

For information

**Legislative Council
Panel on Administration of Justice and Legal Services**

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

PURPOSE

This paper provides information on –

- (a) the granting of privileges and immunities (Ps&Is) by the Central People's Government (CPG) to specific career consular posts established in the Hong Kong Special Administrative Region (HKSAR), namely the Consulate General of India, Italy, New Zealand, the Russian Federation, as well as their respective personnel; and
- (b) the progress of the Administration's preparation of the subsidiary legislation relating to the Ps&Is conferred on the above consular posts, which will be submitted to the Legislative Council for negative vetting.

BACKGROUND

Consular relations

2. Consular relations are established, on the basis of mutual consent, between sovereign States to facilitate the protection of the rights and interests of the nations and nationals, and to promote friendly relations and cooperation. It is a common and well-established practice for the receiving State to accord to the consular post and personnel of the sending State Ps&Is not made available to ordinary residents or visitors in the receiving State. These Ps&Is are granted on a reciprocal basis, meaning the consular personnel of both the receiving and the sending States shall enjoy the same level of Ps&Is in the respective consular district to which they are accredited.

3. The conferment of Ps&Is on consular members, which is the cornerstone of establishing consular relations between sovereign States, is not meant for the personal benefit of individuals. Rather, it is to ensure the efficient performance of functions by consular members on behalf of their respective States. The functions of a consular post include -

- (a) protecting the interests of the sending State and of its nationals in the receiving State;
- (b) furthering the development of commercial, economic, cultural, and scientific relations between the sending and the receiving States; and
- (c) rendering necessary assistance of various sorts to the nationals of the sending State.

4. Consular members could not effectively carry out these functions if acts done and words spoken or written by them in their consular districts would readily render them liable to prosecution, arrest or detention. Hence, the granting of Ps&Is is the pre-requisite for the establishment of consular relations between sovereign States.

Ps&Is granted pursuant to the International Convention

5. The 1963 Vienna Convention on Consular Relations (VCCR), to which the People's Republic of China (PRC) acceded in 1979, is a multilateral international convention which codifies the relevant international laws on consular relations, matters relating to the establishment of consular posts and consular Ps&Is. Article 73 of the VCCR provides that nothing in the Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof. Hence, a State may conclude bilateral agreements with another State in respect of consular matters such as the granting of consular Ps&Is or specifying functions not already provided for specifically in the VCCR.

SITUATION IN HONG KONG

Standard Ps&Is for career consular posts

6. At present, a total of 58 career consular posts are established in the HKSAR. These consular posts and their personnel shall enjoy the Ps&Is accorded to them under the VCCR. In line with the common law practice, the provisions of the VCCR that 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 the Consular Relations Ordinance (Cap. 557). In broad terms, these Ps&Is include the following areas –

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

Bilateral agreements signed by CPG and applicable to the HKSAR

7. The VCCR aside, the CPG has so far applied to the HKSAR nine bilateral consular agreements signed with separate sovereign States, namely Australia, Canada, India, Italy, New Zealand, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland (UK), the United States of America (USA) and Vietnam. These bilateral agreements provide for matters not specifically covered in the VCCR, including additional Ps&Is such as –

- (a) inviolability of the residences of members of the consular post; and
- (b) personal inviolability of consular officers and their respective family members.

8. Some of these bilateral agreements also provide the consular posts concerned with additional functions relating to the administration of estates, with which consular officers of the relevant sending States are entitled to -

- (c) protect and preserve the estates left in the HKSAR by deceased nationals of these States;
- (d) safeguard the interests of their nationals who have a right to property left in the HKSAR by a deceased; and
- (e) 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.

9. On the basis of reciprocity, these additional Ps&Is and additional consular functions apply also to the PRC's consular posts and their respective personnel accredited to the States concerned.

10. The nine bilateral consular agreements between the PRC and foreign States that are applicable to the HKSAR are listed at **Annex**. The full texts of these agreements have been published in the Gazette and uploaded onto the Department of Justice's website for the information of the general public.

LEGISLATIVE PROPOSALS

11. At present, the relevant provisions of these bilateral 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 a national law applicable to the HKSAR by promulgation under Article 18 of the Basic Law. In line with the common law practice, provisions of bilateral agreements applicable to the HKSAR that affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR should be underpinned by way of local legislation. In this regard, the Consular Relations Ordinance (Cap. 557) was enacted in 2000 to provide a flexible framework for underpinning the relevant provisions of the bilateral consular agreements signed by the CPG. Moreover, the Administration of Estates by Consular Officers Ordinance (Cap. 191) and the Consular Conventions Ordinance (Cap. 267) provide a framework for giving effect to certain additional consular functions

relating to the administration of estates by consular officers in the HKSAR, as may be agreed between the CPG and the foreign State concerned.

12. With the legislative framework in place, we have embarked on a programme of preparing the subsidiary legislation in the form of Orders under Cap. 557, Cap. 191 and Cap. 267 to underpin the relevant provisions in the bilateral agreements listed at Annex. The Orders relating to the additional Ps&Is and additional consular functions for the consular posts and their respective personnel of Australia, Canada, the UK, the USA and Vietnam in the HKSAR were enacted in November 2003 and July 2005 respectively. As regards the remaining bilateral consular agreements (i.e. bilateral agreements signed with India, Italy, New Zealand and the Russian Federation), consultation with the relevant consular posts has recently been completed. We shall shortly submit to the Legislative Council for negative vetting the subsidiary legislation underpinning the additional Ps&Is and additional consular functions for these consular posts and their respective personnel in the HKSAR.

Administration Wing
Chief Secretary for Administration's Office
February 2009

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

	Date of Application to the HKSAR
1. 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	1 Jul 1997
2. 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	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 Republic of Italy 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 Canada	11 Mar 1999
5. Consular Convention Between the Socialist Republic of Vietnam and the People's Republic of China	26 Jul 2000
6. Agreement on Consular Relations Between the People's Republic of China and Australia	15 Sept 2000
7. Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of the Republic of India on Matters Concerning the Consular Convention Between the People's Republic of China and the Republic of India	28 Jul 2001

**Date of Application
to the HKSAR**

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| 8. Consular Convention Between the People's Republic of China and the Russian Federation | 23 Oct 2003 |
| 9. Agreement on Consular Relations Between the People's Republic of China and New Zealand | 23 Apr 2006 |