

Volume II

Consular Functions Act

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CONSULAR FUNCTIONS ACT

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SCHEDULE

4 of 1981,

18 of 2006.

AN ACT to give effect to the Vienna convention on Consular relations; to provide a legal regime to govern the Consular functions carried out by diplomatic and Consular Officers of Sri Lanka in foreign countries and to govern the grant within Sri Lanka of immunities, privileges and functions to Consular Officers of foreign countries; and to provide for matters connected therewith or incidental thereto.

[Am by s 2 of Act 18 of 2006.]

[Date of Commencement: *11th February, 1981*]**1. Short title.**

This Act may be cited as the Consular Functions Act.

PART I

ESTABLISHMENT OF CONSULAR RELATIONS AND IDENTIFICATION OF CONSULAR FUNCTIONS.

[Ins by s 4 of Act 18 of 2006.]

2. Establishment of consular relations and authorisation office to perform consular functions.

(1) For the purposes of this Act, Consular relations shall be deemed to be established consequent to the establishment of diplomatic relations between two States. A Consular post may be established in the territory of the receiving State.

(2) Consequent to the establishment of Consular relations, Consular functions shall be exercised by a Consular Officer through a Consular post:

Provided that, Consular functions may also be exercised by diplomatic missions in accordance with the provisions of the Convention.

(3) Every Consular Officer is authorised to discharge within a foreign State to which he is accredited or appointed, any Consular function in accordance with the provisions of any written law, or any Consular functions as identified in terms of the Convention and which are set out in the Schedule, provided that the discharge of such function is not prohibited by the laws of such foreign State.

(4) The functions set out in sections 3, 4, 5, 6 and 7 of the principal enactment shall be exercised by the Consular Officers of a Consular post in addition to the functions set out in the Schedule.

(5) Every Consular post shall have its own Consular premises from which it shall discharge.

[S 2 subs by s 5 of Act 18 of 2006.]

2A. Performance of diplomatic acts by consular officers.

Where a sending State has no diplomatic mission and is not represented by the diplomatic mission of a third State, a Consular Officer may with the consent of the receiving State and without prejudice to his Consular status, be authorised to perform diplomatic acts:

Provided however, that the performance of such acts shall in no way confer upon such Consular Officer, the right to claim diplomatic privileges and immunities.

[S 2A ins by s 6 of Act 18 of 2006.]

3. Validation and translation of documents.

Upon the application of, a person who is a citizen of Sri Lanka, or any other person, a diplomatic or Consular Officer may—

- (i) certify, attest, authenticate or do any other such act to validate any document;
- (ii) translate any document from the Sinhala or Tamil language into any other language;
- (iii) translate any document from any other language into the Sinhala or Tamil language;
- (iv) certify the accuracy of a translation from the Sinhala or Tamil language into any other language; or
- (v) certify the accuracy of a translation from any other language to the Sinhala or Tamil language.

4. Administering of oath or affirmation and taking of affidavit.

(1) Every diplomatic or Consular Officer shall be deemed to be *ex officio* a Justice of the Peace for the Republic of Sri Lanka and accordingly may administer any oath or affirmation or take any affidavit and such oath or affirmation or such affidavit shall be deemed to have been administered or taken, as the case may be, in Sri Lanka.

(2) Any diplomatic or Consular Officer administering an oath or affirmation or taking an affidavit under the provisions of subsection (1) shall not be held responsible for the truth of the contents, or the accuracy, of any statement made under such oath or affirmation or recorded in such affidavit.

5. Solemnisation and registration of marriages.

(1) Every diplomatic or Consular Officer shall be deemed to be an Additional District Registrar for any district in Sri Lanka within the meaning of the Marriage Registration Ordinance and the Kandyan Marriage and Divorce Act and accordingly such diplomatic or Consular Officer may, notwithstanding the provisions of section 23 of that Ordinance and section 16 of that Act, solemnise and register, in the Sinhala, Tamil or English language, any marriage under that Ordinance or Act, as the case may be, in the foreign country to which he is appointed or accredited, where at least one of the parties to the marriage is a citizen of Sri Lanka, as though such marriage was solemnised and registered in any district in Sri Lanka.

(2) Notwithstanding the provisions of the Muslim Marriage and Divorce Act, other than the provisions of subsection (1) of section 8 of that Act relating to capacity, every diplomatic or Consular Officer shall be deemed to be a Registrar within the meaning of that Act, and accordingly such diplomatic or Consular Officer may register in the Sinhala, Tamil or English language, any marriage under that Act, in the foreign country to which he is appointed or accredited, Where at least one of the parties to the marriage is a citizen of Sri Lanka and whether the parties are inhabitants of Sri Lanka or not, as though such marriage were registered in any district in Sri Lanka.

(3) The provisions of the Marriage Registration Ordinance, the Kandyan Marriage and Divorce Act, and the Muslim Marriage and Divorce Act shall, *mutatis mutandis*, apply to and in relation to the solemnisation and registration, or registration as the case may be, of a marriage referred to in subsections (1) and (2).

(4) Every diplomatic or Consular Officer shall, in the performance of his functions under subsection (1), comply with the provisions of the Marriage Registration Ordinance, the Kandyan Marriage and Divorce Act and the Muslim Marriage and Divorce Act, as the case may be.

6. Proceedings on marriage being forbidden or caveat entered.

(1) Where a marriage is forbidden under section 29, or a caveat is entered under section 30, of the Marriage Registration Ordinance, the diplomatic or Consular Officer shall, notwithstanding the provisions of subsection (1) of section 31 of that Ordinance, refuse to issue a certificate for the solemnisation of the marriage intended to be had, and shall forthwith make report of the objection to the District Judge of the district of Colombo. Such report shall be in the form K in the First Schedule to the said Ordinance, and shall be accompanied by a copy of the notice of marriage and of the notice forbidding the marriage or of the caveat entered.

(2) The provisions of subsections (2), (3), (4) and (5) of section 31 of the Marriage Registration Ordinance shall, *mutatis mutandis*, apply to and in relation to any report made under subsection (1) of this section.

7. Registration of births and deaths.

(1) Every diplomatic or Consular Officer shall be deemed to be an Additional District Registrar for any district in Sri Lanka within the meaning of the Birth and Deaths Registration Act and accordingly such diplomatic or Consular Officer may register the birth or death of a citizen of Sri Lanka occurring in the foreign country to which he is appointed or accredited, as though such registration were made in Sri Lanka.

(2) The provisions of the Births and Deaths Registration Act shall, *mutatis mutandis*, apply to and in relation to the registration of any birth or death referred to in subsection (1).

(3) Every diplomatic or Consular Officer shall, in the performance of his functions under subsection (1), comply with the provisions of the Births and Deaths Registration Act.

PART II

IMMUNITIES, FACILITIES AND PRIVILEGES OF CAREER CONSULAR POSTS IN SRI LANKA

[Ins by s 7 of Act 18 of 2006.]

7A. Inviolability of consular premises.

(1) The receiving State shall accord full facilities for the performance of the functions of the Consular post in Sri Lanka.

(2) Consular premises from which a Consular post discharges its functions shall be inviolable as provided herein.

(3) The authorities of the receiving State shall not enter that part of the Consular premises that is used exclusively for the purpose of the work of the Consular post, otherwise than with the consent of the head of the Consular post of the sending State.

(4) The receiving State shall take appropriate steps to protect the Consular premises against any intrusion or damage and to prevent any disturbance of the Consular post.

7B. Exemption from taxation.

The residence of the Consular post of a sending State and the Consular premises of the sending State shall be exempt from all national taxation at whatever level:

Provided that such exemption shall not extend to the payment required to be made in respect of specific services rendered.

7C. Inviolability of consular archives.

The Consular archives of a Consular post shall be inviolable.

7D. Freedom of movement within receiving State.

The receiving State shall ensure freedom of movement and travel within its territory to all members of a Consular post:

Provided however that this freedom shall be subject to such restrictions, which may be imposed for reasons of national security.

7E. Freedom of communication.

(1) The receiving State shall ensure and protect the freedom of communication on the part of the Consular post for all its official purposes. The Consular post may employ appropriate means of communication for communicating in the discharge of its functions.

(2) The official correspondence of the Consular post relating to the discharge of the Consular functions of the Consular post, shall be inviolable.

(3) The Consular bag shall be neither opened nor detained and shall contain only official correspondence and documents or articles intended exclusively for official use: Provided that if there is a reasonable suspicion on the part of the relevant authorities of the receiving State that the bag contains something other than the aforesaid official correspondence, they may request that the bag be opened in their presence by an authorised representative of the sending State. If the request is refused the bag shall be forthwith be returned to its place of origin.

(4) The Consular courier entrusted with the transit of the Consular bag shall be provided with an official document indicating his status and the number of packages, which constitute the Consular bag:

Provided however a Consular post may send one of its members to take possession of the bag directly from the Captain of the ship or aircraft on which the same was brought.

7F. Right of officer to with national of sending State.

(1) A Consular Officer shall have the right of access to and to communicate freely with nationals of the sending State and likewise nationals of the sending State shall have the same access and freedom, to communicate with the Consular Officers of the sending State.

(2) The relevant authorities of the receiving State shall forthwith inform the Consular post of the sending state if a national of such State is arrested or committed to prison, or to custody pending trial or is in any manner detained:

Provided that in such cases the Consular Officers shall in conformity with the laws and regulations of the receiving State, have the right to visit such nationals, converse or correspond with representation for such nationals.

7G. Information to be communicated to the consular officer of a sending State.

It shall be the duty of the relevant authorities of the receiving State to communicate to the relevant Consular post—

- (a) the information relating to the death of a national of the sending State;
- (b) the necessity for the appointment of a guardian or trustee for a minor person or person of unsound mind who is a national of the sending State; or
- (c) information relating to any wreck or aircraft of the sending State.

7H. Communication with relevant authorities.

The Consular Officers of the sending State shall have the right to communicate with the relevant authorities of the receiving State on all matters relating to the exercise of their Consular functions, to the extent that it is permitted by the laws and regulations of the receiving state.

7J. Consular fees and charges.

The Consular post may levy for the discharge of its Consular functions within the territory of the receiving State, such fees and charges as are required in respect thereto. The amounts so levied as fees and charges shall be exempt from all dues and taxes of the receiving State.

7K. Inviolability of consular officers and freedom from arrest.

(1) All Consular Officers shall be treated with due respect at all times and Consular Officers shall not be liable to arrest or detention (other than for the commission of a grave crime and pursuant to a decision of a competent court) or any other form of restriction on their personal freedom.

(2) In the event of the arrest or detention of a Consular Officer for a grave crime as specified in subsection (1) the receiving State shall notify the head of the Consular post of such fact. If the person arrested, is the head of the Consular post himself, they shall notify the sending State of such fact through the means of the diplomatic channel.

(3) Consular Officers and Consular employees shall not in respect of acts performed in the exercise of their Consular functions, be subject to the jurisdiction of any Court or administrative authority of the receiving State:

Provided however, the provisions of subsection (3) shall not apply to civil proceedings instituted against a Consular Officer or a Consular employee—

- (a) in respect of any contract entered into by such officer otherwise than as an agent of the sending State; or
- (b) in respect of third party damage arising out of an accident in the receiving State.

(4) Except as otherwise provided for in subsection (1) of this section Consular Officers shall not be committed to prison or be liable to any other form of restriction on their personal freedom save in the execution of a judicial decision of a court of competent jurisdiction, having the effect of a final judgment.

(5) Where criminal proceedings are instituted against a Consular Officer, such officer shall appear before the competent authorities when summoned to do so:

Provided that any such proceedings shall be conducted with due respect to such officer in consideration of his official position and other than as provided for in subsection (1), and in such a manner as will not substantially hamper the exercise of Consular functions.

(6) Where pursuant to the circumstances set out in subsection (1) it becomes necessary to detain a Consular Officer, the receiving State shall ensure that any proceedings against such officer shall be instituted with the minimum of delay.

7L. Liability to give evidence.

Members of a Consular post may be called upon to attend as witnesses in judicial or administrative proceedings and any Consular Officer shall not decline to so give evidence, except in relation to any matter connected to the exercise of their official functions or where they are required to produce any official document or correspondence.

7M. Waiver of privileges and immunities.

The privileges and immunities provided for in subsections (1) and (3) of section 7k and section 7L may at any time be waived by the sending State in regard to a member of the Consular post, by the sending State forwarding a written communication to that effect to the receiving State.

7N. Exemptions.

(1) Consular Officers and Consular employees and members of their families shall be exempt from any obligation with regard to the registration of aliens and residence permits in the receiving State.

(2) Members of Consular posts and members of their families shall be exempt from social security requirements with respect to the services rendered by them for the sending State.

(3) Consular Officers and Consular employees and members of their families shall be exempt from all dues and taxes other than in the case—

- (a) indirect taxes;
- (b) dues on private immovable property situated in the receiving State;
- (c) succession or inheritance dues;
- (d) dues and taxes on private income;
- (e) charges levied on specific services;
- (f) registration fees, mortgage fees, stamp duties and court record fees.

(4) The receiving State may in accordance with its laws grant exemption from all customs duties, taxes and related charges other than charges for storage or similar services in respect of—

- (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 including articles for his establishment. The articles intended for consumption shall not exceed the quantities stipulated by any rules or regulations of the receiving State in relation thereto.

(5) The receiving State shall exempt members of the Consular post and members of their families from all personal services and military obligations or contributions.

(6) In the event of the death of a member of a Consular post or a member of his family, the receiving State shall permit the export of his movable property other than any articles that may be prohibited and shall not levy any duties on the transfers of movable property of the deceased.

PART III

IMMUNITIES, FACILITIES AND PRIVILEGES OF HONORARY CONSULAR POSTS IN SRI LANKA

[Ins by s 7 of Act 18 of 2006.]

7P. Protection of premises.

The receiving State shall protect the Consular premises from which a Consular post headed by a honorary Consular Officer discharges its functions.

7Q. Exemption from taxation.

The Consular premises of the sending State shall be exempt from all national taxation in respect of acts performed in the course of their Consular functions:

Provided that such exemption shall not extend to the payment required to be made in respect of specific services rendered.

7R. Inviolability of consular archives.

The Consular archives and documents of a honorary Consular post shall be inviolable.

7S. Exemption from customs duties.

The receiving State may in accordance with its laws grant exemption from all customs duties, taxes and related charges other than charges for storage or similar services supplied by or at the instance of the sending State for the official use of the honorary Consular post.

7T. Appearance at criminal proceedings.

Where proceedings are instituted against an honorary Consular Officer, he must appear before the competent authorities: however such proceedings must be conducted with due respect to his official position.

7U. Protection of honorary consular officers.

The receiving State shall accord all protection to an honorary Consular Officer as befits his position.

7V. Exemptions.

(1) Consular Officers and Consular employees and members of their families shall be exempt from any obligation with regard to the registration of aliens and residence permits in the receiving State.

(2) The receiving State shall exempt honorary Consular Officers from all personal services and military obligations or contributions.

(3) An honorary Consular Officer shall be exempt from all dues and taxes on the remuneration and emoluments if any, which he receives from the sending State for the performance of his Consular functions.

7W. Applicability of the provisions of sections 7D to 7J to this Pan.

The provisions of section 7D to 7J of Part II of this Act as are applicable to Career Consular Posts shall *mutatis mutandis* apply, to and in relation to Honorary Consular Posts.

PART IV**GENERAL**

[Ins by s 8 of Act 18 of 2006.]

8. Fees to be levied for performance of consular function.

The Minister may from time to time prescribe by Notification published in the *Gazette*, the fees to be levied by a diplomatic or Consular Officer for the performance of Consular functions specified in such Notification,

8A. Respect for the laws and regulations of the receiving State.

(1) Without prejudice to the privileges and immunities enjoyed by persons to whom the provisions of this Act applies, every such person shall respect the laws and regulations of the receiving State. They shall also have a duty not to interfere in the internal affairs of the receiving State.

(2) Consular premises shall not be used in any manner incompatible with the exercise of Consular functions.

[S 8A ins by s 9 of Act 18 of 2006.]

8B. Limited immunity where consular officers are nationals of receiving State.

Consular Officers who are nationals of, or are 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.

[S 8B ins by s 9 of Act 18 of 2006.]

9. Offences and penalties.

(1) Any person who fraudulently or by wilful act as omission knowingly misleads a diplomatic or Consular Officer to perform any Consular function shall be guilty of an offence and shall be liable, on conviction by the High Court, to imprisonment of either description for a term not exceeding five years, or to a fine not exceeding fifty thousand rupees or to both such imprisonment and fine.

(2) Any person who fraudulently alters the seal or signature of any diplomatic or Consular Officer shall be guilty of an offence and shall be liable, on conviction by the High Court, to imprisonment of either description for a term not exceeding five years.

(3) Any offence referred to in this section shall be deemed to be an extraditable offence within the meaning of section 6 of the Extradition Law, No. 8 of 1977.

10. Regulations.

(1) The Minister may make regulations in respect of:

- (a) matters required by this Act to be prescribed;
- (b) the procedure to be followed in making any application under this Act;
- (c) giving effect to the Consular functions set out in the Schedule hereto.

(2) Every regulation made by the Minister under sub section (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister under sub section (1) shall, as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done there under. Notification of the date on which a regulation is deemed to be rescinded shall be published in the *Gazette*.

11. Interpretation.

In this Act, unless the context otherwise requires—

"Consular archives" includes all 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;

[Ins by s 10 of Act 18 of 2006.]

"Consular functions" means any Consular function authorised by any written law, or any Consular function specified in the Schedule hereto and shall in addition include any function referred to in sections 3, 4, 5, 6 and 7 of this Act;

[Subs by s 10 of Act 18 of 2006.]

"Consular Officer" means any person, including the head of a Consular post, entrusted with the exercise of Consular functions;

[Subs by s 10 of Act 18 of 2006.]

"Consular post" means and consulate - general, consulate, vice-consulate, consulate agency or honorary consulate;

[Ins by s 10 of Act 18 of 2006.]

"Consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, which is used exclusively for the purposes of the Consular office.

[Ins by s 10 of Act 18 of 2006.]

"Diplomatic officer" means the head of a mission or a member of the diplomatic staff of such mission; and

"Document," means a commercial or shipping document and includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

SCHEDULE

ARTICLE V OF THE VIENNA CONVENTION ON CONSULAR RELATION OF 1963

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 relation between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the above-mentioned 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 person interested;
- (d) issuing passports and travel documents to nationals of the sending State and visas or appropriate documents to person 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 register 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 nations, 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 law 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 of 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 purposes 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 are unable at the proper time to assume the defence of their rights and interests.

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