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AGREEMENT ON CONSULAR RELATIONS

BETWEEN

THE PEOPLE'S REPUBLIC OF CHINA

AND

AUSTRALIA

THE PEOPLE'S REPUBLIC OF CHINA AND AUSTRALIA,

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

HAVE DECIDED to conclude the present Consular Agreement and have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement the following expressions shall have the meanings given to them below:

- (a) "national of the sending State" means any natural person having the nationality of the sending State, and, when applicable, also any juridical person of the sending State;
- (b) "vessel of the sending State" means any vessel sailing under the flag of the sending State pursuant to its law, excluding military vessels;
- (c) "aircraft of the sending State" means any aircraft registered in the sending State and bearing that State's registration marks, excluding military aircraft; and
- (d) "consular officer" means any person including the head of a consular post entrusted in that capacity with the exercise of consular functions.

Article 2

Notification to the receiving State of appointments, arrivals and departures

The ministry for foreign affairs of the receiving State or the appropriate authority designated by that ministry shall be notified in writing as soon as possible of:

- (a) the full name and rank of a member of a consular post, the date of his or her arrival and final departure or the termination of his or her functions, as well as any change of his or her status in the course of his or her service with the consular post;
- (b) the full name, nationality and date of arrival and final departure of a person belonging to the family of a member of a consular post forming part of his or her household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

- (c) the full name, nationality, function and the date of the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such; and
- (d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

Article 3

Facilities for the work of the consular post

1. The receiving State shall accord full facilities for the performance of the functions of the consular post.
2. The receiving State shall treat members of a consular post with due respect and take appropriate measures to ensure the smooth performance of functions by such members.

Article 4

Acquisition of consular premises and residences

1. To the extent permitted by the laws and regulations of the receiving State, the sending State or its representative shall have the right to:
 - (a) purchase, lease or acquire in any other way a building or a part of a building and the land ancillary thereto for use as the consular premises and the residences of the members of the consular post, excluding the residences of those members who are nationals or permanent residents of the receiving State; and
 - (b) to construct or improve buildings on the land acquired.
2. The receiving State shall facilitate the sending State in acquiring consular premises and, when necessary, in acquiring appropriate residences for members of the consular post.
3. In the exercise of the rights provided for in paragraph 1 of this Article, the sending State or its representative shall comply with the laws and regulations of the receiving State concerning land, construction and city planning.

Article 5

General consular functions

Consular functions include:

- (a) protecting and securing the rights and interests of the sending State and those of its nationals within the limits permitted by international law;

- (b) furthering the development of economic, trade, scientific and technological, cultural and educational relations between the sending State and the 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 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 6

Applications pertaining to nationality and civil registration

1. Consular functions pertaining to nationality and civil registration include:
 - (a) accepting applications relating to citizenship;
 - (b) registering nationals of the sending State;
 - (c) registering the births and deaths of the nationals of the sending State; and
 - (d) handling the procedures for the marriage between the nationals of the sending State and issuing appropriate documentation.
2. The provisions of paragraph 1 of this Article shall not exempt the persons concerned from the obligation to observe the laws and regulations of the receiving State.

Article 7

Issue of passports and visas

1. Consular functions pertaining to the issue of passports and visas include:
 - (a) issuing passports and other travel documents to the nationals of the sending State, and endorsing or invalidating the said passports or documents; and
 - (b) issuing visas to persons who are to travel to or through the sending State, and endorsing or invalidating 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 promptly to the authorities of the sending State.

Article 8
Notarisation and authentication

1. Consular functions pertaining to notarisation and authentication include:
 - (a) drawing up documents of a person of any nationality for use in the sending State upon the request of that person;
 - (b) drawing up documents of a national of the sending State for use outside the sending State upon the request of that national;
 - (c) translating documents into the official language of the sending State or of the receiving State and certifying that the translation is in conformity with the original;
 - (d) carrying out other notarial functions which are authorized by the sending State, and to which no objection is taken by the receiving State; and
 - (e) authenticating signatures and seals on documents issued by the authorities concerned of the sending State or of the receiving State.

2. When used in the receiving State, the documents drawn up, certified or authenticated by the consular post in accordance with the laws and regulations 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 laws and regulations of the receiving State.

Article 9
Transmission of judicial and extra-judicial documents

Consular functions include transmission of judicial and extra-judicial documents in accordance with international agreements in force between both Parties or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State.

Article 10
Consular protection and assistance

1. The 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 Australia. 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 the 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 or her visa and documentation, that national shall not lose his or her 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 shall, during the period for which his or her 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 11

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) consular officers shall be entitled to ascertain conditions in life and work of a national of the sending State in the receiving State and provide him or her with necessary assistance at all times;
- (c) consular officers shall be entitled to request the competent authorities of the receiving State to ascertain the whereabouts of a national of the sending State, and the competent authorities of the receiving State shall do everything reasonable in the circumstances to provide the relevant information;
- (d) consular officers shall be entitled to receive and take into temporary custody money or valuables of a national of the sending State in accordance with the laws and regulations of the receiving State;
- (e) the competent authorities of the receiving State shall within three days inform the consular post of the sending State if, within its consular district, a national of the sending State is arrested or committed to prison or to custody pending trial or is detained in any other manner, unless that person expressly requests that the consular post of the sending State should not be informed. The authorities of the receiving State shall inform the consular post of the

reasons for which a national has been arrested or committed to prison or to custody pending trial or 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 detained person concerned without delay of his or her rights under this sub-paragraph;

- (f) in the case of a trial or other legal proceeding 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;
- (g) 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; and
- (h) 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 or her, and to arrange for his or her legal representation. They shall also have the right to visit, to converse and correspond with any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Access to detained nationals of the sending State shall be guaranteed by the competent authorities of the receiving State to a consular officer of the sending State within two days of initial notification of arrest or detention as specified in paragraph 1(e) of this Article, and at least once a month thereafter. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he or she expressly opposes such action.

2. The rights and obligations referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, provided 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.

3. Where nationals of the sending State are unable, at the proper time, to assume the defence of their rights and interests because of absence or any other reason, consular officers may, in accordance with the laws and regulations of the receiving State, for the purpose of obtaining provisional measures for the preservation of the rights and interests of such nationals, represent or arrange appropriate representation for the nationals of the sending State before the tribunals or other competent authorities of the receiving State until such nationals appoint their own representation or they themselves are able to defend their own rights and interests.

Article 12
Information in cases of deaths

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty, 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 and provide upon the request of the consular post a death certificate or a copy of other documents certifying the death.

Article 13
Functions concerning estate

1. Whenever the appropriate local authorities of the receiving State learn that a deceased national of the sending State has left an estate in the receiving State and there is no heir or testamentary executor in the receiving State, the competent authorities of the receiving State shall promptly inform the consular post.
2. A consular officer shall be entitled to be present when an estate as referred to in paragraph 1 of this Article is being inventoried and sealed by the competent authorities of the receiving State.
3. If a national of the sending State as an heir or legatee is entitled to inherit or receive an estate or bequeathed gift of a deceased of any nationality in the receiving State and if the competent authorities of the receiving State become aware such a person is not in the territory of the receiving State, the competent authorities of the receiving State shall inform the consular post of any information which may come to their attention concerning such inheritance or reception of estate or bequeathed gift by the said person.
4. In case a national of the sending State has or claims to have a right to inherit an estate in the receiving State but neither he or she nor his or her representative is able to be present at the inheritance proceedings, a consular officer or his or her representative may represent the national before the court or other competent authorities of the receiving State.
5. A consular officer shall be entitled, on behalf of a national of the sending State who is not a permanent resident in the receiving State, to receive for transmission to that national any estate or bequeathed gift in the receiving State, which is due to that national.
6. If a national of the sending State who is not a permanent resident in the receiving State dies during a temporary stay in or transit through the receiving State, and if there is no relative or representative of his or hers in the receiving State, a consular officer shall be entitled to immediately take into provisional custody all the documents, money and personal effects which were with the deceased national for transmission to his or her heir, testamentary executor or other persons authorized to receive the assets.

7. A consular officer shall comply with the laws and regulations of the receiving State in performing his or her functions as referred to in paragraphs 4, 5 and 6 of this Article.

Article 14
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 or her own behalf.

2. A consular officer shall be entitled to protect, to the extent permitted by the laws and regulations 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 or her own behalf, and when necessary, to recommend or designate a guardian or trustee to the person concerned and supervise the activities pertaining to guardianship or trusteeship.

Article 15
Assistance to vessels of the sending state

1. A consular officer shall be entitled to render assistance, to vessels of the sending State which are in the inland or territorial waters of the receiving State, and to their master and crew members, and also:

- (a) to board a vessel when free access to shore has been granted to the vessel, question the master and any member of the crew and receive reports on the vessel, its cargo and voyage;
- (b) without prejudice to the powers of the authorities of the receiving State, to investigate any incident which occurred during the voyage;
- (c) to settle disputes between master and crew, including disputes about wages and service contracts insofar as this may be authorised by the laws and regulations of the sending State;
- (d) to receive visits from the master or any member of the crew, and, when necessary, make arrangements for his or her medical treatment or return home;
- (e) to receive, examine, draw up, sign or authenticate documents with regard to a vessel; and
- (f) to handle other matters relating to a vessel, which are entrusted by the competent authorities of the sending State.

2. The master and any member of the crew may contact a consular officer. They may go to the consular post on the premise of no contravention of the laws and regulations of the receiving State concerning the administration of ports and aliens.

Article 16

Protection in case of compulsory actions against a vessel of the sending State

1. In case the courts or other competent authorities of the receiving State intend to take compulsory actions, or start an official investigation with regard to a vessel or aboard a vessel of the sending State, those authorities shall notify the consular post in advance so as to enable a consular officer or his or her representative to be present when actions are taken. If the urgency of the matter prevents prior notification, the competent authorities of the receiving State shall notify the consular post immediately after the actions have been taken and promptly provide him or her with full particulars of the said actions, upon the request of a consular officer.

2. The provisions of paragraph 1 of this Article shall apply to similar actions taken on shore by the competent authorities of the receiving State against the master of a vessel or any member of the crew.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to any routine inspection carried out by the competent authorities of the receiving State in relation to customs, administration of ports, quarantine or border check, nor to measures taken by such authorities to ensure navigation safety on sea or the prevention of pollution of waters.

4. Except upon the request or with the consent of the master of a vessel of the sending State or of a consular officer, the competent authorities of the receiving State shall not interfere in the internal affairs of the vessel, when the peace, security and public order of the receiving State are not violated.

Article 17

Assistance to wrecked vessels of the sending State

1. If a vessel of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, the competent authorities of the receiving State shall inform without delay the consular post nearest to the scene of the occurrence of the measures taken for rescuing the persons aboard, the vessel and its cargo and other properties.

2. A consular officer shall be entitled to take measures, to the extent permitted by the laws and regulations of the receiving State, to render assistance to any wrecked vessel of the sending State and its crew and passengers and to request assistance from the authorities of the receiving State in this connection.

3. If a wrecked vessel of the sending State or its articles or cargo is found near the coast of, or is brought into a port of the receiving State and neither the master nor the

owner of the vessel, nor any agent of the vessel's company or its insurance company is present or is in a position to take measures for their preservation or disposal, the competent authorities of the receiving State shall inform the consular post as promptly as possible. A consular officer may take appropriate measures on behalf of the owner of the vessel.

4. A wrecked vessel of the sending State and its cargo and articles shall not be subjected to customs duties or other similar charges by the receiving State provided they are not delivered for sale or for use in the receiving State.

Article 18 Aircraft of the sending State

The provisions of this Agreement concerning vessels of the sending State shall apply to aircraft of the sending State provided that such application does not contravene the provisions of bilateral agreements in force between the sending State and the receiving State or multilateral agreements to which both States are signatories, as well as the provisions of any air service agreement signed between the Hong Kong Special Administrative Region of the People's Republic of China and Australia.

Article 19 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.
3. The receiving State shall permit a consular post to remit to the sending State the income from the fees and charges referred to in paragraph 1 of this Article.

Article 20 Relations with other international Agreements

1. The Parties expressly agree and acknowledge that this Agreement is made in accordance with Article 73(2) of the Convention on Consular Relations done at Vienna, 24 April 1963 and that the purpose of this Agreement is to confirm and amplify the provisions of the Vienna Convention on Consular Relations which remains in force as between them.
2. The Parties affirm the provisions of the Vienna Convention on Consular Relations done at Vienna, 24 April 1963, and agree that matters not explicitly raised in this Agreement shall be dealt with in accordance with that Convention.

3. Expressions in this Agreement shall, unless otherwise specified, have the same meaning as those given to them in the Vienna Convention on Consular Relations done at Vienna, 24 April 1963.

Article 21

Application of the Agreement to the Hong Kong Special Administrative Region

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

Article 22

Consultations

The Parties agree to meet for consultations not less than once each year to review the consular relationship, including any issues of concern to either Party. Either Party may also seek consultations on individual consular matters as required from time to time during any one year.

Article 23

Entry into force and duration

This Agreement shall take effect on the thirty-first day after an exchange of notes by which the two Parties notify each other of the completion of the procedures required by their national laws for giving effect to this Agreement, and shall remain in effect until termination by either Party on six (6) months notice in writing to the other Party.

DONE in duplicate at Canberra on the eighth day of September, 1999, in the Chinese and English languages, both texts being equally authentic.

FOR THE PEOPLE'S REPUBLIC
OF CHINA:

FOR AUSTRALIA: