

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING CONSULAR PRIVILEGES AND IMMUNITIES

(Adopted at the 16th Meeting of the Standing Committee of the Seventh National People's Congress on October 30, 1990, promulgated by Order No. 35 of the President of the People's Republic of China on October 30, 1990 and effective as of the date of promulgation)

Article 1

The present Regulations are formulated for the purpose of defining the consular privileges and immunities of the foreign consular posts in China and their members and facilitating the efficient performance of the functions of such foreign consular posts in their consular districts as representatives of the sending States.

Article 2

Consular officers shall be of the nationality of the sending State. They may, only with the consent of the competent Chinese authorities, be appointed from among persons of Chinese or third-state nationality or nationals of the sending State who are permanent residents of China. This consent may be withdrawn at any time by the said Chinese authorities.

Article 3

The consular post and its head shall have the right to use the national flag and emblem of the sending State on the premises of the consular post, on the residence of the head of the consular post and on his means of transport when used on official business.

Article 4

The premises of the consular post shall be inviolable. Chinese government functionaries may enter them only with the consent of the head of the consular post or the head of the diplomatic mission of the sending State or another person authorized by either of them. The consent of the head of the consular post may be assumed in case of fire or other disaster requiring prompt protective action. The Chinese authorities concerned shall take appropriate measures to protect the premises of the consular post against any intrusion or damage.

Article 5

The premises of the consular post and the residence of its head shall be exempt from dues and taxes other than such as represent payment for specific services rendered. The fees and charges levied by the consular post in the course of its official duties shall be exempt from all dues and taxes.

Article 6

The archives and documents of the consular post shall be inviolable.

Article 7

The members of the consular post shall enjoy freedom of movement and travel within Chinese territory except for areas the entry into which is prohibited or restricted by the regulations of the Chinese Government.

Article 8

The consular post may for official purposes communicate freely with the Government and the

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diplomatic mission and other consular posts of the sending State. In so doing, it may employ all appropriate means, including diplomatic couriers or consular couriers, diplomatic bag or consular bag, and messages in code or cipher.

Article 9

The consular post may install and use a wireless transmitter-receiver only with the consent of the Chinese Government. The import of the above- mentioned equipment shall be subject to the relevant procedure prescribed by the Chinese Government.

Article 10

The consular bag shall not be opened or detained. The consular bag may contain only official correspondence and documents or articles intended for official use and must be sealed and bear visible external marks of its character. If the Chinese authorities concerned have serious reason to believe that the bag contains something other than the above-mentioned objects, they may request that the bag be opened in the presence of personnel from the Chinese authorities concerned by the consular officer or another person authorized by him. If this request is refused by the consular officer, the bag shall be returned to its place of origin.

Article 11

The consular courier must be of the nationality of the sending State and shall not be a permanent resident of China. The consular courier must be provided with a courier certificate issued by the competent authorities of the sending State. He shall enjoy personal inviolability and shall not be liable to arrest or detention. Consular couriers ad hoc must be provided with certificates of courier ad hoc issued by the competent authorities of the sending State, and shall enjoy the same immunities as the consular courier while charged with the carrying of the consular bag. A consular bag may be entrusted to the captain of a commercial aircraft or a commercial ship. He must be provided with an official document issued by the consigner State indicating the number of packages constituting the bag, but he shall not be regarded as a consular courier. By arrangement with the competent authorities of the appropriate Chinese local people's government, the consular post may send its members to receive the consular bag from the captain of the aircraft or of the ship or deliver it to him.

Article 12

The person of a consular officer shall be inviolable. The Chinese authorities concerned shall take appropriate measures to prevent any attack on his personal freedom and dignity. Consular officers shall not be liable to arrest or detention, except that the arrest or detention is executed in the case of a grave crime and by following legal procedures. Consular officers shall not be committed to prison save in execution of a judicial decision of final effect.

Article 13

The residence of a consular officer shall be inviolable. His papers and correspondence shall be inviolable. His property, except as provided in Article 14 of the present Regulations, shall be inviolable.

Article 14

Consular officers and members of the administrative and technical staff of the consular post shall

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enjoy immunity from judicial and administrative jurisdiction in respect of acts performed in the exercise of their functions. Immunity from jurisdiction of consular officers in respect of acts other than those performed in the exercise of their functions shall be accorded in accordance with the bilateral treaties and agreements between China and other countries concerned or on the principle of reciprocity. Immunity from judicial jurisdiction enjoyed by consular officers and members of the administrative or technical staff of the consular post shall not apply to any of the following civil actions:

- (1) an action arising out of a contract not concluded expressly as an agent of the sending State;
- (2) an action relating to private immovable property situated in the territory of China, unless they hold it as an agent of the sending State for the purposes of the consular post.
- (3) an action relating to succession in which he is involved as a private person; or
- (4) an action for damages arising from an accident in China caused by a vehicle, vessel or aircraft.

Article 15

Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings, but shall be under no obligation to give testimony concerning matters connected with the exercise of their functions. They are entitled to decline to give testimony as expert witnesses with regard to the law of the sending State. If consular officers should decline to give testimony, no coercive measure or penalty may be applied to them. Members of the administrative or technical staff of the consular post and members of the service staff shall not decline to give testimony except in cases concerning matters connected with the exercise of their functions.

Article 16

The immunity from jurisdiction enjoyed by the persons concerned specified in the present Regulations may be waived through explicit expression by the Government of the sending State. The initiation of proceedings by a person enjoying immunity from jurisdiction in accordance with the provisions of the present Regulations shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the claim. Waiver of immunity from civil or administrative jurisdiction shall not imply waiver of immunity in respect of the execution of the judgment, for which a separate and explicit waiver by the Government of the sending State shall be necessary.

Article 17

Consular officers and members of the administrative or technical staff of the consular post shall be exempt from all dues and taxes, except:

- (1) dues and taxes of a kind which are normally incorporated in the price of goods or services;
- (2) dues or taxes on private immovable property situated in the territory of China, excepting that used as the consular premises;
- (3) estate, succession or inheritance duties, except that movable property left in China by a deceased consular officer shall be exempt therefrom;
- (4) dues and taxes on private income having its source in China; or
- (5) charges levied for specific services rendered.

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Members of the service staff of the consular post shall be exempt from dues and taxes on the wages which they receive for their service in the consular post.

Article 18

Members of the consular post shall be exempt from all personal and public services as well as military obligations. Consular officers and members of the administrative or technical staff of the consular post shall be exempt from all obligations under the laws and regulations of China in regard to the registration of aliens and residence permits.

Article 19

Imported articles for the official use of the consular post, those for the personal use of consular officers, and those for the personal use of members of the administrative or technical staff of the consular post, including articles intended for their establishment, imported within six months of the time of installation shall, in accordance with the relevant regulations of the Chinese Government, be exempt from customs duties and all other related dues and taxes with the exception of charges for storage, cartage and similar services. Imported articles for the personal use of the consular officers and the members of the administrative or technical staff of the consular post referred to in the preceding paragraph shall not exceed the quantities necessary for their direct utilization. The personal baggage of a consular officer shall be exempt from inspection, unless the competent Chinese authorities have serious reason to believe that it contains articles not within the exemptions provided for in the first paragraph of this Article, or articles the import or export of which is prohibited or controlled by Chinese laws and government regulations. Such inspection shall be conducted in the presence of the consular officer or of his authorized representative.

Article 20

The consular post and its members may carry firearms and bullets into or out of China for their personal use, subject to the approval of the Chinese government and to its relevant regulations.

Article 21

The spouse and underage children of consular officers, of members of the administrative or technical staff of the consular post, or of members of the service staff of the consular post forming part of their respective households, except those who are nationals of China or aliens permanently residing in China, shall respectively enjoy the privileges and immunities accorded to the consular officers, the members of the administrative or technical staff of the consular post or the members of the service staff of the consular post in accordance with the provisions of Articles 7, 17, 18 or 19 of the present Regulations.

Article 22

Consular officers who are nationals of China or aliens permanently residing in China shall enjoy the privileges and immunities provided for in the present Regulations only in respect of acts performed in the course of official duties. Members of the administrative or technical staff of the consular post and members of the service staff of the consular post who are nationals of China or aliens permanently residing in China shall not enjoy the privileges and immunities provided for in

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the present Regulations except that they shall have no obligation to give evidence concerning matters connected with the exercise of their functions. Private attendants shall not enjoy the privileges and immunities provided for in the present Regulations.

Article 23

The following persons shall enjoy necessary immunity and inviolability during their transit through or sojourn in China:

- (1) a consular officer stationed in a third State who passes through China together with his spouse and underage children forming part of his household; and
- (2) a visiting foreign consular officer who has obtained a diplomatic visa from China or who holds a diplomatic passport of a State with which China has an agreement on the mutual exemption of visas.

Article 24

Persons enjoying consular privileges and immunities under the present Regulations shall:

- (1) respect Chinese laws and regulations;
- (2) not interfere in the internal affairs of China; and
- (3) not use the premises of the consular post and the residence of members of the consular post for purposes incompatible with the exercise of consular functions.

Article 25

Consular officers shall not practise for personal profit any professional or commercial activity outside his official functions on Chinese territory.

Article 26

In case the consular privileges and immunities accorded by a foreign State to the Chinese consular post and its members in that State and to transiting or visiting Chinese consular officers stationed in a third State are different from those China would give under the present Regulations to the consular post of that State and its members in China and its transiting or visiting consular officers stationed in a third State, the Chinese Government may accord them such consular privileges and immunities as appropriate on a reciprocal basis.

Article 27

Where the international treaties to which China is a contracting or acceding party provide otherwise in respect of consular privileges and immunities, such provisions shall prevail, with the exception of those on which China has declared reservations. Where the bilateral treaties or agreements between China and other countries provide otherwise in respect of consular privileges and immunities, such provisions shall prevail.

Article 28

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

- (1) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;
- (2) "consular district" means the area assigned to a consular post for the exercise of consular functions;
- (3) "head of consular post" means the consul-general, consul, vice-consul or consular agent

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charged by the sending State with the duty of leading the consular post;

(4) "consular officer" means the consul-general, vice- consul-general, consul, vice-consul and consular attache or consular agent;

(5) "members of the administrative or technical staff of the consular post" means the members of the staff of the consular post engaged in the administrative or technical work of the consular post;

(6) "members of the service staff" means the members of the staff of the consular post engaged in the domestic service of the consular post;

(7) "members of the consular post" means consular officers, members of the administrative or technical staff of the consular post and members of the service staff of the consular post;

(8) "private attendant" means an attendant in the private employment of a member of the consular post;

(9) "consular premises" means the buildings or parts of buildings and the land ancillary thereto used exclusively for the purposes of the consular post.

Article 29

The present Regulations shall enter into force as of the date of promulgation.



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China Business Engine

Tel +86 21 52289730

Fax +86 21 5228-9730

Website

China site: www.cbize.com

Globe site: www.cbize.net