

立法會
Legislative Council

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**Paper for the House Committee meeting
on 21 January 2000**

**Report of the Bills Committee on
International Organizations (Privileges and Immunities) Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on the International Organizations (Privileges and Immunities) Bill (the Bill) and seeks members' support for the Second Reading debate on the Bill to resume.

Background

2. The 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 (the "PRC Regulations") and by the International Organizations and Diplomatic Privileges Ordinance (Cap. 190).

3. The Bill is intended to replace those parts of Cap. 190 which deal with the international organizations and, without prejudice to the PRC Regulations, to make provisions for implementing the privileges and immunities conferred upon international organizations by international agreements.

The Bills Committee

4. At the meeting of the House Committee on 26 February 1999, members decided to form a Bills Committee to study the Bill. The membership list of the Bills Committee is at **Appendix I**.

5. Under the chairmanship of Hon James TO Kun-sun, the Bills Committee held two meetings with the Administration.

Deliberations of the Bills Committee

6. Members question the need for the introduction of the Bill, given that the Government of the Hong Kong Special Administrative Region (HKSAR) is not in a position to make any amendments to the international agreements to which China is a party, and that Article 153 of the Basic Law has already determined the ways in which international agreements shall be applied to the HKSAR.

7. The Administration has explained that the HKSAR Government relies on 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. Therefore, the PRC Regulations have already given effect to the relevant provisions of international agreements relating to the privileges and immunities of international organizations in Hong Kong. However, the approach taken in the national legislation where treaties are self-executing is not suited to the HKSAR which remains a common law jurisdiction. As in other common law jurisdictions, international rights and obligations arising from international agreements concluded by the HKSAR or applied to HKSAR by the Central People's Government (CPG) do not automatically have the force of law in Hong Kong.

8. The Administration has pointed out that 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. The Administration has further pointed out that 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. However, the privileges and immunities granted to the BIS do not correspond exactly with those set out in the First Schedule to Cap. 190.

9. The Administration therefore considers it necessary for the HKSAR Government to introduce local legislation to implement the relevant privileges and immunities conferred upon international organizations by international agreements.

10. The Administration has advised that the CPG has no objection to the introduction of the Bill, which seeks to provide a framework under which privileges and immunities conferred on an international organization would be given the force of law in Hong Kong by way of an order to be made by the Chief Executive in Council.

11. Members express concern about clause 3(2) of the bill which specifies that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to an order made by the Chief Executive in Council under clause 3(1) of the Bill.

Members consider it a retrogressive step to deprive LegCo of the right to scrutinize subsidiary legislation relating to the conferment of privileges and immunities on international organizations and their personnel.

12. The Administration has explained that according to Article 13 of the Basic Law, the CPG is responsible for the foreign affairs relating to the HKSAR. The granting of privileges and immunities to international organizations as well as the conclusion of international agreements concerning privileges and immunities unquestionably fall within the scope of foreign affairs. It is therefore important that local legislation underpinning those privileges and immunities must be consistent with the international rights and obligations of the CPG.

13. The Administration has advised that it fully respects the status and power of LegCo as the legislature of the HKSAR as provided for in the Basic Law. In the light of members' concern on the disapplication of section 34 of Cap. 1, the Administration will introduce a Committee Stage amendment to remove clause 3(2) of the Bill so that section 34 of Cap. 1 will apply to orders made by the Chief Executive in Council under clause 3(1) of the Bill. In making the amendment, the Administration recognizes that section 34(2) of Cap. 1 already provides that LegCo may amend subsidiary legislation only "in any manner whatsoever consistent with the power to make such subsidiary legislation", and that LegCo would not act in any way that is ultra vires.

14. The Administration has further advised that when an order in respect of an international organization is made under the Bill, the notification under Cap. 190 in respect of the same organization would be repealed. The repeal of the provisions in Cap. 190 which deal with international organizations would come into operation after the repeal of all those notifications. However, the provisions in Cap. 190 which deal with diplomatic privileges and immunities would be retained.

Committee Stage Amendment

15. The Committee Stage amendment to be moved by the Administration referred to in paragraph 13 is at **Appendix II**.

Recommendation

16. The Bills Committee supports the Bill and recommends that, subject to the Committee Stage amendment at Appendix II to be moved by the Administration, the Second Reading debate on the Bill be resumed.

Legislative Council Secretariat
19 January 2000

**Bills Committee on
International Organizations (Privileges and Immunities) Bill**

Membership list

Hon James TO Kun-sun (Chairman)

Hon Cyd HO Sau-lan

Hon LEE Cheuk-yan

Hon Gary CHENG Kai-nam, JP

Hon Ambrose LAU Hon-chuen, JP

Total : 5 members

INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND
IMMUNITIES) BILL

COMMITTEE STAGE

Amendments to be moved by the Chief Secretary
for Administration

<u>Clause</u>	<u>Amendment Proposed</u>
3	(a) In subclause (1), by deleting "(1)". (b) By deleting subclause (2).
4(1), 5(1) and (2)(a) and 8(a)(ii) and (b)(iii)	By deleting "3(1)" and substituting "3".
15	(a) By deleting the heading before the clause. (b) By deleting the clause.