

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

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The Government of the People's Republic of China and the Government of the United States of America, in accordance with Article 157 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Section XI of Annex I of the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong, hereby agree as follows:

1. The Government of the People's Republic of China agrees to the maintenance by the Government of the United States of America of its Consulate General in the Hong Kong Special Administrative Region of the People's Republic of China, the consular district of which shall be the Hong Kong Special Administrative Region.

2. The Government of the People's Republic of China takes note of the consular function which the Consulate General of the United States in Hong Kong performs in Macao, and agrees to the continuation of this function after the Government of the People's Republic of China resumes the exercise of sovereignty over Macao with effect from December 20, 1999.

3. In accordance with Article 73 of the Vienna Convention on Consular Relations, the Consulate General of the United States of America in the Hong Kong Special Administrative Region of the People's Republic of China shall be subject to the following provisions:

(a) The residences of consular officers of the sending State shall enjoy the same inviolability, protection, and immunity from requisition or expropriation as the consular premises of the sending State. If for the needs of the national defense or other public purposes expropriation of consular residences becomes necessary, all possible measures must be taken by the receiving State to avoid interference with the performance of consular functions and promptly to pay appropriate and effective compensation to the sending State.

(b) The exemption from taxes applicable to the premises of the consulate shall extend to the residences of the members of the consulate who are not nationals or residents of the receiving State, as well as to any taxes that may be imposed in connection with transactions or documents relating to such residences, but this exemption shall not apply to payment for specific services rendered and to dues and taxes if under the law of the receiving State they are payable by a person contracting with the sending State or with a person acting on behalf of the sending State.

(c) With the assistance of the receiving State, where necessary, the sending State or its representative shall be entitled to purchase, lease, or otherwise acquire consular premises and residences, and to construct or improve such facilities, subject to relevant laws of the receiving State, including the law relating to land, construction, zoning and town planning.

(d) (1) A consulate shall be entitled to exchange communications with its government, with diplomatic missions of the sending State and with other consulates of the sending State, wherever situated. For this purpose, the consulate may employ all ordinary means of communication, including diplomatic and consular couriers, diplomatic and consular bags and codes and ciphers. The consulate may install and use a wireless transmitter only with the prior consent of the receiving State;

(2) The official correspondence of a consulate, regardless of the means of communication employed, as well as sealed consular bags and other containers, provided they bear visible external marks of their official character, shall be inviolable. They may contain nothing other than official correspondence and articles intended exclusively for official use;

(3) The authorities of the receiving State shall neither open nor detain the official correspondence of a consulate, including consular bags and other containers, as described in sub-paragraph (2) of this section;

(4) The consular couriers of the sending State shall enjoy in the territory of the receiving State the same rights, privileges and immunities enjoyed by diplomatic couriers of the sending State;

(5) If a master of a vessel or captain of a civil aircraft of the sending State is charged with an official consular bag, the master or captain shall be provided with an official document showing the number of containers forming the consular bag entrusted to him; he shall not, however, be considered to be a consular courier. By arrangements with the appropriate authorities of the receiving State, and in compliance with the safety regulations of the receiving State, the sending State may send a member of the consulate to take possession of the consular bag directly and freely from the master of the vessel or captain of the aircraft or to deliver such bag to him.

(e) (1) Members of the consulate and their family members shall be immune from the criminal jurisdiction of the receiving State;

(2) Members of the consulate and their family members shall be immune from the civil and administrative jurisdiction of the receiving State respecting any act performed by them in the exercise of consular functions;

(3) The provisions of sub-paragraph (2) of this section shall not apply to civil procedures:

(a) resulting from contracts that were not concluded by a member of the consulate on behalf of the sending State;

(b) relating to succession in which a member of the consulate was involved as executor, administrator, heir or legatee in a private capacity;

(c) concerning a claim by a third party for damage caused by a vessel, vehicle, or aircraft;

(d) concerning private immovable property in the jurisdiction of the receiving State, unless the member of the consulate is holding it on behalf of the sending State for the purposes of the consulate;

(e) relating to any private professional or commercial activities engaged in by a member of the consulate in the receiving State outside of his official functions.

(4) No measures of execution shall be taken against any of the persons mentioned in this section, except in the cases under sub-paragraph (3)(d) of this section, and then under the condition that these measures shall not infringe upon the inviolability of their person or residence;

(5) Members of the consulate and their family members may be called upon to attend as witnesses in the course of judicial or administrative proceedings. In the event of the refusal of a consular officer or a member of the officer's family to give evidence, no coercive measure or penalty may be applied to such person. Consular employees and members of their families may not decline to give evidence except with respect to matters mentioned in sub-paragraph (6) of this section;

(6) Members of the consulate are under no obligation to give evidence concerning matters relating to the exercise of their official functions or to produce official correspondence or documents. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State;

(7) In taking testimony of members of the consulate, the authorities of the receiving State shall take all appropriate measures to avoid hindering the performance of their official consular duties. Upon the request of the head of the consulate, such testimony may, when possible, be given orally or in writing at the consulate or at the residence of the person concerned;

(8) Members of the consulate and their families who are nationals or permanent residents of the receiving State shall not enjoy the above-mentioned privileges and immunities except in respect of any act performed by them in the exercise of consular functions.

(f) (1) A consular officer shall be entitled, in his consular district, to communicate and meet with any national of the sending State, and, when necessary, to arrange for legal assistance and an interpreter. The receiving State shall in no way restrict access between a consular officer and a national of the sending State;

(2) If a national of the sending State is arrested or placed under any form of detention within the consular district, the competent authorities of the receiving State shall immediately, but no later than within four days from the date of arrest or detention, notify the consulate of the sending State. If it is not possible to notify the consulate of the sending State within four days because of communications difficulties, they should try to provide notification as soon as possible. Upon the request of a consular officer, he shall be informed of the reasons for which said national has been arrested or detained in any manner;

(3) The competent authorities of the receiving State shall immediately inform the national of the sending State of the rights accorded to him by this section to communicate with a consular officer;

(4) A consular officer shall be entitled to visit a national of the sending State who has been arrested or placed under any form of detention, including such national who is in prison pursuant to a judgment, to converse and to exchange correspondence with him in the language of the sending State or the receiving State, and may assist in arranging for legal representation and an interpreter. These visits 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 notified the consulate that said national had been placed under any form of detention. The visits may be made on a recurring basis. No longer than one month shall be allowed to pass in between visits requested by the consular officer;

(5) In the case of a trial of, or other legal proceeding against, a national of the sending State in the receiving State, the appropriate authorities shall, at the request of a consular officer, inform such officer of the charges

against such national. A consular officer shall be permitted to attend the trial or other legal proceedings;

(6) A consular officer is entitled to provide to a national to whom the provisions of this section apply parcels containing food, clothing, medicaments and reading and writing materials;

(7) A consular officer of the sending State may request the assistance of the authorities of the receiving State in ascertaining the whereabouts of a national of the sending State. The authorities of the receiving State shall do everything possible to provide all relevant and available information;

(8) The rights contained in this section shall be exercised in accordance with the law of the receiving State. Nevertheless, such law shall be applied so as to give full effect to the purposes for which these rights are intended.

(g) (1) All Chinese nationals of the Hong Kong Special Administrative Region entering the United States on the basis of travel documents of the Hong Kong Special Administrative Region of the People's Republic of China will, during the period for which their status has been accorded on a limited basis by visa or lawful visa-free entry, be considered Chinese nationals by the appropriate authorities of the United States for the purpose of ensuring consular access and protection by the People's Republic of China;

(2) All nationals of the United States entering the Hong Kong Special Administrative Region on the basis of travel documents of the United States will, during the period for which their status has been accorded on a limited basis by visa or lawful visa-free entry, be considered nationals of the United States by the appropriate authorities of the People's Republic of China (including those of the HKSAR) for the purpose of ensuring consular access and protection by the United States.

4. The matters that are not referred to in this Agreement shall be regulated by the Vienna Convention on Consular Relations.

5. The present agreement shall enter into force on July 1, 1997.

In witness whereof the undersigned, being duly authorized by their respective governments, have signed this agreement.

Done in Beijing on March 25, 1997 in duplicate in the Chinese and English languages, both texts being equally authentic.

For the Government of the
People's Republic of China

Li Zhaoxing

For the Government of the
United States of America

James Sasser