

**LEGISLATIVE COUNCIL BRIEF**  
**SUBSIDIARY LEGISLATION RELATING TO**  
**CONSULAR MATTERS**

**INTRODUCTION**

At the meeting of the Executive Council on 8 September 2015, 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 Cambodia<sup>(1)</sup>,

A

(i) the Consular Relations (Additional Privileges and Immunities) (Cambodia) Order, at **Annex A**, should be made under section 4(1) of the Consular Relations Ordinance (Cap. 557);

B

(ii) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule: Cambodia) Order 2015, at **Annex B**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191); and

C

(iii) the Consular Conventions (Application of Section 3) (Amendment of Schedule: Cambodia) Order 2015, at **Annex C**, should be made under section 5 of the Consular Conventions Ordinance (Cap. 267); and

(b) in respect of the bilateral consular agreement between the PRC and the Philippines<sup>(2)</sup>,

D

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

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**Note** (1) The bilateral consular agreement concerned is Consular Convention Between the People’s Republic of China and the Kingdom of Cambodia.

**Note** (2) The bilateral consular agreement concerned is Consular Agreement Between the People’s Republic of China and the Republic of the Philippines.

E

(ii) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule: Philippines) Order 2015, at **Annex E**, should be made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191); and

F

(iii) the Consular Conventions (Application of Section 3) (Amendment of Schedule: Philippines) Order 2015, at **Annex F**, should be made under section 5 of the Consular Conventions Ordinance (Cap. 267).

## **BACKGROUND AND JUSTIFICATIONS**

### **Underlying Principles of the 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 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 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 and 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 13 bilateral consular agreements signed with separate sovereign States (a list of these agreements is at **Annex G**). Two Orders relating to the additional consular functions for the consular post of Canada in the HKSAR came into operation in November 2003. The Orders 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, came into operation in July 2005. The Orders relating to the additional Ps&Is and/or additional consular functions in respect of another four States, i.e. India, Italy, New Zealand and the Russian Federation, came into operation in July 2009. The Order relating to the additional Ps&Is in respect of Japan came into operation in July 2015. The current legislative exercise deals with the subsidiary legislation in respect of

Cambodia and the Philippines. As regards the bilateral consular agreement signed with Korea, it is not necessary to make any subsidiary legislation.

7. The PRC has concluded bilateral consular agreements with Cambodia and the Philippines respectively which are applicable to the HKSAR. The agreements accord to the consular posts and their personnel in the HKSAR additional Ps&Is and provide for additional consular functions relating to the administration of estates in the HKSAR, which include -

- (a) inviolability of residences for consular officers;
- (b) personal inviolability for consular officers and their family members;
- (c) immunity from the judicial and administrative jurisdiction except in certain civil proceedings for consular officers and their family members;
- (d) protect and preserve the estates left in the HKSAR by deceased nationals of these States;
- (e) safeguard the interest of their nationals who have a right to property left in the HKSAR by a deceased person; and
- (f) 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**

8. 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<sup>(3)</sup> is to enact local legislation setting them out expressly and specifically.

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**Note** (3) At present, the 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**

9. 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 Cambodia and the Philippines, or to persons connected with the consular posts, or to both, under the relevant provisions of the bilateral consular agreements, have the force of law in the HKSAR.

10. 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 consular posts of Cambodia and the Philippines 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 Cambodia and the Philippines by adding "Kingdom of Cambodia" and "Republic of the Philippines" to the Schedule to the Ordinance<sup>(4)</sup>. The Orders to be made under the Consular Conventions Ordinance (Cap. 267) seek to underpin relevant provisions of the above two agreements by directing that section 3 of the Ordinance<sup>(5)</sup> applies to Cambodia and the Philippines, with which a bilateral consular agreement has been concluded by the CPG respectively.

## **LEGISLATIVE TIMETABLE**

11. The Orders will be published in the Gazette on 25 September 2015. We propose that the Orders are to come into operation on 11 December 2015, taking into account the lead time required for negative vetting upon gazettal.

## **IMPLICATIONS OF THE PROPOSAL**

12. The proposal is in conformity 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 amended.

13. 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

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**Notes** (4) The Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 191) sets out the States with which the CPG has entered into an agreement providing for the administration of estates by consular officers which applies to the HKSAR.

**Notes** (5) 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.

service, economic, productivity, environmental, sustainability, family or gender implications.

#### **PUBLIC CONSULTATION**

14. We have issued a paper to the Legislative Council's Panel on Administration of Justice and Legal Services in May 2015 to inform Members of this subject.

#### **PUBLICITY**

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

#### **ENQUIRY**

16. Any enquiries on the brief should be addressed to Mrs Judy Li, Director of Protocol, at 2810 2212.

Administration Wing  
Chief Secretary for Administration's Office  
23 September 2015

## **Subsidiary Legislation relating to Consular Matters: Annexes**

- Annex A - Consular Relations (Additional Privileges and Immunities) (Cambodia) Order
- Annex B - Administration of Estates by Consular Officers Ordinance (Amendment of Schedule: Cambodia) Order 2015
- Annex C - Consular Conventions (Application of Section 3) (Amendment of Schedule: Cambodia) Order 2015
- Annex D - Consular Relations (Additional Privileges and Immunities) (Philippines) Order
- Annex E - Administration of Estates by Consular Officers Ordinance (Amendment of Schedule: Philippines) Order 2015
- Annex F - Consular Conventions (Application of Section 3) (Amendment of Schedule: Philippines) Order 2015
- Annex G - List of the Bilateral Agreements between the Central People's Government and Foreign States Relating to Privileges and Immunities Conferred on Consular Posts

**Consular Relations (Additional Privileges and Immunities) (Cambodia) Order**

**Schedule**

[ss. 2 & 3]

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

**Provisions of the Convention Referred to in this Order**

**1. Commencement**

This Order comes into operation on 11 December 2015.

CHAPTER I

DEFINITION

**2. Interpretation**

In this Order—

Article 1

*Convention* (《條約》) means the Consular Convention between the People’s Republic of China and the Kingdom of Cambodia done at Phnom Penh on 25 February 2010;

Definitions

*relevant provisions of the Convention* (《條約》有關條文) means the provisions of paragraph 2 of Article 4, paragraph 1 of Article 28, Articles 29 and 30, paragraphs 3 and 4 of Article 31, Articles 34, 35, 36, 37 and 38, paragraph 1 of Article 39, 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.

For the purposes of this Convention, the following expressions shall have the meanings hereunder assigned to them:

**3. Additional privileges and immunities**

It is declared that the additional privileges and immunities accorded to a consular post of the Kingdom of Cambodia, 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) and (i)), and Articles 42, 44 and 45, of the Convention as set out in the Schedule, have the force of law in Hong Kong.

(a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;

.....

(c) “head of consular post” means the consul-general, consul, vice consul or consular agent who is charged by the sending State to head a consular post;

(d) “consular officer” means a consular-general, vice consul-general, consul, vice consul, consular attaché or consular agent;

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

(h) “family members” means the spouse of a member of the consular post and their minor children who live with them in the same household;

.....

(j) “consular premises” means the 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, tapes and registers of the consular post, together with the ciphers and codes, the card indexes, the data stored in memory medium and any articles 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 any juridical person of the sending State;

(m) “vessel of the sending State” means any vessel sailing under the flag of the sending State pursuant to its law, 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 II

### ESTABLISHMENT OF A CONSULAR POST AND APPOINTMENT OF ITS MEMBERS

#### Article 4

Temporary exercise of the functions of the head of a consular post

2. The acting head of a consular post shall enjoy the same rights, facilities, privileges and immunities as enjoyed by a head of a consular post under this Convention.

## CHAPTER IV

### FACILITIES, PRIVILEGES AND IMMUNITIES

#### Article 28

Inviolability of the consular premises and the residences of consular officers

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

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 30

Inviolability of the consular archives and documents

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

Article 31

Freedom of communication

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

4. A consular bag may be entrusted to the captain of an aircraft or a vessel of the sending State. But he shall be provided with an official document indicating the number of packages constituting the bag, however, he shall not be considered as a consular courier. By arrangement with the appropriate authorities of the receiving State, a member of the

consular post may directly and freely collect the bag from or deliver it to him.

Article 34

Personal inviolability of consular officers

The person of consular officers shall be inviolable, and they shall not be liable to detention or arrest. The receiving State shall take appropriate measures to prevent any attack on their freedom of person and dignity.

Article 35

Immunity from jurisdiction

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

- (a) arising out of a contract concluded by a consular officer in which he did not contract expressly 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 consular officer is holding it in the capacity of representative of the sending State and for the purposes of the consular post;
- (d) concerning private succession;

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

2. The receiving State shall not take measures of execution against a consular officer except in cases referred to in paragraph 1 of this Article. In the event of taking such measures in such cases, the inviolability of the person and residence of the consular officer shall not be impaired.

3. Members of the administrative and technical staff and 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 functions, except in the civil proceedings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

#### Article 36

##### Liability to give evidence

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

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.

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 their 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 37

##### Exemption from services and registration of aliens and residence permits

1. A member of the consular post shall be exempt in the receiving State from any kind of personal services, public services and military obligations.

2. A consular officer and a member of the administrative and technical staff of the consular post shall be exempt from all obligations under the laws and regulations of the receiving State concerning the registration of aliens and residence permits.

#### Article 38

##### Exemption of properties from taxation

1. On a reciprocal basis and to the extent permitted by the laws and regulations of the receiving State, the following shall be exempt 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 39

##### Exemption of members of the consular post from taxation

1. Consular officers and members of the administrative and technical staff of the consular post shall be exempt from all national, regional or municipal dues and taxes of the receiving State on person or object except:

(a) indirect taxes of a kind which are normally incorporated in the price of commodities or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, other than the provisions stipulated in sub-paragraph (a) of paragraph 1 of Article 38 of this Convention;

(c) estate and inheritance duties and duties on transfers, other than the provisions stipulated in Article 43 of this Convention;

(d) dues and taxes on private income other than the income acquired from their official functions in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duties, other than the provisions stipulated in paragraph 1 of Article 38 of this Convention.

#### 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 persons 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 service staff is entitled under paragraph 1 of Article 37 of 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. Member 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 the Convention, other than the provisions stipulated in 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 a 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 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 date from which the member of the consular post enjoys privileges and immunities. In the case that they enter into the territory of the receiving State or become a member of such family members after the member of the consular post enjoys privileges and immunities, they enjoy such privileges and immunities from the date of their entry or their becoming such family members.

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 Article 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

2015

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**Explanatory Note**

This Order declares that the additional privileges and immunities accorded to a consular post of the Kingdom of Cambodia, 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 (Amendment of Schedule: Cambodia) Order 2015**

(Made by the Chief Executive in Council under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191))

Clerk to the Executive Council

**1. Commencement**

This Order comes into operation on 11 December 2015.

COUNCIL CHAMBER

**2. Administration of Estates by Consular Officers Ordinance amended**

2015

The Administration of Estates by Consular Officers Ordinance (Cap. 191) is amended as set out in section 3.

**3. Schedule amended**

The Schedule—

**Add**

“7.	Kingdom of Cambodia	Consular Convention between the People’s Republic of China and the Kingdom of Cambodia	25.2.2010	Article 17.6”.
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### **Explanatory Note**

This Order amends the Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 191)—

- (a) to enable section 2 of the Ordinance to apply to consular officers of the Consulate General of the Kingdom of Cambodia; and
- (b) to give effect to the provision in the Consular Convention between the People's Republic of China and the Kingdom of Cambodia done on 25 February 2010 relating to the administration of estates of deceased Cambodian nationals.

**Consular Conventions (Application of Section 3)  
(Amendment of Schedule: Cambodia) Order 2015**

(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 11 December 2015.

**2. Consular Conventions (Application of Section 3) Order amended**

The Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended as set out in section 3.

**3. Schedule amended**

The Schedule—

**Add**

“7. Kingdom of Cambodia”.

Chief Executive

2015

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**Explanatory Note**

This Order amends the Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B)—

- (a) to enable section 3 of the Consular Conventions Ordinance (Cap. 267) to apply to consular officers of the Consulate General of the Kingdom of Cambodia; and
- (b) to give effect to a provision in the Consular Convention between the People’s Republic of China and the Kingdom of Cambodia done on 25 February 2010. The provision empowers the consular officers to represent Cambodian nationals in inheritance proceedings and to transmit estates in the Hong Kong Special Administrative Region to Cambodian nationals.

## Consular Relations (Additional Privileges and Immunities) (Philippines) 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 11 December 2015.

### 2. Interpretation

In this Order—

*Agreement* (《協定》) means the Consular Agreement between the People's Republic of China and the Republic of the Philippines done at Manila on 29 October 2009;

*relevant provisions of the Agreement* (《協定》有關條文) means the provisions of paragraph 2 of Article 4, paragraph 1 of Article 28, Articles 29 and 30, paragraphs 2, 3 and 4 of Article 31, Articles 34, 35, 36, 37 and 38, paragraph 1 of Article 39, Article 40 (except sub-paragraphs (a) and (b) of paragraph 1 and paragraph 3), Article 41, and Article 43 (except paragraph (a)), of the Agreement as set out in the Schedule.

### 3. Additional privileges and immunities

It is declared that the additional privileges and immunities accorded to a consular post of the Republic of the Philippines, or to persons connected with the consular post, or to both, under the relevant provisions of the Agreement, as read with the provisions of Article 1 (except paragraphs (b) and (h)), and Articles 42, 44 and 45, of the Agreement as set out in the Schedule, have the force of law in Hong Kong.

## Schedule

[ss. 2 & 3]

### Provisions of the Agreement Referred to in this Order

#### CHAPTER I

#### DEFINITION

#### Article 1

#### Definitions

For the purposes of the present Agreement, 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 consul-general, consul, vice consul or consular agent who is charged by the sending State to head a consular post;

(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 service 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 the consular post” means consular officers, administrative and technical staff and service staff of the consular post;

.....

(i) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(j) “consular archives” means all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card indexes, the data stored in memory medium and any articles of furniture intended for their protection or safe-keeping;

(k) “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;

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

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

## CHAPTER II

### ESTABLISHMENT OF A CONSULAR POST AND APPOINTMENT OF ITS MEMBERS

#### Article 4

#### Temporary Exercise of the Functions of the Head of a Consular Post

2. The acting head of a consular post shall enjoy the same rights, facilities, privileges and immunities as enjoyed by a head of a consular post under this Agreement.

## CHAPTER IV

### FACILITIES, PRIVILEGES AND IMMUNITIES

#### Article 28

#### Inviolability of Consular Premises and the Residences of Consular Officers

1. Consular premises and the residences of consular officers shall be inviolable. The authorities of the receiving State may not enter the consular premises and the residences of consular officers 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. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

**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 30**

**Inviolability of the Consular Archives**

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

**Article 31**

**Freedom of Communication**

2. The official correspondence of a consular post shall be inviolable. The consular bag shall neither be opened nor detained. The consular bag must 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 not be a permanent resident of the receiving State. He shall be provided with an official document certifying his status. He shall enjoy the same rights, facilities, privileges and immunities in the receiving State as enjoyed by a diplomatic courier.

4. A consular bag may be entrusted to the captain of an aircraft or a vessel of the sending State. But he shall be provided with an official document indicating the number of packages constituting the bag, however, he shall not be considered as a consular courier. By arrangement with the appropriate authorities of the receiving State, a member of the consular post may directly and freely collect the bag from or deliver it to him.

**Article 34**

**Personal Inviolability of Consular Officers**

The person of consular officers shall be inviolable, and they shall not be liable to any form of detention or arrest. The receiving State shall take appropriate measures to prevent any attack on their freedom of person and dignity.

**Article 35**

**Immunity from Jurisdiction**

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

(a) arising out of a contract concluded by a consular officer in which he did not contract expressly 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 consular officer is holding it in the capacity of representative of the sending State and for the purposes of the consular post;

(d) concerning private succession;

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

2. The receiving State shall not take measures of execution against a consular officer except in cases referred to in paragraph 1 of this Article. In the event of taking such measures in such cases, the inviolability of the person and residence of the consular officer shall not be impaired.

3. Members of the administrative and technical staff and 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 functions, except in the civil proceedings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

#### **Article 36**

##### **Liability to Give Evidence**

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

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 proceeding of the receiving State. He shall not, except in the cases referred to in paragraph 3 of this Article, decline to give evidence.

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 their 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 37**

##### **Exemption from Services and Registration of Aliens and Residence Permits**

1. A member of the consular post shall be exempt in the receiving State from any kind of personal services, public services and military obligations.

2. A consular officer and a member of the administrative and technical staff of the consular post shall be exempt from all obligations under the laws of the receiving State concerning the registration of aliens and residence permits.

#### **Article 38**

##### **Exemption of Properties from Taxation**

1. On a reciprocal basis and to the extent permitted by the laws and regulations of the receiving State, the followings shall be exempt 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 39

#### Exemption of Members of the Consular Post from Taxation

1. Consular officers and members of the administrative and technical staff of the consular post shall be exempt from all national, regional or municipal dues and taxes of the receiving State on person or object, except:

(a) indirect taxes of a kind which are normally incorporated in the price of commodities or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, subject to the provisions in subparagraph (a) of paragraph 1 of Article 38 of this Agreement;

(c) estate and inheritance duties and duties on transfers, subject to the provisions of Article 43 of this Agreement;

(d) dues and taxes on private income other than the income acquired from their official functions in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of paragraph 1 of Article 38 of this Agreement.

### 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 Agreement; Family members of a member of the service staff of the consular post shall enjoy the privileges and immunities to which the member of service staff is entitled under paragraph 1 of Article 37 of this Agreement, 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 Agreement, subject to the provisions of paragraph 3 of Article 36 of this Agreement.

2. Family members of the persons mentioned in paragraph 1 of this Article shall not enjoy the privileges and immunities provided for in this Agreement.

#### **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 Agreement 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 in this Agreement 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, whichever is sooner. 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.

5. However, with respect to acts performed by a member of the consular post in the exercise of his functions during his tenure of office, immunity from jurisdiction shall continue to subsist without limitation of time.

#### **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 Article 35 and 36 of this Agreement. 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 Agreement 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

2015

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**Explanatory Note**

This Order declares that the additional privileges and immunities accorded to a consular post of the Republic of the Philippines, 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 (Amendment of Schedule: Philippines) Order 2015**

(Made by the Chief Executive in Council under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191))

**1. Commencement**

This Order comes into operation on 11 December 2015.

**2. Administration of Estates by Consular Officers Ordinance amended**

The Administration of Estates by Consular Officers Ordinance (Cap. 191) is amended as set out in section 3.

**3. Schedule amended**

The Schedule—

**Add**

“8.	Republic of the Philippines	Consular Agreement between the People’s Republic of China and the Republic of the Philippines	29.10.2009	Article 17.6”.
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Clerk to the Executive Council

COUNCIL CHAMBER

2015

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**Explanatory Note**

This Order amends the Schedule to the Administration of Estates by Consular Officers Ordinance (Cap. 191)—

- (a) to enable section 2 of the Ordinance to apply to consular officers of the Consulate General of the Republic of the Philippines; and
- (b) to give effect to the provision in the Consular Agreement between the People's Republic of China and the Republic of the Philippines done on 29 October 2009 relating to the administration of estates of deceased Philippine nationals.

**Consular Conventions (Application of Section 3)  
(Amendment of Schedule: Philippines) Order 2015**

(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 11 December 2015.

**2. Consular Conventions (Application of Section 3) Order amended**

The Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B) is amended as set out in section 3.

**3. Schedule amended**

The Schedule—

**Add**

“8. Republic of the Philippines”.

Chief Executive

2015

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**Explanatory Note**

This Order amends the Schedule to the Consular Conventions (Application of Section 3) Order (Cap. 267 sub. leg. B)—

- (a) to enable section 3 of the Consular Conventions Ordinance (Cap. 267) to apply to consular officers of the Consulate General of the Republic of the Philippines; and
- (b) to give effect to a provision in the Consular Agreement between the People’s Republic of China and the Republic of the Philippines done on 29 October 2009. The provision empowers the consular officers to represent Philippine nationals in inheritance proceedings and to transmit estates in the Hong Kong Special Administrative Region to Philippine nationals.

**List of the Bilateral Agreements between the  
Central People's Government 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 <b>the United Kingdom of Great Britain and Northern Ireland</b> 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 <b>the United States of America</b> 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 <b>the Republic of Italy</b> 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 <b>Canada</b>  | 11 Mar 1999  |
| 5. Consular Convention Between <b>the Socialist Republic of Vietnam</b> and the People's Republic of China  | 26 Jul 2000  |
| 6. Agreement on Consular Relations Between the People's Republic of China and <b>Australia</b>  | 15 Sept 2000 |

**Date of Application  
to the HKSAR**

- |  |             |
|--|-------------|
| 7. Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of <b>the Republic of India</b> on Matters Concerning the Consular Convention Between the People's Republic of China and the Republic of India | 28 Jul 2001 |
| 8. Consular Convention Between the People's Republic of China and <b>the Russian Federation</b>  | 23 Oct 2003 |
| 9. Agreement on Consular Relations Between the People's Republic of China and <b>New Zealand</b>   | 23 Apr 2006 |
| 10. Agreement on Consular Relations Between the People's Republic of China and <b>Japan</b>  | 16 Feb 2010 |
| 11. Consular Convention Between the People's Republic of China and <b>the Kingdom of Cambodia</b>  | 12 Jan 2011 |
| 12. Consular Agreement Between the People's Republic of China and <b>the Republic of the Philippines</b>   | 13 Jul 2013 |
| 13. Consular Agreement Between the People's Republic of China and <b>the Republic of Korea</b>   | 12 Apr 2015 |