



LAWS OF MALAYSIA

REPRINT

Act 595

CONSULAR RELATIONS (VIENNA CONVENTION) ACT 1999

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

**CONSULAR RELATIONS (VIENNA CONVENTION)
ACT 1999**

Date of Royal Assent 27 August 1999

Date of publication in the *Gazette* 9 September 1999

PREVIOUS REPRINT

First Reprint 2001

LAWS OF MALAYSIA**Act 595****CONSULAR RELATIONS (VIENNA CONVENTION)
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SCHEDULE

LAWS OF MALAYSIA**Act 595****CONSULAR RELATIONS (VIENNA CONVENTION)
ACT 1999**

An Act to amend the law on consular relations by giving effect to the Vienna Convention on Consular Relations (signed in 1963) and for other matters connected therewith.

[1 November 1991]

WHEREAS Article 77 of the Vienna Convention on Consular Relations signed in 1963 provides:

“(1) The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

(2) For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.”:

AND WHEREAS the said twenty-second instrument of accession was so deposited by Madagascar on 17 February 1967 and the Convention therefore entered into force on 19 March 1967:

AND WHEREAS Malaysia deposited her instrument of accession on 1 October 1991 and therefore in accordance with the said Article 77 the Convention entered into force as far as Malaysia is concerned on 1 November 1991:

NOW, THEREFORE, IT IS ENACTED by the Parliament of Malaysia as follows:

Short title, commencement and application

1. (1) This Act may be cited as the Consular Relations (Vienna Convention) Act 1999.

(2) This Act shall be deemed to have come into operation on 1 November 1991.

(3) This Act shall apply throughout Malaysia.

Application of Vienna Convention

2. (1) Subject to section 4, the Articles set out in the Schedule (being Articles of the Vienna Convention on Consular Relations signed in 1963) shall have the force of law in Malaysia and for that purpose be construed in accordance with the following provisions of this section.

(2) In those Articles—

“authorities of the receiving State” shall be construed as including any police officer and any person exercising a power of entry to any premises under any written law in force in Malaysia;

“national of the receiving State” shall be construed as meaning a citizen.

(3) For the purposes of Article 45, a waiver by the head of a consular post of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.

(4) Articles 32, 39, 46, 47, 48, 49, 50, 52, 54, 58, 60, 62, 65, 66 and 67 shall be construed as granting any privilege or immunity which they require to be granted.

(5) The reference in Article 71 to the extent to which any privileges and immunities are admitted by the receiving State and to the additional privileges and immunities that may be granted by the receiving State shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by the Yang di-Pertuan Agong by order published in the *Gazette* and to any additional privileges and immunities that may be so specified.

Interpretation

3. In this Act, unless the context otherwise requires—

“Minister” means the Minister charged with the responsibility for foreign affairs;

“the 1963 Convention” means the Vienna Convention on Consular Relations 1963.

Application of Act

4. This Act shall apply—

- (a) to any State which is a party to the 1963 Convention;
- (b) to such extent and with such modifications as the Yang di-Pertuan Agong may deem necessary, to any State, not being a State which is a party to the 1963 Convention, as he may by order published in the *Gazette* declare to be a State to which this Act shall apply, being a State with which a consular convention providing for matters for which provision is made in this Act has been concluded by or on behalf of Malaysia; and
- (c) to such extent and with such modifications as the Yang di-Pertuan Agong may deem necessary, to such body or political entity as he may by order published in the *Gazette* specify.

Remission of taxes, charges, duties and fees

5. The Yang di-Pertuan Agong may provide that any tax, charge, duty or fee, imposed or collected under any written law in force in Malaysia or in any constituent State in Malaysia or any part thereof by the Government of Malaysia or of any such constituent State or by any Municipality, Town Board or other public authority in Malaysia, and payable by the Government of any State or by a consular officer or consular employee of that State shall be remitted, when, in the opinion of the Yang di-Pertuan Agong, such remission should be granted by reason of the treatment accorded to the Government of Malaysia or the consular staff thereof by that State.

Restriction of privileges and immunities

6. (1) If it appears to the Yang di-Pertuan Agong that the privileges and immunities accorded to a consular post of Malaysia in the territory of any State, or to persons connected with that consular post, are less than those conferred by this Act on the consular post of that State or on persons connected with that consular post, the Yang di-Pertuan Agong may by order published in the *Gazette* withdraw such of the privileges and immunities so conferred from the consular post of that State or from such persons connected with it as appears to him to be proper.

(2) An order under this section shall be disregarded for the purpose of subsection 1(2) of Part I and subsection 2(1) of Part II of the Second Schedule to the Constitution (relating to citizenship of children of certain persons possessing diplomatic immunity).

Evidence

7. If in any proceedings any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Minister stating any fact relating to that question shall be conclusive evidence of that fact.

Saving for certain bilateral arrangements

8. (1) Where any special agreement or arrangement between the Government of any State and the Government of Malaysia in force at the commencement of this Act provides for extending—

- (a) such immunity from jurisdiction and from arrest or detention, and such inviolability of residence, as are conferred by this Act on a consular employee; or
- (b) such exemption from customs duties, taxes and related charges as is conferred by this Act in respect of articles for the personal use of a consular employee,

to any class of persons, or to articles for the personal use of any class of persons, connected with the consular post of that State, that immunity and inviolability or exemption shall so extend, so long as that agreement or arrangement continues in force.

(2) The Minister shall publish in the *Gazette* a notice specifying the States with which and the classes of persons with respect to which such an agreement or arrangement as is mentioned in subsection (1) is in force and whether its effect is as mentioned in paragraph (1)(a) or (b), and shall whenever necessary amend the notice by a further such notice; and the notice shall be conclusive evidence of the agreement or arrangement and the classes of persons with respect to which it is in force.

Authority to hold land in Malaysia

9. (1) Notwithstanding the provisions of any written law to the contrary it shall be lawful for land in any part of Malaysia or any interest in such land to be granted, alienated, leased or transferred to or owned or held by—

(a) any State—

(i) for the purposes of a consular office of that State or for the residence of a consular officer of that State; or

(ii) for such other consular purposes as may be approved by the Minister; or

(b) any State that is authorized or entitled to own or hold land or any interest in land in Malaysia under any treaty, convention or agreement to which Malaysia is a party, for any purpose specified in such treaty, convention or agreement.

(2) Where by virtue of subsection (1), it is lawful for land or an interest in land to be granted, alienated, leased or transferred to or owned or held by any State, such land or interest may be granted, alienated, leased or transferred to or owned or held by that State in its own name or on its behalf to or by any person nominated for the purposes of this subsection either generally or in a particular case by writing addressed to the Minister by or on behalf of that State and that State or person, as the case may be, shall be registered accordingly as proprietor, lessee or otherwise, as the case may require, in any register kept under the provisions of the National Land Code [*Act 56 of 1965*], the Land Ordinance of Sabah [*Sabah Cap. 68*] or the Land Code of Sarawak [*Sarawak Cap. 81*], as the case may be.

(3) For the purposes of subsection (2), a State may nominate a body corporate incorporated by or under the laws of Malaysia or of that State or an individual person nominated by name or by the title of any office held by him in the government of that State and where any person is nominated by the title of an office any right, power or obligation to which by virtue of his nomination he may be entitled or liable at the date of his vacating his office shall be deemed to pass to or be imposed on his successors for the time being in such office in all respects as if the holder of such office had been a corporation sole.

(4) A nomination made under subsection (2) may at any time be cancelled and a fresh nomination made in the manner provided by that subsection and in that event any right, power or obligation to which by virtue of his nomination the person formerly nominated was at the date of the cancellation of his nomination entitled or liable shall be transferred to the person last nominated in such manner as may be provided by rules made under subsection (6).

(5) For the purpose of any dealing in any land or interest in any land vested in the name of a State, any person authorized for the purposes of this subsection either generally or in any particular case by writing addressed to the Minister by or on behalf of that State may, by virtue of such authorization execute all or any instruments and do any other act or thing for giving effect to any dealing with such land on behalf of that State in the same manner and to the like extent as if such person had been authorized thereto by a valid power of attorney duly delivered under the provisions of the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak, as the case may be.

(6) The Yang di-Pertuan Agong may make rules for the purpose of carrying this section into effect.

Powers of consular officers in relation to property of deceased persons

10. (1) Where any national of a State to which this Act applies is named as the executor of the will of a deceased person disposing of property in Malaysia or is otherwise a person to whom a grant of representation may be made by any court under any written law in force in Malaysia or in any constituent State in Malaysia relating to the probate of wills or the administration of the estate of deceased persons, then, if such court is satisfied on the application of a consular officer of that State that such national is not resident in Malaysia and if no application for a grant of such representation is made by a person duly authorized under such law by power of attorney to act for him in that behalf, the court shall make to such officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorized as aforesaid:

Provided that the court may if it thinks fit postpone the making of a grant by virtue of this section during such period as the court considers appropriate having regard to the circumstances of the case.

(2) Where any person who is a national or citizen of a State to which this Act applies—

- (a) is entitled to any money or other property in Malaysia forming part of the estate of a deceased person or to receive payment in Malaysia of any money becoming due on the death of a deceased person; or
- (b) is among the persons to whom any money or other property of a deceased person may under any written law in force in Malaysia or in any constituent State in Malaysia be paid or delivered without grant of probate or other proof of title,

then, if such national or citizen is not resident in Malaysia, a consular officer of that State shall have the like right and power to receive and give a valid discharge for any such money or property as if he were duly authorized by power of attorney to act for him in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in Malaysia has been expressly authorized to receive that money or property on behalf of such national or citizen.

(3) Notwithstanding anything to the contrary in any written law in force in Malaysia or in any constituent State in Malaysia, it shall be lawful for letters of administration of an estate to be granted, by virtue of this section, to a consular officer alone, and, when the existing personal representative is a consular officer appointed by virtue of this section, it shall not be necessary, in any case, for any additional personal representative to be appointed.

(4) When letters of administration are granted or any grant of representation is made to any consular officer by virtue of this section, sureties shall not be required to any administration bond given by such officer, notwithstanding the provisions of any written law in force in Malaysia or in any constituent State in Malaysia.

(5) Notwithstanding any rule of law conferring privilege or immunity in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any privilege or immunity in respect of any act done by virtue of the powers conferred upon him by or under this section or in respect of any document for the time being in his possession relating thereto.

(6) A grant of representation made by virtue of this section may be made to the consular officer by his official title and to his successors in office and where a grant is so made the office of administrator and all the estate, rights, duties and liabilities of the administrator (including liabilities under the administration bond) shall be vested in and imposed on the person for the time being holding the office and no fresh grant shall be required by reason only of the death or vacation of office of the person to whom the grant was made or in whom it is vested as aforesaid:

Provided that nothing in this subsection shall affect any limitation contained in the grant or any power of the court to revoke the grant.

Amendment and saving

11. (1) Subject to subsections (2) and (3), the *Diplomatic and Consular Privileges Ordinance 1957 [*Ord. 53 of 1957*], which in this section is referred to as the “Ordinance”, is amended—

(a) in subsection 2(1) by deleting the definitions of “consular employee”, “consular office” and “consular officer”;

(b) by deleting Part IV;

(c) in section 8—

(i) by deleting the words “or consular officer or consular employee” appearing after the words “chief representative”; and

(ii) by deleting the words “or the consular staff thereof” appearing before the words “by such country”; and

(d) in paragraph 9(1)(a)—

(i) by deleting the words “or for the purposes of a consular office of such country or for the residence of a consular officer or consular employee of such country” appearing after the words “official staff”; and

*NOTE—The Diplomatic and Consular Privileges Ordinance 1957 [*Ord. 53 of 1957*] has since been repealed by the Diplomatic Privileges (Vienna Convention) (Amendment) Act 1999 [*Act A1064*]—see section 5 of Act A1064.

- (ii) by deleting the words “or consular” appearing after the word “diplomatic”.

(2) A State referred to under paragraph 5(*a*) or (*b*) of the Ordinance and which is not a member of the 1963 Convention shall continue to enjoy the privileges and immunities specified in sections 6 and 7 of the Ordinance.

(3) For the purpose of this Act, the privileges and immunities referred to under subsection (2) shall be deemed to have been privileges and immunities declared by the Yang di-Pertuan Agong under paragraph 4(*b*) notwithstanding—

- (*a*) any differences as to the nature and extent of such privileges and immunities and the privileges and immunities under the 1963 Convention; and
 - (*b*) whether or not there is in respect of that State a consular convention as referred to under paragraph 4(*b*).
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SCHEDULE

[Subsection 2(1)]

ARTICLES OF THE VIENNA CONVENTION ON CONSULAR
RELATIONS (1963) HAVING THE FORCE OF LAW IN MALAYSIA**ARTICLE 1***Definitions*

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

- (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;
- (b) “consular district” means the area assigned to a consular post for the exercise of consular functions;
- (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 employee” means any person employed in the administrative or technical service of 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, consular employees and members of the service staff;
- (h) “members of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;
- (j) “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;
- (k) “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 and any article of furniture intended for their protection or safekeeping.

ARTICLE 5

Consular functions

Consular function consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel; examining and stamping the ships' papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

ARTICLE 15

Temporary exercise of the functions of the head of a consular post

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.
2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.
3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

ARTICLE 17

Performance of diplomatic acts by consular officers

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

ARTICLE 27

Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances

1. In the event of the severance of consular relations between two States:
 - (a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
 - (b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
 - (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.
2. In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph 1(a) of this Article shall apply. In addition,
 - (a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the

premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or

- (b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs 1(b) and (c) of this Article shall apply.

CHAPTER II

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

SECTION I

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

ARTICLE 28

Facilities for the work of the consular post

The receiving State shall accord full facilities for the performance of the functions of the consular post.

ARTICLE 29

Use of national flag and coat-of-arms

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

ARTICLE 30

Accommodation

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

ARTICLE 31

Inviolability of the consular premises

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
3. Subject to paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.
4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

ARTICLE 32

Exemption from taxation of consular premises

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

ARTICLE 33

Inviolability of the consular archives and documents

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

ARTICLE 34*Freedom of movement*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

ARTICLE 35*Freedom of communication*

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. 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.

5. 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 be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases, paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

ARTICLE 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

- (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
- (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
- (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

ARTICLE 37

Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

- (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;
- (c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

ARTICLE 38

Communication with the authorities of the receiving State

In the exercise of their functions, consular officers may address:

- (a) the competent local authorities of their consular district;
- (b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

ARTICLE 39

Consular fees and charges

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.
2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

SECTION II

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

ARTICLE 40

Protection of consular officers

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

ARTICLE 41

Personal inviolability of consular officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.
2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 42

Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

ARTICLE 43

Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. Paragraph 1 of this Article shall not, however, apply in respect of a civil action either:
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

ARTICLE 44*Liability to give evidence*

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measures or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post 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. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

ARTICLE 45*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 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.
3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. 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 measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

ARTICLE 46*Exemption from registration of aliens and residence permits*

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. Paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

ARTICLE 47

Exemption from work permits

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

ARTICLE 48

Social security exemption

1. Subject to paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

ARTICLE 49*Exemption from taxation*

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to paragraph (b) of Article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to Article 32.

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

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

ARTICLE 50*Exemption from customs duties and inspection*

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

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilisation by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph 1(b) of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

ARTICLE 51

Estate of a member of the consular post or of a member of his family

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

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

ARTICLE 52

Exemption from personal services and contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 53

Beginning and end of consular privileges and immunities

- 1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention 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. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided 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 territory of 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 forming part of his household 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 case of armed conflict. In the case of the 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. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household 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 54

Obligations of third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa, if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

ARTICLE 55

Respect for the laws and regulations of the receiving State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. Paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

ARTICLE 56

Insurance against third party risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

ARTICLE 57

Special provisions concerning private gainful occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this Chapter 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 subparagraph (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.

CHAPTER III

REGIME RELATING TO HONORARY CONSULAR OFFICERS AND
CONSULAR POSTS HEADED BY SUCH OFFICERS**ARTICLE 58***General provisions relating to facilities, privileges and immunities*

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.
2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

ARTICLE 59*Protection of the consular premises*

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

ARTICLE 60*Exemption from taxation of consular premises*

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

ARTICLE 61

Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

ARTICLE 62

Exemption from customs duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

ARTICLE 63

Criminal proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 64

Protection of honorary consular officers

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

ARTICLE 65

Exemption from registration of aliens and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

ARTICLE 66*Exemption from taxation*

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

ARTICLE 67*Exemption from personal services and contributions*

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 68*Optional character of the institution of honorary consular officers*

Each State is free to decide whether it will appoint or receive honorary consular officers.

CHAPTER IV

GENERAL PROVISIONS

ARTICLE 69*Consular agents who are not heads of consular posts*

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular posts by the sending State.
2. The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

ARTICLE 70*Exercise of consular functions by diplomatic missions*

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.
3. In the exercise of consular functions a diplomatic mission may address:
 - (a) the local authorities of the consular district;
 - (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

ARTICLE 71

Nationals or permanent residents of the receiving State

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.
 2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.
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LAWS OF MALAYSIA

Act 595

**CONSULAR RELATIONS (VIENNA CONVENTION)
ACT 1999**

LIST OF AMENDMENTS

Amending law	Short title	In force from
	– NIL –	

LAWS OF MALAYSIA**Act 595****CONSULAR RELATIONS (VIENNA CONVENTION)
ACT 1999****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
	– NIL –	

