

## LEGISLATIVE COUNCIL BRIEF

### Subsidiary Legislation relating to Consular Matters

#### INTRODUCTION

At the meeting of the Executive Council on 12 April 2005, the Council ADVISED and the Acting Chief Executive ORDERED that –

- (a) in respect of the consular agreement between the People's Republic of China (PRC) and the United Kingdom<sup>(1)</sup>, the Consular Relations (Additional Privileges and Immunities) (United Kingdom) Order, at **Annex A**, should be made under section 4(1) of the Consular Relations Ordinance (Chapter 557);
- (b) in respect of the consular agreement between the PRC and the United States of America<sup>(2)</sup>, the Consular Relations (Additional Privileges and Immunities) (United States of America) Order, at **Annex B**, should be made under section 4(1) of Chapter 557;
- (c) in respect of the consular agreement between the PRC and Australia<sup>(3)</sup>,
  - (i) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2005, at **Annex C**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Chapter 191); and
  - (ii) the Consular Conventions (Application of Section 3) Order 2005, at **Annex D**, should be made under section 5 of the Consular Conventions Ordinance (Chapter 267).

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Notes (1) The Agreement constituted by Exchange of Notes between the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the establishment of a British Consulate-General in the Hong Kong Special Administrative Region of the People's Republic of China.

(2) 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.

(3) The Agreement on Consular Relations between the People's Republic of China and Australia.

- (d) in respect of the consular convention between the PRC and Vietnam<sup>(4)</sup>,
  - (i) the Consular Relations (Additional Privileges and Immunities) (Vietnam) Order at **Annex E**, should be made under section 4(1) of Chapter 557;
  - (ii) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) (No. 2) Order 2005, at **Annex F**, should be made under section 3 of Chapter 191; and
  - (iii) the Consular Conventions (Application of Section 3) (No. 2) Order 2005, at **Annex G**, should be made under section 5 of Chapter 267.

## **BACKGROUND AND JUSTIFICATIONS**

### Grant of Consular 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. It is a common and well-established practice that the receiving State accords to the consular post and personnel of the sending State privileges and immunities not made available to its ordinary residents or visitors. As every State is both a sending and a receiving State, these privileges and immunities are granted on a reciprocal basis, meaning that a State's own consular personnel abroad enjoy the same level of privileges and immunities as those enjoyed by the consular personnel of the sending State.

3. The conferment of privileges and immunities on consular members 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. The major functions of a consular post are set out as follows –

- (a) protecting the interests of the sending State and of its nationals, both individuals and bodies corporate, in the receiving State;

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<sup>(4)</sup> Note (4) The Consular Convention between the Socialist Republic of Vietnam and the People's Republic of China.

- (b) furthering the development of commercial, economic, cultural, scientific relations between the States concerned;
- (c) reporting to the sending State conditions and developments in such areas as commercial, economic, cultural and scientific life of the receiving State;
- (d) rendering necessary assistance of various sorts to the nationals of the sending State, especially at times of emergency or occurrence of natural disasters in the receiving State;
- (e) exercising rights of supervision and inspection in respect of vessels and aircrafts and their crews of the sending State entering the ports or territory of the receiving State, and extending to them necessary assistance; and
- (f) handling miscellaneous administrative affairs relating to passports, visas, notarization, authentication, etc.

Consular members could not effectively carry out these functions if their acts or words in their consular districts would readily render them liable to prosecution, arrest or detention. Hence, the grant of privileges and immunities is the pre-requisite for the establishment of consular relations between sovereign States.

#### International Convention on Consular Privileges and Immunities

4. The Vienna Convention on Consular Relations (VCCR) is a multilateral international convention which codifies the relevant international laws on consular relations, matters relating to the establishment and maintenance of consular posts, and consular privileges and immunities. 166 States are signatories to the VCCR, including the PRC. At present, a total of 56 career consular posts in the HKSAR and their personnel are enjoying the privileges and immunities accorded to them under the VCCR. The major types of privileges and immunities stipulated under the VCCR include –

- (a) Inviolability of consular premises, except in case of fire or other disaster;
- (b) Exemption of consular premises and residence of head of consular post from dues and taxes;

- (c) Freedom of communication of consular posts;
- (d) Personal inviolability of consular officers, except in case of a grave crime;
- (e) Immunity of consular officers and employees from jurisdiction in respect of acts performed in the exercise of consular functions; and
- (f) Exceptions to the liability of members of a consular post to give evidence concerning matters connected with the exercise of their functions.

5. In line with the established practice under common law, those provisions of the VCCR, which affect private rights and obligations or require exceptions to be made to the existing laws, have already been specifically set out in the laws of the HKSAR by way of Chapter 557.

#### Bilateral Consular Agreements

6. Article 73 of the VCCR provides that nothing in the VCCR shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions of the VCCR. The PRC has concluded with eight foreign States bilateral consular agreements which are applicable to the HKSAR (a full list at **Annex H**). The current legislative exercise concerns the PRC's bilateral agreements with the UK, the USA, Australia and Vietnam.

#### **NEED FOR LOCAL LEGISLATION**

7. The PRC's bilateral agreements with the UK, the USA, Australia and Vietnam accord to the consular posts and personnel of these States additional privileges and immunities and/or functions in relation to the administration of estates in the HKSAR. At present, the relevant provisions of these agreements are given legal effect in the HKSAR by the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, which is national law applicable to the HKSAR by promulgation under Article 18 of the Basic Law. In line with the established practice under common law, provisions of these agreements will be underpinned by way of local legislation, should they affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR.

### Additional Privileges and Immunities

8. The PRC's bilateral consular agreements with the UK, the USA and Vietnam provide for additional privileges and immunities which are broadly comparable to those provided for diplomatic agents in the 1961 Vienna Convention on Diplomatic Relations (VCDR), but not covered in the VCCR. Major examples of these additional privileges and immunities are –

- (a) No entry to consular premises and residences is allowed under any circumstances without consent of the head of the consular post or his designated person. Moreover, the inviolability of consular premises under the VCCR is extended to cover the residences of consular officers;
- (b) Exemption from dues and taxes accorded to the residence of the head of consular post under the VCCR is extended to that of consular officers;
- (c) The official correspondence of some consular posts may not be opened or detained under any circumstances;
- (d) Consular members and their family members are given greater protection from arrest or detention;
- (e) Consular members and their family members are given greater protection from prosecution;
- (f) The immunities of consular officers and employees from giving evidence under the VCCR are extended to their respective family members.

9. Members may refer to the explanatory note, at **Annex I**, for a comparison of the privileges and immunities provided for in the VCCR and the VCDR.

### Additional Functions of Administration of Estates

10. The PRC's bilateral consular agreements with Australia and Vietnam accord to their consular posts additional consular functions relating to the administration of the estates of their deceased nationals which are not provided for in the VCCR. Specifically, consular officers of these States are entitled to –

- (a) protect and conserve the estates left in the HKSAR by deceased nationals of these States;
- (b) safeguard the interests of their nationals who have a right to property left in the HKSAR by a deceased; and
- (c) receive for transmission to their nationals money or property in the HKSAR to which they are entitled as a consequence of the death of another person.

## **THE ORDERS**

11. The Orders to be made under Chapter 557 seek to declare that the additional privileges and immunities accorded to the consular posts of the UK, the USA and Vietnam, or to persons connected with the consular posts, or to both, under the relevant provisions of the relevant bilateral consular agreements, shall have the force of law in the HKSAR.

12. The Orders to be made under Chapter 191 and Chapter 267 seek to implement the additional consular functions in relation to the administration of estates. The Orders to be made under Chapter 191 seek to underpin relevant provisions of the PRC's bilateral consular agreements with Australia and Vietnam by adding "Australia" and "Vietnam" to the Schedule to the Ordinance<sup>(5)</sup>. The Orders to be made under Chapter 267 seek to underpin relevant provisions of the above two agreements by directing that section 3 of the Ordinance<sup>(6)</sup> shall apply to Australia and Vietnam respectively, with which a consular convention has been concluded by the PRC. The existing provisions to be amended are at **Annex J**.

## **LEGISLATIVE TIMETABLE**

13. The Orders will be published in the Gazette on 22 April 2005. We propose that the Orders should come into operation on 11 July 2005, taking into account the lead time required for negative vetting upon gazettal.

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Notes (5) The Schedule of Chapter 191 sets out the States with which the PRC Government has entered into an agreement providing for the administration of estates by consular officers which applies to the HKSAR.

(6) Section 3 of Chapter 267 provides for the relevant powers of consular officers to deal with property in Hong Kong of deceased persons under specified circumstances.

## **IMPLICATIONS OF THE PROPOSAL**

14. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Orders will not affect the current binding effect of the principal legislation concerned and the legislation being amended.

15. The proposal has no civil service, economic, productivity, environmental or sustainability implications. As the residence of consular officers has already been exempted from dues and taxes since the bilateral agreements signed between the PRC and the foreign States concerned applied to the HKSAR, the proposal to reflect the arrangements under local legislation will not carry additional financial implications.

## **PUBLIC CONSULTATION**

16. We have consulted the Consulates General concerned on the draft Orders. We briefed the Panel on Administration of Justice and Legal Services on the subject on 28 February 2005. The Panel noted the underlying principles of the grant of privileges and immunities between sovereign States and the Administration's programme of preparing subsidiary legislation on additional privileges and immunities.

## **PUBLICITY**

17. A spokesman will be available to answer possible media and public enquiries.

## **ENQUIRY**

18. Any enquiries on the brief should be addressed to Mr David Leung, Assistant Director of Administration, on 2810 3946.

Administration Wing  
Chief Secretary for Administration's Office  
20 April 2005

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;

"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 1

[s. 2]

#### PROVISION OF THE 1996 AGREEMENT REFERRED TO IN THIS ORDER

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.

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 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.

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

(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.

(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.

Clerk to the Executive Council

COUNCIL CHAMBER

**Explanatory Note**

This Order declares that the additional privileges and immunities accorded to the consular post of the United Kingdom of Great Britain and Northern Ireland in Hong Kong, or to persons connected with the consular post, or to both, as specified in the Order, shall have the force of law in the Hong Kong Special Administrative Region.

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.

**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

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.
- (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.

.....

(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.

.....

- (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;
  - (b) 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;
  - (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;
  - (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.
- (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;
- (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 sub-paragraph (6) of this section;

.....

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

Clerk to the Executive Council

COUNCIL CHAMBER

2005

**Explanatory Note**

This Order declares 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, as specified in the Order, shall have the force of law in the Hong Kong Special Administrative Region.

ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS ORDINANCE  
(AMENDMENT OF SCHEDULE) ORDER 2005

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

**Explanatory Note**

This Order provides for the application of section 2 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) to consular officers of the Consulate General of Australia and gives effect to the provision in the Agreement on Consular Relations between the People's Republic of China and Australia signed on 8 September 1999 relating to the custodian and transmission of personal effects of deceased Australian nationals.

CONSULAR CONVENTIONS (APPLICATION OF SECTION 3)  
ORDER 2005

(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".

Chief Executive

2005

**Explanatory Note**

This Order provides for the application of section 3 of the Consular Conventions Ordinance (Cap. 267) to consular officers of the Consulate General of Australia and gives effect to the provision in the Agreement on Consular Relations between the People's Republic of China and Australia signed on 8 September 1999 which empowers such officers to represent Australian nationals in inheritance proceedings and to transmit estates in the Hong Kong Special Administrative Region to Australian nationals.

**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》有關係文) 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 subparagraphs (a) and (b) of paragraph 1 and paragraph 3), and Article 28, of the Convention as set out in the Schedule.

**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.

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;

4. "Consular officer" means a consul-general, 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;

6. "Member of the service staff" means any person employed in the domestic service of a consular post;



7. "Members of the consular post" means consular officers, consular employees and members of the service staff;

.....

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;

### **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 13**

#### **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 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.

**Article 18**

**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.

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.

## **Article 19**

### **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 20**

### **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 25**

### **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 28**

### **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.

### **Article 30**

#### **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.

### **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 subparagraph (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.

Clerk to the Executive Council

COUNCIL CHAMBER

2005

**Explanatory Note**

This Order declares that the additional privileges and immunities accorded to a consular post of the Socialist Republic of Vietnam, or to persons connected with the consular post, or to both, as specified in the Order, shall have the force of law in the Hong Kong Special Administrative Region.

**ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS ORDINANCE  
(AMENDMENT OF SCHEDULE) (NO. 2) ORDER 2005**

(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 19.10.1998 Article 41(3)".  
Republic Convention  
of between the  
Vietnam Socialist  
Republic of  
Vietnam and  
the People's  
Republic of  
China

Chief Secretary for Administration

2005

**Explanatory Note**

This Order provides for the application of section 2 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) to consular officers of the Consulate General of the Socialist Republic of Vietnam and gives effect to the provision in the Consular Convention between the Socialist Republic of Vietnam and the People's Republic of China done on 19 October 1998 relating to the protection of estates left in the Hong Kong Special Administrative Region by deceased Vietnamese nationals.

**CONSULAR CONVENTIONS (APPLICATION OF SECTION 3)  
(NO. 2) ORDER 2005**

(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".

Chief Executive

2005

**Explanatory Note**

This Order provides for the application of section 3 of the Consular Conventions Ordinance (Cap. 267) to consular officers of the Consulate General of the Socialist Republic of Vietnam and gives effect to the provision in the Consular Convention between the Socialist Republic of Vietnam and the People's Republic of China done on 19 October 1998 relating to the protection of

interests of Vietnamese nationals who have a right to property left in the Hong Kong Special Administrative Region by a deceased.

## Annex H

### **List of the International Agreements between CPG and Foreign States Relating to Privileges and Immunities Conferred on Consular Posts**

	<b>Date of Application to the HKSAR</b>
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> Regarding the Maintenance of the Italian Consulate General in the Hong Kong Special Administrative Region	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
8. Consular Convention between the People's Republic of China and <b>the Russian Federation</b>	23 October 2003

## Comparison of Privileges and Immunities under Vienna Convention on Consular Relations (VCCR) and Vienna Convention on Diplomatic Relations (VCDR)

(The note highlights several important aspects of the different levels of privileges and immunities between the VCCR and VCDR. It only serves as a rough reference and does not purport to set out the differences between consular and diplomatic privileges and immunities in a comprehensive and exhaustive manner. In every individual case, the full text of the VCCR, the VCDR and other applicable legal instruments must be referred to and applied to the facts of the particular case.)

<b><u>Relating to a Consular Post/Diplomatic Mission</u></b>		
	<b>VCCR</b>	<b>VCDR</b>
A. Inviolability of premises/ residences	<ul style="list-style-type: none"> <li>• Consular premises shall be inviolable. No entry without consent of head of consular post. Consent may be assumed in case of fire or other disaster.</li> <li>• Consular premises, property and means of transport shall be immune from requisition for purposes of national defence or public utility. If expropriation is necessary, prompt, adequate and effective compensation shall be paid. (Art. 31 of VCCR)</li> </ul>	<ul style="list-style-type: none"> <li>• Mission's premises shall be inviolable. No entry without consent of head of mission.</li> <li>• Mission's premises, property and means of transport shall be immune from search, requisition, attachment or execution. (Art. 22 of VCDR)</li> <li>• Diplomatic agent's residence shall be inviolable. (Art. 30 of VCDR)</li> </ul>
B. Exemption of premises/ residence from taxation	<ul style="list-style-type: none"> <li>• Consular premises and the residence of the head of consular post shall be exempt from dues and taxes. (Art. 32 of VCCR)</li> </ul>	<ul style="list-style-type: none"> <li>• The premises of the mission shall be exempt from dues and taxes. (Art. 23 of VCDR)</li> <li>• Diplomatic agent's private immovable property shall be exempt from dues and taxes if he holds it on behalf of the sending State for the purposes of the mission. (Art. 34 of VCDR)</li> </ul>
C. Freedom of communication	<ul style="list-style-type: none"> <li>• Official correspondences shall be inviolable. Consular bags may be opened or detained only in exceptional circumstances and in the presence of a representative of sending State. (Art. 35 of VCCR)</li> </ul>	<ul style="list-style-type: none"> <li>• Official correspondences shall be inviolable. Diplomatic bags shall not be opened or detained. (Art. 27 of VCDR)</li> </ul>



<b><u>Relating to Consular /Diplomatic Personnel</u></b>		
	<b>VCCR</b>	<b>VCDR</b>
D. Personal inviolability	<ul style="list-style-type: none"> <li>• Consular officers<sup>1</sup> shall not be liable to arrest or detention pending trial, except in case of grave crime and pursuant to a decision by the competent judicial authority.</li> <li>• Consular officers shall not be committed to prison, etc, save in execution of a judicial decision of final effect. (Art. 41 of VCCR)</li> </ul>	<ul style="list-style-type: none"> <li>• The person of a diplomatic agent<sup>2</sup> shall be inviolable and not be liable to arrest or detention. (Art. 29 of VCDR)</li> <li>• Applicable to family members<sup>3</sup> of a diplomatic agent.</li> <li>• Applicable to administrative/technical staff and their family members<sup>3</sup>. (Art. 37 of VCDR)</li> </ul>
E. Immunity from jurisdiction	<ul style="list-style-type: none"> <li>• Consular officers shall not be amenable to the jurisdiction of the judicial and administrative authorities in respect of acts performed in the exercise of consular functions, except for certain civil actions (e.g. claim by a third party for damage arising from an accident).</li> <li>• Applicable to consular employees<sup>4</sup>. (Art. 43 of VCCR)</li> </ul>	<ul style="list-style-type: none"> <li>• Diplomatic agents shall enjoy immunity from criminal jurisdiction.</li> <li>• Diplomatic agents shall enjoy immunity from civil and administrative jurisdiction, except under certain specified circumstances (e.g. actions relating to succession under specified conditions, professional/commercial activity conducted outside official functions, etc).</li> <li>• No measures of execution may be taken in respect of a diplomatic agent except in specified cases and provided that inviolability of person or residence shall not be infringed. (Art. 31 of VCDR)</li> <li>• Applicable to family members of a diplomatic agent.</li> <li>• Applicable to administrative/technical staff to the extent that immunity from civil and administrative jurisdiction shall not extend to acts performed outside the course of their duties. (Art. 37 of VCDR)</li> </ul>

<sup>1</sup> “Consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions.

<sup>2</sup> “Diplomatic agent” is the head of the diplomatic mission or a member of the staff of the mission having diplomatic rank.

<sup>3</sup> “Family members” mean the spouse and under-age children forming part of the household of a diplomatic agent or the administrative/technical staff concerned.

<sup>4</sup> “Consular employee” means any person employed in the administrative or technical service of a consular post.

	VCCR	VCDR
F. Exceptions to the liability to give evidence	<ul style="list-style-type: none"> <li>• When being called upon to attend as witness in judicial or administrative proceedings, consular officers may decline to give evidence. If they decline to do so, no coercive measure or penalty may be applied to them.</li> <li>• Members of a consular post<sup>5</sup> are under no obligation to give evidence or produce official correspondence and documents concerning matters connected with or relating to the exercise of their functions. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State. (Art. 44 of VCCR)</li> </ul>	<ul style="list-style-type: none"> <li>• Diplomatic agents are not obliged to give evidence as a witness. (Art. 31 of VCDR)</li> <li>• Applicable to family members<sup>3</sup> of a diplomatic agent.</li> <li>• Applicable to administrative/technical staff and their family members. (Art. 37 of VCDR)</li> </ul>

<sup>5</sup> “Members of a consular post” means consular officers, consular employees and members of the service staff.

## Annex J

Chapter:	191	ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS ORDINANCE	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 167 of 2003	14/11/2003
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[section 3]

	Name of State	Title of agreement or arrangement	Date of agreement or arrangement	Provision
1.	Canada	Consular Agreement between the Government of the People's Republic of China and the Government of Canada	28.11.1997	Article 10.3

(Schedule Replaced 81 of 1999 s. 3. Added L.N. 167 of 2003)

Chapter:	267B	CONSULAR CONVENTIONS (APPLICATION OF SECTION 3) ORDER	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 168 of 2003	14/11/2003
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[section 2]

## FOREIGN STATE

1. Canada