

L.N. 52 of 2005**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.

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- (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.

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- (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.

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- (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;

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- (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.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
12 April 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.