

L.N. 62 of 2005**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (WORLD TRADE ORGANIZATION) 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 shall come into operation on 7 July 2005.

2. Interpretation

In this Order—

“1947 Convention” (《1947年公約》) means the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations by resolution adopted on 21 November 1947;

“WTO” (世貿組織) means the World Trade Organization established in Geneva on 1 January 1995 under the Marrakesh Agreement Establishing the World Trade Organization signed at Marrakesh on 15 April 1994.

3. Provisions of 1947 Convention have force of law in Hong Kong

(1) It is declared that the provisions of the 1947 Convention as specified in the Schedule shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with the other provisions of this section.

(2) In applying those provisions of the 1947 Convention—

(a) a reference to any specialized agency, however expressed, shall be construed as a reference to the WTO, and, without limiting the generality of the foregoing, the reference to “meetings convened by a specialized agency” in section 1(vi) of the 1947 Convention shall be construed accordingly;

(b) a reference to any member, however expressed and whether with or without reference to any specialized agency (with the exception of section 13(f) of the 1947 Convention), shall be construed as a reference to a WTO member, and, without limiting the generality of the foregoing, the reference to

“representatives of members” in section 1(v) of the 1947 Convention shall be construed accordingly;

- (c) (i) the reference to “will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country” in section 9(b) of the 1947 Convention shall be construed as a reference to “will not be sold in the Hong Kong Special Administrative Region of the People’s Republic of China except under conditions agreed to with the Government of the Hong Kong Special Administrative Region of the People’s Republic of China”;
- (ii) the reference to “Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question” in section 19(f) of the 1947 Convention shall be construed as a reference to “Have the right to import free of duty their furniture and effects at the time of first taking up their post in the Hong Kong Special Administrative Region of the People’s Republic of China”;
- (d) the reference to “the territory of each State party to this Convention in respect of that agency” in section 11 of the 1947 Convention shall be construed as a reference to the area of the Hong Kong Special Administrative Region of the People’s Republic of China;
- (e) the reference to “the Government of such State” in section 11 of the 1947 Convention shall be construed as a reference to the Central People’s Government of the People’s Republic of China;
- (f) without prejudice to the generality of paragraph (a), the reference to “Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency” in section 12 of the 1947 Convention shall be construed as a reference to “Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the Hong Kong Special Administrative Region of the People’s Republic of China and the WTO”;
- (g) notwithstanding the generality of paragraph (b), the reference to “present in a member State” in section 15 of the 1947 Convention shall be construed as a reference to “present in the Hong Kong Special Administrative Region of the People’s Republic of China”;

- (h) section 17 of the 1947 Convention shall be construed as if it read as follows: “The provisions of sections 13(a), (b), (c) and (f), 14 and 15 are not applicable in relation to the authorities of the Hong Kong Special Administrative Region of the People’s Republic of China in the case where the person concerned is a permanent resident of the Hong Kong Special Administrative Region of the People’s Republic of China or is or has been a representative of the Hong Kong Special Administrative Region of the People’s Republic of China.”;
- (i) the reference to “sections 19 ...” in section 21 of the 1947 Convention shall be construed as a reference to “section 19(a), (b) and (f)”.

(3) For the avoidance of doubt, a reference to any functions or duties of the representatives of WTO members in sections 13 and 14 of the 1947 Convention means the functions or duties, as the case may be, of such representatives as referred to in those sections, which are construed in accordance with subsection (2), relating to the meetings convened by the WTO.

SCHEDULE

[s. 3]

PROVISIONS OF 1947 CONVENTION HAVING FORCE OF LAW IN HONG KONG

Article I—Definitions and Scope

Section 1

In this Convention:

...

- (iv) For the purposes of article III, the words “property and assets” shall also include property and funds administered by a specialized agency in furtherance of its constitutional functions.
- (v) For the purposes of articles V ..., the expression “representatives of members” shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations.

(vi) In sections 13, 14, 15 ..., the expression “meetings convened by a specialized agency” means meetings: (1) of its assembly and of its executive body (however designated), and (2) of any commission provided for in its constitution; (3) of any international conference convened by it; and (4) of any committee of any of these bodies.

(vii) The term “executive head” means the principal executive official of the specialized agency in question, whether designated “Director-General” or otherwise.

...

Article II—Juridical Personality

Section 3

The specialized agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.

Article III—Property, Funds and Assets

Section 4

The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 5

The premises of the specialized agencies shall be inviolable. The property and assets of the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 6

The archives of the specialized agencies, and in general all documents belonging to them or held by them, shall be inviolable, wherever located.

...

Section 9

The specialized agencies, their assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the specialized agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;

(c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of their publications.

...

*Article IV—Facilities in respect of Communications**Section 11*

Each specialized agency shall enjoy, in the territory of each State party to this Convention in respect of that agency, for its official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

Section 12

No censorship shall be applied to the official correspondence and other official communications of the specialized agencies.

The specialized agencies shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency.

*Article V—Representatives of Members**Section 13*

Representatives of members at meetings convened by a specialized agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

...

- (f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 14

In order to secure for the representatives of members of the specialized agencies at meetings convened by them complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 15

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the specialized agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

Section 16

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the specialized agencies. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 17

The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

Article VI—Officials

...

Section 19

Officials of the specialized agencies shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;

...

- (f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

...

Section 21

In addition to the immunities and privileges specified in sections 19 ..., the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 22

Privileges and immunities are granted to officials in the interests of the specialized agencies only and not for the personal benefit of the individuals themselves. Each specialized agency shall have the right and the duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialized agency.

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LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
26 April 2005

Explanatory Note

Hong Kong, China is a Member in its own right of the World Trade Organization (WTO) established in Geneva on 1 January 1995 under the Marrakesh Agreement Establishing the World Trade Organization (the "Agreement") signed at Marrakesh on 15 April 1994. According to Article VIII(4) of the Agreement, the privileges and immunities accorded to the WTO, its officials and the representatives of its members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations by resolution adopted on 21 November 1947 (the "1947 Convention"). This Order declares that certain provisions of the 1947 Convention relating to the privileges and immunities to be enjoyed accordingly by the WTO, its officials and the representatives of its members are to have the force of law in Hong Kong.