

Make provisions for the implementation in Hong Kong of certain provisions of the Vienna Convention on Consular Relations and of other agreements concerning consular relations to which the Government of the People's Republic of China is a party and which are applied to Hong Kong by the Central People's Government; to make further provisions with respect to consular relations in Hong Kong between the People's Republic of China and other countries and matters arising in connection therewith; to enable diplomatic agents and consular officers in Hong Kong to administer oaths and do notarial acts in certain cases; and to provide for matters connected therewith and incidental thereto.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Consular Relations Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires---

"accorded to a State" (某國家所享有的), in relation to any privilege or immunity, means accorded to a consular post of a State, or to persons connected with the consular post, or to both, and similar expressions shall be construed accordingly;

"additional privileges and immunities" (增補特權及豁免) means privileges or immunities that are not contained in the Schedule;

"international agreement" (國際協議) means any agreement in writing concerning consular relations or that agreement as amended from time to time, whether contained in one or more documents and by whatever name called, which has effect in international law and---

(a) to which the Government of the People's Republic of China is a party; and

(b) which is applied to Hong Kong by the Central People's Government.

3. Provisions of Vienna Convention

on Consular Relations

(1) Subject to section 4(2) and (3), the provisions set out in the Schedule (being Articles or parts of Articles of the Vienna Convention on Consular Relations done at Vienna on 24 April 1963) shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2) to (8).

(2) In those Articles or parts of Articles---

"authorities of the receiving State" (接受國當局、接受國官吏、接受國機關) shall be construed as including any police officer and any person exercising a power of entry to any premises under any enactment;

"grave crime" (嚴重罪行) shall be construed as meaning any offence punishable (on a first conviction) with imprisonment for a term up to 5 years or with a more severe sentence;

"Ministry for Foreign Affairs" (外交部) shall be construed as meaning the Ministry of Foreign Affairs of the People's Republic of China;

"national of the receiving State" (接受國國民) shall be construed as meaning a Chinese national.

(3) The reference in paragraph 2 of Article 17 to any privileges and immunities accorded by customary international law or by international agreements shall be construed as a reference to any privileges and immunities conferred in Hong Kong under the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) or the International Organizations (Privileges and Immunities) Ordinance (of 1999).

(4) For the purposes of Article 45 and that Article as applied by Article 58 a waiver shall be deemed to have been expressed by a State if it has been expressed by the head, or any person for the time being performing the functions of head, of the superintending diplomatic mission of that State or of the consular post concerned.

(5) Articles 50, 51, 52, 54, 62 and 67 shall be construed as granting any privilege or immunity provided for in those Articles.

(6) The reference in Article 57 to the privileges and immunities provided in Chapter II shall be construed as referring to those provided in Section II of that Chapter.

(7) The reference in Article 70 to the rules of international law concerning diplomatic relations shall be construed as a reference to the provisions of the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997).

(8) The references in Article 71 to additional privileges and immunities that may be granted by the receiving State or to privileges and immunities so far as these are granted by the receiving State shall be construed as referring to such privileges and immunities as may be specified by the Chief Executive in Council by order.

4. Orders providing for additional or reduced privileges and immunities

(1) The Chief Executive in Council may---

(a) by order, declare that the additional privileges and immunities---

(i) accorded to a State under an international agreement; and

(ii) specified in the order,

shall have the force of law in Hong Kong; and

(b) in such order make such provisions as the Chief Executive in Council may consider necessary for carrying into effect in

Hong Kong the provisions of the international agreement in connection with such privileges and immunities.

(2) The Chief Executive in Council may, by order, declare that such of the

privileges and immunities contained in the Schedule---

(a) that are not accorded to a State under an international agreement to which that State is a party; and

(b) as specified in the order,

shall be excluded in the application of section 3 in relation to---

(i) any consular post of that State;

(ii) persons connected with the consular post.

(3) The Chief Executive in Council may, by order, declare that any privilege or immunity conferred by or under this Ordinance and as specified in the order shall no longer have the force of law in Hong Kong in relation to---

(a) all or any of the consular posts of a State;

(b) such persons connected with the consular post or posts as the Chief Executive in Council may consider proper,

on the ground that that State is failing to accord the corresponding privilege or immunity to a consular post of the People's Republic of China in a territory of that State, or to persons connected with such consular post.

5. Authorized refund of duties paid on hydrocarbon oils

(1) The Chief Executive may authorize the Commissioner of Customs and Excise to make such arrangements as the Chief Executive thinks fit for securing the refund of duties imposed on hydrocarbon oils under the Dutiable Commodities Ordinance (Cap. 109) where such hydrocarbon oils are---

(a) imported into Hong Kong; and

(b) used for such purpose that, had they been imported for that use, exemption from customs duty would have been required to be granted under---

(i) Article 50 in the Schedule; or

(ii) an order made under section 4(1).

(2) Any arrangements made under this section may impose conditions subject to which any refund shall be made.

(3) Any amount of money refunded under arrangements made under this section shall be paid from the general revenue.

6. Right of diplomatic agents and consular officers to administer oaths and do notarial acts in certain cases

(1) A diplomatic agent or consular officer of a State may, if authorized to do so under the laws of that State, administer oaths, take affidavits and do notarial acts---

(a) required by a person for use in that State or under the laws of that State; or

(b) otherwise required by a national of that State but not for use in Hong Kong except under the laws of some other country.

(2) The Chief Executive may by notice in the Gazette exclude or restrict the provisions of subsection (1) in relation to the diplomatic agents or consular officers of a State in Hong Kong if he considers that in any territory of that State diplomatic agents or consular officers of the People's Republic of China are not permitted to perform functions corresponding in nature and extent to those authorized by that subsection.

(3) In this section, "diplomatic agent" has the same meaning as the term "外交代表" (diplomatic agent) in the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997).

7. Evidence

(1) Where a question arises as to whether or not a person is entitled to a privilege or immunity conferred by or under this Ordinance, a certificate issued by the Chief Secretary for Administration stating a fact relevant to that question is, subject to subsection (2), conclusive evidence of that fact.

(2) Where there is any conflict or inconsistency as respects a question of fact between---

(a) a certificate issued under subsection (1); and

(b) a certificate obtained under the third paragraph of Article 19 of the Basic Law, then the second-mentioned certificate shall, to the extent of that conflict or inconsistency, as the case may be, prevail over the certificate issued under subsection (1).

8. Application of national laws

(1) Nothing in this Ordinance or an order made under section 4 shall prejudice the operation of---

(a) the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997); or

(b) the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities in Schedule 3 to the Promulgation of National Laws (No. 2) 1997 (L.N. 386 of 1997).

(2) If there is any conflict or inconsistency between---

(a) a provision of this Ordinance or of an order made under section 4; and

(b) the Regulations referred to in subsection (1)(a) or (b),

then that provision shall be construed subject to the Regulations and shall be so construed as to be consistent with the international rights and obligations of the Central People's Government.

9. Repeals

The Consular Relations Ordinance (Cap. 259) and all subsidiary legislation made under it are repealed.

Consequential Amendments

Dutiable Commodities Regulations

10. Exemptions

Regulation 12(1)(m) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) is amended by repealing "(Cap. 259)" and substituting "(of 1999)".

11. Refund of duty on goods supplied for consular etc. use

Regulation 15 is amended by repealing "(Cap. 259)" and substituting "(of 1999)".

Immigration Ordinance

12. Interpretation

Section 2(4)(a)(vii) of the Immigration Ordinance (Cap. 115) is amended by repealing "(Cap. 259)" and substituting "(of 1999)".

Stamp Duty Ordinance

13. Relief in case of certain leases etc.

of consular premises

Section 43(3) of the Stamp Duty Ordinance (Cap. 117) is amended---

(a) in paragraph (a)(i), by repealing "(Cap. 259)" and substituting "(of 1999)" ;

(b) in paragraph (b)(i), by repealing "(Cap. 259)" and substituting "(of 1999)" .

Air Passenger Departure Tax Ordinance

14. Passengers exempted from

liability to pay the tax

The Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140) is amended, in paragraph 8(c), by repealing "(Cap. 259)" and substituting "(of 1999)".

Road Traffic (Driving Licences) Regulations

15. Issue of full driving licences

Regulation 11(3A) of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.) is amended---

(a) by repealing "First";

(b) by repealing "(Cap. 259)" and substituting "(of 1999)".

SCHEDULE [ss. 2, 3, 4 & 5]

Provisions of Vienna Convention on Consular Relations

having the force of Law in Hong Kong

Article 1

Definitions

1. 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;
- (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
- (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) "consular employee" means any person employed in the administrative or technical service of 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, consular employees and members of the service staff;
- (h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;
- (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" includes all the papers, documents, correspondence, books, films, tapes 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.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officer; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

Chapter I Consular Relations in General

Article 5

Consular functions

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and

regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews; (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 15

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

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistant and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall,

if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 17

Performance of diplomatic acts by consular officers

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Chapter II Facilities, Privileges and Immunities

Relating to Consular Posts, Career

Consular Officers and other

Members of a Consular Post

Section I---Facilities, Privileges and

Immunities Relating

to a Consular Post

Article 31

Inviolability of the consular premises

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

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

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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 ex-propritation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of

consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

Article 32

Exemption from taxation of consular premises

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 33

Inviolability of the consular archives and documents

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

Article 35

Freedom of communication

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or

articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 39

Consular fees and charges

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

Section II---Facilities, Privileges and Immunities Relating to Career Consular Officers and other Members of a Consular Post

Article 41

Personal inviolability of consular officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

Article 43

Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:

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

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

Article 44

Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45

Waiver of privileges and immunities

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. 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 measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 48

Social security exemption

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

Article 49

Exemption from taxation

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings 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 Article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 50

Exemption from customs duties and inspection

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

(a) articles for the official use of the consular post;

(b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51

Estate of a member of the consular post or of a member of his family

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

(a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(b) shall not levy national, regional or municipal estate, succession or inheritance

duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 52

Exemption from personal services and contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53

Beginning and end of consular privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present 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. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, 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 a member of his family forming part of his household or a member of his private staff shall normally 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 the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee 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, the members of his family forming part of his household 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 enabling them to do so, whichever is the sooner.

Article 54

Obligations of third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

Article 55

Respect for the laws and regulations of the receiving State

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 57

Special provisions concerning private gainful occupation

2. Privileges and immunities provided in this Chapter shall not be accorded:

- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
- (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
- (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

Chapter III Regime Relating to Honorary Consular Officers and Consular Posts Headed

by such Officers

Article 58

General provisions relating to facilities, privileges and immunities

1. Articles
35, and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 60, 61 and 62.

2. Articles 43, paragraph 3 of Article 44, Articles 45 and 53 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles.....
66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
Article 60

Exemption from taxation of consular premises

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61

Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books and documents relating to their profession or trade.

Article 62

Exemption from customs duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Article 66

Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

Article 67

Exemption from personal services and contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Chapter IV General Provisions

Article 70

Exercise of consular functions by diplomatic missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

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4. The privileges and immunities of the members of a diplomatic mission referred

to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71

Nationals or permanent residents of the receiving State

1. Except in so far as additional facilities privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State.

Explanatory Memorandum

This Bill seeks to underpin the implementation of consular privileges and immunities in Hong Kong. At present, consular privileges and immunities are given effect in Hong Kong by the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997), the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities in Schedule 3 to the Promulgation of National Laws (No. 2) 1997 (L.N. 386 of 1997) and the Consular Relations Ordinance (Cap. 259). The Bill is intended to repeal that Ordinance and, without prejudice to the operation of both Regulations in Hong Kong, make provisions for implementing consular privileges and immunities accorded to consular posts of other States and persons connected with such posts pursuant to international agreements concerning consular relations to which the People's Republic of China is a party. The Bill makes further provisions for purposes connected with consular matters in Hong Kong.

2. Clause 2 sets out the definitions necessary for the interpretation of the proposed Ordinance.

3. Clause 3 provides that such of the articles or parts of articles of the Vienna Convention on Consular Relations as specified in the Schedule (which articles or parts of articles are related to consular privileges and immunities, hereafter called "VCCR

PIs") to the Bill shall have the force of law in Hong Kong and provides also for the construction of these articles.

4. (a) Clause 4(1) empowers the Chief Executive in Council to declare by order that consular privileges and immunities in addition to the VCCR PIs accorded to a consular post of a State and persons connected with the post shall have the force of law in Hong Kong. It also empowers the Chief Executive in Council to make provisions in the order for carrying into effect such additional privileges and immunities in Hong Kong.

(b) Clause 4(2) empowers the Chief Executive in Council to declare by order that such of the VCCR PIs which are not accorded to a consular post of a State and persons connected with the post shall not apply in Hong Kong in relation to such consular post and persons.

(c) Clause 4(3) provides that if a State fails to accord any privilege or immunity to a consular post of the People's Republic of China in a territory of that State, the Chief Executive in Council may, by order, declare that the corresponding privilege or immunity conferred by or under the proposed Ordinance to a consular post of that State and any person connected with the post shall no longer have the force of law in Hong Kong.

5. Clause 5 provides that the Chief Executive may authorize the Commissioner of Customs and Excise to make arrangements for the refund of duties payable on hydrocarbon oils under the Dutiable Commodities Ordinance (Cap. 109) where hydrocarbon oils are imported into Hong Kong for such purposes as would require exemption from the payment of custom duties to be granted under Article 50 in the Schedule or an order made under clause 4(1).

6. Clause 6 seeks to provide that a diplomatic agent (defined in clause 6(3)) and a consular officer of a sending State may, in specified cases, administer oaths and perform notarial duties in Hong Kong.

7. Clause 7 provides for the proof of whether a person is entitled to a privilege or immunity conferred by or under the proposed Ordinance.

8. Clause 8 provides for the relationship between the proposed Ordinance and the 2 national laws applying in Hong Kong that relate to diplomatic or consular privileges and immunities.

9. Clause 9 repeals the Consular Relations Ordinance (Cap. 259) and its subsidiary legislation.

10. Clauses 10 to 15 are consequential amendments.

11. The Schedule to the Bill sets out the provisions of the Vienna Convention on Consular Relations that have the force of law in Hong Kong.