

**CONSULAR RELATIONS (ADDITIONAL
PRIVILEGES AND IMMUNITIES)(RUSSIA) 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 Orders.

2. Interpretation

In this Order –

“Convention” (《條約》) means the Consular Convention between the People’s Republic of China and the Russian Federation done at Moscow on 25 April 2002;

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

“relevant provisions of the Convention” (《條約》有關條文) means the provisions of paragraph 3 of Article 20, Article 21, paragraphs 1, 4 and 5 of Article 28, Article 29, paragraphs 2, 3, 4 and 5 of Article 30, Article 33, Article 34, paragraphs 1 and 3 of Article 35, Article 37, paragraphs 1 (except subparagraphs (a) and (b)) and 2 of Article 39, Article 40 and Article 42 (except subparagraph (a)) of the Convention, 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 Russian Federation, 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 subparagraphs (b), (c) and (i)), and Articles 41, 43 and 44, of the Convention, the English translation of which is set out in the Schedule, have the force of law in Hong Kong.

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

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

SCHEDULE [ss. 2 & 3]

PROVISIONS OF THE CONVENTION REFERRED
TO IN THIS ORDER

CHAPTER I

DEFINITIONS

Article 1

Definitions

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;

.....

(d) "consular officer" means any person, including the head of the consular post, who is charged by the sending State with the exercise of consular functions;

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

As the provisions included in the Order do not contain the following expressions as appeared in Article 1 of the Convention, it is not necessary to include them in the Order:

"(b) consular district"

"(c) head of consular post"

(e) “member of the administrative and technical staff of the consular post” means any person who performs administrative or technical services at the consular post;

(f) “member of the service staff of the consular post” means any person who performs domestic service at the consular post;

(g) “members of the consular post” means consular officers, members of the administrative and technical staff of the consular post and members of the service staff of the consular post;

(h) “family members” means the spouse, minor children and parents who live in the same household with and are dependent on a member of the consular post;

.....
(j) “consular premises” means 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” means all the papers, documents, correspondence, books, films, audio tapes, video tapes, electronic data carriers and registers of the consular post, together with the ciphers and codes, the card-indices and any article of furniture intended for their protection or safe-keeping;

(l) “national of the sending State” means any natural person having the nationality of the sending State, and, when applicable, also means any juridical person of the sending State;

(m) “vessel of the sending State” means any vessel registered in the sending State pursuant to its law and sailing under the flag of the sending State, excluding military vessels;

“(i) member of the private staff”

(n) “aircraft of the sending State” means any aircraft registered in the sending State and bearing that State’s registration marks, excluding military aircraft.

[Article 2 to Article 8 (Establishment of a Consular Post and Appointment of its Members)]

These provisions can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.

CHAPTER III

CONSULAR FUNCTIONS

[Article 9 to Article 19 (Consular Functions)]

These provisions (except Article 17) can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.

[Article 17 (Functions Concerning Estate)]

Article 17 of the Convention confers upon consular officers of the Consulate General of the Russian Federation in Hong Kong additional consular powers relating to the administration of estates of deceased Russian nationals. These additional consular powers are to be given effect in the form of Orders made under the Administration of Estates by Consular Officer Ordinance (Chapter 191) and the Consular Conventions Ordinance (Chapter 267).

Article 20

Assistance to wrecked vessels of the sending State

3. If a wrecked vessel of the sending State or its equipment or cargo is found on shore, in the coastal area or within the inland waters of the receiving State, or is brought into a port of the receiving State and neither the master nor the owner of the vessel, nor any representative of the vessel company or any agent of its insurance company is present or is in a position to take measures for the preservation or disposal of the property, the competent authorities of the receiving State shall inform the consular post as promptly as possible. A consular officer may, on behalf of the owner of the vessel of the sending State, take measures for the protection and disposal of the wrecked vessel and its property.

Article 5(1) of the VCCR provides for consular functions in respect of vessels having the nationality of the sending State. The VCCR does not specify detailed provisions for matters relating to the handling of wrecked vessels of the sending State by consular officers.

Article 20(3) of the Convention provides that consular officers may, on behalf of the owner of the vessel of the sending State, take measures for the protection and disposal of the wrecked vessel and its property.

Article 21

Aircraft of the sending State

The provisions of Articles 18, 19 and 20 of this Convention shall apply to aircraft of the sending State provided that such application does not contravene the provisions of bilateral agreements in force or of multilateral agreements to which the Contracting Parties are parties.

Article 5(1) of the VCCR provides for consular functions in respect of aircraft registered in the sending State. The VCCR does not specify detailed provisions for matters relating to the handling of aircraft of the sending State by consular officers.

Article 21 of the Convention extends the additional consular functions performed by consular officers in respect of wrecked vessels of the sending State to aircraft of the sending State.

Explanatory Notes

[Article 22 (Transmitting Judicial Documents), Article 23 (Performance of Consular Functions Within and Outside the Consular District) and Article 24 (Communication with the Authorities of the Receiving State)]

These provisions can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.

CHAPTER IV

FACILITIES, PRIVILEGES AND IMMUNITIES

[Article 25 (Facilities for a Consular Post), Article 26 (Consular Premises and Residences) and Article 27 (Use of National Emblem and Flag)]

These provisions can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.

Article 28

Inviolability of the consular premises

1. Consular premises shall be inviolable to the extent provided in this Article.

.....

Article 31 of the VCCR provides for the inviolability of the consular premises.

Explanatory Notes

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 expropriation of such property is necessary for such purposes, all possible measures shall be taken to avoid impeding the performance of consular functions, and prompt, appropriate and effective compensation shall be paid to the sending State.

5. The provisions of paragraphs 1 and 4 of this Article shall also apply to residences of consular officers.

Article 29

Inviolability of the consular archives

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

Article 28(5) of the Convention extends the inviolability of the consular premises, as set out in paragraphs 1 and 4 of the Article, to the residences of consular officers.

Article 1(1)(k) of the VCCR provides that “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-indexes and any article of furniture intended for their protection or safekeeping.

The definition of “consular archives” under Article 1(k) of the Convention includes audio tapes, video tapes and electronic data carriers of the consular post, in addition to those specified in the VCCR. The inviolability of the consular archives under Article 29 of the Convention is therefore wider in scope than that provided for in the VCCR, hence its inclusion in the Order.

Article 30

Freedom of communication

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions. The consular bag shall neither be opened nor detained. The consular bag shall bear visible external marks of its character and may contain nothing other than official correspondence, official documents and articles intended exclusively for official use.

3. The consular courier shall only be a national of the sending State, and shall not be a permanent resident of the receiving State. He shall be provided with an official document certifying his status and indicating the number of consular bags. The consular courier shall enjoy the same rights, facilities, privileges and immunities as any diplomatic courier.

4. The sending State, its diplomatic mission and consular post may designate consular couriers ad hoc; in such cases the provisions of paragraph 3 of this Article shall also apply except that the privileges and immunities therein mentioned shall cease to apply when such courier has delivered the consular bag to the destination.

5. A consular bag may be entrusted to the master of a vessel of the sending State or captain of an aircraft of the sending State. He shall be provided with an official document indicating the number of consular bags. However, he shall not be considered as a consular courier. By arrangement with the competent authorities of the receiving State, a consular officer may directly and freely collect the consular bag from or deliver it to him.

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

Article 30 of the Convention provides that the receiving State shall not, under any circumstances, open or detain the consular bag.

Explanatory Notes

[Article 31 (Consular Fees and Charges) and Article 32 (Freedom of Movement)]

These provisions can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.

Article 33

Personal inviolability of consular officers

Consular officers shall enjoy personal inviolability and shall not be liable to arrest or detention. The receiving State shall treat consular officers with due respect and shall take appropriate measures to prevent any attack on their personal freedom and dignity.

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

Article 33 of the Convention provides that consular officers shall enjoy personal inviolability which is not limited to the above stipulation as set out in the VCCR. Article 40 of the Convention extends the personal inviolability of consular officers to their family members.

Article 34

Immunity from jurisdiction

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

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

Explanatory Notes

Article 34(1) of the Convention provides that consular officers' immunities from judicial or administrative jurisdiction are not limited to the above stipulation as set out in the VCCR. Article 40 of the Convention extends consular officers' immunities from judicial or administrative jurisdiction to their family members.

(a) arising out of a contract concluded by the consular officer in which he did not contract expressly as an agent on behalf of the sending State;

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

(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) involving private succession;

(e) arising out of any professional or commercial activity exercised by the consular officer in the receiving State outside his official functions.

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

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

2. No measures of execution shall be taken by the receiving State in respect of a consular officer except in the cases set out in paragraph 1 of this Article and provided that the measures can be taken in the cases set out in paragraph 1 of this Article without infringing the inviolability of his person or of his residence.

There is no similar provision in the VCCR as Article 34(2) of the Convention.

Explanatory Notes

3. Members of the administrative and technical staff of the consular post or members of the service staff of the consular post shall be immune from the jurisdiction of the judicial or administrative authorities of the receiving State in respect of any act in the performance of their official functions, except in civil proceedings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article.

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

Article 34(3) of the Convention extends consular employees' immunities from jurisdiction as set out in the VCCR to members of the service staff of the consular post.

Article 40 of the Convention also extends the immunities conferred upon members of the administrative and technical staff and members of the service staff of the consular post under Article 34 to their respective family members.

Article 35

Liability to give evidence

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

.....

3. A member of the administrative and technical staff of the consular post or a member of the service staff of the consular post is under no obligation to give evidence concerning matters connected with the exercise of his functions or to produce any official correspondence or documents relating thereto. He is entitled to decline to give evidence as expert witness with regard to the law of the sending State.

[Article 36 (Exemption from Services and Obligations)]

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

Article 35(1) of the Convention provides that a consular officer is under no obligation to give evidence as a witness.

Article 40 of the Convention extends the respective immunities conferred upon consular officers, members of the administrative and technical staff and members of the service staff of the consular post under Article 35 to their respective family members.

This provision can be implemented either by way of administrative arrangements under the existing legal framework, or has already been covered by the VCCR and set out in the Schedule to Cap. 557.

Article 37

Exemption of properties from taxation

1. The receiving State shall exempt the following 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 related 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 38 (Exemption of Members of the Consular Post from Taxation)]

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

Article 37(1) of the Convention extends the privileges and immunities to the residences of the members of the consular post, consular facilities and means of transport acquired exclusively for official purposes.

This provision has already been covered by the VCCR and set out in the Schedule to Cap. 557.

Article 39

Exemption from customs duties and customs inspection

1. The receiving State shall, in accordance with its laws and regulations, permit entry and export of and grant exemption from all customs duties, dues and taxes and related charges other than charges for storage, cartage and other similar services, on:

.....
(c) articles imported at the time of first installation for the personal use of a member of the administrative and technical staff of the consular post, including household articles intended for his establishment.

2. Articles referred to in subparagraph ... (c) of paragraph 1 of this Article shall not exceed the quantities necessary for direct use by the person concerned.

Article 50 of the VCCR provides for the right of exemption from customs duties of a consular employee at the time of first installation.

Article 40 of the Convention extends the right of exemption from customs duties conferred on a member of the administrative and technical staff of the consular post at the time of first installation under Article 39 to his family members.

Article 40

Privileges and immunities of family members

Subject to the provisions of Article 41 of this Convention, family members of a consular officer, family members of a member of the administrative and technical staff of the consular post and family members of a member of the service staff of the consular post shall enjoy respectively the privileges and immunities to which the consular officer, the

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

Explanatory Notes

member of the administrative and technical staff of the consular post and the member of the service staff of the consular post are respectively entitled under the provisions of this Convention.

Article 40 of the Convention extends the respective privileges and immunities enjoyed by consular officers, members of the administrative and technical staff of the consular post, and members of the service staff of the consular post to their respective family members.

Article 41

Persons who shall not enjoy privileges and immunities

1. Members of the administrative and technical staff of the consular post 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 paragraphs 2 and 3 of Article 35 of this Convention.

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

2. Family members of a member of the consular post who is a national or permanent resident of the receiving State shall not enjoy the privileges and immunities provided for in this Convention.

Article 42

Estate of member of the consular post

In the event of the death of a member of the consular post or his family members, the receiving State shall:

.....

(b) exempt the movable property of the deceased from estate duties and all other duties concerned.

Article 51(b) of the VCCR provides that in the event of death of a member of the consular post or of a member of his family forming part of his household, the receiving State 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 42(b) of the Convention provides that the receiving State shall exempt the movable property of the deceased from estate duties and all other duties concerned, which is not limited to the above stipulation as set out in the VCCR.

Article 43

Beginning and end of privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided for in this 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. Family members of a member of the consular post shall enjoy the privileges and immunities provided for in this Convention from the moment from which he enjoys the privileges and immunities in accordance with the provisions of paragraph 1 of this Article, or from the moment of their entry into the territory of the receiving State or from the moment of their becoming such family members in the case of their entry or becoming such family members after the date from which he enjoys the privileges and immunities, 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 his family members shall cease at the moment when the person concerned leaves the territory of 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. The privileges and immunities of the family members of a member of the consular post shall come to an end when they cease to be the said family members. However, if such persons intend to leave the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

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

4. With respect to acts performed by a member of the consular post 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, his family members shall continue to enjoy the privileges and immunities accorded to them until they leave the territory of the receiving State or until the expiry of a reasonable period in which to do so, whichever is the sooner.

Article 44

Waiver of privileges and immunities

1. The sending State may waive any of the privileges and immunities enjoyed by a member of the consular post under Articles 33, 34 and 35 of this Convention. The waiver shall in all cases be explicit and shall be communicated to the receiving State in writing.

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

2. The initiation of proceedings by a member of the consular post in a matter where he might enjoy immunity from jurisdiction provided for in this Convention shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

3. 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 execution of judicial decision. In respect of such execution, a separate waiver of immunity in writing shall be necessary.

Explanatory Notes

[Article 45 (Protection of Consular Premises and Archives and of the Interests of the Sending State in Exceptional Circumstances)]

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

[Article 46 to Article 47 (General Provisions)]

These provisions can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.

[Article 48 to Article 49 (Other Matters)]

These provisions can be implemented either by way of administrative arrangements under the existing legal framework, or have already been covered by the VCCR and set out in the Schedule to Cap. 557.