provides that the authorities of the receiving State may not, under any circumstances, enter the consular premises without the consent of the head of the consular post or of his designee. The Article also extends the inviolability of consular premises to the residences of consular officers.

Exemption from taxation of consular premises and consular properties

- 1. The receiving State shall exempt the followings from all dues and taxes:
- (a) consular premises and residences of the members of the consular post acquired in the name of the sending State or its representative and transactions or instruments thereto;
- (b) consular facilities and means of transport acquired exclusively for official purposes as well as their acquisition, possession or maintenance.
- 2. The provisions of paragraph 1 of this Article shall not apply in respect of:
 - (a) charges levied for specific services;
- (b) dues and taxes collectable under the laws and regulations of the receiving State from a person who concludes a contract with the sending State or its representative.

[Article 14 (Inviolability of consular archives)]

Article 32 of the VCCR provides that consular premises and the residence of the career head of consular post shall be exempt from dues and taxes.

Article 13(1) of the Convention extends the privilege and immunity to the residences of the members of the consular post, consular facilities and means of transport acquired exclusively for official purposes.

Article 33 of the VCCR provides that the consular archives and documents shall be inviolable at all times and wherever they may be. As Article 33 has already covered the scope of Article 14 of the Convention, and has been set out in the Schedule to Chapter 557, there is no need to include Article 14 of the Convention in the Order.

[Article 15 (Freedom of movement)]

Article 16

Freedom of communication

- 2. The official correspondence of the consular post shall be inviolable. The consular bag shall be neither opened nor detained. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.
- 3. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State, he shall only be a national of the sending State and not be a permanent resident of the receiving State. In the performance of his functions, the consular courier shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest, detention or any other form of limitation of his personal freedom.

Article 17

Personal inviolability of consular officers

Consular officers shall enjoy personal inviolability and can not be liable to arrest or detention or to any other form of limitation of their personal freedom.

This provision can be implemented by way of administrative arrangements under the existing legal framework.

Article 35 of the VCCR provides that the official correspondence of the consular post shall be inviolable. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains anything other than consular correspondence, they may request that the bag be opened in their presence by an authorised representative of the sending State.

Article 16 of the Convention provides that the receiving State shall not, under any circumstances, open or detain the official correspondence of the consular post.

Article 41 of the VCCR provides that consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

Article 17 of the Convention provides that consular officers shall enjoy personal inviolability which is not limited to the above stipulation as set out in the VCCR. Article 28 of the Convention extends the personal inviolability of consular officers to their family members.

Immunity from jurisdiction

(1) A consular officer shall be immune from the judicial or administrative jurisdiction of the receiving State, except in civil proceedings:

- (a) arising out of a contract concluded by a consular officer in which he did not contract expressly or impliedly as an agent on behalf of the sending State;
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft;
- (c) concerning private immovable property situated in the territory of the receiving State, unless the consular officer holds it on behalf of the sending State and for the purposes of the consular post;
- (d) concerning private succession in which the consular officer is involved as executor, administrator, heir or legatee as private person and not on behalf of the sending State;
- (e) arising out of any professional or commercial activity exercised by the consular officer in the receiving State outside his official functions.

Article 43(1) of the VCCR provides that consular officers shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

Article 18(1) of the Convention provides that consular officers' immunities from judicial or administrative jurisdiction are not limited to the above stipulation as set out in the VCCR. Article 28 of the Convention extends consular officers' immunities from judicial or administrative jurisdiction to their family members.

The exceptions set out in Article 43(2) of the VCCR do not include the exceptions set out in Article 18(1)(c)-(e) of the Convention.

These provisions are identical to those set out in Article 43(2) of the VCCR.

These provisions are identical to Article 31(1)(a), (b) and (c) of the Vienna Convention on Diplomatic Relations (VCDR).

- (2) No measures of execution may be taken in respect of a consular officer except in the cases referred to in paragraph 1 of this Article and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
- (3) Consular employees and members of the service staff shall be immune from judicial or administrative jurisdiction of the receiving State in respect of any act in the performance of their functions, except in civil proceedings referred to in paragraph 1 of this Article.

Liability to give evidence

(1) A consular officer is under no obligation to give evidence as a witness.

.....

(3) A consular employee or a member of the service staff are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. He is also entitled to decline to give evidence as expert witnesses with regard to the laws of the sending State. Article 18(2) of the Convention is similar to Article 31(3) of the VCDR.

Article 43(1) of the VCCR also provides that consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

Article 18(3) of the Convention extends consular employees' immunities from judicial or administrative jurisdiction to members of the service staff. Article 28 of the Convention extends consular employees' immunities to their family members.

Article 44 of the VCCR provides that if a consular officer should decline to give evidence, no coercive measure or penalty may be applied to him. Moreover, consular officers, consular employees and members of the service staff are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto.

Article 19(1) of the Convention provides that a consular officer is under no obligation to give evidence as a witness. Article 28 of the Convention extends the immunities conferred upon consular officers and consular employees under Article 19 to their family members respectively.

Waiver of privileges and immunities

- 1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 17, 18 and 19 of this Convention. The waiver shall in all cases be express and shall be communicated to the receiving State in writing.
- 2. The initiation of proceedings by a member of the consular post in a matter where he might enjoy immunity from jurisdiction under Article 18 of the present Convention shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
- 3. The waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver in writing shall be necessary.

[Article 21 (Exemption from registration of aliens and residence permits) and Article 22 (Exemption from work permits)]

[Article 23 (Social security exemption) and Article 24 (Exemption from taxation)]

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the relevant provisions must be read with this provision, hence its inclusion in the Order.

These provisions can be implemented by way of administrative arrangements under the existing legal framework.

Article 48 of the VCCR provides for social security exemption. Article 49 provides for exemption from taxation. As these two Articles have already covered the scope of Articles 23 and 24 of the Convention respectively, and have been set out in the Schedule to Chapter 557, there is no need to include Articles 23 and 24 of the Convention in the Order.

Exemptions from customs duties and inspection

1. In accordance with such laws and regulations as it may adopt, the receiving State shall permit entry and export of and grant exemption from all customs duties, taxes and related charges, other than charges for storage, cartage and similar services, on:

.....

- (c) articles imported at the time of first installation for the personal use of a consular employee of the consular post, including household articles intended for his establishment.
- 2. Articles referred to in sub-paragraphs ... (c) of paragraph 1 of this Article shall not exceed the quantities necessary for direct use by the person concerned.

[Article 26 (Estate of a member of the consular post or of a member of his family) and Article 27 (Exemption from personal services and contributions)] Article 50 of the VCCR provides for the right of exemption from customs duties of a consular employee at the time of first installation.

Article 28 of the Convention extends the right of exemption from customs duties conferred on a consular employee at the time of first installation under Article 25 to their family members.

Article 51 of the VCCR provides for the stipulation relating to the estate of a member of the consular post or of a member of his family. Article 52 provides for the exemption from personal services and contributions. As these two Articles have already covered the scope of Articles 26 and 27 of the Convention respectively and have been set out in the Schedule to Chapter 557, there is no need to include Articles 26 and 27 of the Convention in the Order.

Privileges and immunities of family members

- 1. Family members of a consular officer and family members of a consular employee of the consular post shall enjoy respectively the privileges and immunities to which the consular officer and the consular employee are respectively entitled under the provisions of this Convention.
- 2. Family members of a member of the service staff of the consular post shall enjoy the privileges and immunities to which the member of the service staff is entitled under the Article 27 of this Convention, except those who are nationals or permanent residents of the receiving State, or who carry on any private gainful occupation in the receiving State.

Article 29

Persons who shall not enjoy privileges and immunities

- 1. Consular employees and members of the service staff of the consular post who are nationals or permanent residents of the receiving State shall not enjoy the privileges and immunities provided for in this Convention, subject to the provisions of paragraph 3 of Article 19 of this Convention.
- 2. Family members of the person mentioned in paragraph 1 of this Article shall not enjoy the privileges and immunities provided for in this Convention.

The VCCR does not have a separate provision to stipulate that the privileges and immunities enjoyed by family members of consular officers and consular employees shall be the same as those enjoyed by the consular officers and consular employees respectively.

Article 28(1) of the Convention extends the privileges and immunities enjoyed by consular officers/employees to their family members respectively. Article 28(2) of the Convention stipulates that family members of a member of the service staff of the consular post shall enjoy only the privileges and immunities to which the member of the service staff is entitled under the Article 27 of the Convention.

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the relevant provisions must be read with this provision, hence its inclusion in the Order.

Beginning and end of consular privileges and immunities

- 1. Every member of a consular post shall enjoy the privileges and immunities provided for in the present Convention from the moment he enters the territory of the receiving State on the proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
- 2. Family members of a member of the consular post and members of his private staff shall receive the privileges and immunities provided for in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.
- 3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in the case of armed conflict. In the case of persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.
- 4. In the event of the death of a member of the consular post, the members of his family shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the relevant provisions must be read with this provision, hence its inclusion in the Order.

[Article 31 (Respect for the laws and regulations of the receiving State)]

Article 55 of the VCCR provides for the stipulation about the respect for the laws and regulations of the receiving State. As Article 55 of the VCCR has already covered the scope of Article 31 of the Convention and has been set out in the Schedule to Chapter 557, there is no need to include Article 31 of the Convention in the Order.

[Article 32 (Insurance against third party risks)]

This provision can be implemented by way of administrative arrangements under the existing legal framework.

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the

relevant provisions must be read with this provision, hence its

inclusion in the Order.

Article 33

Special provisions concerning private gainful occupation

- 2. Privileges and immunities provided in this Part shall not be accorded:
- (a) to consular employees or to members of the service staff, who carry on any private gainful occupation in the receiving State;
- (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
- (c) to members of the family of a member of a consular post, who themselves carry on any private gainful occupation in the receiving State.

[Article 34 to Article 53 (Consular functions)]

These provisions (except Article 41) can be implemented by way of administrative arrangements under the existing legal framework.

[Article 41 (Functions related to inheritance)]

Article 41 of the Convention confers upon consular officers of Vietnam in Hong Kong additional consular powers relating to the administration of estates of deceased Vietnamese nationals. These additional consular powers are to be given effect in the form of Orders made under the Administration of Estates by Consular Officers Ordinance (Chapter 191) and the Consular Conventions Ordinance (Chapter 267).

Annex B

CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES)(UNITED KINGDOM) ORDER

(Made by the Chief Executive in Council under section 4(1) of the Consular Relations Ordinance (Cap. 557))

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Interpretation

In this Order –

"1984 Agreement" (《1984 年協議》) means the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the establishment of a British Consulate-General at Shanghai and a Chinese Consulate-General at Manchester signed at Beijing on 17 April 1984;

"1996 Agreement" (1996 年協議) means the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China constituted by an exchange of Notes dated 26 September 1996 between the Embassy of the United Kingdom of Great Britain and Northern Ireland in China and the Ministry of Foreign Affairs of the People's Republic of China;

"relevant provisions of the 1984 Agreement" (《1984 年協議》有關條文) means the provisions of paragraphs (1) and (3) of Article 3 and paragraphs (1), (2), (3), (4) and (5) of Article 7 of the 1984 Agreement as set out in Schedule 2;

Explanatory Notes

The proposed commencement date has taken into account the lead time required to complete the negative vetting process upon gazettal of the Orders.

These two Agreements have been published in the Gazette (Special Supplement No. 5) and uploaded onto the website of the Department of Justice for public's information.

"relevant provision of the 1996 Agreement" (1996 年協議有關條文) means the provision of Article 3 of the 1996 Agreement as set out in Schedule 1.

3. Additional privileges and immunities

It is declared 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, under –

- (a) the relevant provision of the 1996 Agreement; and
- (b) the relevant provisions of the 1984 Agreement, as read with the provision of paragraph (8) of Article 7 of that Agreement as set out in Schedule 2, all of which are applied as part of the 1996 Agreement by virtue of Article 4 of the 1996 Agreement,

shall have the force of law in Hong Kong.

SCHEDULE [s. 2]

PROVISIONS OF THE 1996 AGREEMENT REFERRED TO IN THIS ORDER

[Article 1 and Article 2 (Establishment of a consular post)]

3. The like exemption from dues and taxes as shall be accorded to the premises of the Consulate-General shall be accorded to the residence of a consular officer of which the Government of the United Kingdom, or any person acting on its behalf, is the owner or lessee.

In line with the established practice under common law, we have included in the Order the provisions of these two Agreements which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, to reflect that they have the force of law in local legislation.

Provisions which can be implemented by way of administrative arrangements under the existing legal framework or which have already been covered by the Vienna Convention on Consular Relations (VCCR) and set out in the Schedule to the Consular Relations Ordinance (Chapter 557) need not be included in the Order.

These provisions can be implemented by way of administrative arrangements under the existing legal framework.

Article 32 of the VCCR provides that consular premises and the residence of the career head of consular post shall be exempt from dues and taxes.

Article 3 of the "1996 Agreement" extends the privilege and immunity to the residences of consular officers.

[Article 4 (the applicability of the "1984 Agreement")]

Reference has been made in Clause 3(b) of the Order.

[Article 5 (the applicability of the Vienna Convention on Consular Relations)]

The Order is made under Chapter 557 which provides for the implementation of the VCCR in Hong Kong. Hence, consular matters not mentioned in the Order shall be regulated by the VCCR.

SCHEDULE 2 [ss. 2 & 3]

PROVISIONS OF THE 1984 AGREEMENT REFERRED TO IN THIS ORDER

ARTICLE 3

(1) The consular premises shall be inviolable. The authorities of the receiving State may not enter the consular premises without the consent of the head of the consular post or the head of the diplomatic mission of the sending State, or a person designated by one of those persons.

.....

(3) The provisions of paragraph (1) of this Article shall likewise apply to the residences of consular officers.

Article 31 of the VCCR provides that the authorities of the receiving State shall not enter the consular premises except with the consent of the head of the consular post or of his designee. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

Article 3(1) of the "1984 Agreement" provides that the authorities of the receiving State may not, under any circumstances, enter the consular premises without the consent of the head of the consular post or of his designee. Article 3(3) of the "1984 Agreement" extends the inviolability of consular premises to the residences of consular officers.

[Article 5 (Facilities for the work of the consular post)]

This provision can be implemented by way of administrative arrangements under the existing legal framework.

[Article 6 (Protection of consular officers)]

This provision can be implemented by way of administrative arrangements under the existing legal framework.

Article 41 of the VCCR provides that consular officers shall not be liable to arrest or detention pending trial, except in the case of

a grave crime and pursuant to a decision by the competent judicial

authority. Article 43(1) of the VCCR provides that consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the

receiving State in respect of acts performed in the exercise of

consular functions.

ARTICLE 7

- (1) Members of the consular post and members of their families shall be immune from the criminal jurisdiction of the receiving State and shall not be liable to arrest or detention pending trial.
- (2) Members of the consular post shall be immune from the civil and administrative jurisdiction of the receiving State in respect of any act performed by them in the exercise of consular functions.

Article 7(1) of the "1984 Agreement" provides that members of the consular post shall enjoy personal inviolability and immunity from criminal jurisdiction which are not limited to the above stipulations as set out in the VCCR. It also extends the personal inviolability and immunity from criminal jurisdiction of members of the consular post to their family members.

(3) The provisions of paragraph (2) of this Article shall not apply in respect of a civil action:

The exceptions set out in Article 43(2) of the VCCR do not include the exceptions set out in paragraphs (3)(a) to (3)(c) of Article 7 of the "1984 Agreement".

- (a) relating to private immovable property situated in the receiving State, unless the member of the consular post holds it on behalf of the sending State for the purposes of the consular post;
- (b) relating to succession in which the member of the consular post is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) relating to any professional or commercial activity exercised by the member of the consular post in the receiving State outside his official functions;
- (d) arising out of a contract concluded by the member of the consular post in which he did not contract, expressly or impliedly, on behalf of the sending State;
- (e) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.
- (4) No measures of execution shall be taken against any of the persons mentioned in this Article, except in the cases coming under subparagraphs (a), (b) and (c) of paragraph (3) of this Article and provided also that the measures concerned can be taken without infringing the inviolability of the person concerned or of his residence.

These provisions are identical to Article 31(1)(a)-(c) of the Vienna Convention on Diplomatic Relations (VCDR).

These provisions are identical to those set out in Article 43(2) of the VCCR.

Article 7(4) of the "1984 Agreement" is similar to Article 31(3) of the VCDR.

(5) Members of the consular post and members of their families may be called upon to attend as witnesses in the course of judicial or administrative proceedings. If a consular officer or a member of his family should decline to give evidence, no coercive measure or penalty shall be applied to that person. Consular employees and members of their families, as well as members of the service staff and members of their families, may not decline to give evidence except as provided in paragraph (6) of this Article.

.....

(8) Members of the consular post who are nationals or permanent residents of the receiving State and members of their families, as well as those members of the families of the members of the consular post who are themselves nationals or permanent residents of the receiving State, shall not enjoy the rights, facilities and immunities provided for in this Article, except the immunity provided for in paragraph (6) of this Article.

[Article 8 (Consular functions)]

Article 44 of the VCCR provides that if a consular officer should decline to give evidence, no coercive measure or penalty may be applied to him. Moreover, consular officers, consular employees and members of the service staff are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto.

Article 7(5) of the "1984 Agreement" extends the immunities enjoyed by consular officers and other members of the consular post to their family members respectively.

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the relevant provisions must be read with this provision, hence its inclusion in the Order.

This provision can be implemented by way of administrative arrangements under the existing legal framework.

CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES) (UNITED STATES OF AMERICA) ORDER

(Made by the Chief Executive in Council under section 4(1) of the Consular Relations Ordinance (Cap. 557))

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Interpretation

In this Order –

"Agreement" (《協定》) means the Agreement between the Government of the People's Republic of China and the Government of the United States of America regarding the maintenance of the United States Consulate General in the Hong Kong Special Administrative Region signed at Beijing on 25 March 1997;

"relevant provisions of the Agreement" (《協定》有關條文) means the provisions of sections (a), (b), (d)(3) and (e)(1), (2), (3), (4) and (5) of Article 3 of the Agreement as set out in the Schedule.

Explanatory Notes

The proposed commencement date has taken into account the lead time required to complete the negative vetting process upon gazettal of the Orders.

The Agreement has been published in the Gazette (Special Supplement No. 5) and uploaded onto the website of the Department of Justice for public's information.

3. Additional privileges and immunities

It is declared that the additional privileges and immunities accorded to the consular post of the United States of America in Hong Kong, or to persons connected with the consular post, or to both, under the relevant provisions of the Agreement, as read with the provision of section (e)(8) of Article 3 of the Agreement as set out in the Schedule, shall have the force of law in Hong Kong.

SCHEDULE [ss. 2 & 3] PROVISIONS OF THE AGREEMENT REFERRED TO IN THIS ORDER

[Article 1 (Maintenance of the consular post) and Article 2 (Performance of consular functions in Macao by the consular post in Hong Kong)]

3.

(a) The residences of consular officers of the sending State shall enjoy the same inviolability, protection, and immunity from requisition or expropriation as the consular premises of the sending State. If for the needs of the national defense or other public purposes expropriation of consular residences becomes necessary, all possible measures must be taken by the receiving State to avoid interference with the performance of consular functions and promptly to pay appropriate and effective compensation to the sending State.

In line with the established practice under common law, we have included in the Order the provisions of the Agreement which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, to reflect that they have the force of law in local legislation.

Provisions which can be implemented by way of administrative arrangements under the existing legal framework or which have already been covered by the Vienna Convention on Consular Relations (VCCR) and set out in the Schedule to the Consular Relations Ordinance (Chapter 557) need not be included in the Order.

These provisions can be implemented by way of administrative arrangements under the existing legal framework.

Article 31 of the VCCR provides that the authorities of the receiving State shall not enter the consular premises except with the consent of the head of the consular post or of his designee. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

Article 3(a) of the Agreement provides for the inviolability, protection, and immunity from requisition or expropriation of consular premises. It also extends the privilege and immunity to the residences of consular officers.

(b) The exemption from taxes applicable to the premises of the consulate shall extend to the residences of the members of the consulate who are not nationals or residents of the receiving State, as well as to any taxes that may be imposed in connection with transactions or documents relating to such residences, but this exemption shall not apply to payment for specific services rendered and to dues and taxes if under the law of the receiving State they are payable by a person contracting with the sending State or with a person acting on behalf of the sending State.

Article 32 of the VCCR provides that consular premises and the residence of the career head of consular post shall be exempt from dues and taxes.

Article 3(b) of the Agreement extends the privilege and immunity to the residences of members of the consulate.

[Article 3(c)(Purchase, lease or acquisition of consular premises and residences)]

This provision can be implemented by way of administrative arrangements under the existing legal framework.

(d)

(3) The authorities of the receiving State shall neither open nor detain the official correspondence of a consulate, including consular bags and other containers, as described in sub-paragraph (2) of this section.

Article 35 of the VCCR provides that the official correspondence of the consular post shall be inviolable. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains anything other than consular correspondence, they may request that the bag be opened in their presence by an authorized representative of the sending State.

Article 3(d)(3) of the Agreement provides that the receiving State shall not, under any circumstances, open or detain the official correspondence of the consular post.

- (e) (1) Members of the consulate and their family members shall be immune from the criminal jurisdiction of the receiving State;
 - (2) Members of the consulate and their family members shall be immune from the civil and administrative jurisdiction of the receiving State respecting any act performed by them in the exercise of consular functions;

- (3) The provisions of sub-paragraph (2) of this section shall not apply to civil procedures:
 - (a) resulting from contracts that were not concluded by a member of the consulate on behalf of the sending State;
 - relating to succession in which a member of the consulate was involved as executor, administrator, heir or legatee in a private capacity;
 - (c) concerning a claim by a third party for damage caused by a vessel, vehicle, or aircraft;

Article 43(1) of the VCCR provides that consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

Article 3(e)(1) of the Agreement provides that members of the consular post shall enjoy immunity from criminal jurisdiction which is not limited to the above stipulation as set out in the VCCR. It also extends the immunity from criminal jurisdiction of members of the consular post to their family members. Article 3(e)(2) of the Agreement extends the immunity from the civil and administrative jurisdiction of members of the consular post in respect of any act performed in the exercise of consular functions to their family members.

The exceptions set out in Article 43(2) of the VCCR do not include the exceptions set out in Article 3 (e)(3)(b), (d) and (e) of the Agreement.

This provision is identical to that set out in Article 43(2) of the VCCR.

This provision is identical to Article 31(1)(b) of the Vienna Convention on Diplomatic Relations (VCDR).

This provision is identical to that set out in Article 43(2) of the VCCR.

(d) concerning private immovable property in the jurisdiction of the receiving State, unless the member of the consulate is holding it on behalf of the sending State for the purposes of the consulate; This provision is identical to Article 31(1)(a) of the VCDR.

(e) relating to any private professional or commercial activities engaged in by a member of the consulate in the receiving State outside of his official functions.

This provision is identical to Article 31(1)(c) of the VCDR.

(4) No measures of execution shall be taken against any of the persons mentioned in this section, except in the cases under sub-paragraph (3)(d) of this section, and then under the condition that these measures shall not infringe upon the inviolability of their person or residence.

Article 3(e)(4) of the Agreement is similar to Article 31(3) of the VCDR.

(5) Members of the consulate and their family members may be called upon to attend as witnesses in the course of judicial or administrative proceedings. In the event of the refusal of a consular officer or a member of the officer's family to give evidence, no coercive measure or penalty may be applied to such person. Consular employees and members of their families may not decline to give evidence except with respect to matters mentioned in subparagraph (6) of this section;

Article 44 of the VCCR provides that if a consular officer should decline to give evidence, no coercive measure or penalty may be applied to him. Moreover, consular officers, consular employees and members of the service staff are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto.

......

Article 3(e)(5) of the Agreement extends the immunities enjoyed by consular officers and other members of the consular post to their family members respectively.

(8) Members of the consulate and their families who are nationals or permanent residents of the receiving State shall not enjoy the abovementioned privileges and immunities except in respect of any act performed by them in the exercise of consular functions.

To ascertain the scope of the additional privileges and immunities accorded by the relevant provisions of the Convention, the relevant provisions must be read with this provision, hence its inclusion in the Order.

[Article 3(6) (Consular functions) and Article 3(7) (Issuance of visas and nationality)]

This provision can be implemented by way of administrative arrangements under the existing legal framework.

[Article 4 (the Vienna Convention on Consular Relations is applicable)]

The Order is made under Chapter 557 which provides for the implementation of the VCCR in Hong Kong. Hence, consular matters not mentioned in the Order shall be regulated by the VCCR.

LN 53 of 2005

Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2005

Explanatory Notes

Agreement on Consular Relations
Between
the People's Republic of China
And
Australia

Article 13 Functions concerning estate

(Made by the Chief Executive under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) after consultation with the Executive Council)

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Schedule amended

Notice is given that the Chief Executive has ordered the variation of the Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 191) by adding –

"2. Australia Australia Agreement 8.9.1999 Article 13.6".
on Consular
Relations
between the People's
Republic of China
and Australia

Article 5(g) of the Vienna Convention on Consular Relations (VCCR) provides for the safeguarding of the interests of nationals of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State. VCCR does not specify detailed provisions for matters relating to the administration of their nationals' estates in the receiving States by consular officers.

The Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2005 adds "Australia" to the Schedule to Cap. 191 to confer additional powers to Australian consular officers as set out in Article 13(6) of the Agreement, i.e. to administer the deceased national's estates under specified circumstances.

6. If a national of the sending State who is not a permanent resident in the receiving State dies during a temporary stay in or transit through the receiving State, and if there is no relative or representative of his or hers in the receiving State, a consular officer shall be entitled to immediately take into provisional custody all the documents, money and personal effects which were with the deceased national for transmission to his or her heir, testamentary executor or other persons authorized to receive the assets.

Consular Conventions (Application of Section 3) Order 2005

Explanatory Notes

Agreement on Consular Relations
Between
the People's Republic of China
And
Australia

(Made under section 5 of the Consular Conventions Ordinance (Cap. 267) after consultation with the Executive Council)

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Application of section 3 of the Ordinance

It is directed that section 3 of the Ordinance shall apply to Australia.

3. Foreign State

The Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended by adding –

"2. Australia".

Article 5(g) of the VCCR provides for the safeguarding of the interests of nationals of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State. VCCR does not specify detailed provisions for matters relating to the handling of estates which their nationals have a right to inherit in the receiving States by consular officers.

The Consular Officers Ordinance (Amendment of Schedule) Order 2005 directs that section 3 of Cap. 267 shall apply to Australia to confer additional powers to Australian consular officers as set out in Article 13(4) and 13(5) of the Agreement, i.e. to deal with estates which their nationals have a right to inherit in the HKSAR under specified circumstances.

Article 13 Functions concerning estate

- 4. In case a national of the sending State has or claims to have a right to inherit an estate in the receiving State but neither he or she nor his or her representative is able to be present at the inheritance proceedings, a consular officer or his or her representative may represent the national before the court or other competent authorities of the receiving State.
- 5. A consular officer shall be entitled, on behalf of a national of the sending State who is not a permanent resident in the receiving State, to receive for transmission to that national any estate or bequeathed gift in the receiving State, which is due to that national.

LN 56 of 2005

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

Explanatory Notes

Consular Convention
Between
the Socialist Republic of Vietnam
And
the People's Republic of China

(Made by the Chief Executive under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) after consultation with the Executive Council)

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Schedule amended

Notice is given that the Chief Executive has ordered the variation of the Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 191) by adding -

"3. Socialist Consular Convention 19.10.1998 Article 41(3)".

Republic of between the Socialist

Vietnam Republic of Vietnam and the People's Republic of China

Article 5(g) of the Vienna Convention on Consular Relations (VCCR) provides for the safeguarding of the interests of nationals of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State. VCCR does not specify detailed provisions for matters relating to the administration of their nationals' estates in the receiving States by consular officers.

The Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) (No. 2) Order 2005 adds "Socialist Republic of Vietnam" to the Schedule to Cap. 191 to confer additional powers to Vietnamese consular officers as set out in Article 41(3) of the Convention, i.e. to administer the deceased national's estates under specified circumstances.

Article 41 Functions related to inheritance

3. If a national of the sending State, who is not permanently resident in the receiving State, dies during a temporary stay in or passing through the receiving State, the consular officer may, for the purpose of safeguarding and preserving the money and assets of the deceased, take immediate custody thereof. The consular officer shall, in conformity with the laws and regulations of the sending and the receiving States in respect of succession, be entitled to receive and preserve the deceased's objects for his personal use.

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

Explanatory Notes

Consular Convention Between the Socialist Republic of Vietnam And the People's Republic of China

(Made under section 5 of the Consular Conventions Ordinance (Cap. 267) after consultation with the Executive Council)

1. Commencement

This Order shall come into operation on 11 July 2005.

2. Application of section 3 of the Ordinance

It is directed that section 3 of the Ordinance shall apply to the Socialist Republic of Vietnam.

3. Foreign State

The Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended by adding -

"3. Socialist Republic of Vietnam".

Article 5(g) of the VCCR provides for the safeguarding of the interests of nationals of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State. VCCR does not specify detailed provisions for matters relating to the handling of estates which their nationals have a right to inherit in the receiving States by consular officers.

The Consular Officers Ordinance (Amendment of Schedule) (No. 2) Order 2005 directs that section 3 of Cap. 267 shall apply to the Socialist Republic of Vietnam to confer additional powers to Vietnamese consular officers as set out in Article 41(1)(b) and 41(2) of the Convention, i.e. to deal with estates which their nationals have a right to inherit in the HKSAR under specified circumstances.

Article 41 Functions related to inheritance

1. When the relevant information is available to the competent authorities of the receiving State, in the case of the death of a national of the sending State, they shall inform in time the consular officer of the sending State of:

...

- (b) the initiation of an estate proceedings of a person, irrespective of the nationality, who has left in the receiving State an estate in which a national of the sending State who is not a permanent resident of the receiving State and who has no representative there may have an interest under a will or otherwise in accordance with the laws and regulations of the receiving State.
- 2. In relation to the estate matters specified in paragraph 1 of this Article and in conformity of the laws and regulations of the receiving State a consular officer shall be entitled:
- (a) to request the competent authorities of the receiving State to take necessary measures for the safeguarding, preservation and administration of the estate;
- (b) to be present during, or otherwise to participate in, the taking of the measures referred to in sub-paragraph (a) of paragraph 2 of this Article;
- (c) to arrange for the representation of a national of the sending State, having a legitimate interest in the estate, who is neither present nor represented in the receiving State.

CAP. 191

第 191 章

領事館官員管理遺產條例

[1940年3月15日]

弁言(由1999年第81號第3條廢除)

本條例可引稱為《領事館官員管理遺產條例》。

由領事館官員管理遺產

凡附表第1欄所述任何國家的任何子民或公民----

- (a) 在香港境內去世,或
- (b) 在香港境外去世, 遺下財產在香港境內,

而在其去世時,並無依法有權管理該死者遺產的人在香港,則該國家在香港的領事、 副領事或領事代理人可管有及保管該死者的財產,並可運用該等財產以支付該死者的 債項及殯殮費,以及將盈餘部分為有權享有其利益的人而保留;但該領事、副領事及 領事代理人須就該死者的財產立即申請並有權從法院獲得遺產管理書,而遺產管理書 受限制的方式及時間則視乎法院覺得適當者而定。

CHAPTER 191

ADMINISTRATION OF ESTATES BY **CONSULAR OFFICERS**

To make provision for the administration of estates by consular officers.

[15 March 1940]

Preamble (Repealed 81 of 1999 s. 3)

1. Short title

This Ordinance may be cited as the Administration of Estates by Consular Officers Ordinance.

2. Administration of estates by Consular Officers

Whenever any subject or citizen of any State mentioned in the first column of the Schedule-

- (a) dies within Hong Kong, or
- (b) dies outside Hong Kong, leaving property within Hong Kong, and no person is present in Hong Kong at the time of his death who is rightfully entitled to administer the estate of such deceased person, the consul, vice-consul, or consular agent of such State within Hong Kong may take possession and have the custody of the property of such deceased person, and may apply the same in payment of his debts and funeral expenses, and may retain the surplus for the benefit of the persons entitled thereto; but such consul, vice-consul, or consular agent shall immediately apply for, and shall be entitled to obtain from the court, letters of administration of the property of such deceased person, limited in such manner and for such time as to the court shall seem fit.

(Amended 81 of 1999 s. 3)

3. 附表的更改

₹ 2

行政長官可藉憲報公布由政務司司長簽署的命令,更改附表,更改的方式是----(由 1994 年第 242 號法律公告修訂;由 1997 年第 362 號法律公告修訂;由 1999 年 第81 號第3 條修訂)

- (a) 在中華人民共和國政府與任何國家訂立某項適用於香港的協議或安排而 該項協議或安排或該項協議或安排的任何條文就領事館官員管理遺產一 事作出規定時,在附表內加入該國家; (由 1999 年第 81 號第 3 條代
- (b) 當與附表內任何國家訂立的協議或安排內附表所述的條文失效時,從附 表刪除該國家。 (由1999年第81號第3條代替)

附表

[第3條]

國家名稱 加拿大

協議或安排名稱

協議或安排日期

條文

《中華人民共和國政府和加拿大 政府領事協定》

1997年11月28日 第十(三)條

(由 2003 年第 167 號法律公告增補) (附表由 1999 年第81 號第3條代替)

Variation of Schedule

CAP. 191

The Chief Executive may by order notified in the Gazette under the hand of the Chief Secretary for Administration vary the Schedule- (Amended L.N. 242 of 1994; L.N. 362 of 1997; 81 of 1999 s. 3)

- (a) by adding thereto any State with whom the Government of the People's Republic of China 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; (Replaced 81 of 1999 s. 3)
- (b) by deleting therefrom any State when the provision of the agreement or arrangement with that State mentioned in the Schedule shall have ceased to have effect. (Replaced 81 of 1999 s. 3)

SCHEDULE

[s. 3]

Name of State

1. Canada

Title of agreement or arrangement

28.11.1997

Date of agreement or arrangement

Provision Article 10.3

Consular Agreement between the Government of the People's Republic of China and the Government of Canada

(Added L.N. 167 of 2003) (Schedule replaced 81 of 1999 s. 3) 第 267 章

第 267 章

領事協定條例

本條例旨在將某些與管理死者遺產及財產有關的權力授予已與中華人民共和國政府訂 立領事協定的外國的領事館官員。

(1999 年第81 號第3 條修訂)

[1951年4月20日]

1. 簡稱

本條例可引稱為《領事協定條例》。

2. 釋義

在本條例中,除文意另有所指外—— "領事辦事處" (consular office) 指任何純粹為執行領事館官員公務而佔用的建築物或 其部分。

[比照 1949 c. 29 s. 4(3) U.K.]

3. 領事館官員在死者於香港的 財產方面的權力

(1) 凡任何屬本條適用國家的國民的人被指名為處置在香港財產的死者遺囑的遺屬執行人,或該國民在其他情況下屬可獲授予承辦死者在香港的遺產的人,如法院應該國的領事館官員提出的申請而信納該國民並非在香港居住,而且沒有獲授權書妥為

CHAPTER 267

CONSULAR CONVENTIONS

To confer upon the consular officers of foreign States with which consular conventions are concluded by the Government of the People's Republic of China certain powers relating to the administration of the estates and property of deceased persons.

(Amended 81 of 1999 s. 3)

[20 April 1951]

1. Short title

This Ordinance may be cited as the Consular Conventions Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires—
"consular office" (領事辦事處) means any building or part of a building which
is exclusively occupied for the purposes of the official business of a
consular officer.

[cf. 1949 c. 29 s. 4(3) U.K.]

3. Powers of consular officers in relation to property in Hong Kong of deceased persons

(1) Where any person who is a national of a State to which this section applies is named as executor in the will of a deceased person disposing of property in Hong Kong, or is otherwise a person to whom a grant of representation to the estate in Hong Kong of a deceased person may be made, then if the court is satisfied, on the application of a consular officer of the said State, that the said national is not resident in Hong Kong, and if no application for a grant of such representation is made by a person duly authorized by power of attorney to act for him in that behalf, the court shall

授權在該方面代該國民行事的人提出授予該項承辦的申請,則法院須向該官員作出承 辦死者遺產的授予,如同假使該官員獲得如上述般授權便會向他作出的一樣。

- (2) 凡任何屬本條適用國家的國民的人——
 - (a) 有權獲得屬死者遺產一部分並在香港的任何金錢或其他財產,或有權收 取於死者去世時到期在香港繳付的任何金錢;或
 - (b) 是根據任何在本條例生效之前或之後通過的條例,無須遺囑認證授予或 其他所有權證明亦可獲付予或交付死者的任何金錢或其他財產的人士中 的其中一人,

則該國民如並非在香港居住,該國的任何領事館官員即具有收取任何該等金錢或財產 或就其給予有效責任解除的權利及權力,猶如該官員已獲授權書妥為授權在該方面代 該國民行事一樣:

但如任何人知悉在香港有其他人已獲明示授權代該國民收取任何金錢或財產,則 本款並不授權或規定該人將該筆金錢或財產付予或交付領事館官員。

> (由 1971 年第 26 號第 76 條修訂) [比照 1949 c. 29 s. 1 U.K.]

4. 第3條的補充條文

即使有任何法律規則在領事館官員的公事上作為及文件方面賦予豁免或特權,領 事館官員在憑藉第3條賦予或根據第3條賦予他的權力而作出的任何作為方面,或在 與該等作為有關而當其時正由他管有的任何文件方面,並無權享有任何豁免或特權。 [比照 1949 c. 29 s. 3 U.K.]

藉行政長官命令第3條適用於任何外國

行政長官可藉於憲報示明的命令,指示第3條適用於該命令所指明的已與中華人 民共和國政府訂立關乎該條所規定事宜的領事協定的外國。

> (由 1970 年第 17 號第 14 條修訂;由 1999 年第 81 號第 3 條修訂) [比照 1949 c. 29 s. 6 U.K.]

make to that officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorized as aforesaid.

- (2) Where any person who is a national of a State to which this section applies—
 - (a) is entitled to any money or other property in Hong Kong forming part of the estate of a deceased person, or to receive payment in Hong Kong of any money becoming due on the death of a deceased person; or
 - (b) is among the persons to whom any money or other property of a deceased person may under any Ordinance, whether passed before or after the commencement of this Ordinance, be paid or delivered without grant of probate or other proof of title,

then if the said national is not resident in Hong Kong a consular officer of that State shall have the like right and power to receive and give a valid discharge for any such money or property as if he were duly authorized by power of attorney to act for him in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in Hong Kong has been expressly authorized to receive that money or property on behalf of the said national.

> (Amended 26 of 1971 s. 76) [cf. 1949 c. 29 s. 1 U.K.]

4. Supplementary provisions as to section 3

Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of powers conferred on him by or under section 3 or in respect of any document for the time being in his possession relating thereto.

[cf. 1949 c. 29 s. 3 U.K.]

5. Section 3 to apply to any foreign State by order of the Chief Executive

The Chief Executive may by order signified in the Gazette direct that section 3 shall apply to any foreign State specified in the Order, being a State with which a consular convention providing for matters for which provision is made by that section has been concluded by the Government of the People's Republic of China.

(Amended 17 of 1970 s. 14; 81 of 1999 s. 3) [cf. 1949 c. 29 s. 6 U.K.]

CONSULAR CONVENTIONS (APPLICATION OF **SECTION 3) ORDER**

(Cap. 267, section 5)

[Subsidiary]

[14 November 2003]

[附屬法例]

領事協定(第3條的適用範圍)令

(第 267 章第 5 條)

[2003年11月14日]

- 1. (已失時效而略去)
- 2. 本條例第3條的適用範圍 現指示本條例第3條適用於附表指明的外國。

附表

[第2條]

外國

1. 加拿大

2. Application of section 3 of the Ordinance

It is directed that section 3 of the Ordinance shall apply to any foreign State specified in the Schedule.

SCHEDULE

[s. 2]

FOREIGN STATE

Canada

1. (Omitted as spent)

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