

LEGISLATIVE COUNCIL BRIEF

International Organizations (Privileges and Immunities) Ordinance
(Chapter 558)

INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (ASIA PACIFIC REGIONAL OFFICE OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW) ORDER

INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (PERMANENT COURT OF ARBITRATION) ORDER

INTRODUCTION

At the meeting of the Executive Council on 26 January 2016, the Council ADVISED and the Chief Executive ORDERED that –

(a) the International Organizations (Privileges and Immunities) (Asia Pacific Regional Office of the Hague Conference on Private International Law) Order, at Annex A; and

(b) the International Organizations (Privileges and Immunities) (Permanent Court of Arbitration) Order, at Annex B,

should be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance.

BACKGROUND

2. The Central People's Government (CPG) has entered into a host country agreement each with the Hague Conference on Private International Law (HCCH)⁽¹⁾ and the Permanent Court of Arbitration

Note ⁽¹⁾ HCCH is a leading global intergovernmental organization in the field of private international law. Since 1893, it has developed and serviced multilateral legal instruments on private international law, commonly known as the Hague Conventions, which respond to global needs. There are

(PCA)⁽²⁾ respectively, which are applicable to the Hong Kong Special Administrative Region (HKSAR). The HKSAR Government has also entered into a memorandum of administrative arrangements (MAA) with HCCH to give effect to certain practical aspects of the host country agreement between CPG and HCCH. In order to implement the host country agreements and the MAA, we need to, among other things, declare that certain of their provisions have the force of law in Hong Kong, which concern the status, privileges and immunities of HCCH and PCA as well as their related personnel.

JUSTIFICATIONS

HCCH Agreement and MAA

3. With the support of the CPG, in April 2012 HCCH's Council on General Affairs and Policy endorsed the proposal to establish an Asia Pacific Regional Office of HCCH (Regional Office) in the HKSAR to facilitate the achievement of HCCH's objectives in the Asia Pacific Region. For this purpose, HCCH signed on 13 December 2012 a host country agreement with the CPG relating to the establishment of the Regional Office in the HKSAR (HCCH Agreement). The HKSAR Government also signed with HCCH on the same day a MAA to give effect to certain administrative and practical aspects of the HCCH Agreement.

4. The establishment of the Regional Office constitutes a significant vote of confidence in the HKSAR's position as a regional legal services centre. Implementation of the HCCH Agreement and the MAA will facilitate the provision of services by the Regional Office to the region which will strengthen our role as a regional legal services centre.

5. The HCCH Agreement and the MAA entered into force on 13 December 2012. In line with the established practice, we need to give effect by local legislation to the provisions of the HCCH Agreement and the MAA in relation to the legal status, privileges and immunities of the Regional Office and its related personnel.

PCA Agreement

6. On 4 January 2015, the CPG and PCA signed a host country agreement on the conduct of PCA arbitrations and other forms of dispute settlement proceedings in the HKSAR (PCA Agreement)⁽³⁾.

now over 130 countries that are party to one or more of the Hague Conventions.

Note ⁽²⁾ PCA is an intergovernmental organization with over 100 member States. It is a renowned global arbitration institution established in 1899 and has been providing services for the resolution of disputes involving various combinations of States, State entities, intergovernmental organizations, and private parties.

Note ⁽³⁾ A related MAA was also signed between PCA and the HKSAR Government

7. The PCA Agreement will facilitate the conduct of dispute settlement proceedings by PCA in the HKSAR, and secure the provision of the requisite supporting services, thereby attracting more parties, particularly those in the neighbouring regions, to choose the HKSAR as the venue for hearing of PCA-administered cases (especially international investment arbitrations).

8. The signing of the PCA Agreement is a vote of confidence in the HKSAR including our legal system and infrastructure for arbitration. Smooth implementation of the PCA Agreement will further enhance our role as an international and regional dispute resolution centre.

9. The PCA Agreement entered into force for China, including the HKSAR on 4 January 2015. In line with the established practice, we need to give effect by local legislation to the provisions of the PCA Agreement in relation to the legal status, privileges and immunities of PCA and its related personnel.

THE ORDERS

10. The HCCH Order, at Annex A, seeks to recognise the legal status of the Regional Office in the HKSAR, and implement the privileges and immunities as provided under the HCCH Agreement and the MAA. These privileges and immunities are commensurate with the functions of the Regional Office as a regional base of a renowned international organization on private international law, and are generally in line with those currently accorded to other international organizations establishing their presence in the HKSAR.

11. The PCA Order, at Annex B, seeks to recognise the legal status of PCA in the HKSAR, and implement the privileges and immunities as provided under the PCA Agreement. These privileges and immunities are commensurate with the function of PCA as a renowned international arbitration body, and are generally in line with those currently accorded to other international organizations carrying activities in the HKSAR.

LEGISLATIVE TIMETABLE

12. The Orders will be published in the Gazette on 5 February 2016. We propose that the Orders are to come into operation on 6 April 2016, taking into account the lead time required for negative vetting upon gazettal.

on the same day. Its provisions can be given effect in the HKSAR by administrative means without having to enact any implementing legislation.

IMPLICATIONS OF THE PROPOSAL

13. The proposal is in conformity with the Basic Law, including provisions concerning human rights. The Orders will not affect the current binding effect of the Ordinance. 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, productivity, environmental, economic, sustainability, family or gender implications. Additional work, if any, arising from the enforcement of the Orders will be absorbed by the relevant departments from within their existing resources.

PUBLIC CONSULTATION

14. We have informed the Panel on Administration of Justice and Legal Services of the Legislative Council (the Panel) of our efforts in promoting the HKSAR as an international arbitration and legal services centre, including informing the Panel of the establishment of the Regional Office in the HKSAR and the signing of the PCA Agreement with PCA in January 2013 and January 2015 respectively.

PUBLICITY

15. A spokesperson will be available to answer media and public enquiries.

ENQUIRY

16. Any enquiries on the brief should be addressed to Dr James Ding, Deputy Principal Government Counsel, at 3918 4772.

Department of Justice
28 January 2016

International Organizations (Privileges and Immunities) (Asia Pacific Regional Office of the Hague Conference on Private International Law) Order

Contents

Section	Page
1. Commencement	1
2. Interpretation	1
3. Provisions of Host Country Agreement having force of law in Hong Kong	2
4. Provisions of Memorandum of Administrative Arrangements having force of law in Hong Kong	3
Schedule 1 Provisions of Host Country Agreement Having Force of Law in Hong Kong	4
Schedule 2 Provisions of Memorandum of Administrative Arrangements Having Force of Law in Hong Kong	12

International Organizations (Privileges and Immunities) (Asia Pacific Regional Office of the Hague Conference on Private International Law) Order

(Made by the Chief Executive in Council under section 3 of the
International Organizations (Privileges and Immunities) Ordinance (Cap.
558))

1. Commencement

This Order comes into operation on 6 April 2016.

2. Interpretation

In this Order—

Hague Conference (海牙會議) means the Hague Conference on Private International Law;

Host Country Agreement (《東道國協議》) means the Host Country Agreement Between the Government of the People's Republic of China and the Hague Conference on Private International Law Relating to the Establishment of the Asia Pacific Regional Office of the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China, done on 13 December 2012;

Memorandum of Administrative Arrangements (《行政安排備忘錄》) means the Memorandum of Administrative Arrangements Concerning the Establishment of the Asia Pacific Regional Office of the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China, done on 13 December 2012;

Office (辦事處) means the Asia Pacific Regional Office of the Hague Conference in the Hong Kong Special Administrative Region.

3. Provisions of Host Country Agreement having force of law in Hong Kong

- (1) It is declared that the provisions of the Host Country Agreement as specified in Schedule 1 have the force of law in Hong Kong and are, for that purpose, to be construed in accordance with subsections (2), (3) and (4).
- (2) The reference to the laws and regulations of the People's Republic of China in Article 6 of the Host Country Agreement is, in relation to the Hong Kong Special Administrative Region, to be construed as a reference to the national laws of the People's Republic of China listed in Annex III to the Basic Law and applied in the Hong Kong Special Administrative Region by way of promulgation or legislation in accordance with Article 18 of the Basic Law.
- (3) In applying Article 9 of the Host Country Agreement, **Representative** (辦事處代表) is to be construed as meaning the Representative appointed by the Secretary General of the Hague Conference in consultation with the Government of the People's Republic of China.
- (4) In applying paragraph 1 of Article 14 of the Host Country Agreement, the reference to safeguard is to be construed as including any safeguard that the Central People's Government authorizes the Government of the Hong Kong Special Administrative Region to apply.

4. Provisions of Memorandum of Administrative Arrangements having force of law in Hong Kong

It is declared that the provisions of the Memorandum of Administrative Arrangements as specified in Schedule 2 have the force of law in Hong Kong.

Schedule 1

[s. 3]

Provisions of Host Country Agreement Having Force of Law in Hong Kong

...

Article 1

1. The Chinese Government acknowledges the international legal personality of the Hague Conference and the Office, which is an integral part of the Hague Conference.

2. Within ... the HKSAR, the Hague Conference and the Office shall have the following legal capacity necessary for carrying out its functions:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute legal proceedings.

...

Article 3

1. The Office shall enjoy immunity from every form of legal process in ... the HKSAR, except:

(a) with respect to contracts relating to real estate in the HKSAR or to the supply of goods or services for the Office, which are concluded with a person resident or a body incorporated or having its principal place of business or domicile in the HKSAR at the time of the conclusion of the contract, unless otherwise agreed; or

(b) in the case of any civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to or used by the Office, or in respect of a motor traffic offence involving such a vehicle.

2. Property and assets of the Office shall be exempt from any measure of compulsory execution in ... the HKSAR, except for any final judgment rendered by any HKSAR court which has jurisdiction pursuant to paragraph 1 of this Article.

3. The immunities provided for above may be expressly waived by the Secretary General of the Hague Conference or any other duly authorized person, in writing or in a duly authenticated telecommunication.

Article 4

1. The premises occupied as the Office, regardless of ownership, shall be inviolable. Personnel of ... the Government of the HKSAR, shall not enter the premises of the Office to perform any official duty, except with the express consent of and under the conditions, if any, proposed by the Secretary General of the Hague Conference or any other duly authorized person. Consent from a duly authorized person may be assumed in the case

of fire or other disaster requiring prompt protective action, if he or she cannot be reached in time.

2. All data, archives and records of the Office, in any form or medium whatsoever, wherever located and by whomever held, shall be inviolable.

...

4. The Office shall be accorded the same protection against any intrusion or damage and any disturbance of law and order as is granted by the Chinese Government to any other international intergovernmental organization in the HKSAR.

Article 5

1. All official correspondence and communications to or from the Office, by whatever means and in whatever form transmitted or received, shall be immune from censorship, monitoring, and any other form of interception or interference.

2. The Office may, with the consent of the relevant HKSAR authorities regarding technical requirements, use a wireless transmitter in the HKSAR.

Article 6

1. The Office may, consistent with the objectives of the Hague Conference and within the scope of its functions, produce and disseminate publications, data or data media in conformity with the laws and regulations of the People's Republic of China, including the HKSAR, with regard to publication and intellectual property, and in accordance with applicable international Conventions.

2. The importation of publications, data or data media by the Office for official use, and the exportation of the Office's publications, data or data media, shall not be subject to any restriction.

Article 7

1. The Office, its assets, income and other property within the HKSAR shall be exempt from all direct taxes and other taxes, dues, duties or rates of any kind except:

(a) excise duties, taxes on the sale of movable and immovable property and taxes on the provision of services which form part of the price to be paid; nevertheless when the Office makes purchases for property or services intended for official use on which such duties and taxes have been charged or are chargeable, the HKSAR authorities may, whenever possible, make appropriate administrative arrangements for exemption or reimbursement of the amount of such duty or tax;

(b) charges for specific services rendered to the Office, provided such charges are non-discriminatory and generally levied; and

(c) the government rent levied by the Government of the HKSAR under Article 121 of the Basic Law or the terms of land leases if such fees assessed pursuant to this Article are explicitly set forth in any lease agreement entered into by the Office.

2. The Office shall be exempt in the HKSAR from all customs duties, license fees, taxes and other levies, and from economic restrictions on imports and exports, on all goods and articles, including motor vehicles, spare parts, publications, data and data media, which are imported or

exported by the Office for its official uses, and from any obligation for the payment, withholding or collection of any customs duty. Goods or articles imported into the HKSAR by the Office under such exemptions can be disposed of locally in accordance with applicable laws or administrative regulations.

3. The Office shall not be subject to taxation on the rent or lease for any premises rented by it and occupied by its personnel.

Article 8

1. The Office may hold and dispose freely all funds, currency and other financial assets, and may open and operate accounts in any convertible currency.

2. The Office may transfer freely its funds, currency and other financial assets to and from the HKSAR or within the HKSAR, and may convert them into any other convertible currency.

...

Article 9

1. The Representative, as well as other officers and experts appointed or assigned by the Secretary General of the Hague Conference, who are neither Chinese citizens nor permanent residents of the HKSAR, upon the notification of their designation to the relevant HKSAR authorities, shall:

(a) be immune from the jurisdiction of any court or tribunal of ... the HKSAR, with respect to words spoken or writings and all acts performed by them in their official capacity even after their

missions have been accomplished, except in the event of legal proceedings arising from an accident caused by a vehicle belonging to or driven by them;

(b) be exempt from any ... tax on salaries, fees, emoluments and allowances paid to them for work completed in their official capacity;

(c) be exempt from any obligation relating to national services of any kind in the HKSAR;

(d) enjoy the same immigration facilities within the HKSAR for the term of their appointment for themselves, their spouses, and dependent children under the age of 21, who are neither Chinese citizens nor permanent residents of the HKSAR, as those granted to personnel of any other international intergovernmental organization in the HKSAR, and shall not be subject to any restriction on conditions of stay, to any formality concerning the registration of aliens, or to any restriction regarding employment or access to educational institutions, and shall promptly be provided by the HKSAR authorities with any clearance or document which may be required by the usual immigration procedures;

(e) enjoy the same customs privileges and facilities as those granted by the Chinese Government to the personnel of any other international intergovernmental organization in the HKSAR;

(f) enjoy the same currency and exchange facilities as those granted by the Chinese Government to the personnel of any other international intergovernmental organization in the HKSAR;

(g) enjoy the same repatriation facilities as those granted by the Chinese Government to the personnel of any other international intergovernmental organization in the HKSAR.

2. Other Office personnel, other than those mentioned in paragraph 1 of this Article, shall only enjoy the immunity provided for by paragraph 1(a) of this Article.

Article 10

1. All other experts on mission of the Office not specified in Article 9, who are neither Chinese citizens nor permanent residents of the HKSAR, shall, in connection with their mission, enjoy the privileges, immunities and facilities specified in paragraph 1 of Article 9 when performing such mission.

2. All other experts on mission of the Office not specified in Article 9, who are Chinese citizens or permanent residents of the HKSAR, shall, in connection with their mission, enjoy the immunities specified in paragraph 1(a) of Article 9 when performing such mission.

...

Article 11

1. The privileges, immunities and facilities referred to in this Agreement are solely granted to ensure, in all circumstances, effective performance of the Office's official functions and are not granted for the personal benefit of those persons.

...

3. The Secretary General of the Hague Conference or any other duly authorized person shall have the duty to waive the immunity of any member of the personnel of the Office or expert on mission of the Office where he or she considers that the immunity would impede the normal course of justice and can be waived without prejudice to the interests of the Office.

...

Article 14

1. Nothing in this Agreement shall affect the right of the Chinese Government to apply any appropriate safeguard for the national security of the People's Republic of China, including the security of the HKSAR. ...

...

...

Schedule 2

[s. 4]

Provisions of Memorandum of Administrative Arrangements Having Force of Law in Hong Kong

...

(2) The Office, as an employer, shall be exempt from the Employment Ordinance, the Employees' Compensation Ordinance, the Mandatory Provident Fund Schemes Ordinance and any legislation applicable in the HKSAR regarding old-age and surviving-dependents insurance, or incapacity insurance, or unemployment insurance, or insurance of health care or against accident, or occupational pension schemes, or welfare systems of any kind, save in respect of any person who is engaged by the Office as a local employee.

...

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

On 13 December 2012, the Government of the People's Republic of China and the Hague Conference on Private International Law (*Hague Conference*) signed a host country agreement (*Host Country Agreement*) relating to the establishment of the Asia Pacific Regional Office of the Hague Conference in the Hong Kong Special Administrative Region (*Asia Pacific Regional Office*). The status of the Hague Conference and the privileges and immunities of the Asia Pacific Regional Office, its staff and their dependents are set out in—

- (a) the Host Country Agreement; and
- (b) a memorandum of administrative arrangements concerning the establishment of the Asia Pacific Regional Office (*Memorandum of Administrative Arrangements*), signed between the Government of the Hong Kong Special Administrative Region and the Hague Conference in accordance with Article 15 of the Host Country Agreement.

2. This Order declares that certain provisions of the Host Country Agreement and the Memorandum of Administrative Arrangements relating to the status of the Hague Conference and to the privileges and immunities of the Asia Pacific Regional Office, its staff and their dependents have the force of law in Hong Kong.

International Organizations (Privileges and Immunities) (Permanent Court of Arbitration) Order

Section 1

1

International Organizations (Privileges and Immunities) (Permanent Court of Arbitration) Order

(Made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558))

1. Commencement

This Order comes into operation on 6 April 2016.

2. Interpretation

In this Order—

Host Country Agreement (《東道國協議》) means the Host Country Agreement Between the Government of the People's Republic of China and the Permanent Court of Arbitration on the Conduct of Dispute Settlement Proceedings in the Hong Kong Special Administrative Region of the People's Republic of China, done on 4 January 2015.

3. Provisions of Host Country Agreement having force of law in Hong Kong

- (1) It is declared that the provisions of the Host Country Agreement as specified in the Schedule have the force of law in Hong Kong and are, for that purpose, to be construed in accordance with subsections (2), (3) and (4).
- (2) In applying Article 1 of the Host Country Agreement—
 - (a) the reference to 1899 Convention is to be construed as meaning the Convention for the Pacific Settlement of International Disputes, done at The Hague on 29 July 1899;

International Organizations (Privileges and Immunities) (Permanent Court of Arbitration) Order

Section 3

2

- (b) the reference to 1907 Convention is to be construed as meaning the Convention for the Pacific Settlement of International Disputes, done at The Hague on 18 October 1907.
- (3) In applying Article 1, paragraph 2 of Article 2 and Articles 5, 6, 7, 8 and 9 of the Host Country Agreement, the reference to PCA is to be construed as meaning the Permanent Court of Arbitration.
- (4) In applying paragraph 3 of Article 11 of the Host Country Agreement, the reference to safeguard is to be construed as including any safeguard that the Central People's Government authorizes the Government of the Hong Kong Special Administrative Region to apply.

Schedule

[s. 3]

Provisions of Host Country Agreement Having Force of Law in Hong Kong

Article 1 Definitions

For the purposes of the Agreement:

“Officials of the PCA” shall mean the Secretary-General and all officials of the International Bureau of the PCA;

“PCA Proceedings” shall mean any dispute resolution proceedings administered by or under the auspices of the PCA, whether or not pursuant to the 1899 Convention or the 1907 Convention or any of the PCA’s optional rules of procedure;

“PCA Adjudicator” shall mean any arbitrator, mediator, conciliator, or member of an international commission of inquiry taking part in a hearing, meeting, or other activity in relation to PCA Proceedings held in the HKSAR;

“Participant in Proceedings” shall mean any counsel, party, agent, or other party representative, witness, expert, as well as any interpreter, translator, or court reporter taking part in a hearing, meeting, or other activity in relation to PCA Proceedings held in the HKSAR;

“PCA Meeting” shall mean any meeting, including hearings in the context of PCA Proceedings and conferences, convened by the PCA;

“Local Personnel” shall mean any person assigned by the Chinese Government to assist in the conduct of any PCA Proceedings or PCA Meeting.

Article 2 Legal Capacity

...

2. The PCA shall have the legal capacity necessary to fulfill its purposes and objectives in the ... HKSAR.

...

Article 5 Privileges and Immunities of the PCA

1. The PCA, and its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process in the ... HKSAR, except in the case of any civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to or operated on behalf of the PCA, where these damages are not recoverable from insurance, or in respect of a motor traffic offence or an unlawful act involving such a vehicle.

2. The PCA may expressly waive immunities provided for in paragraph 1 of this Article in any specific case. However, it is understood that no waiver shall extend to the immunity from any measure of execution unless such immunity has been expressly and separately waived by the PCA.

3. The property and assets of the PCA shall be exempt from any measures of compulsory execution in the ... HKSAR, except for any final judgment rendered by any court in the ... HKSAR which has jurisdiction pursuant to paragraph 1 of this Article.

4. Should the PCA be provided with, acquire, or rent office space or hearing space, its premises shall be inviolable. The premises of the PCA shall not be used in any manner incompatible with the objectives and functions of the PCA.

5. The archives of the PCA, wherever located, and in general all documents belonging to it or held by it, shall be inviolable.

6. The PCA may hold funds, currency of any kind, or other financial assets and operate accounts in any convertible currency, and the PCA shall be free to transfer its funds, currency, and other assets to, from, or within the HKSAR, and to convert any currency held by it into any other currency.

7. The PCA, its assets, income and other property shall, within the HKSAR, be:

- (a) exempt from all direct taxes;
- (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the PCA for its official use; it is understood, however, that articles imported under such exemption will not be sold in the People's Republic of China, including the HKSAR, except under conditions agreed with the Chinese Government; and
- (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

8. While the PCA will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property

which form part of the price to be paid, nevertheless when the PCA is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government of the HKSAR will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

9. The ... Government shall permit and protect free communication on the part of the PCA for all official purposes. The PCA shall enjoy in the ... HKSAR, for its official communications treatment not less favourable than that accorded to other inter-governmental organizations, in the matter of priorities, rates and taxes on mails, cables, telephones and other communications; and press rates for information to the press and radio.

10. The official correspondence of the PCA shall be inviolable. The consent of the relevant authorities of the Government of the HKSAR regarding technical requirements is required if wireless transmitter is used.

Article 6 Privileges and Immunities of PCA Officials and Adjudicators

1. Officials of the PCA and PCA Adjudicators shall enjoy:

- (a) immunity from legal process of every kind in respect of words spoken or written and acts performed by them in the course of the discharge of their duties even after they have ceased to exercise their functions in connection with the PCA, except in the event of legal proceedings arising from an accident caused by a vehicle belonging to or driven by them;
- (b) inviolability for all papers and documents for the purpose of their communications with the PCA and in relation to PCA Proceedings or PCA Meetings;
- (c) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of other inter-governmental organizations;

- (d) exemption from taxation on any fees, salaries, and emoluments paid to them by or through the PCA for work completed in their official capacity;
 - (e) immunity from national service obligations;
 - (f) immunity from immigration restrictions and alien registration;
 - (g) the same repatriation facilities in time of international crises as representatives of other inter-governmental organizations; and
 - (h) the right to import free of duty their furniture and personal effects at the time of first taking up their post.
2. In addition to the privileges and immunities provided for in paragraph 1 of this Article, the Secretary-General of the PCA, the Deputy Secretary-General of the PCA and PCA Adjudicators shall enjoy immunity from personal arrest or detention and from seizure of their personal baggage.
3. Officials of the PCA and PCA Adjudicators who are either Chinese citizens or permanent residents of the People's Republic of China including permanent residents of the HKSAR shall only enjoy the privileges and immunities provided for by paragraph 1(a), (b) and (d) of this Article.

Article 7 Immunity of Local Personnel

Local Personnel shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the PCA, which immunity shall continue after they have ceased to exercise their functions in connection with the PCA, except in the event of legal proceedings arising from an accident caused by a vehicle belonging to or driven by them.

Article 8 Privileges and Immunities of Participants in Proceedings

1. Participants in Proceedings shall be accorded the following privileges, immunities and facilities that are necessary for the independent exercise of their functions, subject to the production of the document referred to in paragraph 2 of this Article:
- (a) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings or PCA Meetings, which immunity shall continue after they have ceased to exercise their functions in connection with the PCA, except in the event of legal proceedings arising from an accident caused by a vehicle belonging to or driven by them;
 - (b) inviolability of all papers, documents in whatever form and materials relating to their participation in PCA Proceedings or PCA Meetings, which immunity shall continue after they have ceased to exercise their functions in connection with the PCA;
 - (c) for purposes of their communications in relation to PCA Proceedings or PCA Meetings, the right to receive and send papers and documents in whatever form by duly identified couriers or in sealed bags;
 - (d) exemption from immigration restrictions or alien registration when they travel for purposes of their participation in PCA Proceedings or PCA Meetings; and
 - (e) the same repatriation facilities in time of international crises as representatives of other inter-governmental organizations.
2. A participant in Proceedings shall be provided by the PCA with a document certifying that his or her participation is required by the PCA and specifying a time period during which such participation is necessary. This document shall be withdrawn prior to its expiry if the Participant's appearance in PCA Proceedings or PCA Meetings or his or her presence

within the People's Republic of China, including the HKSAR, is no longer required.

3. The privileges, immunities and facilities referred to in paragraphs 1 of this Article shall cease to apply after fifteen consecutive days following the date on which the presence of the Participant in Proceedings is no longer required by the PCA, provided such Participant has had an opportunity to leave the People's Republic of China, including the HKSAR during that period.

4. Participants in Proceedings who are either Chinese citizens or permanent residents of the People's Republic of China including permanent residents of the HKSAR shall only enjoy the immunities and provided for by paragraph 1(a), (b) and (c) of this Article.

Article 9 Acquisition and Waiver of Privileges and Immunities

1. When an Official of the PCA or a PCA Adjudicator will be present in the People's Republic of China, including the HKSAR, or may have need to invoke privileges and immunities under this Agreement, a certification of the status of such person shall be provided to the ... Government under the signature of the Secretary-General. The ... Government shall accord the privileges and immunities provided for in Article 6 upon production of this certification.

2. When Local Personnel are assigned to assist in the conduct of PCA Proceedings or PCA Meetings in the HKSAR, they shall enjoy immunities under this Agreement from the moment of their assignment.

3. Upon receipt of notification from parties to PCA Proceedings as to the appointment of a Participant in Proceedings, a certification of the status of such person shall be provided to the ... Government under the signature of

an Official of the PCA. The authorities of the ... Government shall accord the privileges and immunities provided for in Article 8 upon production of this certification.

4. Whenever a determination is required as to whether a person enjoys status under this Agreement entitling him or her to privileges and immunities, or whether words or acts are connected to the discharge of that person's official duties, such determination shall be made by the competent authority in consultation with the Chinese Government.

5. The privileges and immunities provided for in Articles 6 to 8 of this Agreement are granted in the interests of the PCA and the good administration of justice, and not for the personal benefit of the individuals themselves. The competent authority has the right and the duty to waive the immunity in any case where, in the opinion of such authority, the immunity would impede the course of justice and can be waived without prejudice to the interests of the PCA or to any PCA Proceedings in connection with which those immunities are granted.

6. For the purposes of this Article, the competent authority shall be:

- (a) in the case of PCA Adjudicators and Officials of the PCA (other than the Secretary-General), the Secretary-General;
- (b) in the case of the Secretary-General, the Administrative Council of the PCA;
- (c) in the case of Local Personnel, the Secretary-General;
- (d) in the case of Participants in Proceedings representing or designated by a State which is a party to the relevant PCA Proceedings, that State; and
- (e) in the case of other individuals appearing at the instance of a party to PCA Proceedings, the Secretary-General.

...

Article 11 Security

...

3. Nothing in this Agreement shall affect the right of the Chinese Government to apply any appropriate safeguard for the national security of the People's Republic of China, including the security of the HKSAR. ...

...

...

Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

On 4 January 2015, the Government of the People's Republic of China and the Permanent Court of Arbitration (*PCA*) signed a host country agreement on the conduct of dispute settlement proceedings in Hong Kong (*Host Country Agreement*).

2. This Order declares that certain provisions of the Host Country Agreement relating to the status of the PCA and to the privileges and immunities of the PCA and related parties have the force of law in Hong Kong.