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**Paper for the House Committee meeting on 29 April 2016**

**Report of the Subcommittee on  
International Organizations (Privileges and Immunities)  
(ASEAN+3 Macroeconomic Research Office) Order**

**Purpose**

This paper reports on the deliberations of the Subcommittee on International Organizations (Privileges and Immunities) (ASEAN+3 Macroeconomic Research Office) Order ("the Subcommittee").

**Background**

Hong Kong's participation in the Chiang Mai Initiative Multilateralisation

2. The Chiang Mai Initiative Multilateralisation ("CMIM") is a regional joint-defence mechanism that provides short-term US dollar liquidity support through currency swap transactions to its participants when facing balance of payments and liquidity difficulties. With the support of the Central People's Government, Hong Kong, using the name "Hong Kong, China", has been participating in CMIM since its establishment in March 2010 under the aegis of ASEAN+3<sup>1</sup>. According to the Administration, it is of strategic importance for Hong Kong to participate in CMIM which seeks to maintain financial stability and help contain any possible financial contagion in the region. Hong Kong has undertaken to commit US\$8.4 billion (or 3.5% of the current total CMIM size of US\$240 billion) through the Exchange Fund, and is entitled to borrow up to US\$6.3 billion<sup>2</sup>. The commitment is callable upon activation of a currency swap

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<sup>1</sup> The participating economies of CMIM comprise 10 ASEAN member states (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam), as well as the People's Republic of China, Japan and the Republic of Korea, and Hong Kong.

<sup>2</sup> Hong Kong's commitment was US\$4.2 billion when it participated in CMIM in March 2010. The commitment was increased to US\$8.4 billion in May 2012 with the increase in the total size of CMIM from US\$120 billion to US\$240 billion. The amount that Hong Kong is entitled to borrow also increased from US\$2.1 billion to US\$6.3 billion.

transaction under CMIM. So far, there has been no request to activate the emergency liquidity facility of CMIM.

### Establishment of the ASEAN+3 Macroeconomic Research Office

3. Under CMIM Agreement, the participating parties have agreed to establish the ASEAN+3 Macroeconomic Research Office ("AMRO") as a surveillance unit to support the implementation of CMIM and monitor the macroeconomic status and financial soundness of all CMIM participants. AMRO was set up in Singapore in 2011 as a company limited by guarantee. In order for AMRO to function effectively as an independent macroeconomic surveillance unit for the region, Hong Kong and other CMIM participants signed the AMRO Agreement on 10 October 2014 which provides for, among other things, the establishment of AMRO as an international organization. Under the AMRO Agreement, each member of AMRO, including Hong Kong, has agreed to recognize AMRO's legal status, as well as implement certain provisions relating to privileges and immunities on AMRO and its personnel, pursuant to the AMRO Agreement, in its respective jurisdiction.

### **The International Organizations (Privileges and Immunities) (ASEAN+3 Macroeconomic Research Office) Order ("the Order")**

4. The Order was published in the Gazette on 19 February 2016. The Order, which was made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) ("IO(P&I)O"), declares the legal status of AMRO in the Hong Kong Special Administrative Region ("HKSAR"), and implements the privileges and immunities as provided under the AMRO Agreement in Hong Kong's legal framework.

5. The Order was tabled before the Legislative Council at its meeting of 24 February 2016 and was subject to the negative vetting procedure. Under section 1 of the Order, the Order came into operation on 27 April 2016.

### **The Subcommittee**

6. At the House Committee meeting held on 26 February 2016, Members agreed that a subcommittee should be formed to scrutinize the Order. The membership list of the Subcommittee is in **Appendix I**.

7. Under the chairmanship of Hon Cyd HO, the Subcommittee has held two meetings, one of which was with the Administration.

8. To allow more time for the Subcommittee to scrutinize the Order and prepare its report for the House Committee, the Chairman of the House Committee was to move a motion at the Council meeting of 16 March 2016 to extend the scrutiny period of the Order to the Council meeting of 13 April 2016. However, the motion was not dealt with at the Council meeting of 16 March 2016, and the period for amending the Order also expired on 16 March 2016.

### **Deliberations of the Subcommittee**

9. The Subcommittee does not object to the Order. The major deliberations of the Subcommittee are set out in the ensuing paragraphs. The Subcommittee has also invited the business and social science faculties of universities in Hong Kong for their written views on the Order. The organization which has submitted views to the Subcommittee is referred to in **Appendix II**.

### Hong Kong's participation in the Chiang Mai Initiative Multilateralisation

10. Members have enquired about the mechanism and legal basis for Hong Kong to participate in CMIM. The Administration has advised that the commitment is made via the Exchange Fund under the endorsement of the Financial Secretary and in accordance with section 3(1A) of the Exchange Fund Ordinance (Cap. 66), which empowers the Financial Secretary to, with a view to maintaining Hong Kong as an international financial centre, use the Fund as he thinks fit to maintain the stability and integrity of the monetary and financial systems of Hong Kong.

### Immunity from legal process

11. The Subcommittee has expressed concern whether AMRO and its personnel could disregard the law or lawful directions of the enforcement agencies upon the commencement of the Order.

12. The Administration has advised that in view of the status of an international organization, it is necessary to accord appropriate privileges and immunities to the organization so that it could carry out its duties effectively, without the fear of intervention from the local governments or any parties.

13. The Administration has further advised that according to Articles 18 and 19 of the AMRO Agreement, which are specified in the Schedule to the Order, AMRO shall enjoy immunity from legal process and AMRO personnel shall be immune from legal process with respect to words spoken and written and acts performed by them in their official capacity. However, relevant international conventions place an obligation on international organizations and their representatives, without prejudice to their privileges and immunities, to respect

local laws and regulations. For instance, Article 21(4) of the AMRO Agreement provides that "AMRO shall cooperate at all times with the appropriate authorities of members to facilitate the proper administration of justice, secure the observance of police regulations, respect and comply with local laws and prevent the occurrence of any abuse in connection with the privileges and immunities provided under this Agreement".

#### Notifications about AMRO staff travelling to Hong Kong

14. The Subcommittee notes that AMRO and its staff are based in Singapore and it does not plan to set up any office in Hong Kong. As one of the functions of AMRO is to monitor, assess and report to its members on their macroeconomic status and financial soundness, AMRO personnel may conduct annual consultation visits to its members. Members have enquired whether the Administration would be aware of AMRO personnel traveling to Hong Kong.

15. The Administration has advised that by virtue of Article 21(1) of the AMRO Agreement, the privileges and immunities as specified in the Order are granted to AMRO personnel in the interest of AMRO, i.e. when they act in their official capacities, and not for the personal benefit of such individuals. While there is no marking or label to identify the AMRO personnel in their passports, it has been the usual practice for AMRO to inform the relevant authorities in advance about the visits of AMRO personnel to Hong Kong if they see the need to exercise such privileges and immunities as appropriate. However, even if AMRO has not informed the relevant authorities about the visits of its personnel, they could still claim privileges and immunities for their stay in Hong Kong as appropriate provided that they are acting in their official capacities. Relevant competent authorities would handle cases relating to AMRO or its personnel's entitlement to the privileges and immunities according to the established procedures.

#### Drafting approach to the Order

16. Some members have expressed concerns that it might cause difficulty for the court to interpret the provisions in the Schedule to the Order, being the original provisions of an international agreement, as the terms in these provisions might be foreign to Hong Kong's legislation drafting styles and practices. The Chairman has enquired about the drafting approach adopted by the Administration in making an order pursuant IO(P&I)O, i.e. specifying the relevant provisions of an international agreement in the schedule to an order so that they have the force of law in Hong Kong.

17. The Administration has advised that, in line with the established practice, it is necessary to give effect by local legislation the provisions of the international agreements which confer privileges and immunities on

international organizations and their personnel. Under section 3 of IO(P&I)O, the Chief Executive in Council may, by order in the Gazette, declare that the relevant provisions relating to the status, privileges and immunities of an international organization and its personnel as prescribed in a relevant international agreement, and which are specified in the order, have the force of law in Hong Kong. Since IO(P&I)O was enacted in 2000, a total of 10 orders, including the Order, have been made by the Chief Executive in Council. If there is any argument on the claims in relation to privileges and immunities under the Order in Hong Kong, such cases could be referred to the Court for adjudication. According to the Administration, it is not aware of any case law relating to the orders made under IO(P&I)O.

### Hong Kong's role in granting privileges and immunities to international organizations

18. In reply to members' enquiries about the role of Hong Kong in granting privileges and immunities to international organizations and its personnel, the Administration has advised that such matters fall within foreign affairs of HKSAR. According to Article 13 of the Basic Law, the Central People's Government shall be responsible for the foreign affairs relating to HKSAR. The Administration has an obligation to implement international agreements, including the provision of the privileges and immunities under the AMRO Agreement. In case that there are questions on the implementation of privileges and immunities under international agreements, clarifications could be sought from the Central People's Government as appropriate.

### **Recommendation**

19. The Subcommittee has no objection to the Order and will not propose any amendment.

### **Advice sought**

20. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on  
International Organizations (Privileges and Immunities)  
(ASEAN+3 Macroeconomic Research Office) Order**

**Membership list**

<b>Chairman</b>	Hon Cyd HO Sau-lan, JP
<b>Members</b>	Hon LEE Cheuk-yan Hon Alan LEONG Kah-kit, SC Dr Hon Kenneth CHAN Ka-lok Hon Dennis KWOK  (Total : 5 members)
<b>Clerk</b>	Anthony CHU
<b>Legal adviser</b>	Miss Joyce CHAN

**Subcommittee on  
International Organizations (Privileges and Immunities)  
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**List of organization which has given views to the Subcommittee**

1. Department of Asian and International Studies, City University of Hong Kong