

LEGISLATIVE COUNCIL BRIEF

**INTERNATIONAL ORGANIZATIONS
(PRIVILEGES AND IMMUNITIES) BILL**

INTRODUCTION

At the meeting of the Executive Council on 12 January 1999, the Council ADVISED and the Chief Executive ORDERED that the International Organizations (Privileges and Immunities) Bill (copy at Annex A) should be introduced into the Legislative Council to provide a framework to give effect in Hong Kong to the privileges and immunities conferred upon certain international organizations or persons connected with such organizations by international agreements.

BACKGROUND AND ARGUMENT

Background

2. Article 18 of the Basic Law provides that the laws in force in the HKSAR shall be the Basic Law, the laws previously in force in Hong Kong and the laws enacted by the legislature of the HKSAR. The legal system in the HKSAR is different from that of the rest of the People's Republic of China. The

HKSAR remains a common law jurisdiction whereas the legal system in the Mainland is based on civil law.

3. As in other common law jurisdictions, international rights and obligations arising from international agreements concluded by the HKSAR or applied to the HKSAR by the CPG do not automatically have the force of law in the HKSAR. If the implementation of international agreements would affect private rights and obligations, they must be transformed from the international legal plane onto the domestic legal plane by legislation. The situation is different in the rest of China. According to our understanding, under the legal system in the Mainland, international agreements, once signed or acceded to by China and approved by the Standing Committee of the National People's Congress, become self-executing, i.e., they become part of the law of China.

4. The conferment of privileges and immunities on international organizations is considered to be an act falling within the repertoire of foreign affairs. It is therefore the responsibility of the CPG under Article 13(1) of the Basic Law which states that the CPG shall be responsible for the foreign affairs relating to the HKSAR. Article 13(3) also states that the CPG authorizes the HKSAR to conduct relevant external affairs on its own in accordance with the Basic Law.

Present Position

5. The principal Ordinance in the HKSAR giving effect to the privileges and immunities of international organizations is the International Organizations and Diplomatic Privileges Ordinance (Cap 190) (the Ordinance) (copy at Annex B). The approach in the Ordinance is specific and prescriptive. The relevant provisions of an international agreement are transformed into Hong Kong domestic law by a notification made as subsidiary legislation under the Ordinance. The privileges and immunities of the international organization concerned are set out clearly in a notification. However, under the Ordinance, only the privileges and immunities set out in the First Schedule to the Ordinance may be afforded to an international organization and its personnel. This has proved to be unduly restrictive and has created technical and drafting problems in a number of cases since some of the privileges and immunities that need to be granted to an international organization in accordance with our international obligations do not correspond exactly to those set out in the First Schedule.

Examples of Problem Cases

6. Recently, we have encountered two cases which have created problems.

7. Firstly, the privileges and immunities of a number of international financial institutions (including the World Bank and the International Monetary Fund) were, prior to the reunification, implemented in Hong Kong by United Kingdom legislation. Such legislation ceased to have effect in the HKSAR after

30 June 1997, but was not immediately replaced by local legislation. At present, the HKSAR Government relies on the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities (the PRC Regulations) for granting privileges and immunities to the relevant institutions. The PRC Regulations are a national law that applies to the HKSAR as they have been included in Annex III of the Basic Law and promulgated in the HKSAR in accordance with Article 18 of the Basic Law. However, the approach taken in the national legislation is not suited to Hong Kong because under the Mainland legal system, treaties are self-executing, i.e. they have legal effect in the Mainland once ratified and entered into force. In Hong Kong, we need to set out clearly the privileges and immunities in our domestic legislation. It would therefore be necessary for the HKSAR Government to introduce local legislation to implement the relevant privileges and immunities of these international organizations. The rigid structure of the Ordinance has proved to be a problem.

8. Secondly, the CPG has recently concluded a Host Country Agreement with the Bank for International Settlements (BIS) concerning the establishment of a regional office of the BIS in the HKSAR. Certain privileges and immunities have been granted to the BIS in the HKSAR. Similarly, the HKSAR Government relies on the PRC Regulations for granting privileges and immunities to the BIS. The privileges and immunities granted to the BIS do not correspond exactly with those set out in the First Schedule to the Ordinance. Specific local legislation is required to underpin those privileges and immunities.

The Proposal

9. We propose that a Bill be introduced into the Legislative Council to provide a framework under which privileges and immunities conferred on an international organization may be given the force of law in the HKSAR by way of an order to be made by the Chief Executive in Council under the enabling provisions contained in the Bill. Our intention is that when an order is made by the Chief Executive in Council in respect of an international organization, the notification under the Ordinance in respect of the same organization (if any) will be repealed. The repeal of the provisions of the Ordinance which deal with international organizations will come into operation after the repeal of all those notifications. The provisions in the Ordinance which deal with diplomatic privileges and immunities will need to be retained.

THE BILL

10. The Bill seeks to give effect in Hong Kong to the privileges and immunities of certain international organizations or of persons connected with such organizations. The main provisions of the Bill are :

- (a) Clause 2 sets out the definitions necessary for the interpretation of the Bill.

- (b) Clause 3 empowers the Chief Executive in Council to declare by order that the provisions of certain international agreements relating to the privileges and immunities of international organizations and of persons connected with such organizations shall have the force of law in Hong Kong. It also empowers the Chief Executive in Council to make provisions in the order for carrying into effect those provisions of these agreements relating to privileges and immunities.
- (c) Clause 4 provides for the proof of whether a person is entitled to a privilege or immunity under an order made under the proposed Ordinance.
- (d) Clause 5 provides for the relationship between the proposed Ordinance and the two national laws applying in Hong Kong that relate to diplomatic or consular privileges and immunities.
- (e) Clauses 6 to 15 are consequential amendments.

PUBLIC CONSULTATION

11. This Bill relates to foreign affairs matters. It does not involve any substantive change to the HKSAR Government's existing policy of granting privileges and immunities to international organizations in accordance with international agreements concluded by the HKSAR or applied to the HKSAR by the CPG. Therefore, we do not see a need for public consultation on this Bill.

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the Bill is consistent with human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

14. There are no financial and staffing implications.

BINDING EFFECT

15. In common with the Ordinance, the provisions of this Bill do not bind the State by express provision.

LEGISLATIVE TIMETABLE

16. The legislative timetable of the Bill will be -

Publication in the Gazette	22 January 1999
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First Reading and commencement of Second Reading debate	3 February 1999
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Resumption of Second Reading debate, committee stage and Third Reading	to be notified
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PUBLICITY

17. A press release will be issued immediately before the publication of the Bill in the Gazette. A government spokesman will be made available for answering possible media questions.

OTHERS

18. Enquiries concerning this brief should be directed to Mr Stephen Fisher, Deputy Director of Administration, on 2810 2268.

Administration Wing
Chief Secretary for Administration's Office
21 January 1999

A BILL

To

Make provision for the implementation in Hong Kong of the privileges and immunities of international organizations and of persons connected with such organizations under international agreements, and for matters connected therewith and incidental thereto.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the International Organizations (Privileges and Immunities) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Chief Secretary for Administration by notice in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires -
“international agreement” (國際協議) means any agreement in writing or that agreement as amended from time to time, whether contained in one or more documents and by whatever name called, which has effect in international law and -

(a) to which Hong Kong is a party; or

- (b) which is applied to Hong Kong by the Central People's Government of the People's Republic of China;

“international organization” (國際組織) means an organization in relation to which there is an international agreement providing for it or for persons connected with it or both to enjoy privileges and immunities in Hong Kong.

3. Provisions of international agreements to have the force of law

- (1) The Chief Executive in Council may -
 - (a) by order in the Gazette, declare that the provisions of an international agreement relating to the status, privileges and immunities of an international organization and of persons connected with such organization, and which are specified in the order, shall have the force of law in Hong Kong; and
 - (b) in such order make such provisions as the Chief Executive in Council may consider necessary for carrying into effect the provisions of any such agreement in connection with such privileges and immunities.

(2) Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to an order made under subsection (1).

4. Evidence

(1) Where a question arises as to whether or not a person is entitled to a privilege or immunity under an order made under section 3(1), a certificate issued by the Chief Secretary for Administration stating a fact relevant to that question is, subject to subsection (2), conclusive evidence of that fact.

(2) Where there is any conflict or inconsistency as respects a question of fact between -

- (a) a certificate issued under subsection (1); and
- (b) a certificate obtained under the third paragraph of Article 19 of the Basic Law,

then the second-mentioned certificate shall, to the extent of that conflict or inconsistency, as the case may be, prevail over the certificate issued under subsection (1).

5. Application of national laws

(1) Nothing in this Ordinance or an order made under section 3(1) shall prejudice the operation of -

- (a) the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in

Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997); or

- (b) the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities in Schedule 3 to the Promulgation of National Laws (No. 2) 1997 (L.N. 386 of 1997).

(2) If there is any conflict or inconsistency between -

- (a) a provision of this Ordinance or of an order made under section 3(1);
and
- (b) the Regulations referred to in subsection (1),

then that provision shall be construed subject to the Regulations and shall be so construed as to be consistent with the international rights and obligations of the Central People's Government of the People's Republic of China.

Consequential Amendments

Dutiable Commodities Regulations

6. Exemptions

Regulation 12(1) (m) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.) is amended -

- (a) by repealing "International Organizations and";

- (b) by adding “the International Organizations (Privileges and Immunities) Ordinance (of 1999),” after “(Cap. 190),”.

7. Refund of duty on goods supplied for consular etc. use

Regulation 15 is amended -

- (a) by repealing “International Organizations and”;
- (b) by adding “the International Organizations (Privileges and Immunities) Ordinance (of 1999),” after “(Cap. 190),”.

Stamp Duty Ordinance

8. Relief in case of certain leases etc.

of consular premises

Section 43(3) of the Stamp Duty Ordinance (Cap. 117) is amended -

- (a) in paragraph (a) -
 - (i) in subparagraph (iv) by repealing “and” at the end;
 - (ii) by adding -
 - “(v) in respect of premises which are exempt from taxation under an order made under section

3(1) of the International Organizations (Privileges and Immunities) Ordinance (of 1999), that such premises are exempted premises for the purposes of this Part; and”;

(b) in paragraph (b) -

- (i) in subparagraph (iii) by repealing “and” at the end;
- (ii) in subparagraph (iv) by repealing the full stop and substituting”; and”;
- (iii) by adding -

“(v) in respect of a person who is exempt from taxation under an order made under section 3(1) of the International Organizations (Privileges and Immunities) Ordinance (of 1999), that such person is an exempted person for the purposes of this Part.”.

Air Passenger Departure Tax Ordinance

9. Passengers exempted from liability to pay the tax

The Second Schedule to the Air Passenger Departure Tax Ordinance (Cap. 140) is amended in paragraph 7 -

- (a) by repealing “International Organizations and”;
- (b) by adding “or the International Organizations (Privileges and Immunities) Ordinance (of 1999)” after “(Cap. 190)”.

**International Organizations and Diplomatic
Privileges Ordinance**

10. Long title amended

The long title to the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) is amended by repealing everything from “international” to “and other”.

11. Short title

Section 1 is amended by repealing “International Organizations and”.

12. Privileges, immunities and capacities of certain international organizations and their staffs

Section 2 is repealed.

13. Schedule repealed

The First Schedule is repealed.

Consular Relations Ordinance

14. Application of Vienna Convention

Section 2(3) of the Consular Relations Ordinance (Cap. 259) is amended -

- (a) by repealing “International Organizations and”;
- (b) by adding “or the International Organizations (Privileges and Immunities) Ordinance (of 1999)” after “(Cap. 190)”.

Cross-Harbour Tunnel (Passage Tax) Ordinance

15. Exemptions

Section 4(3) of the Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274) is amended -

- (a) by repealing “International Organizations and”;
- (b) by adding “the International Organizations (Privileges and Immunities) Ordinance (of 1999),” after “(Cap. 190),”.

Explanatory Memorandum

This Bill seeks to give effect in Hong Kong to the privileges and immunities of certain international organizations and of their personnel. At present, privileges and immunities of international

organizations are given effect in Hong Kong by the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997) and by the International Organizations and Diplomatic Privileges Ordinance (Cap. 190). The Bill is intended to replace those parts of the Ordinance which deal with the international organizations and, without prejudice to the Regulations, to make provisions for implementing the privileges and immunities conferred upon international organizations by international agreements.

2. Clause 2 sets out the definitions necessary for the interpretation of the proposed Ordinance.

3. Clause 3 empowers the Chief Executive in Council to declare by order that the provisions of certain international agreements relating to the privileges and immunities of international organizations and of persons connected with such organizations shall have the force of law in Hong Kong. It also empowers the Chief Executive in Council to make provisions in the order for carrying into effect the provisions of such agreements relating to privileges and immunities.

4. Clause 4 provides for the proof of whether a person is entitled to a privilege or immunity under an order made under the proposed Ordinance.

5. Clause 5 provides for the relationship between the proposed Ordinance and the 2 national laws applying in Hong Kong that relate to diplomatic or consular privileges and immunities.

6. Clauses 6 to 15 are consequential amendments.