

L.N. 180 of 2015

Consular Relations (Additional Privileges and Immunities) (Philippines) 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 11 December 2015.

2. Interpretation

In this Order—

Agreement (《協定》) means the Consular Agreement between the People's Republic of China and the Republic of the Philippines done at Manila on 29 October 2009;

relevant provisions of the Agreement (《協定》有關條文) means the provisions of paragraph 2 of Article 4, paragraph 1 of Article 28, Articles 29 and 30, paragraphs 2, 3 and 4 of Article 31, Articles 34, 35, 36, 37 and 38, paragraph 1 of Article 39, Article 40 (except sub-paragraphs (a) and (b) of paragraph 1 and paragraph 3), Article 41, and Article 43 (except paragraph (a)), 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 the Republic of the Philippines, 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 paragraphs (b) and (h)), and

Articles 42, 44 and 45, 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

CHAPTER I

DEFINITION

Article 1

Definitions

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 consul-general, consul, vice consul or consular agent who is charged by the sending State to head a consular post;

(d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

(e) “member of the administrative and technical staff of the consular post” means any person who performs administrative or technical service at 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, administrative and technical staff and service staff of the consular post;

.....

(i) “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;

(j) “consular archives” means 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 safe-keeping;

(k) “national of the sending State” means any natural person having the nationality of the sending State, and when applicable, also any juridical person of the sending State;

(l) “vessel of the sending State” means any vessel sailing under the flag of the sending State pursuant to its law, excluding military vessels;

(m) “aircraft of the sending State” means any aircraft registered in the sending State and bearing that State’s registration marks, excluding military aircraft.

CHAPTER II

ESTABLISHMENT OF A CONSULAR POST AND APPOINTMENT OF ITS MEMBERS

Article 4

Temporary Exercise of the Functions of the Head of a Consular Post

2. The acting head of a consular post shall enjoy the same rights, facilities, privileges and immunities as enjoyed by a head of a consular post under this Agreement.

CHAPTER IV

FACILITIES, PRIVILEGES AND IMMUNITIES

Article 28

Inviolability of 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 may 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. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

Article 29

Immunity from Requisition of Consular Premises

The consular premises, their furnishings and the property and means of transport of the consular post shall be immune from any form of requisition.

Article 30

Inviolability of the Consular Archives

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

Article 31

Freedom of Communication

2. The official correspondence of a consular post shall be inviolable. The consular bag shall neither be opened nor detained. The consular bag must bear visible external marks of its character and may contain nothing other than official correspondence, official documents and articles intended exclusively for official use.

3. The consular courier shall only be a national of the sending State, and not be a permanent resident of the receiving State. He shall be provided with an official document certifying his status. He shall enjoy the same rights, facilities, privileges and immunities in the receiving State as enjoyed by a diplomatic courier.

4. A consular bag may be entrusted to the captain of an aircraft or a vessel of the sending State. But he shall be provided with

an official document indicating the number of packages constituting the bag, however, he shall not be considered as a consular courier. By arrangement with the appropriate authorities of the receiving State, a member of the consular post may directly and freely collect the bag from or deliver it to him.

Article 34

Personal Inviolability of Consular Officers

The person of consular officers shall be inviolable, and they shall not be liable to any form of detention or arrest. The receiving State shall take appropriate measures to prevent any attack on their freedom of person and dignity.

Article 35

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 as an agent 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 in the receiving State, unless a consular officer is holding it in the capacity of representative of the sending State and for the purposes of the consular post;

(d) concerning private succession;

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

2. The receiving State shall not take measures of execution against a consular officer except in cases referred to in paragraph 1 of this Article. In the event of taking such measures in such cases, the inviolability of the person and residence of the consular officer shall not be impaired.

3. Members of the administrative and technical staff and of the service staff of the consular post shall be immune from the jurisdiction of the judicial or administrative authorities of the receiving State in respect of any act in the performance of their functions, except in the civil proceedings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

Article 36

Liability to Give Evidence

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

2. A member of the administrative and technical staff or of the service staff of the consular post may be called upon to give evidence in the course of judicial or administrative proceeding of the receiving State. He shall not, except in the cases referred to in paragraph 3 of this Article, decline to give evidence.

3. A member of the administrative and technical staff or of the service staff of the consular post is under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce any official correspondence or documents relating thereto. He is entitled to decline to give evidence as expert witness with regard to the law of the sending State.

4. The competent authorities of the receiving State requiring the evidence of a member of the administrative and technical staff or of the service staff of the consular post shall avoid interference with the performance of his functions. They may, when possible, take such evidence at his residence or at the consular premises or accept a statement from him in writing.

Article 37

Exemption from Services and Registration of Aliens and Residence Permits

1. A member of the consular post shall be exempt in the receiving State from any kind of personal services, public services and military obligations.

2. A consular officer and a member of the administrative and technical staff of the consular post shall be exempt from all obligations under the laws of the receiving State concerning the registration of aliens and residence permits.

Article 38

Exemption of Properties from Taxation

1. On a reciprocal basis and to the extent permitted by the laws and regulations of the receiving State, the followings shall be exempt from all dues and taxes:

(a) consular premises and residences of the members of a consular post acquired in the name of the sending State or its representative and transactions or instruments related 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 39

Exemption of Members of the Consular Post from Taxation

1. Consular officers and members of the administrative and technical staff of the consular post shall be exempt from all national, regional or municipal dues and taxes of the receiving State on person or object, except:

(a) indirect taxes of a kind which are normally incorporated in the price of commodities or services;

(b) dues and taxes on private immovable property situated in the territory of the receiving State, subject to the provisions in subparagraph (a) of paragraph 1 of Article 38 of this Agreement;

(c) estate and inheritance duties and duties on transfers, subject to the provisions of Article 43 of this Agreement;

(d) dues and taxes on private income other than the income acquired from their official functions 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 paragraph 1 of Article 38 of this Agreement.

Article 40

Exemption from Customs Duties and Inspection

1. The receiving State shall, in accordance with its laws and regulations, permit entry and exit of and grant exemption from all customs duties other than charges, for storage, cartage and similar services, on:

.....

(c) articles imported at the time of first installation for the personal use of a member of the administrative and technical staff 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 41

Privileges and Immunities of Family Members

Family members of a consular officer and family members of a member of the administrative and technical staff of the consular post shall enjoy respectively the privileges and immunities to which the consular officer and the member of the administrative and technical staff are respectively entitled under the provisions of this Agreement; Family members of a member of the service staff of the consular post shall enjoy the privileges and immunities to which the member of service staff is entitled under paragraph 1 of Article 37 of this Agreement, 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 42

Persons Who Shall Not Enjoy Privileges and Immunities

1. Members of the administrative and technical staff or 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 Agreement, subject to the provisions of paragraph 3 of Article 36 of this Agreement.

2. Family members of the persons mentioned in paragraph 1 of this Article shall not enjoy the privileges and immunities provided for in this Agreement.

Article 43

Estate of Member of the Consular Post

In the event of the death of a member of a consular post or a member of his family, the receiving State shall:

.....

(b) exempt the movable property of the deceased from estate duties and all duties concerned.

Article 44

Beginning and End of Privileges and Immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in this Agreement 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. Family members of a member of the consular post shall enjoy the privileges and immunities provided in this Agreement from the date from which he enjoys privileges and immunities, or from the date of their entry into the territory of the receiving State or from the date of their becoming such family members in the case of their entry or becoming such family members after the date from which he enjoys privileges and immunities.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of his family members shall 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 sooner. The privileges and immunities of the family members of a member of the consular post shall come to an end when they cease to be the said family members. However if such persons intend to leave 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, his family members 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 in which to do so.

5. However, with respect to acts performed by a member of the consular post in the exercise of his functions during his tenure of office, immunity from jurisdiction shall continue to subsist without limitation of time.

Article 45

Waiver of Privileges and Immunities

1. The sending State may waive any of the privileges and immunities enjoyed by the persons concerned under Article 35 and 36 of this Agreement. The waiver shall in all cases be explicit and shall be communicated to the receiving State in writing.

2. The initiation of proceedings by a person in a matter where he might enjoy immunity from jurisdiction under this Agreement shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

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3. 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 execution of judicial decision. In respect of such execution, a separate waiver of immunity in writing shall be necessary.

Kinnie WONG
Clerk to the Executive Council

COUNCIL CHAMBER

8 September 2015

Explanatory Note

This Order declares that the additional privileges and immunities accorded to a consular post of the Republic of the Philippines, 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.