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Administration of Justice and Legal Services  
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(Attn: Mrs Percy Ma)

**Subsidiary Legislation relating to  
Privileges and Immunities Conferred on  
Consular Posts and Specified International Organizations**

I enclose a paper on the captioned subject for the reference of Members of the Panel. We stand ready to brief Members on the subject at the coming Panel meeting on 23 June 2003, or on any future date convenient to the Panel.

Yours sincerely,

( David Leung )  
for Director of Administration

Encl.

## **LegCo Panel on Administration of Justice and Legal Services**

### **Subsidiary Legislation relating to Privileges and Immunities Conferred on Consular Posts and Specified International Organizations**

#### **PURPOSE**

This paper briefs the Panel on Administration of Justice and Legal Services on –

- (a) the grant of privileges and immunities by the Central People's Government (CPG) to consular posts and designated offices of International Organizations (IOs) established in the HKSAR, as well as their personnel; and
- (b) the Administration's work programme of preparing subsidiary legislation relating to these privileges and immunities and other consular matters, for the approval of the Legislative Council.

#### **BACKGROUND**

##### **Privileges and Immunities**

2. Consular relations are established, on the basis of mutual consent, between sovereign States to facilitate the protection of the rights and interests of their nations and nationals, and to promote friendly relations and cooperation among them. It is a common and well-established practice that following the establishment of a consular post by a sending State, the post and its members will be accorded with privileges and immunities not made available to ordinary resident aliens in the receiving State.

3. The conferment of privileges and immunities on consular members, which is a cornerstone of the consular relations between sovereign States, is not meant for the personal benefit of individuals but

rather, to ensure the efficient performance of functions by consular members on behalf of the sending State. Consular members could not effectively carry out their functions if their official acts or words in their consular districts would render them liable to prosecution. As a matter of principle, any act performed in the discharge of consular functions is in the nature an act of the sending State. Given the equality of sovereign States, such act lies outside the jurisdiction or competence of the law and authority of the receiving State.

### **International Conventions and Bilateral Treaties**

4. The Vienna Convention on Consular Relations (VCCR) has codified the international law on consular relations, matters relating to the establishment and maintenance of consular missions and consular privileges and immunities. 165 States are signatories to the VCCR, including the People's Republic of China (PRC). Without prejudice to the privileges and immunities conferred under the VCCR, it is also a well-established principle set out in the VCCR that consular members have the duty to respect local laws and regulations.

5. Apart from the VCCR, a State may conclude bilateral agreements with other States regarding the establishment of or facilitation for consular posts to deal with matters not covered in the VCCR, including according privileges and immunities *exceeding* those provided for in the VCCR to the consular posts of those other states.

6. For IOs, which are not sovereign States and whose representatives are not covered under the VCCR, their entitlements to privileges and immunities are provided for under their respective statutes (e.g. its Articles of Agreement in the case of the International Monetary Fund), or relevant international agreements (e.g. the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations). In addition, a host country may also enter into bilateral agreements with IOs, providing them with tailor-made privileges and immunities. The privileges and immunities granted to IOs serve to enable the IOs concerned to carry out their functions more effectively. In the same way, privileges and immunities are not conferred on IO personnel for their personal benefit, but rather to ensure the independent exercise of their functions in connection with the IOs.

## **SITUATION IN HONG KONG**

### **Standard Privileges and Immunities for Career Consular Posts**

7. At present, a total of 54 career consular posts are established in the HKSAR. These consular posts enjoy the privileges and immunities accorded to them under the VCCR, to which the PRC acceded in 1979. Such privileges and immunities include –

- (a) inviolability of consular premises, its archives and documents;
- (b) personal inviolability of consular officers except in the case of grave crime;
- (c) immunity from jurisdiction in respect of acts performed in the exercise of consular functions;
- (d) exemption from giving evidence concerning matters connected with the exercise of consular functions; and
- (e) exemption from taxation, customs duties, inspection and personal services and contributions, etc.

In line with the established practice under common law, provisions of the VCCR which affect private rights and obligations have already been specifically set out in local legislation by way of the Consular Relations Ordinance. Please refer to **Annex A** for a list of such provisions.

### **Additional Privileges and Immunities and Consular Functions for Career Consular Posts**

8. On top of the provisions in the VCCR, the PRC has so far applied to the HKSAR seven bilateral agreements providing for matters not covered in the VCCR, ranging from additional consular functions relating to the administration of deceased nationals' estates in the HKSAR (e.g. conferred on the consular posts of Canada and Australia) to enhanced privileges and immunities comparable to those for diplomatic agents (e.g. conferred on the consular posts of the United Kingdom and the United States). Save for individual agreements which specifically provide for the maintenance / establishment of consular posts in the HKSAR (e.g. those signed by the CPG with the United States and the

United Kingdom), all these bilateral agreements are concluded on a reciprocal basis, meaning that the facilities, privileges and immunities provided therein apply also to the PRC's consular posts in the receiving States concerned.

### **Privileges and Immunities for IOs**

9. Separately, five IOs have established / maintained their offices in the HKSAR under their respective bilateral arrangements with the PRC, which are applied to the HKSAR. They are granted privileges and immunities having regard to their operational needs in the HKSAR under four bilateral agreements with the PRC. Some of these privileges and immunities are similar in nature to those granted to consular posts in Hong Kong (e.g. inviolability of premises and archives, functional immunity, immunity from taxation). Some others are specific to the IOs concerned (e.g. immunity from seizure, expropriation, freeze in respect of their deposit, property and assets, etc).

10. These 11 bilateral agreements between the PRC and foreign States / IOs that are applied to the HKSAR to deal with privileges, immunities and additional consular functions are set out at **Annex B**. We have published the texts of the relevant agreements in Special Supplement No. 5 to the Gazette for the information of the general public.

### **LEGISLATIVE PROPOSALS**

11. At present, international agreements signed by the CPG which confer privileges and immunities on consular posts or IOs, and their respective personnel, and which are applied to the HKSAR, are given effect in Hong Kong generally by the following national laws applicable to the HKSAR –

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

12. Having regard to our common law tradition, provisions of international agreements applicable to Hong Kong will be transformed onto the domestic legal plane, should they affect private rights and

obligations or require exceptions to be made to the existing laws of the HKSAR. In this regard, 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 the relevant international agreements signed by the CPG. In addition, the Administration of Estates by Consular Officers Ordinance (Cap 191) and the Consular Conventions Ordinance (Cap 267) provide a framework for giving effect to certain additional consular functions relating to administration of estates by consular officers in the HKSAR, as may be agreed between the CPG and the sending State concerned.

13. With the legislative framework in place, we consider that the best means of underpinning the relevant provisions in the 11 bilateral agreements between the PRC and Consular Posts / IOs mentioned above is to enact local legislation setting them out expressly and specifically in the laws of Hong Kong. We have since embarked on a programme of preparing the necessary subsidiary legislation in the form of Orders to cover such agreements. We shall introduce those Orders into LegCo in batches for negative vetting, as soon as the drafting and consultation of the relevant Orders have been completed.

Administration Wing  
Chief Secretary for Administration's Office  
June 2003

**Provisions of the Vienna Convention on Consular Relations  
having the force of law under the Consular Relations Ordinance**

**ARTICLE 1 Definitions**

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:
  - (a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;
  - (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
  - (c) "head of consular post" means the person charged with the duty of acting in that capacity;
  - (d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
  - (e) "consular employee" means any person employed in the administrative or technical service of a consular post;
  - (f) "member of the service staff" means any person employed in the domestic service of a consular post;
  - (g) "members of the consular post" means consular officers, consular employees and members of the service staff;
  - (h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;
  - (i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;
  - (j) "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;
  - (k) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indices and any article or furniture intended for their protection or safe-keeping.
  
2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career

consular officer; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

## **CHAPTER I CONSULAR RELATIONS IN GENERAL**

### **ARTICLE 5 Consular functions**

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, 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;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for



- nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
  - (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
  - (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
  - (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

**ARTICLE 15 Temporary exercise of the functions of the head of a consular post**

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.
2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this

notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.
4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

#### **ARTICLE 17 Performance of diplomatic acts by consular officers**

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.
2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

#### **CHAPTER II FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST**

## **SECTION I FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST**

### **ARTICLE 31 Inviolability of the consular premises**

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If ex-propiation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

### **ARTICLE 32 Exemption from taxation of consular premises**

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

### **ARTICLE 33 Inviolability of the consular archives and documents**

The consular archives and documents shall be inviolable at all times and wherever they may be.

### **ARTICLE 35 Freedom of communication**

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official

purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.
3. 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 something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.
4. 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.
5. 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 be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.
7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

## **ARTICLE 39 Consular fees and charges**

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.
2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

## **SECTION II FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST**

### **ARTICLE 41 Personal inviolability of consular officers**

1. 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.
2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

### **ARTICLE 43 Immunity from jurisdiction**

1. 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.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:
  - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
  - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

### **ARTICLE 44 Liability to give evidence**

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A

consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post 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. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

#### **ARTICLE 45 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 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.
3. The initiating of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. The waiver of immunity from jurisdiction for the purposes 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 shall be necessary.

#### **ARTICLE 48 Social security exemption**

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
  - (b) that they are covered by the social security provisions which are in force in the sending State or a third State.
- 3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
- 4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

#### **ARTICLE 49 Exemption from taxation**

- 1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:
  - (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
  - (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
  - (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
  - (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
  - (e) charges levied for specific services rendered;
  - (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.
- 2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.
- 3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

#### **ARTICLE 50 Exemption from customs duties and inspection**

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
  - (a) articles for the official use of the consular post;
  - (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.
2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.
3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

**ARTICLE 51 Estate of a member of the consular post or of a member of his family**

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

**ARTICLE 52 Exemption from personal services and contributions**

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning,



military contributions and billeting.

### **ARTICLE 53 Beginning and end of consular privileges and immunities**

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on 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. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided 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 territory of 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 forming part of his household 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 case of armed conflict. In the case of the 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. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.
5. In the event of the death of a member of the consular post, the members of his family forming part of his household 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.

### **ARTICLE 54 Obligations of third States**

1. If a consular officer passes through or is in the territory of a third

State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.
3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.
4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

#### **ARTICLE 55    Respect for the laws and regulations of the receiving State**

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.
3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

#### **ARTICLE 57    Special provisions concerning private gainful occupation**

2. Privileges and immunities provided in this Chapter 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.

### **CHAPTER III REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS**

#### **ARTICLE 58 General provisions relating to facilities, privileges and immunities**

- 1. Articles ..... 35, ..... and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles ..... 60, 61 and 62.
- 2. Articles ..... 43, paragraph 3 of Article 44, Articles 45 and 53 ..... shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles ..... 66 and 67.
- 3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

#### **ARTICLE 60 Exemption from taxation of consular premises**

- 1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
- 2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

## **ARTICLE 61 Inviolability of consular archives and documents**

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books and documents relating to their profession or trade.

## **ARTICLE 62 Exemption from customs duties**

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

## **ARTICLE 66 Exemption from taxation**

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

## **ARTICLE 67 Exemption from personal services and contributions**

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

## **CHAPTER IV GENERAL PROVISIONS**

### **ARTICLE 70 Exercise of consular functions by diplomatic missions**

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.
2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the

consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

#### **ARTICLE 71 Nationals or permanent residents of the receiving State**

1. Except in so far as additional facilities privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44.
2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State.

**List of the International Agreements between  
CPG and Foreign States/International Organizations  
Relating to Privileges and Immunities**

**Date of  
Application to  
the HKSAR**

**Consular Agreements**

- |    |  |              |
|----|--|--------------|
| 1. | Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of <b>the United Kingdom of Great Britain and Northern Ireland</b> Concerning the Establishment of a British Consulate-General in the Hong Kong Special Administrative Region of the People's Republic of China | 1 Jul 1997   |
| 2. | Agreement Between the Government of the People's Republic of China and the Government of <b>the United States of America</b> Regarding the Maintenance of the United States Consulate-General in the Hong Kong Special Administrative Region   | 1 Jul 1997   |
| 3. | Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of the <b>Republic of Italy</b> Concerning the Maintenance of the Consulate-General of Italy in the Hong Kong Special Administrative Region of the People's Republic of China                                   | 1 Jul 1997   |
| 4. | Consular Agreement Between the Government of the People's Republic of China and the Government of <b>Canada</b>  | 11 Mar 1999  |
| 5. | Consular Convention Between <b>the Socialist Republic of Vietnam</b> and the People's Republic of China  | 26 Jul 2000  |
| 6. | Agreement on Consular Relations Between the People's Republic of China and <b>Australia</b>  | 15 Sept 2000 |
| 7. | Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of <b>the Republic of India</b> on Matters Concerning the Consular Convention Between the People's Republic of China and the Republic of India  | 28 Jul 2001  |

**Date of  
Application to  
the HKSAR**

**Agreements with International Organizations**

- |    |   |              |
|----|---|--------------|
| 1. | Agreement Constituted by Exchange of Letters Between the Government of the People's Republic of China and <b>the Commission of the European Communities</b> Concerning the Maintenance of the Office of the Commission of the European Communities in the Hong Kong Special Administrative Region of the People's Republic of China   | 1 Jul 1997   |
| 2. | Host Country Agreement Between the Government of the People's Republic of China and <b>the Bank for International Settlements</b> Relating to the Establishment and Status of a Representative Office of the Bank for International Settlements in the Hong Kong Special Administrative Region of the People's Republic of China  | 11 May 1998  |
| 3. | Memorandum of Understanding Between the Government of the People's Republic of China and <b>the International Monetary Fund</b> Concerning the Establishment of a Sub-Office in the Hong Kong Special Administrative Region by the Resident Representative Office of the Fund in the People's Republic of China   | 23 Sept 2000 |
| 4. | Memorandum of Understanding Between the Government of the People's Republic of China and <b>the International Bank for Reconstruction and Development and the International Finance Corporation</b> Concerning the Establishment of the IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific in the Hong Kong Special Administrative Region of the People's Republic of China, Memorandum of Administrative Arrangements Relating to the IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific in the Hong Kong Special Administrative Region of the People's Republic of China and Letters between the Hong Kong Monetary Authority and the International Bank for Reconstruction and Development and the International Finance Corporation Relating to the Memorandum of Understanding | 28 Sept 2000 |