

LEGISLATIVE COUNCIL BRIEF

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

International Organizations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Order

Securities and Futures Ordinance (Chapter 571)

Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2016

INTRODUCTION

At the meeting of the Executive Council on 26 April 2016, the Council **ADVISED** and the Chief Executive **ORDERED** that the International Organizations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Order (“the Order”), at **Annex A**, should be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (“IO(P&I)O”).

2. Separately, the Securities and Futures Commission (“SFC”) has, pursuant to section 2(3) of the Securities and Futures Ordinance (“SFO”), made the Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2016 (“the Notice”) (a copy of which is at **Annex B**) to amend Part 4 of Schedule 1 to the SFO by adding the Asian Infrastructure Investment Bank (“AIIB”) to that part as a multilateral agency.

JUSTIFICATIONS

3. The AIIB is a multilateral development bank, which supports infrastructure development in Asia with a view to expanding regional connectivity and improving regional integration. China is a founding member of the AIIB.

4. Articles 44 to 52 of the Articles of Agreement (“AoA”) of the AIIB provide for the status, immunities and privileges of the AIIB and its connected persons to enable the AIIB to fulfil its purposes and carry out its functions. Paragraph 2 of Article 44 of the AoA expressly requires all members of the AIIB to make effective in their own territory all such provisions.

5. Under Article 13 of the Basic Law, the Central People’s Government (“CPG”) is responsible for the foreign affairs relating to the HKSAR. The conferment of privileges and immunities on international organizations is an act falling within the ambit of foreign affairs. Before the ratification of the AoA by the CPG in November 2015, the Office of the Commissioner of the Ministry of Foreign Affairs in the HKSAR consulted the HKSAR Government on the application of the AoA to the HKSAR. The HKSAR Government confirmed that we had no objection to the application.

6. In line with our established practice, we need to give effect to the provisions of the AoA in relation to its status, privileges and immunities as well as its personnel by local legislation. In this connection, according to section 3 of the IO(P&I)O, the Chief Executive in Council (“CE-in-Council”) may, by order in the Gazette, declare that the relevant provisions relating to the status, privileges and immunities of the AIIB and its connected persons have the force of law in the HKSAR.

7. Regarding the Notice, with a view to offering the AIIB similar treatment accorded to other multilateral agencies such as the Asian Development Bank, the European Bank for Reconstruction and Development and the World Bank under Part 4 of Schedule 1 to the SFO, it is proposed that the AIIB be specified as a multilateral agency under Part 4 of Schedule 1 to the SFO. The SFC confirms that the proposal is consistent with its regulatory objectives and functions.

THE ORDER

8. The Order seeks to recognise the legal status of the AIIB in the HKSAR, and accord the privileges and immunities as provided under the AoA in our legal framework. The main provisions of the Order are set out as follows –

- (a) **Section 3** declares that the provisions of the AoA 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 AoA which have the force of law in Hong Kong, viz –

- (i) Article 44 which relates to the recognition of the AIIB's status as well as relevant privileges and immunities of the AIIB in the territory of each AIIB member;
- (ii) Article 45 which relates to the full juridical personality and full legal capacity of the AIIB;
- (iii) Article 46 which relates to the AIIB's immunity from relevant judicial proceedings;
- (iv) Articles 47 and 48 which relate to the privileges and immunities in respect of, among other things, the AIIB's property and assets, as well as its archives and documents;
- (v) Article 49 which relates to the privilege in respect of the AIIB's official communications;
- (vi) Article 50 which relates to the immunity of AIIB's personnel from relevant legal process with respect to acts performed in their official capacity, and their privileges and immunities in respect of immigration restrictions;
- (vii) Article 51 which relates to the privileges and immunities of the AIIB and its personnel in respect of taxation; and
- (viii) Article 52 which relates to the waiver of immunity exercisable by the AIIB.

9. These privileges and immunities are commensurate with the function of the AIIB as a multilateral development bank.

THE NOTICE

10. The Notice seeks to specify the AIIB as a multilateral agency under Part 4 of Schedule 1 to the SFO. After the proposed amendment to that part, the AIIB will become a multilateral agency under the SFO and will be classified as a professional investor.

LEGISLATIVE TIMETABLE

11. The Order and the Notice will be published in the Gazette on 6 May 2016. According to section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the Order and the Notice will then be tabled before the Legislative Council for negative

vetting on 11 May 2016. Subject to the negative vetting by the Legislative Council, the Order and the Notice will come into operation on 11 July 2016.

IMPLICATIONS OF THE PROPOSAL

12. The Order and the Notice are in conformity with the Basic Law, including provisions concerning human rights. The Order and the Notice will not affect the current binding effect of the IO(P&I)O and SFO. They have no civil service, productivity, environmental, sustainability, family or gender implication. Additional work, if any, arising from the enforcement of the Order will be absorbed by the relevant departments with existing resources.

Financial Implications

13. Regarding the Order, the proposed provision of tax exemption to the AIIB (including the scope of such exemption) is in line with HKSAR's practice all along for international organizations of similar nature. As a territory to which the AoA applies, Hong Kong is required to comply with the relevant obligations. Drawing from the experience in conferring privileges and immunities to other similar international organisations, any revenue forgone by the Government due to the exemption from taxation and custom duties for the AIIB and its personnel as proposed in the Order is expected to be insignificant. Regarding the Notice, any financial implications for the SFC will be absorbed with existing resources in the SFC's budget.

Economic Implications

14. The proposed arrangements could facilitate the operation of the AIIB in Hong Kong for the benefit of our financial services and professional services industries in areas such as project financing, bond issuance, investment, financial management and foreign exchange management. This would help strengthen our position as an international financial centre.

PUBLIC CONSULTATION

15. We have issued an information note to the Financial Affairs Panel of the Legislative Council in March 2016 to inform it of the legislative initiative to amend the IO(P&I)O.

16. As for the Notice, the SFC considers that since the Notice is straightforward, it is not necessary to conduct a public consultation.

PUBLICITY

17. A press release will be issued when the Order and the Notice are published in the Gazette. A spokesperson will be available to answer media and public enquiries.

ENQUIRES

18. Enquiries relating to this brief can be directed to Mr Paul Wong, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2528 6257 and Mr Paul Yeung, Commission Secretary of the SFC, at 2231 1498.

**Financial Services and the Treasury Bureau
Securities and Futures Commission
4 May 2016**

**International Organizations (Privileges and
Immunities) (Asian Infrastructure Investment Bank)
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 11 July 2016.

2. Interpretation

In this Order—

Agreement (《協定》) means the Articles of Agreement of the
Bank done at Beijing on 29 June 2015;

Bank (銀行) means the Asian Infrastructure Investment Bank.

**3. Certain provisions of Agreement having force of law in Hong
Kong**

(1) It is declared that the provisions of the Agreement as specified
in the Schedule have the force of law in Hong Kong, and for
that purpose are to be construed in accordance with
subsections (2) and (3).

(2) In applying paragraph 1 of Article 44, paragraph 2 of Article
46, Article 49 and Article 50 of the Agreement, the reference
to “member” is to be construed as a reference to member of
the Bank, and “members” is to be construed accordingly.

- (3) In applying Article 50 of the Agreement, the reference to
“local citizens or nationals” is to be construed as a reference
to Hong Kong permanent residents or Chinese nationals.

Schedule

[s. 3]

Provisions of Agreement Having Force of Law in Hong Kong

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CHAPTER IX

STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44 Purposes of Chapter

1. To enable the Bank to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member.

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Article 45 Status of the Bank

The Bank shall possess full juridical personality and, in particular, the full legal capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
- (iii) to institute and respond to legal proceedings; and

- (iv) to take such other action as may be necessary or useful for its purpose and activities.

Article 46 Immunity from Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in the contracts entered into with the Bank.

3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 47 Immunity of Assets and Archives

1. Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

2. The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wheresoever located and by whomsoever held.

Article 48 Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 49 Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of any other member.

Article 50 Immunities and Privileges of Officers and Employees

All Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank, including experts and consultants performing missions or services for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity and shall enjoy inviolability of all their official papers, documents and records;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and

- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 51 Exemption from Taxation

1. The Bank, its assets, property, income and its operations and transactions pursuant to this Agreement, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax of any kind shall be levied on or in respect of salaries, emoluments and expenses, as the case may be, paid by the Bank to Directors, Alternate Directors, the President, Vice-Presidents and other officers or employees of the Bank, including experts and consultants performing missions or services for the Bank, ...

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 52 Waivers

1. The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

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Clerk to the Executive Council

COUNCIL CHAMBER

2016

Explanatory Note

On 29 June 2015, the Government of the People's Republic of China signed the Articles of Agreement of the Asian Infrastructure Investment Bank (*Agreement*). The Agreement was ratified by the Standing Committee of the National People's Congress of the People's Republic of China on 4 November 2015. The Asian Infrastructure Investment Bank (*AIIB*) supports infrastructure development in Asia with a view to expanding regional connectivity and improving regional integration.

2. This Order is to give effect to the privileges and immunities accorded to the AIIB and its officers and employees under Chapter IX of the Agreement.

Securities and Futures Ordinance (Amendment of Schedule 1) Notice 2016

(Made by the Securities and Futures Commission under section 2(3) of the
Securities and Futures Ordinance (Cap. 571))

1. Commencement

This Notice comes into operation on 11 July 2016.

2. Securities and Futures Ordinance amended

The Securities and Futures Ordinance (Cap. 571) is amended as set out in section 3.

3. Schedule 1 amended (interpretation and general provisions)

Schedule 1, Part 4—

Add

“8. The Asian Infrastructure Investment Bank”.

Chief Executive Officer,
Securities and Futures Commission

2016

Explanatory Note

Part 4 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) (*the Ordinance*) contains a list of multilateral agencies. Under section 2(3) of the Ordinance, the Securities and Futures Commission may amend that Part by notice published in the Gazette.

2. This Notice amends that Part by adding the Asian Infrastructure Investment Bank (*AIIB*). After the amendment, the AIIB becomes a multilateral agency under the Ordinance and is classified as a professional investor.