Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996

Statutory Rules No. 334, 1996

made under the

Overseas Missions (Privileges and Immunities) Act 1995

Compilation No. 2

Compilation date: 1 July 2015
Includes amendments up to: SLI No. 90, 2015
Registered: 19 August 2015

Prepared by the Office of Parliamentary Counsel, Canberra
About this compilation

This compilation

This is a compilation of the Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996 that shows the text of the law as amended and in force on 1 July 2015 (the compilation date).

This compilation was prepared on 10 August 2015.

The notes at the end of this compilation (the endnotes) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.
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Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996

Compilation No. 2 Compilation date: 1/7/15 Registered: 19/8/15
1 Name of Regulations

These Regulations are the Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996.

2 Interpretation

(1) In these Regulations:


authorised person means:
(a) the Minister administering Part XII of the Customs Act 1901; or
(b) a person authorised in writing by the Minister administering Part XII of the Customs Act 1901 for the purposes of these Regulations.

employee of the Mission means a person employed in the administrative or technical service of the Mission.

Head of Mission means the person in charge of the functions of the Mission.

member of the family or family member, in relation to a person (the first person), means a person who is:
(a) a part of the first person’s household; and
(b) any of the following members of the first person’s family:
   (i) the first person’s spouse;
   (ii) an unmarried child who is under the age of 21 years;
   (iii) an unmarried child who is under the age of 25 years and is undertaking full-time studies at an Australian educational institution;
   (iv) an unmarried child who is incapable of self-support because of a physical or mental disability.
Regulation 3

member of the Mission means:
(a) an officer of the Mission; or
(b) an employee of the Mission.

Mission means the Hong Kong Economic and Trade Office.

officer of the Mission means a person, including the Head of Mission, entrusted in that capacity with the exercise of the functions of the Mission.

taxable supply has the meaning given by section 195-1 of the GST Act.

tax invoice has the meaning given by section 29-70 of the GST Act.

(2) Unless the contrary intention appears, a reference to a person in relation to whom privileges and immunities are conferred by these Regulations is taken to be a reference to a person who:
(a) has been sent by the government of Hong Kong and is not engaged in employment other than by the Mission, or is a member of the family of such a person; and
(b) is not a permanent resident of Australia; and
(c) is not an Australian citizen.

3 Act to apply to the Mission

The Mission is declared to be a designated overseas mission.

4 Privileges and immunities of the Mission

(1) Subject to this regulation, the Mission has the privileges and immunities set out in items 1, 2, 4, 5, 6, 7, 8, 9, 10 and 12 in Schedule 1 to the Act.

(2) A privilege or immunity set out in Column 2 of an item in Schedule 1 to these Regulations is subject to the limitation or condition set out in Column 3 of that item.
(3) The Mission is not exempt under subregulation (1) from any dues and taxes that constitute payment for specific services in respect of:
(a) premises owned, leased or occupied by the Mission; or
(b) the residence of the Head of Mission.

5 Privileges and immunities of members of the Mission

(1) Subject to this regulation, a member of the Mission has the privileges and immunities set out in items 1, 2, 7 and 8 in Schedule 2 to the Act.

(2) A privilege or immunity set out in Column 2 of an item in Schedule 2 to these Regulations is subject to the limitation or condition set out in Column 3 of that item.

(3) A member of the Mission is not entitled to immunity from criminal jurisdiction.

6 Duties of customs and excise

(1) Subject to this regulation and regulation 8, the Mission and officers and employees of the Mission are exempt from duties of customs and excise on goods that are purchased for the official use of the Mission or for personal use by them or by members of their families.

(2) In the case of employees, the exemption applies only to goods imported or purchased by them within 6 months after their first arrival in Australia.

(3) The exemption does not apply unless:
(a) in the case of goods for official use—the Head of Mission; or
(b) in the case of goods for personal use—the person who had the benefit of the exemption;
enters an agreement with an authorised person:
(c) to notify an authorised person if the exemption is lost under subregulation 8(2); and
Regulation 7

(d) to pay an amount that an authorised person may determine and notify under that subregulation.

7 Sales tax

(1) Subject to this regulation and regulation 8, the Mission and officers and employees of the Mission are exempt from the obligation to pay sales tax on goods that are exempt from duties of customs or excise under regulation 6.

(2) The exemption does not apply unless:

(a) in the case of goods for official use—the Head of Mission; or
(b) in the case of goods for personal use—the person who had the benefit of the exemption;

to enter an agreement with an authorised person:

(c) to notify an authorised person if the exemption is lost under subregulation 8(2); and
(d) to pay an amount that the authorised person may determine and notify under that subregulation.

8 Loss of exemption—sales tax, customs duty and excise duty

(1) Regulations 6 and 7 do not apply in relation to goods if an authorised person, by instrument in writing, declares that, in his or her opinion, the reasonable requirements of the Mission or the person purchasing the goods have adequately been met by goods for which the Mission or the person has already had the benefit of an exemption claimed under those regulations.

(2) If goods for which an exemption has been claimed under regulation 6 or 7 are sold or disposed of within the period specified in subregulation (3):

(a) in the case of goods for official use—the Head of Mission; or
(b) in the case of goods for personal use—the person who had the benefit of the exemption;
must pay the Commonwealth an amount for duties or tax, as the case may be, that would have been payable, apart from the period of exemption before the sale or disposal, as determined and notified by an authorised person.

(3) The period referred to in subregulation (2) is:
   (a) in the case of a motor vehicle—3 years from:
       (i) the date of entry of the motor vehicle into Australia (if imported); or
       (ii) the date of purchase of the motor vehicle (if produced in Australia); and
   (b) in any other case—2 years from:
       (i) the date of entry of the goods into Australia (if imported); or
       (ii) the date of purchase of the goods (if produced in Australia).

(4) If a person fails to comply with the requirements of subregulation (2) or an agreement under subregulation 6(3) or 7(2), an authorised person may, by instrument in writing, determine that the person cannot claim any further exemption under regulation 6 or regulation 7 unless the person enters a similar agreement, for any other goods, that may include a condition that the person give security, satisfactory to an authorised person, that he or she will comply with the agreement.

9 Period of entitlement

(1) An entitlement to a privilege or immunity under these Regulations in respect of a matter that is not of an official nature commences on the date:
   (a) in the case of a member of the Mission—the member first arrived in Australia for service with the Mission; or
   (b) in the case of a member of the family of a member of the Mission:
Regulation 9A

(i) the member of the Mission first arrived in Australia for service with the Mission; or
(ii) the member of the family first arrived in Australia; or
(iii) the person became a member of the family;
whichever occurs last.

(2) An entitlement to a privilege or immunity under these Regulations in respect of a matter that is not of an official nature ceases on the date the member of the Mission:
(a) ceases to perform his or her official functions; or
(b) leaves Australia;
whichever occurs first.

9A Indirect tax concession scheme—acquisitions

(1) For paragraph 12A(1)(a) of the Act, the following acquisitions by a person mentioned in section 7 of the Act are covered by these Regulations:
(a) an acquisition of any of the following, on a single tax invoice for a taxable supply of at least $200 (including indirect tax):
   (i) goods (by purchase or lease);
   (ii) mail services for the Mission;
   (iii) telecommunications services;
   (iv) electricity or gas services;
   (v) protection of premises services;
   (vi) removal of goods services;
   (vii) freight and cartage other than removal of goods;
(b) an acquisition of goods that are freed from duties of excise by regulation 6;
(c) an acquisition of warehoused goods (within the meaning of the Customs Act 1901), the importation of which is covered by an immunity from taxation (including customs duties) conferred by these Regulations;

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Federal Register of Legislative Instruments F2015C00694
(d) an acquisition of any of the following, if the acquisition is subject to an arrangement between the Head of Mission and the Commonwealth for reimbursement of indirect tax:
   (i) construction or renovation services;
   (ii) real property;
   (iii) any other thing.

(2) However, subject to subregulations (3) and (5), an acquisition is covered by these Regulations only if, at the time of the acquisition, it was intended for the official use of the Mission.

(3) For paragraph 12A(1)(a) of the Act, the following acquisitions by an officer of the Mission (including the Head of the Mission) or a member of an officer’s family are covered by these Regulations:
   (a) an acquisition of any of the following, on a single tax invoice for a taxable supply of at least $200 (including indirect tax):
      (i) goods (by purchase or lease);
      (ii) removal of goods services;
   (b) an acquisition of goods that are freed from duties of excise by regulation 6;
   (c) an acquisition of warehoused goods (within the meaning of the Customs Act 1901), the importation of which is covered by an immunity from taxation (including customs duties) conferred by these Regulations.

(4) However:
   (a) an acquisition by an officer of the Mission or a member of an officer’s family is covered by these Regulations (under subregulation (3)) only if, at the time of the acquisition, it was intended for the personal use of the person, or of a member of the family of the person; and
   (b) an acquisition of a motor vehicle for the personal use of an officer of the Mission is covered by these Regulations only if:
      (i) the vehicle was acquired in exceptional circumstances to replace a motor vehicle for which the officer received:
         (A) a concession under section 12A of the Act; or
(B) an exemption from indirect tax under subsection 9(2) of the Act; or
(ii) within the previous 3 years, the officer has not received:
(A) a concession under section 12A of the Act for the acquisition of another motor vehicle; or
(B) an exemption from indirect tax under subsection 9(2) of the Act on the importation of another motor vehicle; and

(c) an acquisition of a motor vehicle for the personal use of a member of the family of an officer of the Mission is covered by these Regulations only if:
(i) the vehicle is acquired in exceptional circumstances to replace a motor vehicle for which a family member (except the officer) received:
(A) a concession under section 12A of the Act; or
(B) an exemption under subsection 9(2) of the Act; or

(ii) the family member is eligible to hold a driver’s licence that is valid in Australia and, within the previous 3 years, no family member (except the officer) has received:
(A) a concession under section 12A of the Act for the acquisition of another motor vehicle; or
(B) an exemption from indirect tax under subsection 9(2) of the Act on the importation of another motor vehicle.

(5) For paragraph 12A(1)(a) of the Act, the acquisition of a locally-manufactured motor vehicle by an employee of the Mission for the personal use of the employee is covered by these Regulations if:
(a) the vehicle is acquired within the first 6 months of the employee’s installation in Australia and the employee has not previously received:
(i) a concession under section 12A of the Act for the acquisition of another motor vehicle; or
(ii) an exemption from indirect tax under subsection 9(2) of the Act on the importation of another motor vehicle; or

(b) the vehicle is acquired in exceptional circumstances to replace a motor vehicle for which the employee has received:
   (i) a concession under section 12A of the Act; or
   (ii) an exemption from indirect tax under subsection 9(2) of the Act.

(6) In subparagraphs (4)(b)(i) and (c)(i), and paragraph (5)(b):

*exceptional circumstances*, in relation to the replacement of a motor vehicle, includes the original vehicle being stolen or damaged beyond repair.

Note: Section 12A of the Act establishes an indirect tax concession scheme that provides for reimbursement by the Commissioner of Taxation of indirect tax payable for acquisitions covered by these Regulations.

### 9B Indirect tax concession scheme—conditions

(1) For paragraph 12A(3)(a) of the Act, the amount mentioned in subsection 12A(1) of the Act is payable only if the following conditions are satisfied:

(a) the person who made the acquisition is subject to an agreement in writing between the Head of Mission and the Commonwealth to repay to the Commonwealth the amount worked out under subregulation (2) if:

   (i) for a payment in relation to an acquisition of a motor vehicle—the person disposes of the motor vehicle (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 3 years after it was acquired; or

   (ii) for a payment in relation to an acquisition of goods other than a motor vehicle—the person disposes of the goods (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 3 years after it was acquired; or

   (iii) for a payment in relation to an acquisition of goods other than a motor vehicle in the course of any business or trade other than trade in motor vehicles, the goods are exported from Australia or an external Territory within 3 years after the goods were acquired.
Regulation 9B

Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 2 years after they were acquired; or

(iii) for a payment in relation to an acquisition of services or any other acquisition (except for an acquisition covered by paragraph 9A(1)(d)—the person assigns the services to another person (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory;

(b) if the person has breached a previous agreement under paragraph (a)—the person complies with any written requirements, including a requirement to give security, that the Minister considers necessary to ensure that the person complies with the agreement.

(2) For subparagraphs (1)(a)(i) and (ii):

(a) a sale of goods to a finance company as part of a sale and lease-back arrangement is not a disposal of the goods; and

(b) a person (the first person) is taken to have disposed of goods to which 1 of those subparagraphs applies within the period mentioned in that subparagraph to a person who is not entitled to an indirect tax concession in relation to similar acquisitions if:

(i) the first person disposes of the goods to a person (the second person) who is entitled to the concession; and

(ii) the second person disposes of the goods to another person; and

(iii) the series of disposals of the goods to other persons continues (if necessary) until the goods are eventually acquired, within the period mentioned in that paragraph, by a person who is not entitled to the concession.

(3) For paragraph (1)(a), the amount to be repaid is:

(a) for an acquisition to which subparagraph (1)(a)(i) or (ii) applies—the proportion of the amount paid under section 12A
Regulation 9C

of the Act in relation to the acquisition that is equal to the proportion of the period mentioned in that subparagraph remaining after the person disposes of the goods; and
(b) for an acquisition to which subparagraph (1)(a)(iii) applies—the amount paid under section 12A of the Act in relation to the acquisition.

(4) However, for an acquisition to which subparagraph (1)(a)(i) or (ii) applies, a person is not required to repay an amount paid under section 12A of the Act in relation to a lease payment that relates to a period before the person disposes of the goods.

(5) The amount mentioned in section 12A of the Act is not payable if:
(a) an amount was payable for a similar acquisition; and
(b) the Minister tells the person in writing that, in his or her opinion, the person’s reasonable needs were met by that acquisition.

9C Indirect tax concession scheme—claims for payment

A claim for payment under regulation 9A:
(a) must be signed by, or for, the Head of Mission; and
(b) must be sent with the tax invoice for the acquisition; and
(c) must be sent:
   (i) for an acquisition of a motor vehicle—to the Protocol Branch of the Department of Foreign Affairs and Trade; or
   (ii) in any other case—to the Australian Taxation Office; and
(d) for an acquisition of a motor vehicle or an acquisition of real property by lease—may be sent at any time after the acquisition; and
(e) for an acquisition of a kind mentioned in paragraph 9A(1)(d), except an acquisition of real property by lease—may only be sent:
   (i) in accordance with the arrangement mentioned in that paragraph; or
Regulation 9D

(ii) if the arrangement does not specify a time when a claim may be sent:
   (A) with another claim; or
   (B) at least 3 months after another claim from the Mission is sent; and

(f) for an acquisition that is not mentioned in paragraph (d) or (e)—may only be sent:
   (i) with another claim; or
   (ii) at least 3 months after another claim from the Mission.

Note: Paragraphs 9C(e) and (f) are intended to limit the number of claims from the Mission to one in each quarter, to minimise delays in the processing of claims.

9D Indirect tax concession scheme—manner of payment

For paragraph 12A(3)(b) of the Act, the amount is to be paid to a single recipient, or an account, nominated by, or for, the Head of Mission.

10 Application of laws about quarantine, importation and exportation and public order

(1) Subject to subregulation (2), nothing in these Regulations affects the application of any law of the Commonwealth, a State or a Territory relating to:
   (a) quarantine; or
   (b) the prohibition or restriction of imports into, or exports from, Australia or an External Territory of any animals, plants or goods; or
   (c) public order.

(2) Subregulation (1) does not prejudice the immunity from suit or from other legal processes conferred by these Regulations.
11 Waiver

The government of Hong Kong may waive a privilege or immunity conferred by these Regulations.

12 Application

To the extent that these Regulations confer an exemption from an obligation to pay taxes to the Commonwealth, these Regulations are taken to have effect on 1 October 1995.

13 Delegation

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to a person, the Minister’s powers under paragraphs 9B(1)(b) and (5)(b) of these Regulations.

(2) A power delegated under subregulation (1), when exercised by the delegate, is taken to have been exercised by the Minister.

(3) A delegation of power under subregulation (1) does not prevent the exercise of the power by the Minister.

14 Transitional matters—amendments made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015*

(1) The amendments of these Regulations made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* do not affect the validity of any thing done by an authorised person under these Regulations before 1 July 2015.

(2) An authorisation in force under paragraph (b) of the definition of* authorised person* in subregulation 2(1) immediately before 1 July 2015 continues in force on and after that day as if it were an authorisation by the Minister administering Part XII of the *Customs Act 1901*.
Schedule 1—Limitations and conditions—the Mission

(regulation 4)

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<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
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<tbody>
<tr>
<td>Item</td>
<td>Item in</td>
<td>Limitations or conditions</td>
</tr>
<tr>
<td></td>
<td>Schedule 1 to the Act</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Inviolability of premises is limited to the extent that local authorities cannot enter the official premises of the Mission except: (a) with the consent of the Head of Mission; or (b) in cases of emergency.</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>Inviolability of property and assets is limited to the extent that the property and assets of the official premises of the Mission (including furnishings and means of transport) will not be requisitioned for purposes of national defence or public utility.</td>
</tr>
<tr>
<td>3</td>
<td>7</td>
<td>The privileges and immunities relating to a courier are not conferred.</td>
</tr>
<tr>
<td>4</td>
<td>9</td>
<td>Exemption from taxation is limited to premises used exclusively for the purposes of the Mission.</td>
</tr>
<tr>
<td></td>
<td>12</td>
<td>Exemption from taxation of articles does not apply in relation to: (b) duties on transfers levied in Australia; (c) registration, court or record fees, mortgage dues and stamp duties (other than stamp duty payable in respect of the lease or purchase of the official premises of the Mission or the private residence of the Head of Mission).</td>
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## Schedule 2—Limitations and conditions—members of the Mission

(Regulation 5)

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<th>Column 1 Item</th>
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<th>Column 3 Limitations or conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Only the private residence of the Head of Mission is inviolable.</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>Exemption from taxation does not apply in relation to: (b) dues or taxes on private immovable property situated in Australia (except the official premises of the Mission and the residence of the Head of Mission); (c) estate, succession or inheritance duties, and duties on transfers levied in Australia; (d) dues and taxes on private income, including capital gains, having its source in Australia; (e) capital taxes relating to investments made in commercial or financial undertakings in Australia; (f) charges levied for specific services rendered; (g) registration, court or record fees, mortgage dues and stamp duties except where they apply to the official premises of the Mission or the Head of Mission’s residence.</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>Members of the Mission who employ persons whose wages or salaries are subject to income tax in Australia must comply with the laws of Australia relating to income tax.</td>
</tr>
<tr>
<td>4</td>
<td>7</td>
<td>Immunity from civil and administrative jurisdiction is conferred only in relation to acts performed in the exercise of official functions, and not in relation to civil action: (a) arising out of private contractual matters; or (b) by a third party for damages arising in Australia.</td>
</tr>
</tbody>
</table>
## Schedule 2  Limitations and conditions—members of the Mission

<table>
<thead>
<tr>
<th>Column 1 Item</th>
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<tr>
<td>5</td>
<td>8</td>
<td>The exemption from obligations to give evidence in judicial or administrative proceedings is limited to evidence by members of the Mission: (a) of matters connected with the exercise of their official functions; or (b) requiring production of official documents; or (c) as expert witnesses of the law of Hong Kong.</td>
</tr>
</tbody>
</table>

16  
*Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations*  
1996

Compilation No. 2  
Compilation date: 1/7/15  
Registered: 19/8/15
Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.
Endnote 3—Legislation history

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<th>Application, saving and transitional provisions</th>
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<td>31 July 2000</td>
<td>1 July 2000 (r 2)</td>
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<td>90, 2015</td>
<td>19 June 2015 (F2015L00854)</td>
<td>Sch 2 (items 119, 120): 1 July 2015 (s 2(1) item 2)</td>
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Endnote 4—Amendment history

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<tr>
<td>r 1</td>
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<td>r 2</td>
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<tr>
<td>r 14</td>
<td>ad No 90, 2015</td>
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Schedule 1

Schedule 1 ................................ ad No 202, 2000

Schedule 2

Schedule 2 ................................ ad No 202, 2000