

立法會
Legislative Council

LC Paper No. CB(4)969/15-16
(These minutes have been
seen by the Administration)

Ref : CB4/SS/2/15

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

Minutes of the meeting held on
Thursday, 24 March 2016, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Cyd HO Sau-lan, JP (Chairman)
Hon LEE Cheuk-yan
Hon Alan LEONG Kah-kit, SC
Dr Hon Kenneth CHAN Ka-lok
Hon Dennis KWOK

Attendance by invitation : **Agenda item I**

Financial Services and the Treasury Bureau

Mr Jackie LIU
Principal Assistant Secretary (Financial Services)

Mr Henry YIM
Assistant Secretary (Financial Services)

Hong Kong Monetary Authority

Mr Clement LAU
Head (External)

Ms Linda TSE
Senior Manager (External)

Department of Justice

Ms Melody HUI
Senior Government Counsel (Treaties and Law)

Miss Emma WONG
Senior Government Counsel

Clerk in attendance : Mr Anthony CHU
Chief Council Secretary (4)1

Staff in attendance : Miss Joyce CHAN
Assistant Legal Adviser 1

Ms Wendy JAN
Senior Council Secretary (4)7

Ms Prima LAI
Legislative Assistant (4)1

Action

I. Meeting with Administration

- | | | |
|---------------------------------|----|--|
| (File Ref: G10/34/9C | -- | Legislative Council Brief |
| L.N. 35 of 2016 | -- | International Organizations
(Privileges and Immunities)
(ASEAN+3 Macroeconomic
Research Office) Order |
| LC Paper No. LS36/15-16 | -- | Legal Service Division Report |
| LC Paper No. CB(4)720/15-16(02) | -- | Background brief prepared by the
Legislative Council Secretariat |
| LC Paper No. CB(4)769/15-16(01) | -- | List of follow-up actions arising
from the discussion at the first
meeting on 16 March 2016 |
| LC Paper No. CB(4)769/15-16(02) | -- | Administration's response to
issues raised at the first meeting
on 16 March 2016 |

LC Paper No. CB(4)777/15-16(01) -- Submission from the City University of Hong Kong

The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions arising from the discussion

2. The Administration was requested to provide further information as follows:
 - (a) background information on Hong Kong's participation in Chiang Mai Initiative Multilateralisation ("CMIM"), including the legal basis for the Administration to participate in CMIM and agree to increase Hong Kong's share of financial contributions, and the activation procedures under CMIM;
 - (b) referring to paragraph 10 of the submission from the City University of Hong Kong regarding the recruitment of staff in Hong Kong for the ASEAN+3 Macroeconomic Research Office ("AMRO"), whether AMRO was recruiting a deputy director who would be based in Hong Kong and commence duties in June 2016, and if yes, details of the AMRO's office in Hong Kong;
 - (c) whether the passports of the personnel of AMRO bore any markings or labels showing that they were staff of AMRO personnel in order that they could be granted immunities from immigration restrictions and use of special travelling facilities;
 - (d) whether there had been any disputes relating to the orders made under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) which had been brought to court for adjudication, and if yes, details of such cases;
 - (e) the steps leading to the implementation of international agreements relating to the privileges and immunities granted to international organizations and their personnel pursuant to Cap. 558, including interactions with the Central People's Government, under Hong Kong's legal framework; and
 - (f) the Administration's approach in implementing international agreements which applied to Hong Kong in local legislation in relation to the privileges and immunities of international organizations and their personnel granted pursuant to Cap. 558.

(Post-meeting note: Administration's supplementary information was circulated to members vide LC Paper No. CB(4)876/15-16(02) on 15 April 2016.)

Completion of the scrutiny

3. The Subcommittee completed the scrutiny of the above Order and would not propose any amendment to the Order.

4. Members noted that the motion to extend the scrutiny period of the above Order could not be dealt with at the Council meeting of 16 March 2016 owing to the heavy agenda for the meeting. As such, the scrutiny period of the Order had expired at the same meeting.

(Post-meeting note: The Subcommittee Chairman reported the Subcommittee's deliberations to the House Committee on 29 April 2016.)

II. Any other business

5. There being no other business, the meeting ended at 6:21 pm.

Council Business Division 4
Legislative Council Secretariat
10 May 2016

**Proceedings of the second meeting of the
Subcommittee on International Organizations (Privileges and Immunities)
(ASEAN+3 Macroeconomic Research Office) Order
on Thursday, 24 March 2016, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
Agenda item I - Meeting with the Administration			
000108 - 000334	Chairman Clerk	Opening remarks Members noted that the Subcommittee had invited social science and business faculties of seven local universities/institutions to give written views on the International Organizations (Privileges and Immunities) (ASEAN+3 Macroeconomic Research Office) Order ("the Order"). Only one written submission from the Department of Asian and International Studies of the City University of Hong Kong was received (LC Paper No. CB(4)777/15-16(01)).	
000335 - 001225	Chairman Administration	Briefing by the Administration on the Order and its response to issues raised by members at the meeting on 16 March 2016 (LC Paper No. CB(4)769/15-16(02)).	
001226 - 001315	Chairman Administration	The Chairman's enquiry on the involvement of the Hong Kong Monetary Authority ("HKMA") in monitoring the operation of ASEAN+3 Macroeconomic Research Office ("AMRO"). The Administration advised that AMRO was governed by its Executive Committee ("EC") comprising Deputy Finance Ministers and Deputy Central Bank Governors of its members, which included a Deputy Chief Executive of HKMA.	
001316 - 001833	Chairman Mr Dennis KWOK Administration	Mr KWOK's enquiries about- (a) the number of personnel of AMRO and whether any of them was from Hong Kong; and (b) future participation of Hong Kong in the economic and financial affairs of East Asia. The Administration advised that- (a) the head office of AMRO was set up in	

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		<p>Singapore in 2011 and it currently had more than 40 staff members;</p> <p>(b) there was currently no personnel in AMRO who was from Hong Kong and AMRO did not plan to set up any office in Hong Kong;</p> <p>(c) AMRO personnel would travel to its member economies, including Hong Kong, each year to carry out consultation visits; and</p> <p>(d) HKMA would continue to actively participate in the discussions with other ASEAN+3 members on the economic and financial affairs of East Asia under the Chiang Mai Initiative Multilateralisation (“CMIM”) framework.</p>	
001834 - 003426	Chairman Dr Kenneth CHAN Ka-lok Administration	<p>Dr CHAN's concerns about-</p> <p>(a) the practical operation of granting privileges and immunities to AMRO personnel under the Order; and</p> <p>(b) how the Administration would determine whether an AMRO personnel was carrying out official duties in Hong Kong when he/she claimed the privileges and immunities under the Order.</p> <p>The Administration advised that-</p> <p>(a) it was the common practice of AMRO to inform the Government in advance about its personnel's plans to visit Hong Kong for consultations; and</p> <p>(b) under the Order, AMRO personnel would only be granted privileges and immunities if they were performing official duties in Hong Kong. If in doubt, the Administration would clarify with the AMRO head office on official capacities of the AMRO personnel.</p> <p>The Administration was requested to provide information on-</p> <p>(a) whether AMRO was recruiting a deputy director who would be based in Hong Kong and commence duties in June 2016 as stated in paragraph 10 of the submission from the City University of Hong Kong, if yes, details of the AMRO's office in Hong Kong; and</p> <p>(b) whether the passports of the personnel of AMRO bore any markings or labels</p>	Admin

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		<p>showing that they were AMRO personnel in order that they could be granted relevant privileges or immunities in terms of immigration and travelling facilities.</p>	
003427 - 004722	Chairman Mr LEE Cheuk-yan Administration	<p>Mr LEE's concerns whether-</p> <ul style="list-style-type: none"> (a) AMRO and its personnel would be subject to local civil and criminal law after the privileges and immunities had been granted under the Order; and (b) AMRO personnel would still be granted the privileges and immunities under the Order while they were performing official duties in Hong Kong even if advance notice had not been given to the Government of the visits. <p>The Administration's response that-</p> <ul style="list-style-type: none"> (a) as stated in Article 19 of the Schedule to the Order, AMRO personnel should be immune from legal process in respect of words spoken and written and acts performed by them in their official capacities; and (b) without advance notice from AMRO to the Government, AMRO personnel would still be granted the privileges and immunities under the Order provided that they were performing official duties in Hong Kong, subject to confirmation from AMRO. <p>Noting from Article 18 of the Schedule to the Order that AMRO should enjoy immunity from legal process, the Chairman was concerned about whether AMRO would be subject to local laws and regulations under the Order.</p> <p>The Administration explained that, although AMRO would enjoy immunity from legal process under the Order, AMRO still had to respect and comply with local laws and regulations as required under the AMRO Agreement. The rationale for granting privileges and immunities to international organizations was that such privileges and immunities would allow those organizations to carry out their duties effectively, without fear of any interference from the local governments or third parties.</p>	

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004723 - 012552	Chairman Mr Alan LEONG Administration	<p>Noting that the provisions of the AMRO Agreement in relation to the privileges and immunities of AMRO and its personnel were reproduced in the Schedule to the Order, Mr LEONG was concerned about-</p> <ul style="list-style-type: none"> (a) the difficulties that might arise from the above drafting approach because the terms in the provisions of the AMRO Agreement might be foreign to Hong Kong's legislation drafting styles and practices; (b) how disputes arising from the Order could be resolved; and (c) whether any other ASEAN member states had adopted a similar approach as Hong Kong in implementing AMRO Agreement in their local legislation in relation to the privileges and immunities of AMRO and its personnel. <p>The Administration advised that-</p> <ul style="list-style-type: none"> (a) the Order 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"), in accordance with which the Chief Executive in Council might 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 specified in the order had the force of law in Hong Kong; (b) IO(P&I)O was enacted in 2000 and so far there were 10 Orders made by using the same drafting approach under this Ordinance, and the Administration had not encountered any problem with the implementation of such Orders; (c) upon the enactment of the Order, disputes arising from the Order might be brought to court if necessary; (d) there was also a dispute resolution clause in the AMRO Agreement to resolve disputes between members concerning the interpretation or application of the Agreement; and (e) Singapore, as one of the ASEAN member states which adopted the common law system, had also implemented the AMRO 	

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		<p>(f) Agreement in local legislation in relation to the privileges and immunities of AMRO and its personnel.</p> <p>The Administration was requested to provide information on-</p> <p>(a) whether there had been any disputes relating to the orders made under Cap. 558 which had been brought to court for adjudication, if yes, details of such cases; and</p> <p>(b) the Administration's approach in implementing international agreements which applied to Hong Kong in local legislation in relation to the privileges and immunities of international organizations and their personnel granted pursuant to Cap. 558.</p>	Admin
012553 - 014044	Chairman Dr Kenneth CHAN Ka-lok Administration	<p>Regarding Dr CHAN's enquiry about the applicability of section 4 of Cap. 558, the Administration explained that according to that section, a certificate issued by the Chief Secretary for Administration stating whether a person was granted privileges and immunities under an order made under Cap. 558 would be used as evidence in legal proceedings.</p> <p>The Chairman's enquiry about whether the Government had to consult the Central People's Government regarding the disputes arising from the privileges and immunities granted to international organizations.</p> <p>The Administration explained that the granting of privileges and immunities to international organizations touched on foreign affairs matters. According to Article 13 of the Basic Law, the Central People's Government should be responsible for foreign affairs relating to the Hong Kong Special Administrative Region ("HKSAR"). As such, the Government might consult the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in HKSAR regarding disputes arising from the privileges and immunities granted to international organizations if necessary.</p> <p>The Administration was requested to provide-</p> <p>(a) information on the steps leading to the</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		<p>implementation of international agreements relating to the privileges and immunities granted to international organizations and their personnel pursuant to Cap. 558, including interactions with the Central People's Government, under Hong Kong's legal framework; and</p> <p>(b) background information on Hong Kong's participation in CMIM, including the legal basis for the Administration to participate in CMIM and to agree to increase Hong Kong's share of financial contributions, and the activation procedures under CMIM.</p>	
<i>Examination of the provisions of the Order</i>			
014045 - 014440	Chairman Administration	<p><u>International Organizations (Privileges and Immunities) (ASEAN+3 Macroeconomic Research Office) Order (L.N. 35 of 2016)</u></p> <p><i>Section 1 - Commencement</i> <i>Section 2 - Interpretation</i> <i>Section 3 - Provisions of Agreement having force of law in Hong Kong</i></p> <p>Members raised no questions on the above provisions.</p> <p>In response to the Chairman's enquiry, the Administration advised that as the AMRO Agreement was written in English only, the Chinese translation of the relevant provisions specified in the Schedule to the Order was prepared by the Department of Justice.</p>	
014441 - 015000	Chairman Administration Assistant Legal Adviser ("ALA")	<p><i>Schedule</i></p> <p>ALA's advice that the bilingual texts of the Order were in order.</p>	
Agenda item II - Any other business			
015001 - 015130	Chairman Clerk	Closing remarks	