

For Information

Legislative Council Panel on Financial Affairs

**Agreement Establishing
the European Bank for Reconstruction and Development**

PURPOSE

This paper briefs Members on the Government's intent to give effect to the relevant provisions of the Agreement Establishing the European Bank for Reconstruction and Development ("the Agreement") in respect of the status, privileges and immunities of the European Bank for Reconstruction and Development ("the Bank") and its personnel.

BACKGROUND

2. Established in 1991, the Bank is a multilateral development bank which supports development in recipient member countries with a view to fostering their transition towards open market-oriented economies. The Bank has 67 members and operates in 36 recipient member countries, spanning from Central and Eastern Europe, to Southern and Eastern Mediterranean, and Central Asia. China joined the Bank in January 2016 as a non-recipient member.

3. Articles 44 to 53 and 55 of the Agreement provide for the status, immunities, privileges and exemptions accorded to the Bank and its personnel to enable the Bank to fulfil its purposes and carry out its functions. Article 54 of the Agreement expressly requires all members of the Bank to make effective in their own territory all those provisions. It is incumbent upon China, as a member of the Bank, to apply the relevant provisions to its territory.

IMPLEMENTATION OF THE AGREEMENT

4. Under Article 13 of the Basic Law, the Central People's Government ("CPG") is responsible for foreign affairs relating to the Hong Kong Special Administrative Region ("HKSAR"). The conferment of privileges and immunities on international organisations is an act falling within the ambit of foreign affairs. When consulted on the application of the Agreement to the HKSAR, we have indicated to the CPG that the HKSAR

Government has no objection to its application to the HKSAR.

5. In line with the established practice, we need to give effect to the provisions of the Agreement in relation to the legal status, privileges, immunities and exemptions of the Bank and its personnel by local legislation. Pursuant to section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), the Chief Executive in Council may, by order in the Gazette, declare that the relevant provisions relating to the status, privileges and immunities of the Bank and its personnel have the force of law in the HKSAR.

6. In this connection, the Government intends to make the International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order (“the Order”) under the Ordinance. The relevant provisions of the Agreement to be implemented via the Order are extracted at **Annex**. The Order seeks to fulfil China’s obligation as a member of the Bank.

WAY FORWARD

7. We intend to table the Order before the Legislative Council for negative vetting in Q1 2017.

8. Members are invited to note the content of this paper.

Financial Services and the Treasury Bureau
February 2017

**Agreement Establishing
the European Bank for Reconstruction and Development
Provisions to be Given Legal Effect**

The Government intends to declare, by the International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order made under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), that the following provisions of the Agreement have the force of law in the HKSAR –

(i) Article 44: Purposes of chapter

To enable the Bank to fulfil its purpose and the functions with which it is entrusted, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member country.

(ii) Article 45: Status of the Bank

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

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

(iii) Article 46: Position of the Bank with regard to judicial process

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, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The 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.

(iv) Article 47: Immunity of assets from seizure

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.

(v) Article 48: Immunity of archives

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

(vi) Article 49: Freedom of assets from restrictions

To the extent necessary to carry out the purpose and functions of the Bank 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.

(vii) Article 50: Privilege for communications

The 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.

(viii) Article 51: Immunities of officers and employees

All Governors, Directors, Alternates, officers and employees of the Bank and experts performing missions for the Bank shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, employee or expert.

(ix) Article 52: Privileges of officers and employees

1. All Governors, Directors, Alternates, officers and employees of the Bank and experts of the Bank performing missions for the Bank:
 - i) not being local 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

- ii) 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.

...

(x) Article 53: Exemption from taxation

1. Within the scope of its official activities the Bank, its assets, property, and income shall be exempt from all direct taxes.
2. When purchases or services of substantial value and necessary for the exercise of the official activities of the Bank are made or used by the Bank and when the price of such purchases or services includes taxes or duties, the member that has levied the taxes or duties shall, if they are identifiable, take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement.
3. Goods imported by the Bank and necessary for the exercise of its official activities shall be exempt from all import duties and taxes, and from all import prohibitions and restrictions. Similarly goods exported by the Bank and necessary for the exercise of its official activities shall be exempt from all export duties and taxes, and from all export prohibitions and restrictions.
4. Goods acquired or imported and exempted under this Article shall not be sold, hired out, lent or given away against payment or free of charge, except in accordance with conditions laid down by the members which have granted exemptions or reimbursements.
5. The provisions of this Article shall not apply to taxes or duties which are no more than charges for public utility services.
6. Directors, Alternate Directors, officers and employees of the Bank shall be subject to an internal effective tax for the benefit of the Bank on salaries and emoluments paid by the Bank, ... From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax. The members may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

...

8. Paragraph 6 of this Article shall not apply to pensions and annuities paid by the Bank.
9. 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.
10. 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; place of business maintained by the Bank.

(xi) Article 55: Waiver of immunities, privileges and exemptions

The immunities, privileges and exemptions conferred under this Chapter are granted in the interest of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine any of the immunities, privileges and exemptions conferred under this Chapter in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Bank, other than the President, Vice President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President and each Vice President.