

## LEGISLATIVE COUNCIL BRIEF

### International Organizations (Privileges and Immunities) Ordinance (Chapter 558)

#### INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (ASEAN+3 MACROECONOMIC RESEARCH OFFICE) ORDER

#### INTRODUCTION

At the meeting of the Executive Council on 16 February 2016, the Council **ADVISED** and the Chief Executive **ORDERED** that the International Organizations (Privileges and Immunities) (ASEAN+3 Macroeconomic Research Office) Order (“the Order”), at **Annex**, should be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (“the Ordinance”).

#### JUSTIFICATIONS

2. With the support of the Central People’s Government (“CPG”), Hong Kong, using the name “Hong Kong, China” (“HKC”), has been participating in the Chiang Mai Initiative Multilateralisation (“CMIM”) since its establishment in March 2010 under the aegis of ASEAN+3<sup>1</sup>. CMIM is a regional and multilateral arrangement that provides short-term US dollar liquidity support through currency swap transactions to its participants facing balance-of-payments and short-term liquidity difficulties<sup>2</sup>. As CMIM seeks to maintain financial stability and help

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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 HKC.

<sup>2</sup> The total size of CMIM is US\$240 billion. The Hong Kong Monetary Authority (“HKMA”), on behalf of HKC, has undertaken to commit US\$8.4 billion (or 3.5% of the total CMIM size) through the Exchange Fund, and is entitled to borrow up to US\$6.3 billion. This commitment would not be paid upfront but will only be callable on activation of a currency swap transaction under CMIM. So far, there has been no request to activate the emergency liquidity facility of CMIM.

contain any possible financial contagion in the region, HKC's participation in CMIM is of strategic importance to our financial markets. In particular, this multilateral arrangement provides temporary liquidity to the regional partners of the Hong Kong Special Administrative Region ("HKSAR") in case of contingency, and may help avert any instability and financial or currency contagion, thereby upholding the financial and monetary stability of the HKSAR.

3. Under the CMIM Agreement, the participating parties, including HKC, have agreed to establish a surveillance unit to support the implementation of CMIM, and to monitor the macroeconomic status and financial soundness of all CMIM parties. The unit was initially set up in Singapore in 2011 as a company limited by guarantee under the name of ASEAN+3 Macroeconomic Research Office Limited ("AMRO Limited")<sup>3</sup>. The intention of the CMIM parties was to upgrade AMRO to, taking over the role of AMRO Limited, become an international organization with full legal personality, so that it can function effectively as an independent macroeconomic surveillance unit for the region. To this end, the Financial Secretary, with the authorisation of the Chief Executive, signed the AMRO Agreement on behalf of the Government of the HKSAR, together with other CMIM participants, on 10 October 2014. The main functions of AMRO as set out in Article 3 of the AMRO Agreement are:

- (a) to monitor, assess and report to the members on their macroeconomic status and financial soundness;
- (b) to identify macroeconomic and financial risks and vulnerabilities in the region and upon request assist in the timely formulation of policy recommendations to mitigate such risks; and
- (c) to support the implementation of CMIM.

4. Under the AMRO Agreement, each member of AMRO, including HKC, has agreed to recognise AMRO's legal status, as well as to implement certain provisions relating to privileges and immunities on AMRO and its personnel, pursuant to the AMRO Agreement, in its respective jurisdiction.

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<sup>3</sup> While time was taken for the parties involved to deliberate over the provisions for establishing AMRO as an international organization, AMRO Limited was set up as an interim vehicle to support the operation of CMIM.

5. In line with the established practice, we need to give effect by local legislation to the provisions of the AMRO Agreement in relation to the legal status, privileges and immunities of AMRO and its personnel. In this connection, pursuant to section 3 of the Ordinance, the Chief Executive in Council may, by order in the Gazette, declare that the relevant provisions relating to the status, privileges and immunities in respect of AMRO as an international organization and of the AMRO personnel as prescribed in the AMRO Agreement have the force of law in the HKSAR.

## **THE ORDER**

6. The Order seeks to recognise the legal status of AMRO in the HKSAR, and implement the privileges and immunities as provided under the AMRO Agreement in our legal framework. The main provisions of the Order are set out as follows –

- (a) **Section 3** declares that the provisions of the AMRO Agreement as specified in the Schedule to the Order have the force of law in Hong Kong; and
- (b) **The Schedule** contains the provisions of the AMRO Agreement which have the force of law in Hong Kong, viz –
  - (i) Article 16 which relates to the implementation of the legal status, relevant privileges and immunities in the territory of each AMRO member;
  - (ii) Article 17 which relates to the legal status of AMRO and its full legal personality;
  - (iii) Article 18 which relates to the immunity of AMRO from relevant legal process, and the privileges and immunities in respect of, among others, its property and assets, archives and documents, official communications, and taxation;
  - (iv) Article 19 which relates to the privileges and immunities of AMRO personnel in respect of, among others, words spoken and written and all acts done in their official capacity, immigration restrictions, and taxation; and

- (v) Article 21 which relates to the waiver of immunity exercisable by the Executive Committee<sup>4</sup> or the Director of AMRO.

7. These privileges and immunities are commensurate with the function of AMRO as a macroeconomic surveillance unit for the region.

## **LEGISLATIVE TIMETABLE**

8. The Order will be published in the Gazette on 19 February 2016. According to section 34 of the Interpretation and General Clauses Ordinance (Chapter 1), the Order will then be tabled before the Legislative Council for negative vetting on 24 February 2016. Subject to the negative vetting by the Legislative Council, the Order will come into operation on 27 April 2016.

## **IMPLICATIONS OF THE PROPOSAL**

9. The Order is in conformity with the Basic Law, including provisions concerning human rights. The Order will not affect the current binding effect of the Ordinance. It has no civil service, productivity, environmental, sustainability, family or gender implications. Additional work, if any, arising from the enforcement of the Order will be absorbed by the relevant departments with existing resources.

### *Financial Implications*

10. The proposed provision of tax exemption to AMRO (including the scope of such exemption) is in line with the HKSAR's practice all along for international organizations of similar nature, and is required for Hong Kong to honour its obligations under the AMRO Agreement. As AMRO does not plan to set up any office in the HKSAR, any revenue forgone by the Government due to the exemption from taxation and customs duties for AMRO and its personnel as proposed in the Order is expected to be insignificant.

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<sup>4</sup> HKMA is one of the members of the Executive Committee, which has strategic oversight of the work of AMRO.

### *Economic Implications*

11. While the Order by itself should not have any significant implications, the establishment of AMRO as an international organization will help strengthen its operation in macroeconomic surveillance, and will be conducive to promoting regional economic and financial stability thereby benefiting Hong Kong.

### **PUBLIC CONSULTATION**

12. We have updated the Financial Affairs Panel of the Legislative Council (“the Panel”) on HKC’s participation in CMIM Agreement in November 2009 and May 2012. We have issued an information note to the Panel in January 2016 to update it on this legislative initiative.

### **PUBLICITY**

13. We will issue a press release upon the issuance of this brief. A spokesperson will be available to answer media and public enquiries.

### **ENQUIRIES**

14. Enquiries relating to this brief can be directed to Mr Jackie Liu, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

**Financial Services and the Treasury Bureau**  
**17 February 2016**

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

(Made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558))

### 1. Commencement

This Order comes into operation on 27 April 2016.

### 2. Interpretation

In this Order—

*Agreement* (《協議》) means the Agreement referred to in section 3(1);

*AMRO* (研究辦公室) means the ASEAN+3 Macroeconomic Research Office (which is translated as “東盟 10+3 宏觀經濟研究辦公室” in this Order) established by the Agreement.

### 3. Provisions of Agreement having force of law in Hong Kong

(1) It is declared that the provisions of the Agreement Establishing ASEAN+3 Macroeconomic Research Office (which is translated as “《關於設立東盟 10+3 宏觀經濟研究辦公室的協議》” in this Order)<sup>#</sup> done in Washington,

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Note: <sup>#</sup> The Agreement Establishing ASEAN+3 Macroeconomic Research Office (which is translated as “《關於設立東盟 10+3 宏觀經濟研究辦公室的協議》” in this Order) was done in a single original in the English language.

District of Columbia, United States of America on 10 October 2014 as specified in the Schedule—

- (a) have the force of law in Hong Kong; and
  - (b) for that purpose are to be construed in accordance with subsections (3), (4) and (5).
- (2) A Chinese translation of the provisions of the Agreement referred to in subsection (1) is also set out in the Schedule.
  - (3) In applying Articles 16, 18 and 19(b) and (c) of the Agreement, *member* (which is translated as “成員” in this Order) is to be construed as meaning a member of AMRO.
  - (4) In applying Article 19 of the Agreement, *local citizens or nationals* (which is translated as “當地公民或國民” in this Order) is to be construed as meaning Chinese nationals or Hong Kong permanent residents.
  - (5) In applying Articles 19 and 21 of the Agreement, *experts performing missions for AMRO* (which is translated as “為研究辦公室執行任務的專家” in this Order) is to be construed as meaning professionals carrying out AMRO’s purpose and functions under contract with AMRO.

## **Schedule**

[s. 3]

### **Provisions of Agreement Having Force of Law in Hong Kong**

#### **CHAPTER 4**

#### **STATUS, PRIVILEGES AND IMMUNITIES**

##### **Article 16**

##### **Purposes of Status, Privileges and Immunities**

The legal status, privileges, immunities, and exemptions set out in this Agreement shall be accorded to AMRO in the territory of each member to enable AMRO to effectively exercise its purpose and functions.

##### **Article 17**

##### **Legal Status of AMRO**

AMRO shall have full legal personality and, in particular, full legal capacity to:

- (a) enter into contracts;
- (b) acquire and dispose of immovable and movable property; and

- (c) institute legal proceedings.

##### **Article 18**

##### **Privileges and Immunities of AMRO**

- (1) AMRO shall enjoy immunity from every form of legal process except to the extent that it expressly waives its immunity for the purpose of any proceedings or under the terms of any contract.
- (2) The property and assets of AMRO shall, wherever located and by whomsoever held, be immune from search, requisition, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive or legislative action.
- (3) The archives of AMRO, and all documents belonging to it, or held by it, shall be inviolable.
- (4) To the extent necessary to carry out its functions, all property and assets of AMRO shall be free from restrictions, regulations, controls and moratoria of any nature.
- (5) Official communications of AMRO shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.
- (6) No censorship shall be applied to the official correspondence and other official communications of AMRO. Nothing in this Article shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a member and AMRO.

(7) AMRO, its assets, property, income, and its operations and transactions shall be exempt from all taxation and from all customs duties. AMRO shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty. Notwithstanding this, it is understood, however, that AMRO shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.

#### Article 19

##### Privileges and Immunities of AMRO Personnel

Deputies and their alternates, members of the Advisory Panel, the Director and staff of AMRO, and experts performing missions for AMRO (hereinafter referred to as "AMRO Personnel"):

- (a) shall be immune from legal process with respect to words spoken and written and acts performed by them in their official capacity and shall enjoy inviolability in respect of their official papers and documents except when AMRO waives this immunity;
- (b) where they are not local citizens or nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by each member to the representatives and staff of comparable rank of any other member;
- (c) shall be granted the same treatment in respect of travelling facilities as is accorded by each member to the representatives and staff of comparable rank of any other member; and

- (d) where they are not local citizens or nationals, shall be exempt from taxation on the salaries and emoluments paid to them by AMRO.

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#### Article 21

##### Waiver of Immunity

- (1) Privileges and immunities are granted to AMRO Personnel in the interest of AMRO only and not for the personal benefit of the individuals themselves.
- (2) The Executive Committee may waive to such extent and upon such conditions as it determines any of the immunities conferred under this Chapter in respect of Deputies and their alternates, members of the Advisory Panel, and the Director.
- (3) The Director may waive any such immunity in respect of any staff of and experts performing missions for AMRO other than himself or herself.

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##### (Chinese Translation)

#### 第 4 章

##### 地位、特權及豁免權



## 第 16 條

### 地位、特權及豁免權的宗旨

每個成員須在其領土內，給予研究辦公室本協議列明的法律地位、特權、豁免權及免繳權，以令研究辦公室有效履行其宗旨及職能。

## 第 17 條

### 研究辦公室的法律地位

研究辦公室具有完全法人資格，尤其具有完全法律行為能力以：

- (a) 訂立合約；
- (b) 取得和處置不動產及動產；及
- (c) 提起法律程序。

## 第 18 條

### 研究辦公室的特權及豁免權

- (1) 研究辦公室享有各種方式的法律程序的豁免權，但在研究辦公室為任何法律程序的目的或根據任何合約條款，以明示方式放棄其豁免權的範圍內，則屬例外。
- (2) 研究辦公室的財產及資產(不論位於何處及由何人持有)，均免受搜查、徵用、沒收、徵收，或藉行政或立法行動而作出的任何其他形式的檢取、取用或止贖。

(3) 研究辦公室的檔案及屬於研究辦公室或由研究辦公室持有的所有文件，均屬不可侵犯。

(4) 在對研究辦公室執行其職能屬必需的範圍內，其所有財產及資產，均不受任何性質的限制、規管、管制及凍結所限。

(5) 每個成員給予研究辦公室的公務通訊待遇，不得遜於該成員給予任何其他成員的公務通訊待遇。

(6) 研究辦公室的來往公文及其他公務通訊，均免受審查。本條不得解釋為阻止採取某成員與研究辦公室藉協議決定的適當安全防範措施。

(7) 研究辦公室、其資產、財產、收入，以及其運作及交易，均獲豁免而無須繳付一切稅項及關稅。研究辦公室亦獲豁免而無須負有任何支付、預扣或收取任何稅項或關稅的義務。儘管有上述規定，仍須有以下理解：凡稅項事實上屬不多於公用事業服務費用，則研究辦公室不得要求豁免繳稅。

## 第 19 條

### 研究辦公室人員的特權及豁免權

副手及其替補者、諮詢委員會成員、主任及研究辦公室職員，以及為研究辦公室執行任務的專家(下稱“研究辦公室人員”)：

- (a) 就以其公務身分發表的口頭及書面的言論，及以其公務身分作出的作為而言，均享有法律程序的豁免權，而其公務文書及文件，均屬不可侵犯，但如研究辦公室放棄此豁免權，則屬例外；

- (b) (凡該等人員不屬當地公民或國民)就出入境限制、外籍人士的登記規定及國民服役的義務而言，均享有每個成員給予任何其他成員相若級別的代表及職員相同的豁免權；就外匯限制而言，亦享有每個成員給予任何其他成員相若級別的代表及職員相同的便利；
- (c) 就交通方面的便利而言，均享有每個成員給予任何其他成員相若級別的代表及職員相同的待遇；及
- (d) (凡該等人員不屬當地公民或國民)均獲豁免而無須就研究辦公室向該等人員支付的薪金及報酬繳稅。

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## 第 21 條

### 放棄豁免權

- (1) 特權及豁免權是專為研究辦公室的利益而給予研究辦公室人員的，而並非為該等人員的個人利益而給予的。
- (2) 執行委員會可在其決定的範圍內及按其決定的條件，放棄任何根據本章就副手及其替補者、諮詢委員會成員及主任而授予的豁免權。
- (3) 主任可放棄任何研究辦公室職員及為研究辦公室執行任務的專家的豁免權，但主任本人的豁免權除外。

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Clerk to the Executive Council

COUNCIL CHAMBER

2016

### **Explanatory Note**

The ASEAN+3 Macroeconomic Research Office (*AMRO*) was established by the Agreement Establishing ASEAN+3 Macroeconomic Research Office (*Agreement*) done in Washington, District of Columbia, United States of America on 10 October 2014.

2. This Order declares that certain provisions of the Agreement relating to the status, privileges and immunities of AMRO and its personnel, as specified in the Order, have the force of law in Hong Kong.