

# Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996 No. 334

## EXPLANATORY STATEMENT

Statutory Rules 1996 No. 334

Issued by the Authority of the Minister for Foreign Affairs

*Overseas Missions (Privileges and Immunities) Act 1995*

Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations

Section 13 of the *Overseas Missions (Privileges and Immunities) Act 1995* (the Act) provides that "the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed".

It is necessary to make regulations under the Act which will declare the Hong Kong Economic and Trade Office (HKETO) to be a "designated overseas mission" in accordance with paragraph 4(1)(a) of the Act, and to confer upon the HKETO and persons associated with it limited privileges and immunities pursuant to sections 6 and 7 of the Act.

The HKETO, established in October 1995 in Sydney, is an overseas mission representing the selfgoverning entity of Hong Kong in Australia. The HKETO performs a liaison and representational function with regard to multilateral and bilateral trade and economic matters. As it does not represent a sovereign state the HKETO is not a diplomatic or consular mission. After 1 July 1997 when Hong Kong returns to Chinese sovereignty and becomes a Special Administrative Region of the Peoples Republic of China, it is anticipated that the HKETO will continue to represent Hong Kong's interests in Australia. A summary of the regulations has been endorsed by China through the Sino-British Joint Liaison Group.

Subsection 4(1) of the Act provides that before a mission becomes a "designated overseas mission" two conditions must be met:

- (a) it must be declared by regulation to be a designated overseas mission; and
- (b) there must be a written instrument in force signed by the Minister for Foreign Affairs which authorises the overseas mission to operate in certain capacities.

The second condition has been met and the instrument was published in the Gazette on 6 December 1996.

The proposed regulations also accord limited privileges and immunities upon the HKETO, its officers and employees similar to, although not as extensive as, those accorded to consular missions and officers in Australia under the Vienna Convention on Consular Relations 1963. The privileges and immunities are intended to facilitate the effective and unhindered performance of the functions of the HKETO in Australia. In particular, they provide that the official premises, property, documents and archives of the HKETO be inviolable and that the official premises be exempt from taxation imposed directly against it.

The proposed regulations provide the HKETO officers and employees with limited immunity from the civil and administrative jurisdiction of Australian courts in respect official acts. Furthermore, they provide that such persons be exempt from certain forms of taxation (not including indirect tax, such as sales tax) and be exempt from customs and excise duties on goods imported for official and personal use. The privileges and immunities would not however, extend to Australian citizens or permanent residents employed by the HKETO.

It is proposed that the majority of regulations would enter into force on Gazetta. The one exception is in respect of Commonwealth taxes. The Australian Taxation Office has advised that this limited retrospective application is necessary to avoid technical breaches by the HKETO of Commonwealth laws relating to taxation, which would otherwise arise because of a failure by the office in the HKETO to deduct income taxes from salaries paid to its Hong Kong staff since the opening of the office in Sydney in October 1995. The technical breaches would leave the HKETO open to prosecution under Australian taxation laws. Therefore to the extent that these regulations confer an exemption from an obligation to pay taxes to the Commonwealth, these Regulations will be taken to have effect on 1 October 1995. (The *Acts Interpretation Act 1901* does not prohibit retrospective application of regulations which do not adversely affect rights other than rights of the Commonwealth or Commonwealth authorities).