

**L.N. 55 of 2005****CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES) (VIETNAM) ORDER**

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

**1. Commencement**

This Order shall come into operation on 11 July 2005.

**2. Interpretation**

In this Order—

“Convention” (《條約》) means the Consular Convention between the Socialist Republic of Vietnam and the People’s Republic of China done at Beijing on 19 October 1998;

“relevant provisions of the Convention” (《條約》有關條文) means the provisions of paragraph 1 of Article 12, Article 13, paragraphs 2 and 3 of Article 16, Articles 17 and 18, paragraphs 1 and 3 of Article 19, Article 25 (except sub-paragraphs (a) and (b) of paragraph 1 and paragraph 3), and Article 28, of the Convention as set out in the Schedule.

**3. Additional privileges and immunities**

It is declared that the additional privileges and immunities accorded to a consular post of the Socialist Republic of Vietnam, or to persons connected with the consular post, or to both, under the relevant provisions of the Convention, as read with the provisions of Article 1 (except paragraphs 2, 8, 11, 14 and 15), Articles 20, 29 and 30, and paragraph 2 of Article 33, of the Convention as set out in the Schedule, shall have the force of law in Hong Kong.

SCHEDULE

[ss. 2 & 3]

PROVISIONS OF THE CONVENTION REFERRED TO IN THIS ORDER

**Part I**

**Definitions**

**Article 1**

**Definitions**

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

1. “Consular post” means any consulate-general, consulate, vice-consulate or consular agency;

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

4. “Consular officer” means a consul-general, vice consul-general, consul, vice-consul, consular attache or consular agent;

5. “Consular employee” means any person who performs administrative and technical service at a consular post;

6. “Member of the service staff” means any person employed in the domestic service of a consular post;

7. “Members of the consular post” means consular officers, consular employees and members of the service staff;

.....

9. “Member of the private staff” means any person who is employed in the private service of a member of the consular post;

10. “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;

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12. “Official correspondence” of a consular post means all the correspondence relating to a consular post and its functions;

13. "Member of the family" means the spouse of a member of the consular post and their minor children who live with them in the same household;

### **Part III**

#### **Facilities, privileges and immunities**

##### **Article 12**

###### **Inviolability of the consular premises and the residences of consular officers**

1. Consular premises and the residences of consular officers shall be inviolable. The authorities of the receiving State shall not enter the consular premises and the residences of consular officers without the consent of the head of the consular post or the head of the diplomatic mission of the sending State in the receiving State or of a person designated by one of them.

##### **Article 13**

###### **Exemption from taxation of consular premises and consular properties**

1. The receiving State shall exempt the followings from all dues and taxes:

(a) consular premises and residences of the members of the consular post acquired in the name of the sending State or its representative and transactions or instruments thereto;

(b) consular facilities and means of transport acquired exclusively for official purposes as well as their acquisition, possession or maintenance.

2. The provisions of paragraph 1 of this Article shall not apply in respect of:

(a) charges levied for specific services;

(b) dues and taxes collectable under the laws and regulations of the receiving State from a person who concludes a contract with the sending State or its representative.

## **Article 16**

### **Freedom of communication**

2. The official correspondence of the consular post shall be inviolable. The consular bag shall be neither opened nor detained. 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.

3. 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 only be a national of the sending State and not be a permanent resident of the receiving State. In the performance of his functions, the consular courier shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest, detention or any other form of limitation of his personal freedom.

## **Article 17**

### **Personal inviolability of consular officers**

Consular officers shall enjoy personal inviolability and can not be liable to arrest or detention or to any other form of limitation of their personal freedom.

## **Article 18**

### **Immunity from jurisdiction**

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

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

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

(c) concerning private immovable property situated in the territory of the receiving State, unless the consular officer holds it on behalf of the sending State and for the purposes of the consular post;

(d) concerning private succession in which the consular officer is involved as executor, administrator, heir or legatee as private person and not on behalf of the sending State;

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

2. No measures of execution may be taken in respect of a consular officer except in the cases referred to in paragraph 1 of this Article and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

3. Consular employees and members of the service staff shall be immune from judicial or administrative jurisdiction of the receiving State in respect of any act in the performance of their functions, except in civil proceedings referred to in paragraph 1 of this Article.

## **Article 19**

### **Liability to give evidence**

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

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3. A consular employee or a member of the service staff 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. He is also entitled to decline to give evidence as expert witnesses with regard to the laws of the sending State.

## **Article 20**

### **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 17, 18 and 19 of this Convention. The waiver shall in all cases be express and shall be communicated to the receiving State in writing.

2. The initiation of proceedings by a member of the consular post in a matter where he might enjoy immunity from jurisdiction under Article 18 of the present Convention shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

3. The waiver of immunity from jurisdiction in respect 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 in writing shall be necessary.

## **Article 25**

### **Exemptions from customs duties and inspection**

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

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(c) articles imported at the time of first installation for the personal use of a consular employee of the consular post, including household articles intended for his establishment.

2. Articles referred to in sub-paragraphs ... (c) of paragraph 1 of this Article shall not exceed the quantities necessary for direct use by the person concerned.

## **Article 28**

### **Privileges and immunities of family members**

1. Family members of a consular officer and family members of a consular employee of the consular post shall enjoy respectively the privileges and immunities to which the consular officer and the consular employee are respectively entitled under the provisions of this Convention.

2. Family members of a member of the service staff of the consular post shall enjoy the privileges and immunities to which the member of the service staff is entitled under the Article 27 of this Convention, except those who are nationals or permanent residents of the receiving State, or who carry on any private gainful occupation in the receiving State.

## **Article 29**

### **Persons who shall not enjoy privileges and immunities**

1. Consular employees and members of the service staff of the consular post who are nationals or permanent residents of the receiving State shall not enjoy the privileges and immunities provided for in this Convention, subject to the provisions of paragraph 3 of Article 19 of this Convention.
2. Family members of the person mentioned in paragraph 1 of this Article shall not enjoy the privileges and immunities provided for in this Convention.

## **Article 30**

### **Beginning and end of consular privileges and immunities**

1. Every member of a consular post shall enjoy the privileges and immunities provided for in the present Convention from the moment he enters the territory of the receiving State on the proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Family members of a member of the consular post and members of his private staff shall receive the privileges and immunities provided for 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 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 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 the case of armed conflict. In the case of 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. In the event of the death of a member of the consular post, the members of his family 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 33**

#### **Special provisions concerning private gainful occupation**

2. Privileges and immunities provided in this Part 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.

LAM Chik-ting, Tony  
Clerk to the Executive Council

COUNCIL CHAMBER  
12 April 2005

#### **Explanatory Note**

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