

Consular Agreement
Between
the Government of the People's Republic of China
And
the Government of Canada

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THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF CANADA, (hereinafter referred to as the "Contracting Parties"),

DESIRING to develop their consular relations in order to facilitate the protection of the rights and interests of their nations and nationals, and to promote the friendly relations and cooperation between the two countries,

HAVE DECIDED to conclude this Agreement and have agreed as follows:

Article 1

Definitions

For the purposes of this 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;
- (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
- (c) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (d) "national of the sending State" means an individual having the nationality of the sending State and, when applicable, a corporate body of the sending State;
- (e) "law" means

for the People's Republic of China:

all laws, administrative decrees and regulations having the effect of law of the State, provinces, autonomous regions, municipalities directly under the Central Government and other localities, and ordinances and subordinate legislation of the Hong Kong Special Administrative Region; and

for Canada:

all federal and provincial laws and regulations, and municipal by-laws.

Article 2

General Consular Functions

A consular officer shall be entitled to the performance of the following functions:

- (a) protecting and securing the rights and interests of the sending State and those of its nationals;
- (b) furthering the development of economic, trade, scientific, technological, cultural and educational relations between the sending State and receiving State and otherwise promoting their friendly relations and cooperation;
- (c) ascertaining by all lawful means conditions of the receiving State in the economic, trade, scientific, technological, cultural, educational and other fields, and reporting thereon to the government of the sending State; and
- (d) performing other consular functions authorized by the sending State which are not prohibited by the law of the receiving State or to which the receiving State does not object.

Article 3

Applications Pertaining to Nationality and Civil Registration

1. A consular officer shall be entitled to:
 - (a) receive applications pertaining to nationality;
 - (b) register nationals of the sending State;
 - (c) register births of nationals of the sending State.
2. The provisions of paragraph 1 of this Article shall not exempt the persons concerned from the obligation to observe the law of the receiving State.

Article 4

Issuance of Passports and Visas

1. A consular officer shall be entitled to:
 - (a) issue passports or other travel documents to nationals of the sending State and endorse or invalidate the said passports or documents;
 - (b) issue visas to persons who will go to or pass through the sending State and endorse or invalidate the said visas.
2. The passports and other travel documents issued by the authorities of the sending State coming into the possession of the authorities of the receiving State, other than those held for purely temporary purposes, shall be returned to the authorities of the sending State.

Article 5

Notarization and Authentication

1. A consular officer shall be entitled to:
 - (a) draw up documents of a person of any nationality for use in the sending State upon the request of that person;
 - (b) draw up documents of a national of the sending State for use outside the sending State upon the request of that national;
 - (c) translate documents into the official language(s) of the sending State or of the receiving State and certify that the translation is in conformity with the original;
 - (d) authenticate signatures and seals on documents issued by the competent authorities of the sending State or of the receiving State;
 - (e) carry out other notarial functions authorized by the sending State that are not contrary to the law of the receiving State.
2. When used in the receiving State, the documents drawn up, certified or authenticated by a consular officer in accordance with the law of the receiving State, shall have the same validity and effect as the documents drawn up, certified or authenticated by the competent authorities of the receiving State.

3. A consular officer shall be entitled to receive or take into temporary custody the certificates and documents of a national of the sending State provided that this is not incompatible with the law of the receiving State.

Article 6

Assistance to Nationals of the Sending State

1. A consular officer shall be entitled to:
 - (a) communicate and meet freely with nationals of the sending State in the consular district, and the receiving State shall neither restrict communication between nationals of the sending State and a consular post nor restrict their access to the consular post;
 - (b) ascertain living and work conditions of nationals of the sending State in the receiving State and provide them with necessary assistance;
 - (c) address the competent authorities of the receiving State to ascertain the whereabouts of a national of the sending State, and the said authorities shall do everything possible to provide the relevant information. The receiving State shall do everything possible to facilitate direct communications between consular officers and nationals of the sending State;
 - (d) receive and take into temporary custody money or valuables of a national of the sending State in accordance with the law of the receiving State.
2. A consular officer may represent a national of the sending State who is not present or for any other reason is unable to defend in time his rights and interests before the court or other competent authorities of the receiving State or arrange for him an appropriate representative in accordance with the law of the receiving State until he designates his own representative or is able to assume the defence of his rights and interests.

Article 7

Guardianship and Trusteeship

1. The competent authorities of the receiving State shall notify the consular post when a guardian or trustee is required for a national, including an underaged national, of the sending State in the consular district who has no capacity or limited capacity to act on his own behalf.

2. A consular officer shall be entitled to protect, to the extent permitted by the law of the receiving State, the rights and interests of a national, including an underaged national of the sending State who has no capacity or limited capacity to act on his own behalf and, when necessary, to recommend a person to be appointed as guardian or trustee to that national and supervise the activities pertaining to guardianship or trusteeship.

Article 8

Notification of Detention, Arrest and Visit

1. If a national of the sending State is detained, arrested or deprived of freedom by any other means in the consular district by the competent authorities of the receiving State, the said authorities shall notify the consular post of the matter without delay from the date of the detention, arrest or deprivation of freedom. If it is not possible to notify without delay the consular post of the sending State because of communication problems, the competent authorities of the receiving State shall provide notification as soon as possible. The said authorities shall inform the consular post of the reasons for which a national has been detained, arrested, or deprived of freedom by any other means.
2. A consular officer shall be entitled to visit a national of the sending State who is under detention, arrest or deprived of freedom in any other means to converse or communicate with him in the language of the sending State or the receiving State and to arrange for interpretation and legal assistance. The competent authorities of the receiving State shall make arrangements for a consular officer to visit the said national. This visit shall take place as soon as possible, but at the latest, shall not be refused after two days from the date on which the competent authorities have notified the consular post that the said national has been placed under any form of detention. Visits may be made on a recurring basis. No longer than one month shall be allowed to pass between visits requested by a consular officer.
3. A consular officer shall be allowed to provide to a national, to whom these provisions apply, parcels containing food, clothing, medicaments and reading and writing materials.
4. The competent authorities of the receiving State shall inform the above-mentioned national of the sending State of the provisions contained under paragraphs 1, 2, and 3 of this Article.

5. In the case of a trial or other legal proceedings against a national of the sending State in the receiving State, the appropriate authorities shall make available to the consular post information on the charges against that national. A consular officer shall be permitted to attend the trial or other legal proceedings.
6. In the case of a trial or other legal proceedings against a national of the sending State, the appropriate authorities of the receiving State shall make available adequate interpretation to that national when necessary.
7. A consular officer shall comply with the law of the receiving State in performing the functions provided for in this Article. Nevertheless, the application of the law of the receiving State shall not restrict the implementation of the rights provided for in this Article.

Article 9

Notification of Death

Upon learning of the death of a national of the sending State in the receiving State, the competent authorities of the receiving State shall so inform the consular post as soon as possible and provide upon the request of the consular post, a death certificate, or a copy of other documents, confirming the cause of death and its circumstances.

Article 10

Functions Concerning Estates

1. Whenever the appropriate local authorities of the receiving State learn of an estate resulting from the death in the receiving State of a national of the sending State who leaves in the receiving State no known heir or testamentary executor, they shall promptly so inform a consular post of the sending State.
2. Whenever the appropriate local authorities of the receiving State learn of an estate of a deceased, regardless of nationality, who has left in the receiving State an estate in which a national of the sending State residing outside the receiving State may have an interest under the will of the deceased or in accordance with the law of the receiving State, they shall promptly so inform a consular post of the sending State.

3. A consular officer is entitled to take appropriate measures to protect and conserve the estate left in the receiving State by a deceased national of the sending State. To this effect, a consular officer may approach the competent authorities of the receiving State with a view to protecting the interest of a national of the sending State who is not a permanent resident of the receiving State, unless that national is otherwise represented. A consular post may request the competent authorities of the receiving State to permit the presence of a consular officer at the inventorying and sealing and, in general, may also take an interest in the proceedings.
4. A consular officer is entitled to safeguard the interests of a national of the sending State who has, or claims to have, a right to property left in the receiving State by a deceased, irrespective of the latter's nationality, and if that national is not in the receiving State or does not have a representative there.
5. A consular officer is entitled to receive for transmission to a national of the sending State who is not a permanent resident of the receiving State any money or other property in the receiving State to which that national is entitled as a consequence of the death of another person, including shares in an estate, payment made pursuant to employee's compensation law, pension and social benefits in general and proceeds of insurance policies, unless the court, agency or person making distribution directs that transmission be effected in a different manner. The court, agency or person making distribution may require that a consular officer comply with conditions laid down with regard to:
 - (a) presenting a power of attorney or other authorization from that national;
 - (b) providing reasonable evidence of the receipt of such money or other property by that national; and
 - (c) returning the money or other property in the event the consular officer is unable to provide that evidence.
6. In exercising the rights provided by paragraphs 3 through 5 of this Article, a consular officer shall comply with the law of the receiving State. Nothing in this Article shall authorize a consular officer to act as an attorney-at-law.

Article 11

Transmitting Judicial Documents

A consular officer shall be entitled to transmit judicial and extra-judicial documents to the extent permitted by the law of the receiving State, subject to the operation of the existing agreements between the sending State and the receiving State.

Article 12

Facilitation of Travel

1. The Contracting Parties agree to facilitate travel between the two States of a person who may have a claim simultaneously to the nationality of the People's Republic of China and that of Canada. However, this does not imply that the People's Republic of China recognizes dual nationality. Exit formalities and documentation of that person shall be handled in accordance with the law of the State in which that person customarily resides. Entry formalities and documentation shall be handled in accordance with the law of the State of destination.
2. If judicial or administrative proceedings prevent a national of the sending State from leaving the receiving State within the period of validity of his visa and documentation, that national shall not lose his right to consular access and protection by the sending State. That national shall be permitted to leave the receiving State without having to obtain additional documentation from the receiving State other than exit documentation as required under the law of the receiving State.
3. A national of the sending State entering the receiving State with valid travel documents of the sending State will, during the period for which his status has been accorded on a limited basis by visa or lawful visa-free entry, be considered as a national of the sending State by the appropriate authorities of the receiving State with a view to ensuring consular access and protection by the sending State.

Article 13

Communication with the Authorities of the Receiving State

In the exercise of his functions, a consular officer may address the competent local authorities in his consular district and, when necessary, the competent central authorities of the receiving State to the extent permitted by the law and usage of the receiving State.

Article 14

Relations between this Agreement and other International Agreements

This Agreement is concluded in accordance with the Article 73 paragraph 2 of the Convention on Consular Relations, done at Vienna, April 24, 1963, and matters not expressly stipulated in it shall be handled in accordance with that Convention.

Article 15

Application of Territory

This Agreement shall apply as well to the Hong Kong Special Administrative Region of the People's Republic of China.

Article 16

Consultations

Both Contracting Parties agree to meet from time to time to discuss consular issues of common concern.

Article 17

Entry into Force and Termination

1. This Agreement shall enter into force after the expiration of thirty days following the date on which the Contracting Parties have notified each other through diplomatic channels that their procedures have been compiled with. ^(Note)
2. This Agreement may be terminated by either Contracting Party by giving written notice through diplomatic channels. Termination shall take effect six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Ottawa, on this 28th day of November 1997, in the Chinese, English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF
CHINA

Qian Qichen

FOR THE GOVERNMENT
OF CANADA

Lloyd Axworthy

Note: The Government of the People's Republic of China and the Government of Canada had respectively completed the procedures to effect the commencement in respect of this Agreement. This Agreement came into force on 11 March 1999.