

LEGISLATIVE COUNCIL BRIEF

SUBSIDIARY LEGISLATION RELATING TO CONSULAR MATTERS

INTRODUCTION

At the meeting of the Executive Council on 21 April 2009, the Council ADVISED and the Chief Executive ORDERED that -

- (a) in respect of the bilateral consular agreement between the People's Republic of China (PRC) and India⁽¹⁾ -
 - (i) the Consular Relations (Additional Privileges and Immunities) (India) Order, at **Annex A**, should be made under section 4(1) of the Consular Relations Ordinance (Cap. 557);
 - (ii) the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: India) Order, at **Annex B**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191); and
 - (iii) the Consular Conventions (Application of Section 3) (India) Order, at **Annex C**, should be made under section 5 of the Consular Conventions Ordinance (Cap. 267);
- (b) in respect of the bilateral consular agreement between the PRC and Italy⁽²⁾, the Consular Relations (Additional Privileges

Notes (1) The 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.

(2) The 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.

and Immunities) (Italy) Order, at **Annex D**, should be made under section 4(1) of the Consular Relations Ordinance (Cap. 557);

- (c) in respect of the bilateral consular agreement between the PRC and New Zealand⁽³⁾ -
 - (i) the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: New Zealand) Order, at **Annex E**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191); and
 - (ii) the Consular Conventions (Application of Section 3) (New Zealand) Order, at **Annex F**, should be made under section 5 of the Consular Conventions Ordinance (Cap. 267); and
- (d) in respect of the bilateral consular agreement between the PRC and the Russian Federation⁽⁴⁾ -
 - (i) the Consular Relations (Additional Privileges and Immunities) (Russia) Order, at **Annex G**, should be made under section 4(1) of the Consular Relations Ordinance (Cap. 557);
 - (ii) the Administration of Estates by Consular Officers Ordinance (Variation of Schedule: Russia) Order, at **Annex H**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191); and
 - (iii) the Consular Conventions (Application of Section 3) (Russia) Order, at **Annex I**, should be made under section 5 of the Consular Conventions Ordinance (Cap. 267).

Notes (3) The Agreement on Consular Relations Between the People's Republic of China and New Zealand.

(4) The Consular Convention Between the People's Republic of China and the Russian Federation.

BACKGROUND AND JUSTIFICATIONS

Granting of 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 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 privileges and immunities (Ps&Is) not made available to ordinary residents or visitors in the receiving State. These Ps&Is are granted on a reciprocal basis, meaning that 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 is not meant for the personal benefit of individuals, but rather 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.

The granting of Ps&Is (e.g. inviolability of consular premises) is necessary for facilitating the relevant consular posts and their personnel to effectively carry out their consular functions, and is therefore part and parcel of the establishment of consular relations between sovereign States.

Vienna Convention on Consular Relations

4. The 1963 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 of consular posts and consular Ps&Is. In broad terms, the Ps&Is stipulated under the VCCR include -

- (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.

In line with the common law practice, 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 Hong Kong Special Administrative Region (HKSAR) by way of the Consular Relations Ordinance (Cap. 557).

5. Article 73 of the VCCR provides that nothing in the Convention shall preclude States from concluding international agreements confirming, supplementing, extending or amplifying the provisions of the VCCR.

Bilateral Consular Agreements

6. The Central People's Government (CPG) has so far applied to the HKSAR nine bilateral consular agreements signed with separate foreign States. A list of these agreements is at **Annex J**. The subsidiary legislation relating to the additional consular functions for the consular post of Canada in the HKSAR came into operation in November 2003. The subsidiary legislation relating to the additional Ps&Is and/or additional consular functions in respect of four other States (i.e. Australia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Vietnam) was enacted in July 2005. The current legislative exercise deals with the remaining bilateral consular agreements, i.e. those with India, Italy, New Zealand and the Russian Federation. These agreements accord to the consular posts and personnel of these four States additional Ps&Is and/or provide for additional consular functions relating to the administration of estates in the HKSAR.

7. The CPG's bilateral consular agreements with India, Italy and the Russian Federation accord to their consular posts and personnel additional Ps&Is such as -

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

8. In the case of India, New Zealand and the Russian Federation, the respective bilateral consular agreements also provide for their consular posts additional consular functions relating to the administration of estates, with which consular officers of these States are entitled to -

- (a) protect and preserve 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.

Need for Local Legislation

9. In line with the common law practice, provisions of bilateral agreements applicable to the HKSAR which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR should be underpinned by way of domestic legislation. Having regard to our common law tradition, the best means of underpinning the relevant provisions of the above bilateral consular agreements⁽⁵⁾ is to enact local legislation setting them out expressly and specifically.

Note (5) At present, these bilateral consular 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. Nonetheless, in line with the established practice under common law, it is prudent to underpin the relevant provisions of the bilateral agreements by way of local legislation.

THE ORDERS

10. The Orders to be made under the Consular Relations Ordinance (Cap. 557) seek to declare that the additional Ps&Is accorded to the consular posts of India, Italy and the Russian Federation, or to persons connected with the consular posts, or to both, under the relevant provisions of the respective bilateral consular agreements shall have the force of law in the HKSAR.

11. The Orders to be made under the Administration of Estates by Consular Officers Ordinance (Cap. 191) and the Consular Conventions Ordinance (Cap. 267) seek to empower the relevant consular posts to perform additional consular functions in relation to the administration of estates. The Orders to be made under the Administration of Estates by Consular Officers Ordinance (Cap. 191) seek to underpin relevant provisions of the CPG's bilateral consular agreements with India, New Zealand and the Russian Federation by adding "India", "New Zealand" and "Russian Federation" to the Schedule to the Ordinance⁽⁶⁾. The Orders to be made under the Consular Conventions Ordinance (Cap. 267) seek to underpin relevant provisions of the above three agreements by directing that section 3 of the Ordinance⁽⁷⁾ shall apply to India, New Zealand and the Russian Federation, with which a consular convention has been concluded by the PRC Government respectively. The existing provisions to be varied are at **Annex K**.

LEGISLATIVE TIMETABLE

12. The Orders will be published in the Gazette on 30 April 2009. We propose that the Orders should come into operation on 17 July 2009, taking into account the lead time required for negative vetting upon gazettal.

IMPLICATIONS OF THE PROPOSAL

13. The proposal is inconformity 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 varied.

Notes (6) The Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 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. After the Chief Executive has varied the Schedule, the Chief Secretary for Administration will notify the variation in the Gazette, as required by section 3 of the Ordinance.

(7) Section 3 of the Consular Conventions Ordinance (Cap. 267) provides for the relevant powers of consular officers to deal with property in Hong Kong of deceased persons under specified circumstances.

14. The proposal does not have significant financial implications for the Government. Bureaux/departments are expected to absorb the additional requirements (if any) from within their existing resources. It has no civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

15. We have consulted the Consulates General concerned on the draft Orders. We have also issued a paper to the Panel on Administration of Justice and Legal Services in February 2009 to inform Members of this subject.

PUBLICITY

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

ENQUIRY

17. Any enquiries on the brief should be addressed to Mr Y K LEE, Deputy Director of Protocol, on 2810 2798.

Administration Wing
Chief Secretary for Administration's Office
28 April 2009

SUBSIDIARY LEGISLATION RELATING TO CONSULAR MATTERS: ANNEXES

- Annex A - Consular Relations (Additional Privileges and Immunities) (India) Order
- Annex B - Administration of Estates by Consular Officers Ordinance (Variation of Schedule: India) Order
- Annex C - Consular Conventions (Application of Section 3) (India) Order
- Annex D - Consular Relations (Additional Privileges and Immunities) (Italy) Order
- Annex E - Administration of Estates by Consular Officers Ordinance (Variation of Schedule: New Zealand) Order
- Annex F - Consular Conventions (Application of Section 3) (New Zealand) Order
- Annex G - Consular Relations (Additional Privileges and Immunities) (Russia) Order
- Annex H - Administration of Estates by Consular Officers Ordinance (Variation of Schedule: Russia) Order
- Annex I - Consular Conventions (Application of Section 3) (Russia) Order
- Annex J - List of the Bilateral Agreements between the CPG and Foreign States Relating to Privileges and Immunities Conferred on Consular Posts
- Annex K - Existing provisions to be varied

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

(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.

2. Interpretation

In this Order –

“Convention” (《條約》) means the Consular Convention between the People’s Republic of China and the Republic of India done at New Delhi on 13 December 1991;

“relevant provisions of the Convention” (《條約》有關條文) means the provisions of paragraphs 1 and 2 of Article 28, Article 29, paragraphs 2, 3 and 4 of Article 31, paragraphs 2, 3 and 4 of Article 34, Articles 35, 36 and 38, Article 40 (except sub-paragraphs (a) and (b) of paragraph 1 and paragraph 3), Article 41, and Article 43 (except paragraph (a)), 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 Republic of India, 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 (b), (i), (k), (m) and (n)), and Articles 42, 44 and 45, of the Convention as set out in the Schedule, have the force of law in Hong Kong.

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;

.....

(c) "head of consular post" means the person charged with the duty of acting in that capacity;

(d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

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

(f) "member of the service staff" means any person employed in the domestic service of a consular post;

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

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

.....

(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;

.....

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

CHAPTER IV

FACILITIES, PRIVILEGES AND IMMUNITIES

Article 28

Inviolability of Consular Premises and Residences of Members of the Consular Post

1. Consular premises and the residences of members of a consular post shall be inviolable. The authorities of the receiving State may not enter the consular premises and the residences of members of a consular post 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.

2. The means of transport of the consular post and of the consular officers shall be immune from search, arrest or execution.

Article 29

Immunity from Requisition of Consular Premises

The consular premises, their furnishings and the property and means of transport of the consular post shall be immune from any form of requisition.

Article 31

Freedom of Communication

2. The official correspondence of a 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. All the packages which constitute 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 indicating his status and the number of packages constituting the consular bag. In performing his functions, a consular courier shall be protected by the receiving State and enjoy personal inviolability and shall not be liable to any form of arrest or detention.
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 to the consignee the consular bag in his charge.

Article 34

Personal Inviolability of Consular Officers

2. A consular officer shall not be liable to arrest or detention.
3. Members of the administrative and technical staff and members of the service staff of a consular post 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 of the receiving State.
4. Except in the case specified in paragraph 3 of this Article, members of the administrative and technical staff and of the service staff of a consular post shall not be committed to prison or be liable to any other form of restriction on his personal freedom save in execution of a judicial decision of final effect.

Article 35

Immunity from Jurisdiction

1. A consular officer shall enjoy total immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from civil and administrative jurisdiction of the receiving State in respect of acts performed in the exercise of consular functions.

2. Members of the administrative and technical staff or of the service staff of a consular post shall also be immune from criminal, civil and administrative jurisdiction of the receiving State in respect of acts performed in the exercise of consular functions.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to the following civil proceedings:

(a) arising out of a contract concluded by a member 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 damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft;

(c) concerning private immovable property in the receiving State, unless a member of the consular post is holding it in the capacity of representative of the sending State and for the purposes of the consular post;

(d) relating to succession in which a member of the consular post is involved as executor, administrator, heir or legatee as a private person;

(e) arising out of any professional or commercial activities in the receiving State by a member of the consular post outside his official functions.

4. The receiving State shall not take measures of execution against a consular officer except in cases referred to in paragraph 3 of this Article. In the event of taking such measures, the inviolability of the person and residence of the consular officer shall not be impaired.

Article 36

Liability to Give Evidence

1. A consular officer is under no obligation to give evidence as a witness. The receiving State shall not apply coercive measures or penalty to a consular officer if he should decline to give evidence.
2. A member of the administrative and technical staff or of the service staff of the consular post may be called upon to give evidence in the course of judicial or administrative proceedings of the receiving State. He shall not, except in the cases referred to in paragraph 3 of this Article, decline to give evidence. However, under no circumstances should coercive measures be applied to him.
3. A member of the administrative and technical staff or 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.
4. The competent authorities of the receiving State requiring the evidence of a member of the administrative and technical staff or of the service staff of the consular post shall avoid interference with the performance of his functions. They may, when possible, take such evidence at his residence or at the consular premises or accept a statement from him in writing.

Article 38

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 a 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 40

Exemption from Customs Duties and Inspection

1. The receiving State shall, in accordance with its laws and regulations, permit entry and exit of and grant exemption from all customs duties 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 member of the administrative and technical staff 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 41

Privileges and Immunities of Family Members

Family members of a consular officer and family members of a member of the administrative and technical staff of the consular post ... shall enjoy respectively the privileges and immunities to which the consular officer and the member of the administrative and technical staff are respectively entitled under the provisions of this Convention. 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 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 42

Persons who shall not Enjoy Privileges and Immunities

1. Members of the administrative and technical staff or 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 36 of this Convention.
2. Family members of the persons mentioned in paragraph 1 of this Article shall not enjoy the privileges and immunities provided for in this Convention.

Article 43

Estate of Member of the Consular Post

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

.....

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

Article 44

Beginning and End of Privileges and Immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided 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 date from which he enjoys privileges and immunities, or from the date of their entry into the territory of the receiving State or from the date of their becoming such family members in the case of their entry or becoming such family members after the date from which he enjoys privileges and immunities.

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 receiving State or on the

expiry of a reasonable period in which to do so. 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.

4. 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 receiving State or until the expiry of a reasonable period in which to do so.

Article 45

Waiver of Privileges and Immunities

1. The sending State may waive any of the privileges and immunities enjoyed by the persons concerned under Articles 35 and 36 of this Convention. The waiver shall in all cases be explicit and shall be communicated to the receiving State in writing.

2. The initiation of proceedings by a person in a matter where he might enjoy immunity from jurisdiction under this 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 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.

Clerk to the Executive Council

COUNCIL CHAMBER

2009

Explanatory Note

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

**ADMINISTRATION OF ESTATES BY CONSULAR
OFFICERS ORDINANCE (VARIATION OF
SCHEDULE: INDIA) ORDER**

(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 comes into operation on 17 July 2009.

2. Schedule varied

The Schedule to the Administration of Estates by Consular Officers
Ordinance (Cap. 191) is varied by adding –

"4.	Republic of	Consular	13.12.1991	Article 17(6)".
	India	Convention		
		between the		
		People's		
		Republic of		
		China and the		
		Republic of		
		India		

Chief Executive

2009

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 Republic of India and gives effect to the provision in the Consular Convention between the People's Republic of China and the Republic of India done on 13 December 1991 relating to the custodian and transmission of personal effects of deceased Indian nationals.

**CONSULAR CONVENTIONS (APPLICATION OF
SECTION 3)(INDIA) ORDER**

(Made by the Chief Executive under section 5 of the Consular Conventions
Ordinance (Cap. 267) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 17 July 2009.

2. Application of section 3 of the Ordinance

It is directed that section 3 of the Ordinance applies to the Republic of India.

3. Foreign State

The Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended by adding –

“4. Republic of India”.

Chief Executive

2009

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 Republic of India and gives effect to the provision in the Consular Convention between the People's Republic of China and the Republic of India done on 13 December 1991 which empowers such officers to represent Indian

nationals in inheritance proceedings and to transmit estates in the Hong Kong Special Administrative Region to Indian nationals.

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

(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.

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;

“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.

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.

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.

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:

(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.

Clerk to the Executive Council

COUNCIL CHAMBER

2009

Explanatory Note

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

**ADMINISTRATION OF ESTATES BY CONSULAR
OFFICERS ORDINANCE (VARIATION OF
SCHEDULE: NEW ZEALAND) ORDER**

(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 comes into operation on 17 July 2009.

2. Schedule varied

The Schedule to the Administration of Estates by Consular Officers
Ordinance (Cap. 191) is varied by adding –

“5.	New Zealand	Agreement on	26.10.2003	Article 14.6”.
		Consular		
		Relations		
		between the		
		People’s		
		Republic of		
		China and New		
		Zealand		

Chief Executive

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 New Zealand and gives effect to the provision in the Agreement on Consular Relations between the People's Republic of China and New Zealand signed on 26 October 2003 relating to the custodian and transmission of personal effects of deceased New Zealand nationals.

**CONSULAR CONVENTIONS (APPLICATION OF
SECTION 3) (NEW ZEALAND) ORDER**

(Made by the Chief Executive under section 5 of the Consular Conventions Ordinance (Cap. 267) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 17 July 2009.

2. Application of section 3 of the Ordinance

It is directed that section 3 of the Ordinance applies to New Zealand.

3. Foreign State

The Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended by adding –

“5. New Zealand”.

Chief Executive

2009

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 New Zealand and gives effect to the provision in the Agreement on Consular Relations between the People's Republic of China and New Zealand signed on 26 October 2003 which empowers such officers to represent New Zealand

nationals in inheritance proceedings and to transmit estates in the Hong Kong Special Administrative Region to New Zealand nationals.

CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES)(RUSSIA) ORDER

(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.

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;

“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.

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;

(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;

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

CHAPTER III

CONSULAR FUNCTIONS

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 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.

CHAPTER IV

FACILITIES, PRIVILEGES AND IMMUNITIES

Article 28

Inviolability of the consular premises

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

.....

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 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 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 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:

(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.

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.

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 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 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 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 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 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 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.

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 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.

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.

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.

Clerk to the Executive Council

COUNCIL CHAMBER

2009

Explanatory Note

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

Annex H

ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS ORDINANCE
(VARIATION OF SCHEDULE: RUSSIA) ORDER

(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 comes into operation on 17 July 2009.

2. Schedule varied

The Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 191) is varied by adding -

"6.	Russian Federation	Consular Convention between the People's Republic of China and the Russian Federation	25.4.2002	Article 17.6".
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Chief Executive

2009

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 Russian Federation and gives effect to the provision in the Consular

Convention between the People's Republic of China and the Russian Federation done on 25 April 2002 relating to the custodian and transmission of personal effects of deceased Russian nationals.

**CONSULAR CONVENTIONS (APPLICATION OF SECTION 3)
(RUSSIA) ORDER**

(Made by the Chief Executive under section 5 of the Consular Conventions Ordinance (Cap. 267) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 17 July 2009.

2. Application of section 3 of the Ordinance

It is directed that section 3 of the Ordinance applies to the Russian Federation.

3. Foreign State

The Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended by adding -

"6. Russian Federation".

Chief Executive

2009

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 Russian Federation and gives effect to the provision in the Consular Convention between the People's Republic of China and the Russian Federation done on 25 April 2002 that empowers such officers to represent Russian nationals in

inheritance proceedings and to transmit estates in the Hong Kong Special Administrative Region to Russian nationals.

**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**

- | | |
|---|-------------|
| 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 |

Annex K

Chapter:	191	ADMINISTRATION OF ESTATES BY CONSULAR OFFICERS ORDINANCE	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 53 of 2005; L.N. 56 of 2005	11/07/2005
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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
2. Australia	Agreement on Consular Relations between the People' s Republic of China and Australia	8.9.1999	(Added L.N. 167 of 2003) Article 13.6
3. Socialist Republic of Vietnam	Consular Convention between the Socialist Republic of Vietnam and the People' s Republic of China	19.10.1998	(Added L.N. 53 of 2005) Article 41(3)
			(Added L.N. 56 of 2005) (Schedule replaced 81 of 1999 s. 3)

Chapter:	267B	CONSULAR CONVENTIONS (APPLICATION OF SECTION 3) ORDER	Gazette Number	Version Date
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Schedule:		SCHEDULE	L.N. 54 of 2005; L.N. 57 of 2005	11/07/2005
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[section 2]

FOREIGN STATE

1. Canada
2. Australia
3. Socialist Republic of Vietnam

(L.N. 54 of 2005; L.N. 57 of 2005)