

## **LEGISLATIVE COUNCIL BRIEF**

### **CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES) (JAPAN) ORDER**

#### **INTRODUCTION**

At the meeting of the Executive Council on 28 April 2015, the Council ADVISED and the Chief Executive ORDERED that for the bilateral consular agreement between the People's Republic of China (PRC) and Japan<sup>(1)</sup>, the Consular Relations (Additional Privileges and Immunities) (Japan) Order, at **Annex A**, should be made under section 4(1) of the Consular Relations Ordinance, Cap. 557 (CRO).

A

#### **BACKGROUND AND JUSTIFICATIONS**

##### **Underlying Principles of the Granting of Privileges and Immunities**

2. Consular relations are established, on the basis of mutual consent, between sovereign States to facilitate the protection of the rights and interests of the nations and nationals, and to promote friendly relations and cooperation. It is a common and well-established practice for the receiving State to accord to the consular post and personnel of the sending State privileges and immunities (Ps&Is) not made available to ordinary residents or visitors in the receiving State. These Ps&Is are granted on a reciprocal basis, meaning that the consular personnel of both the receiving and the sending States enjoy the same level of Ps&Is in the respective consular district to which they are accredited.

3. The conferment of Ps&Is on consular members is not meant for the personal benefit of individuals, but rather to ensure the efficient performance of functions by consular members on behalf of their respective States. The functions of a consular post include -

- (a) protecting the interests of the sending State and of its nationals in the receiving State;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending and the receiving States; and

---

**Note** (1) Agreement on Consular Relations Between the People's Republic of China and Japan

- (c) rendering necessary assistance of various sorts to the nationals of the sending State.

The granting of Ps&Is (e.g. inviolability of consular premises) is necessary for facilitating the relevant consular posts and their personnel to effectively carry out their consular functions, and is therefore part of the establishment of consular relations between sovereign States.

### **Vienna Convention on Consular Relations**

4. The 1963 Vienna Convention on Consular Relations (VCCR) is a multilateral international convention which codifies the relevant international laws on consular relations and matters relating to the establishment of consular posts and consular Ps&Is. In broad terms, the Ps&Is stipulated under the VCCR include -

- (a) inviolability of consular premises, archives and documents;
- (b) personal inviolability of consular officers except in the case of grave crime;
- (c) immunity from jurisdiction in respect of acts performed in the exercise of consular functions;
- (d) exemption from liability to give evidence concerning matters connected with the exercise of consular functions; and
- (e) exemption from dues and taxes, customs duties and inspection, personal services and contributions.

In line with the common law practice, provisions of the VCCR, which affect private rights and obligations or require exceptions to be made to the existing laws, have already been specifically set out in the laws of the Hong Kong Special Administrative Region (HKSAR) by way of the CRO.

5. Article 73 of the VCCR provides that nothing in the Convention shall preclude States from concluding international agreements confirming, supplementing, extending or amplifying the provisions of the VCCR.

### **Bilateral Consular Agreement**

6. The Central People's Government has so far applied to the HKSAR 13 bilateral consular agreements signed with separate sovereign States (a list of these agreements is at **Annex B**). Two Orders relating to the additional consular functions for the consular post of Canada in the HKSAR came into operation in November 2003. The Orders relating to the additional Ps&Is and/or additional consular functions in respect of four other States, i.e.

Australia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Vietnam, were enacted in July 2005. Another four Orders relating to the additional Ps&Is and/or additional consular functions in respect of India, Italy, New Zealand and the Russian Federation were enacted in July 2009. The current legislative exercise deals with the subsidiary legislation in respect of Japan. As regards the subsidiary legislation for the remaining three States, i.e. Cambodia, the Philippines and Korea, additional Orders (if required) will be submitted when preparation work is completed.

7. The PRC has concluded bilateral consular agreement with Japan which is applicable to the HKSAR. The agreement accords to the consular post and its personnel in the HKSAR additional Ps&Is, which includes -

- (a) consular premises shall be inviolable and no entry to the consular premises except with the consent of the head of the consular post or the designee of the head, or the head of the diplomatic mission or the designee of the head;
- (b) the residence of a consular officer enjoys the same inviolability and protection as the consular premises; and
- (c) the inviolability of consular archives under the VCCR is extended to cover data stored in memory medium.

### **Need for Local Legislation**

8. In line with the common law practice, provisions of bilateral agreements applicable to the HKSAR which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, should be underpinned by way of domestic legislation. Having regard to our common law tradition, the best means of underpinning the relevant provisions of the above bilateral consular agreement<sup>(2)</sup> is to enact local legislation setting them out expressly and specifically.

---

**Note** (2) At present, the bilateral consular agreements are given legal effect in the HKSAR by the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities, which is a national law applicable to the HKSAR by promulgation under Article 18 of the Basic Law. Nonetheless, in line with the established practice under common law, it is prudent to underpin the relevant provisions of the bilateral agreements by way of local legislation.

## **CONSULAR RELATIONS (ADDITIONAL PRIVILEGES AND IMMUNITIES) (JAPAN) ORDER (THE ORDER)**

9. The Order to be made under the CRO seeks to declare that the additional Ps&Is accorded to the consular post of Japan, or to persons connected with the consular post, or to both, under the relevant provisions of the bilateral consular agreement, have the force of law in the HKSAR.

### **LEGISLATIVE TIMETABLE**

10. The Order will be published in the Gazette on 15 May 2015. We propose that the Order should come into operation on 17 July 2015, taking into account the lead time required for negative vetting upon gazettal.

### **IMPLICATIONS OF THE PROPOSAL**

11. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Order will not affect the current binding effect of the CRO.

12. The proposal does not have significant financial implications for the Government. Bureaux/departments are expected to absorb the additional requirements (if any) from within their existing resources. It has no civil service, economic, productivity, environmental, sustainability or family implications.

### **PUBLIC CONSULTATION**

13. The Legislative Council's Panel on Administration of Justice and Legal Services was consulted on 23 March 2015. The Panel supported the making of the Consular Relations (Additional Privileges and Immunities) (Japan) Order under the CRO.

### **PUBLICITY**

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

### **ENQUIRY**

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

Administration Wing  
Chief Secretary for Administration's Office  
13 May 2015

**Consular Relations (Additional Privileges and Immunities)  
(Japan) Order: Annexes**

Annex A - Consular Relations (Additional Privileges and Immunities)  
(Japan) Order

Annex B - List of the Bilateral Agreements between the Central People's  
Government and Foreign States Relating to Privileges and  
Immunities Conferred on Consular Posts

Annex C - List of Abbreviations

## Consular Relations (Additional Privileges and Immunities) (Japan) Order

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

### 1. Commencement

This Order comes into operation on 17 July 2015.

### 2. Interpretation

In this Order—

*Agreement* (《協定》) means the Agreement on Consular Relations Between the People's Republic of China And Japan done at Beijing on 24 October 2008;

*relevant provisions of the Agreement* (《協定》有關條文) means the provisions of paragraphs 1, 2 and 5 of Article 6 and Article 7 of the Agreement as set out in the Schedule.

### 3. Additional privileges and immunities

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

## Schedule

[ss. 2 & 3]

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

#### Article 1

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

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

.....
- (c) “head of consular post” means the 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 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;
- (f) “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-indexes, the data stored in memory medium and any articles of furniture intended for their protection or safekeeping.

**Article 6**

1. Consular premises shall be inviolable.
2. The authorities of the receiving State shall not enter the consular premises except with the consent of the head of the consular post or of his or her designee, or of the head of the diplomatic mission of the sending State or of his or her designee.

.....

5. The residence of a consular officer shall enjoy the same inviolability and protection as the consular premises.

**Article 7**

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

Clerk to the Executive Council

COUNCIL CHAMBER

2015

---

**Explanatory Note**

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

**List of the Bilateral Agreements between  
the Central People's Government and Foreign States  
Relating to Privileges and Immunities Conferred on Consular Posts**

**Date of  
Application to the  
HKSAR**

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



**Date of  
Application to the  
HKSAR**

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

**List of Abbreviations**

- CRO - Consular Relations Ordinance, Cap. 557
- HKSAR - Hong Kong Special Administrative Region
- Ps&Is - Privileges and Immunities
- PRC - People's Republic of China
- VCCR - Vienna Convention on Consular Relations