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Report of the Subcommittee on subsidiary legislation relating to consular matters

PURPOSE

This paper reports on the deliberations of the Subcommittee on subsidiary legislation relating to consular matters.

THE SUBCOMMITTEE

2. At the House Committee meeting on 3 October 2003, members agreed to form a subcommittee to study the four items of subsidiary legislation relating to consular matters gazetted on 4 July 2003.
3. Under the chairmanship of Hon Margaret NG, the Subcommittee has held two meetings with the Administration. The membership list of the Subcommittee is in **Appendix I**.

THE SUBSIDIARY LEGISLATION

4. The following four items of subsidiary legislation were gazetted on 4 July 2003 and tabled in the Legislative Council (LegCo) on 9 July 2003 for negative vetting -
 - (a) the Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191);
 - (b) the Consular Conventions (Application of Section 3) Order made under section 5 of the Consular Conventions Ordinance (Cap. 267);
 - (c) the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558); and

- (d) the Registration of Persons (Amendment) Regulation 2003 made under section 7 of the Registration of Persons Ordinance (Cap. 177).

The scrutiny period of the three Orders and the Amendment Regulation has been extended from 15 October 2003 to 5 November 2003 by resolution of LegCo.

5. The Administration advises that as these items of subsidiary legislation are related to the foreign affairs of the Central People's Government (CPG), amendments, if any, to these items of subsidiary legislation must be consistent with the international rights and obligations of the CPG under the relevant international agreements.

DELIBERATIONS OF THE SUBCOMMITTEE

Background

Privileges and immunities and consular relations

6. The Administration advises that consular relations are established, on the basis of mutual consent, between sovereign States to facilitate the protection of the rights and interests of their nations and nationals, and to promote friendly relations and cooperation among them. Following the establishment of a consular post by a sending State, it is a well-established practice that the post and its members will be accorded with privileges and immunities not made available to ordinary resident aliens in the receiving State. The conferment of privileges and immunities on consular members is to ensure the efficient performance of functions by consular members on behalf of the sending State.

7. On the international level, the Vienna Convention on Consular Relations 1963 (VCCR) codifies the international law on consular relations, matters relating to the establishment and maintenance of consular missions and consular privileges and immunities. 165 States are signatories to the VCCR, including the People's Republic of China (PRC), which acceded in 1979.

8. A State may also, if considered appropriate, conclude bilateral agreements with other States to facilitate the performance of consular functions and to deal with matters not covered in the VCCR.

Privileges and immunities and International Organizations

9. For International Organizations (IOs) which are not sovereign States and whose representatives are not covered under the VCCR, their entitlements to privileges and immunities are provided for under their respective statutes, or

relevant international agreements. In addition, a host country may also enter into bilateral agreements with IOs, providing them with tailor-made privileges and immunities. Privileges and immunities are conferred on IO personnel for the independent exercise of their functions in connection with IOs.

Localization of international and bilateral agreements

10. The Subcommittee notes that at present, a total of 55 career consular posts are established in the HKSAR. These consular posts enjoy the privileges and immunities accorded to them under the VCCR to which the PRC acceded in 1979. In line with the established practice under common law, provisions of the VCCR which affect private rights and obligations or which require exceptions to be made to the existing laws of the HKSAR have already been specifically set out in local legislation by way of the Consular Relations Ordinance (Cap. 557). A list of the provisions of the VCCR on consular relations having the force of law under the Consular Relations Ordinance is in **Appendix II**.

11. On top of the provisions in the VCCR, the PRC has so far applied to the HKSAR seven bilateral agreements with foreign States providing for matters not covered in the VCCR, such as additional consular functions and enhanced privileges and immunities. Save for individual agreements which specifically provide for the maintenance/ establishment of consular posts in the HKSAR (e.g. those signed by the CPG with the United States, the United Kingdom and Italy), all these bilateral agreements are concluded on a reciprocal basis, meaning that the facilities, privileges and immunities provided therein apply also to the PRC's consular posts in the receiving States concerned.

12. Separately, five IOs have established/maintained their offices in the HKSAR under their respective bilateral arrangements with the PRC, which are applied to the HKSAR. They are granted privileges and immunities having regard to their operational needs in the HKSAR under four bilateral agreements with the PRC.

13. The 11 international agreements between the PRC and foreign States/IOs that are applied to the HKSAR to deal with privileges, immunities and functions to be performed are set out in **Appendix III**.

14. Having regard to the common law tradition, provisions of international agreements applicable to Hong Kong are transformed onto the domestic legal plane should they affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR. The Administration considers that the best means of underpinning the relevant provisions in the 11 bilateral agreements between the PRC and Consular posts/IOs is to enact local legislation setting them out expressly and specifically in the laws of Hong Kong.

15. In response to the Subcommittee's enquiry, the Administration advises that it has embarked on a programme of preparing the necessary subsidiary legislation to cover such bilateral agreements. Apart from the items of subsidiary legislation being scrutinized by the Subcommittee, the remaining items of subsidiary legislation will be introduced into LegCo in batches for negative vetting, as soon as the necessary drafting and consultation have been completed.

The PRC/Canada and the PRC/EC Agreements

Consular Agreement Between the Government of the People's Republic of China And the Government of Canada (the PRC/Canada Agreement)

16. The PRC/Canada Agreement came into force on 11 March 1999 and is applicable to Hong Kong. It provides for, amongst other things, additional consular functions for the Canadian consular officers relating to administration of estates, that are not provided for in detail under the VCCR. Specifically, under Article 10(3) of the Agreement, Canadian consular officers are entitled to protect and conserve the estates left in the HKSAR by deceased Canadian nationals. They are also entitled under Article 10(4) and (5) to safeguard the interest of Canadian nationals who have a right to property left in the HKSAR by a deceased, and to receive for transmission to Canadian nationals money or property in the HKSAR to which they are entitled as a consequence of the death of another person. A copy of the PRC/Canada Agreement is in **Appendix IV**.

Agreement Constituted by Exchange of Letters Between the Government of the People's Republic of China and the Commission of the European Communities Concerning the Maintenance of the Office of the Commission of European Communities in the Hong Kong Special Administrative Region of the People's Republic of China (the PRC/EC Agreement)

17. The PRC/EC Agreement provides for the maintenance by the Commissioner of its Office in the HKSAR from 1 July 1997. Under Article 4 of the Agreement, the PRC has conferred on the EC Office, its accredited Head and accredited members (who are nationals of the Members States of EC but are not permanent residents of the HKSAR) and their household families, consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the VCCR. These include -

- (a) inviolability of the EC Office, its archives and documents;
- (b) personal inviolability of the accredited personnel of the EC Office, except in the case of grave crime;
- (c) immunity from jurisdiction in respect of acts performed in the exercise of the functions of the EC Office;

- (d) exemption from giving evidence concerning matters connected with the exercise of the functions of the EC Office; and
- (e) exemption from taxation, customs duties, inspection and personal services and contributions, etc.

A copy of the PRC/EC Agreement is in **Appendix V**.

18. Some members have expressed concern whether there is a legal vacuum between the coming into force of the PRC/Canada and the PRC/EC Agreements and the enactment of local legislation to underpin the relevant provisions of the Agreements. The Administration advises that at present, the relevant provisions of the two Agreements are given legal effect in the HKSAR generally by the following national laws applicable to the HKSAR by promulgation under Article 18 of the Basic Law -

- (a) Regulations of the People's Republic of China concerning Consular Privileges and Immunities; and
- (b) Regulations of the People's Republic of China concerning Diplomatic Privileges and Immunities.

19. In addition, the Consular Relations Ordinance (Cap. 557) and the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) were enacted in 2000 to provide a more flexible framework for the localization of the relevant international agreements signed by CPG. The Administration of Estates by Consular Officers Ordinance (Cap. 191) and the Consular Conventions Ordinance (Cap. 267) provide a framework for giving effect to certain additional consular functions relating to administration of estates by consular officers in the HKSAR, as may be agreed between CPG and the sending State concerned.

The three Orders made in respect of the PRC/Canada and PRC/EC Agreements

Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003

20. The Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2003 is made under section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191) by the Chief Executive (CE) after consultation with the Executive Council (ExCo) and is to come into operation on 14 November 2003.

21. The Order seeks to underpin Article 10(3) of the PRC/Canada Agreement by adding "Canada" to the Schedule to the Ordinance, which is the first State to

be named in the Schedule. The Schedule sets out the States with which the PRC Government has entered into an agreement providing for the additional function of administration of estates by their consular officers in the HKSAR.

22. In response to a member's enquiry as regards the position before 1 July 1997, the Administration has advised that the United Kingdom had entered into separate treaties with seven foreign States which provided for the administration of estates by consular officers of those States. The seven States, namely, Estonia, Finland, Hungary, Japan, Thailand, Turkey and Yugoslavia were set out in the Schedule to the Administration of Estates by Consular Officers (Cap. 191) which was substituted with the present Schedule by the Adaptation of Laws (No. 35) Ordinance.

Consular Conventions (Application of Section 3) Order

23. The Consular Conventions (Application of Section 3) Order is made under section 3 of the Consular Conventions Ordinance (Cap. 267) by the CE after consultation with ExCo and is to come into operation on 14 November 2003.

24. The Order seeks to underpin Article 10(4) and (5) of the PRC/Canada Agreement, by directing that section 3 of the Ordinance shall apply to Canada. Canada has signed a consular agreement with the PRC, conferring upon the Canadian consular officers powers to protect the interests of Canadian nationals who have a right to property left in the HKSAR by a deceased person.

Consular functions of safeguarding the interests of nationals in the HKSAR

25. A member has asked whether Canadian consular officers, who are entitled to exercise estate-related consular functions under the PRC/Canada Agreement, would be accorded with any privileges and immunities not available to an ordinary Hong Kong citizen in the case of dispute or litigation between the two parties over the right to estate property in Hong Kong.

26. The Administration has explained that Article 5(g) of the VCCR requires that consular activities concerning safeguarding the interests of nationals in cases of succession mortis causa in the territory of the receiving State, must be conducted "in accordance with the laws and regulations of the receiving State". Article 10(6) of the PRC/Canada Agreement, which deals with functions concerning estates under Article 10(3) to (5), also provides that a consular officer "shall comply with the law of the receiving State". If a consular officer performs acts under section 2 of the Administration of Estates by Consular Officers Ordinance (Cap. 191), he is obliged to act in accordance with the laws of Hong Kong. The same applies if a consular officer performs acts under section 3 of the Consular Conventions Ordinance (Cap. 267). Section 4 of that Ordinance is also relevant.

International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order

27. The International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order is made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) by the CE after consultation with ExCo and is to come into operation on 14 November 2003.

28. The Order seeks to declare Articles 3, 4 and 5 of the PRC/EC Agreement to have the force of law in the HKSAR. Under the Order, EC, namely, the European Coal and Steel Community, the European Community, and the European Atomic Energy Community shall each have legal personality in the HKSAR, and shall have the capacity to conclude contracts, to acquire and dispose of movable and immovable property, and to conduct legal proceedings. The EC Office, its Head and members accredited by the Commission of EC as well as members of their family forming part of their respective households are conferred consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the provisions of the VCCR. The laissez-passer issued by EC to officials and other servants of its institutions shall be recognized as a valid travel document.

29. The Order also empowers the CE to authorize the Commissioner of Customs and Excise to arrange for refund of duties paid on hydrocarbon oils under the Dutiable Commodities Ordinance (Cap. 109) where such hydrocarbon oils, which are imported into Hong Kong for such purposes as would qualify for exemptions from payment of customs duty, to be granted under Article 50 of the VCCR, as read with Article 4 of the PRC/EC Agreement.

Refund of duties paid on hydrocarbon oils

30. The Subcommittee notes that in response to the queries raised by the legal adviser, the Administration has explained that clause 4 of the Order on authorized refund of duties paid on hydrocarbon oils does not have retrospective effect. By virtue of the PRC/EC Agreement, as read with the VCCR, the EC Office has been entitled to exemption from payment of duties on hydrocarbon oils since 1 July 1997. At present, this exemption is given effect through an arrangement, under which oil suppliers (through whom duties on hydrocarbon oils are collected) issue qualified personnel of the EC Office with oil cards. Upon presentation of the oil cards, duties will not be charged on the hydrocarbon oils purchased.

31. As regards the need for explicit exemption of duties on hydrocarbon oils, the Administration has explained that duties are assessed and payable on four types of dutiable goods, namely alcohol liquors, tobacco, hydrocarbon oils and methyl alcohol under Dutiable Commodities Ordinance (Cap. 109). The EC

Office may directly import alcohol liquors, tobacco and methyl alcohol with duties exempted, or obtain them from the authorized sources, who import the goods on their behalf with duties exempted. However, the amount of each single import of hydrocarbon oils far exceeds the demand of the EC Office and its personnel. Oil suppliers cannot arrange for the EC Office individually the import of duty-exempted hydrocarbon oils. Due to this operational problem, it is necessary to make a specific provision in the Order for the refund of duties paid on hydrocarbon oils.

Registration of Persons (Amendment) Regulation 2003

32. The Amendment Regulation, made under section 7 of the Registration of Persons Ordinance (Cap. 177) by the CE in Council, enables the Head and members of the EC Office and their family members in Hong Kong to be issued with identity cards in the same manner as identity cards are issued to consuls, their staff, and family members of the consuls and staff. The Amendment Regulation will come into operation on a day to be appointed by the Chief Secretary for Administration by notice published in the Gazette.

33. The Administration has advised the Subcommittee that Consular Corps Identity Cards (CCICs) are identity cards issued under Regulation 5 of the Registration of Persons Regulations in a form approved by the CE in respect of consuls, consular staff and their spouses and dependent children. Given that the accredited Head and accredited members of the EC Office, and their family members in the HKSAR do not fall within the meaning of "consul" and "consular staff", as defined under Regulation 2 of the Registration of Persons Regulations, administrative arrangements in place since the establishment of the Office in 1993 provide that they are only issued with ordinary identity cards with EC-prefixed identity card numbers.

34. However, operational experience through these years suggests that the existing administrative arrangements do not satisfactorily serve the purpose of making the relevant officials of the EC Office easily identifiable. The Administration reckons that the EC Office is different from other IOs in the HKSAR, in that it is a supranational institution which performs certain governmental functions in relation to Member States of the European Union. The privileges and immunities accorded to the EC Office and its personnel are also comparable to those conferred upon their consular counterparts. In view of the distinctive functions of the EC Office and its personnel, the Administration considers it appropriate to issue CCICs to the accredited Head and accredited members of the EC Office (and their family members) in the HKSAR, as in case of their consular counterparts.

RECOMMENDATION

35. The Subcommittee supports the four items of subsidiary legislation relating to consular matters gazetted on 4 July 2003.

ADVICE SOUGHT

36. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
23 October 2003

Subcommittee on subsidiary legislation relating to consular matters

Membership List

Chairman Hon Margaret NG

Members Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

(Total : 5 Members)

Clerk Mrs Percy MA

Legal Adviser Mr KAU Kin-wah

Date 13 October 2003

Appendix II

Provisions of the Vienna Convention on Consular Relations having the force of law under the Consular Relations Ordinance

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 or 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.
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-propriation 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 initiating 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.

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.

**List of the International Agreements between
CPG and Foreign States/International Organizations
Relating to Privileges and Immunities**

Date of
Application to
the HKSAR

Consular Agreements

- | | | |
|----|--|--------------|
| 1. | Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning the Establishment of a British Consulate-General in the Hong Kong Special Administrative Region of the People's Republic of China | 1 Jul 1997 |
| 2. | Agreement Between the Government of the People's Republic of China and the Government of the United States of America Regarding the Maintenance of the United States Consulate-General in the Hong Kong Special Administrative Region | 1 Jul 1997 |
| 3. | Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of the Republic of Italy Concerning the Maintenance of the Consulate-General of Italy in the Hong Kong Special Administrative Region of the People's Republic of China | 1 Jul 1997 |
| 4. | Consular Agreement Between the Government of the People's Republic of China and the Government of Canada | 11 Mar 1999 |
| 5. | Consular Convention Between the Socialist Republic of Vietnam and the People's Republic of China | 26 Jul 2000 |
| 6. | Agreement on Consular Relations Between the People's Republic of China and Australia | 15 Sept 2000 |
| 7. | Agreement Constituted by Exchange of Notes Between the Government of the People's Republic of China and the Government of the Republic of India on Matters Concerning the Consular Convention Between the People's Republic of China and the Republic of India | 28 Jul 2001 |

Date of
Application to
the HKSAR

Agreements with International Organizations

1. Agreement Constituted by Exchange of Letters Between the Government of the People's Republic of China and **the Commission of the European Communities** Concerning the Maintenance of the Office of the Commission of the European Communities in the Hong Kong Special Administrative Region of the People's Republic of China 1 Jul 1997
2. Host Country Agreement Between the Government of the People's Republic of China and **the Bank for International Settlements** Relating to the Establishment and Status of a Representative Office of the Bank for International Settlements in the Hong Kong Special Administrative Region of the People's Republic of China 11 May 1998
3. Memorandum of Understanding Between the Government of the People's Republic of China and **the International Monetary Fund** Concerning the Establishment of a Sub-Office in the Hong Kong Special Administrative Region by the Resident Representative Office of the Fund in the People's Republic of China 23 Sept 2000
4. Memorandum of Understanding Between the Government of the People's Republic of China and **the International Bank for Reconstruction and Development and the International Finance Corporation** Concerning the Establishment of the IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific in the Hong Kong Special Administrative Region of the People's Republic of China, Memorandum of Administrative Arrangements Relating to the IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific in the Hong Kong Special Administrative Region of the People's Republic of China and Letters between the Hong Kong Monetary Authority and the International Bank for Reconstruction and Development and the International Finance Corporation Relating to the Memorandum of Understanding 28 Sept 2000

Consular Agreement
Between
the Government of the People's Republic of China
And
the Government of Canada

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GOVERNMENT OF CANADA, (hereinafter referred to as the
"Contracting Parties"),

DESIRING to develop their consular relations in order to facilitate the
protection of the rights and interests of their nations and nationals, and to
promote the friendly relations and cooperation between the two countries,

HAVE DECIDED to conclude this Agreement and have agreed as
follows:

Article 1

Definitions

For the purposes of this 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;
- (b) "consular district" means the area assigned to a consular post for the
exercise of consular functions;
- (c) "consular officer" means any person, including the head of a consular
post, entrusted in that capacity with the exercise of consular functions;
- (d) "national of the sending State" means an individual having the nationality
of the sending State and, when applicable, a corporate body of the
sending State;
- (e) "law" means
for the People's Republic of China:

all laws, administrative decrees and regulations having the effect of law of the State, provinces, autonomous regions, municipalities directly under the Central Government and other localities, and ordinances and subordinate legislation of the Hong Kong Special Administrative Region; and

for Canada:

all federal and provincial laws and regulations, and municipal by-laws.

Article 2

General Consular Functions

A consular officer shall be entitled to the performance of the following functions:

- (a) protecting and securing the rights and interests of the sending State and those of its nationals;
- (b) furthering the development of economic, trade, scientific, technological, cultural and educational relations between the sending State and receiving State and otherwise promoting their friendly relations and cooperation;
- (c) ascertaining by all lawful means conditions of the receiving State in the economic, trade, scientific, technological, cultural, educational and other fields, and reporting thereon to the government of the sending State; and
- (d) performing other consular functions authorized by the sending State which are not prohibited by the law of the receiving State or to which the receiving State does not object.

Article 3

Applications Pertaining to Nationality and Civil Registration

1. A consular officer shall be entitled to:
 - (a) receive applications pertaining to nationality;
 - (b) register nationals of the sending State;
 - (c) register births of nationals of the sending State.
2. The provisions of paragraph 1 of this Article shall not exempt the persons concerned from the obligation to observe the law of the receiving State.

Article 4

Issuance of Passports and Visas

1. A consular officer shall be entitled to:
 - (a) issue passports or other travel documents to nationals of the sending State and endorse or invalidate the said passports or documents;
 - (b) issue visas to persons who will go to or pass through the sending State and endorse or invalidate the said visas.
2. The passports and other travel documents issued by the authorities of the sending State coming into the possession of the authorities of the receiving State, other than those held for purely temporary purposes, shall be returned to the authorities of the sending State.

Article 5

Notarization and Authentication

1. A consular officer shall be entitled to:
 - (a) draw up documents of a person of any nationality for use in the sending State upon the request of that person;
 - (b) draw up documents of a national of the sending State for use outside the sending State upon the request of that national;
 - (c) translate documents into the official language(s) of the sending State or of the receiving State and certify that the translation is in conformity with the original;
 - (d) authenticate signatures and seals on documents issued by the competent authorities of the sending State or of the receiving State;
 - (e) carry out other notarial functions authorized by the sending State that are not contrary to the law of the receiving State.
2. When used in the receiving State, the documents drawn up, certified or authenticated by a consular officer in accordance with the law of the receiving State, shall have the same validity and effect as the documents drawn up, certified or authenticated by the competent authorities of the receiving State.

3. A consular officer shall be entitled to receive or take into temporary custody the certificates and documents of a national of the sending State provided that this is not incompatible with the law of the receiving State.

Article 6

Assistance to Nationals of the Sending State

1. A consular officer shall be entitled to:
 - (a) communicate and meet freely with nationals of the sending State in the consular district, and the receiving State shall neither restrict communication between nationals of the sending State and a consular post nor restrict their access to the consular post;
 - (b) ascertain living and work conditions of nationals of the sending State in the receiving State and provide them with necessary assistance;
 - (c) address the competent authorities of the receiving State to ascertain the whereabouts of a national of the sending State, and the said authorities shall do everything possible to provide the relevant information. The receiving State shall do everything possible to facilitate direct communications between consular officers and nationals of the sending State;
 - (d) receive and take into temporary custody money or valuables of a national of the sending State in accordance with the law of the receiving State.
2. A consular officer may represent a national of the sending State who is not present or for any other reason is unable to defend in time his rights and interests before the court or other competent authorities of the receiving State or arrange for him an appropriate representative in accordance with the law of the receiving State until he designates his own representative or is able to assume the defence of his rights and interests.

Article 7

Guardianship and Trusteeship

1. The competent authorities of the receiving State shall notify the consular post when a guardian or trustee is required for a national, including an underaged national, of the sending State in the consular district who has no capacity or limited capacity to act on his own behalf.

2. A consular officer shall be entitled to protect, to the extent permitted by the law of the receiving State, the rights and interests of a national, including an underaged national of the sending State who has no capacity or limited capacity to act on his own behalf and, when necessary, to recommend a person to be appointed as guardian or trustee to that national and supervise the activities pertaining to guardianship or trusteeship.

Article 8

Notification of Detention, Arrest and Visit

1. If a national of the sending State is detained, arrested or deprived of freedom by any other means in the consular district by the competent authorities of the receiving State, the said authorities shall notify the consular post of the matter without delay from the date of the detention, arrest or deprivation of freedom. If it is not possible to notify without delay the consular post of the sending State because of communication problems, the competent authorities of the receiving State shall provide notification as soon as possible. The said authorities shall inform the consular post of the reasons for which a national has been detained, arrested, or deprived of freedom by any other means.
2. A consular officer shall be entitled to visit a national of the sending State who is under detention, arrest or deprived of freedom in any other means to converse or communicate with him in the language of the sending State or the receiving State and to arrange for interpretation and legal assistance. The competent authorities of the receiving State shall make arrangements for a consular officer to visit the said national. This visit shall take place as soon as possible, but at the latest, shall not be refused after two days from the date on which the competent authorities have notified the consular post that the said national has been placed under any form of detention. Visits may be made on a recurring basis. No longer than one month shall be allowed to pass between visits requested by a consular officer.
3. A consular officer shall be allowed to provide to a national, to whom these provisions apply, parcels containing food, clothing, medicaments and reading and writing materials.
4. The competent authorities of the receiving State shall inform the above-mentioned national of the sending State of the provisions contained under paragraphs 1, 2, and 3 of this Article.

5. In the case of a trial or other legal proceedings against a national of the sending State in the receiving State, the appropriate authorities shall make available to the consular post information on the charges against that national. A consular officer shall be permitted to attend the trial or other legal proceedings.
6. In the case of a trial or other legal proceedings against a national of the sending State, the appropriate authorities of the receiving State shall make available adequate interpretation to that national when necessary.
7. A consular officer shall comply with the law of the receiving State in performing the functions provided for in this Article. Nevertheless, the application of the law of the receiving State shall not restrict the implementation of the rights provided for in this Article.

Article 9

Notification of Death

Upon learning of the death of a national of the sending State in the receiving State, the competent authorities of the receiving State shall so inform the consular post as soon as possible and provide upon the request of the consular post, a death certificate, or a copy of other documents, confirming the cause of death and its circumstances.

Article 10

Functions Concerning Estates

1. Whenever the appropriate local authorities of the receiving State learn of an estate resulting from the death in the receiving State of a national of the sending State who leaves in the receiving State no known heir or testamentary executor, they shall promptly so inform a consular post of the sending State.
2. Whenever the appropriate local authorities of the receiving State learn of an estate of a deceased, regardless of nationality, who has left in the receiving State an estate in which a national of the sending State residing outside the receiving State may have an interest under the will of the deceased or in accordance with the law of the receiving State, they shall promptly so inform a consular post of the sending State.

Article 11

Transmitting Judicial Documents

A consular officer shall be entitled to transmit judicial and extra-judicial documents to the extent permitted by the law of the receiving State, subject to the operation of the existing agreements between the sending State and the receiving State.

Article 12

Facilitation of Travel

1. The Contracting Parties agree to facilitate travel between the two States of a person who may have a claim simultaneously to the nationality of the People's Republic of China and that of Canada. However, this does not imply that the People's Republic of China recognizes dual nationality. Exit formalities and documentation of that person shall be handled in accordance with the law of the State in which that person customarily resides. Entry formalities and documentation shall be handled in accordance with the law of the State of destination.
2. If judicial or administrative proceedings prevent a national of the sending State from leaving the receiving State within the period of validity of his visa and documentation, that national shall not lose his right to consular access and protection by the sending State. That national shall be permitted to leave the receiving State without having to obtain additional documentation from the receiving State other than exit documentation as required under the law of the receiving State.
3. A national of the sending State entering the receiving State with valid travel documents of the sending State will, during the period for which his status has been accorded on a limited basis by visa or lawful visa-free entry, be considered as a national of the sending State by the appropriate authorities of the receiving State with a view to ensuring consular access and protection by the sending State.

Article 13

Communication with the Authorities of the Receiving State

In the exercise of his functions, a consular officer may address the competent local authorities in his consular district and, when necessary, the competent central authorities of the receiving State to the extent permitted by the law and usage of the receiving State.

Article 14

Relations between this Agreement and other International Agreements

This Agreement is concluded in accordance with the Article 73 paragraph 2 of the Convention on Consular Relations, done at Vienna, April 24, 1963, and matters not expressly stipulated in it shall be handled in accordance with that Convention.

Article 15

Application of Territory

This Agreement shall apply as well to the Hong Kong Special Administrative Region of the People's Republic of China.

Article 16

Consultations

Both Contracting Parties agree to meet from time to time to discuss consular issues of common concern.

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Article 17

Entry into Force and Termination

1. This Agreement shall enter into force after the expiration of thirty days following the date on which the Contracting Parties have notified each other through diplomatic channels that their procedures have been compiled with. ^(Note)
2. This Agreement may be terminated by either Contracting Party by giving written notice through diplomatic channels. Termination shall take effect six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Ottawa, on this 28th day of November 1997, in the Chinese, English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF
CHINA

FOR THE GOVERNMENT
OF CANADA

Qian Qichen

Lloyd Axworthy

Note: The Government of the People's Republic of China and the Government of Canada had respectively completed the procedures to effect the commencement in respect of this Agreement. This Agreement came into force on 11 March 1999.

Appendix V

中華人民共和國政府與歐洲共同體委員會
關於在中華人民共和國
香港特別行政區保留辦事處
籍換函而達成的協議

Agreement Constituted by Exchange of Letters
Between the Government of the People's Republic of China
and the Commission of the European Communities
Concerning the Maintenance of
the Office of the Commission of the European Communities
in the Hong Kong Special Administrative Region
of the People's Republic of China

Your Excellency,

I have the honour to confirm, on behalf of the Commission of the European Communities, that our two sides have, through friendly consultations, reached the following agreements on the question of the maintenance of the Office of the Commission of the European Communities in the Hong Kong Special Administrative Region of the People's Republic of China from the date of 1 July 1997, when the Government of the People's Republic of China resumes its exercise of sovereignty over Hong Kong:

1. The Government of the People's Republic of China agrees to the maintenance by the Commission of the European Communities of its Office in the Hong Kong Special Administrative Region of the People's Republic of China.
2. The Government of the People's Republic of China, aware of the fact that the Office is also responsible for the affairs of the Commission of the European Communities in Macao, agrees to the maintenance by the Office of such responsibility from the date of 20 December 1999, when the Government of the People's Republic of China resumes its exercise of sovereignty over Macao.
3. The European Communities — the European Coal and Steel Community, the European Community and the European Atomic Energy Community — shall each have legal personality in the Hong Kong Special Administrative Region of the People's Republic of China.

Accordingly, the European Communities shall have the capacity to conclude contracts, to acquire and dispose of immovable and movable property as necessary for the effective fulfillment of their duties, in accordance with the procedural and administrative requirements imposed by the law of the Hong Kong Special Administrative Region of the People's Republic of China and by any other law of the People's Republic of China, and to conduct legal proceedings, and shall be represented for that purpose by the Commission.

His Excellency
Mr. Qian Qichen
Vice Premier of the State Council and
Foreign Minister of the People's Republic of China

4. The Office, its Head and members accredited by the Commission of the European Communities who are nationals of the Member States of the European Communities but not in their capacity as the permanent residents of the Hong Kong Special Administrative Region, as well as the members of their families forming part of their respective households, shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963.

They will, consistent with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the other national laws of China applicable in the Hong Kong Special Administrative Region in accordance with the Basic Law, enjoy such rights and consular privileges and immunities as are necessary for the effective fulfilment of their duties.

5. The laissez-passer issued by the European Communities to officials and other servants of its institutions shall be recognized as a valid travel document.
6. The Government of the People's Republic of China, and the Government of the Hong Kong Special Administrative Region of the People's Republic of China, shall accord necessary assistance and facilities to the Office for the fulfilment of its duties.
7. Any difference between the two parties concerning the interpretation or application of this exchange of letters shall be handled through negotiations and consultations on the basis of equality and mutual benefit and in a friendly and cooperative spirit.
8. The Government of the People's Republic of China agrees to the maintenance of the diplomatic privileges and immunities enjoyed by Mr. Etienne Reuter, Head of the Office, until the termination of his term in office.

If the above points receive Your Excellency's confirmation in a letter of reply, this letter and the letter of reply shall form an agreement between the Commission of the European Communities and the Government of the People's Republic of China, which shall enter into force on the date of 1 July 1997.

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I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Leon Brittan
Vice President of the European Commission

Brussels, 25 June 1997

(English translation)

The Right Honourable Sir Leon Brittan, QC
Vice President of the Commission
of the European Communities

Your Excellency,

I have the honour to acknowledge receipt of your letter of 25 June 1997, which reads as follows:

“1. The Government of the People’s Republic of China agrees to the maintenance by the Commission of the European Communities of its Office in the Hong Kong Special Administrative Region of the People’s Republic of China.

2. The Government of the People’s Republic of China, aware of the fact that the Office is also responsible for the affairs of the Commission of the European Communities in Macao, agrees to the maintenance by the Office of such responsibility from the date of 20 December 1999, when the Government of the People’s Republic of China resumes its exercise of sovereignty over Macao.

3. The European Communities — the European Coal and Steel Community, the European Community and the European Atomic Energy Community — shall each have legal personality in the Hong Kong Special Administrative Region of the People’s Republic of China.

Accordingly, the European Communities shall have the capacity to conclude contracts, to acquire and dispose of immovable and movable property as necessary for the effective fulfillment of their duties, in accordance with the procedural and administrative requirements imposed by the law of the Hong Kong Special Administrative Region of the People’s Republic of China and by any other law of the People’s Republic of China, and to conduct legal proceedings, and shall be represented for that purpose by the Commission.

4. The Office, its Head and members accredited by the Commission of the European Communities who are nationals of the Member States of the European Communities but not in their capacity as the permanent residents of the Hong Kong Special Administrative Region, as well as the members of their families forming part of their respective households, shall enjoy consular privileges and immunities as correspond to those enjoyed by consular posts, Heads and members of consular posts in accordance with the provisions of the Vienna Convention on Consular Relations of 24 April 1963.

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They will, consistent with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the other national laws of China applicable in the Hong Kong Special Administrative Region in accordance with the Basic Law, enjoy such rights and consular privileges and immunities as are necessary for the effective fulfillment of their duties.

5. The laissez-passer issued by the European Communities to officials and other servants of its institutions shall be recognized as a valid travel document.

6. The Government of the People's Republic of China, and the Government of the Hong Kong Special Administrative Region of the People's Republic of China, shall accord necessary assistance and facilities to the Office for the fulfillment of its duties.

7. Any difference between the two parties concerning the interpretation or application of this exchange of letters shall be handled through negotiations and consultations on the basis of equality and mutual benefit and in a friendly and cooperative spirit.

8. The Government of the People's Republic of China agrees to the maintenance of the diplomatic privileges and immunities enjoyed by Mr. Etienne Reuter, Head of the Office, until the termination of his term in office."

I have the honour to inform you that the foregoing agreement is acceptable to the Government of the People's Republic of China, and agree, therefore, that your letter and this letter of reply shall form an Agreement between the Government of the People's Republic of China and the Commission of the European Communities, which shall enter into force on 1 July 1997.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Qian Qichen
Vice Premier of the State Council
and Minister of Foreign Affairs
People's Republic of China

Beijing, 29 June 1997