

L.N. 26 of 2016

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

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

1. Commencement

This Order comes into operation on 6 April 2016.

2. Interpretation

In this Order—

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

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

- (1) It is declared that the provisions of the Host Country Agreement as specified in the Schedule have the force of law in Hong Kong and are, for that purpose, to be construed in accordance with subsections (2), (3) and (4).
- (2) In applying Article 1 of the Host Country Agreement—

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- (a) the reference to 1899 Convention is to be construed as meaning the Convention for the Pacific Settlement of International Disputes, done at The Hague on 29 July 1899;
 - (b) the reference to 1907 Convention is to be construed as meaning the Convention for the Pacific Settlement of International Disputes, done at The Hague on 18 October 1907.
 - (3) In applying Article 1, paragraph 2 of Article 2 and Articles 5, 6, 7, 8 and 9 of the Host Country Agreement, the reference to PCA is to be construed as meaning the Permanent Court of Arbitration.
 - (4) In applying paragraph 3 of Article 11 of the Host Country Agreement, the reference to safeguard is to be construed as including any safeguard that the Central People's Government authorizes the Government of the Hong Kong Special Administrative Region to apply.
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Schedule

[s. 3]

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

Article 1 Definitions

For the purposes of the Agreement:

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

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

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

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

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

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

Article 2 Legal Capacity

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

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Article 5 Privileges and Immunities of the PCA

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

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

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

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

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

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

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

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

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

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

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

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

Article 6 Privileges and Immunities of PCA Officials and Adjudicators

1. Officials of the PCA and PCA Adjudicators shall enjoy:
 - (a) immunity from legal process of every kind in respect of words spoken or written and acts performed by them in the course of the discharge of their duties even after they have ceased to exercise their functions in connection with the PCA, except in the event of legal proceedings arising from an accident caused by a vehicle belonging to or driven by them;
 - (b) inviolability for all papers and documents for the purpose of their communications with the PCA and in relation to PCA Proceedings or PCA Meetings;

- (c) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of other inter-governmental organizations;
- (d) exemption from taxation on any fees, salaries, and emoluments paid to them by or through the PCA for work completed in their official capacity;
- (e) immunity from national service obligations;
- (f) immunity from immigration restrictions and alien registration;
- (g) the same repatriation facilities in time of international crises as representatives of other inter-governmental organizations; and
- (h) the right to import free of duty their furniture and personal effects at the time of first taking up their post.

2. In addition to the privileges and immunities provided for in paragraph 1 of this Article, the Secretary-General of the PCA, the Deputy Secretary-General of the PCA and PCA Adjudicators shall enjoy immunity from personal arrest or detention and from seizure of their personal baggage.

3. Officials of the PCA and PCA Adjudicators who are either Chinese citizens or permanent residents of the People's Republic of China including permanent residents of the HKSAR shall only enjoy the privileges and immunities provided for by paragraph 1(a), (b) and (d) of this Article.

Article 7 Immunity of Local Personnel

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

arising from an accident caused by a vehicle belonging to or driven by them.

Article 8 Privileges and Immunities of Participants in Proceedings

1. Participants in Proceedings shall be accorded the following privileges, immunities and facilities that are necessary for the independent exercise of their functions, subject to the production of the document referred to in paragraph 2 of this Article:

- (a) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings or PCA Meetings, which immunity shall continue after they have ceased to exercise their functions in connection with the PCA, except in the event of legal proceedings arising from an accident caused by a vehicle belonging to or driven by them;
- (b) inviolability of all papers, documents in whatever form and materials relating to their participation in PCA Proceedings or PCA Meetings, which immunity shall continue after they have ceased to exercise their functions in connection with the PCA;
- (c) for purposes of their communications in relation to PCA Proceedings or PCA Meetings, the right to receive and send papers and documents in whatever form by duly identified couriers or in sealed bags;
- (d) exemption from immigration restrictions or alien registration when they travel for purposes of their participation in PCA Proceedings or PCA Meetings; and
- (e) the same repatriation facilities in time of international crises as representatives of other inter-governmental organizations.

2. A participant in Proceedings shall be provided by the PCA with a document certifying that his or her participation is required by the

PCA and specifying a time period during which such participation is necessary. This document shall be withdrawn prior to its expiry if the Participant's appearance in PCA Proceedings or PCA Meetings or his or her presence within the People's Republic of China, including the HKSAR, is no longer required.

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

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

Article 9 Acquisition and Waiver of Privileges and Immunities

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

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

3. Upon receipt of notification from parties to PCA Proceedings as to the appointment of a Participant in Proceedings, a certification of the status of such person shall be provided to the ... Government under the signature of an Official of the PCA. The authorities of the ... Government shall accord the privileges and immunities provided for in Article 8 upon production of this certification.
4. Whenever a determination is required as to whether a person enjoys status under this Agreement entitling him or her to privileges and immunities, or whether words or acts are connected to the discharge of that person's official duties, such determination shall be made by the competent authority in consultation with the Chinese Government.
5. The privileges and immunities provided for in Articles 6 to 8 of this Agreement are granted in the interests of the PCA and the good administration of justice, and not for the personal benefit of the individuals themselves. The competent authority has the right and the duty to waive the immunity in any case where, in the opinion of such authority, the immunity would impede the course of justice and can be waived without prejudice to the interests of the PCA or to any PCA Proceedings in connection with which those immunities are granted.
6. For the purposes of this Article, the competent authority shall be:
 - (a) in the case of PCA Adjudicators and Officials of the PCA (other than the Secretary-General), the Secretary-General;
 - (b) in the case of the Secretary-General, the Administrative Council of the PCA;
 - (c) in the case of Local Personnel, the Secretary-General;
 - (d) in the case of Participants in Proceedings representing or designated by a State which is a party to the relevant PCA Proceedings, that State; and

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

Schedule

L.N. 26 of 2016
B511

(e) in the case of other individuals appearing at the instance of a party to PCA Proceedings, the Secretary-General.

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Article 11 Security

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

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Kinnie WONG
Clerk to the Executive Council

COUNCIL CHAMBER

26 January 2016

Explanatory Note

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

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