

**CONSULAR RELATIONS (ADDITIONAL
PRIVILEGES AND IMMUNITIES) (ITALY)
ORDER**

Explanatory Notes

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

1. Commencement

This Order comes into operation on 17 July 2009.

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

2. Interpretation

In this Order –

“Agreement” (協議) means the agreement between the Government of the Republic of Italy and the Government of the People’s Republic of China constituted by an exchange of Notes dated 5 June 1997 between the Embassy of the Republic of Italy in the People’s Republic of China and the Ministry of Foreign Affairs of the People’s Republic of China;

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

“relevant provisions of the Agreement” (協議有關條文) means the provisions of paragraphs 1.i(b), 1.ii, 5.i and 6 of Article IV of the Agreement, the English translation of which is 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 Republic of Italy, or to persons connected with the consular post, or to both, under the relevant provisions of the Agreement, have the force of law in Hong Kong.

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

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

SCHEDULE

[s. 2]

PROVISIONS OF THE AGREEMENT REFERRED TO IN THIS ORDER

IV. 1. Exemption from taxation of consular premises

i. The receiving State shall exempt the following from all dues and taxes:

.....

(b) consular facilities and means of transport owned, leased or possessed by other lawful means exclusively for official purposes, as well as their acquisition, possession or maintenance.

ii. The provisions of sub-paragraph i of this paragraph 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.

[Paragraph 2 (Notification of arrest, detention or expulsion and visit), Paragraph 3 (Assistance to nationals of the sending State) and Paragraph 4 (A consular officer shall exercise his functions only within his consular district. With the consent of the receiving State, he may also exercise his functions outside the consular district.)]

5. Personal inviolability of head of consular post and consular officers

i. The head of consular post shall enjoy personal inviolability and shall not be liable to arrest or detention.

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

Paragraph 1.i(b) of Article IV of the Agreement extends the privileges and immunities to consular facilities and means of transport owned, leased or possessed by other lawful means exclusively for official purposes.

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

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

Paragraph 5.i of Article IV of the Agreement provides that the head of consular post shall enjoy personal inviolability which is not limited to the above stipulation as set out in the VCCR.

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6. Immunity from jurisdiction

i. The head of consular post shall enjoy immunity from the criminal jurisdiction of the receiving State. Except in the following cases, the head of consular post shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State:

(a) action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State in the exercise of consular functions;

(b) action relating to succession in which the head of consular post is involved as executor, administrator, heir or legatee in a private capacity and not on behalf of the sending State;

(c) action relating to any professional or commercial activity engaged in by the head of consular post in the receiving State outside his official functions;

(d) action by a third party for damages for damage caused by a vehicle, vessel or aircraft in the receiving State.

ii. No measures of execution shall be taken against the head of consular post except in the cases referred to in i(a), (b), (c) and (d) of this paragraph. If any measure of execution is taken in those cases, the inviolability of his person or of his residence shall not be infringed.

iii. Members of the consular post other than the head of consular post shall be immune from the jurisdiction of the receiving State in respect of acts performed in the exercise of consular functions, except in civil action:

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

Paragraph 6.i of Article IV of the Agreement provides that the head of consular post' immunities from criminal, civil and administrative jurisdiction are not limited to the above stipulation as set out in the VCCR.

} These provisions are not covered by Article 43(2) of the VCCR.

} This provision is similar to the exceptions set out in Article 43(2) of the VCCR.

There is no similar provision in the VCCR as paragraph 6.ii of Article IV of the Agreement.

Paragraph 6.iii of Article IV of the Agreement extends the immunities from jurisdiction as provided for under Article 43 of the VCCR to members of the consular post other than the head of consular post.

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(a) arising out of a contract concluded by a member of the consular post other than the head of the consular post in which he did not contract expressly or impliedly as an agent of the sending State;

(b) by a third party for damages for damage caused by a vehicle, vessel or aircraft in the receiving State.