

For discussion on  
19 March 2008

## **LegCo Panel on Administration of Justice and Legal Services**

### **Subsidiary Legislation relating to Privileges and Immunities Conferred on Specified International Organizations**

#### **PURPOSE**

This paper briefs the Panel on Administration of Justice and Legal Services on –

- (a) the granting of privileges and immunities (Ps&Is) by the Central People's Government (CPG) to specific international organizations (IOs), their offices and personnel in the Hong Kong Special Administrative Region (HKSAR); and
- (b) the progress of the Administration's preparation of subsidiary legislation relating to the Ps&Is conferred on these IOs, namely the Bank for International Settlements (BIS), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD) and the International Finance Corporation (IFC), and their representative offices and personnel in the HKSAR, to be submitted to the Legislative Council for negative vetting.

#### **BACKGROUND**

2. IOs are not sovereign States. Their entitlement to Ps&Is is provided for in the IOs' respective statutes (e.g. the Articles of Agreement in the case of the IMF, IBRD and IFC) or in the relevant international conventions (e.g. the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations (UN) which applies to UN Specialized Agencies such as the IMF, IBRD and IFC). In addition, a host Government may also enter into bilateral

agreements with IOs, providing them with tailor-made Ps&Is to facilitate their work in the host territory.

3. The Ps&Is granted to IOs serve to enable them to carry out their functions without undue impediments and interferences. Similarly, the Ps&Is conferred on the personnel of the IOs concerned are meant to ensure the efficient performance of tasks by the personnel for the interests of the IOs and not for the personal benefit of individuals.

### SITUATION IN HONG KONG

4. In general, when an IO wishes to maintain/establish an office in a State, the IO concerned has to seek agreement from the host State. In the case of the HKSAR, since under the Basic Law, the CPG is responsible for foreign affairs in respect of the HKSAR, the establishment of an IO office in the HKSAR requires the consent of the CPG in consultation with the Government of the HKSAR. The IO concerned and the CPG will normally conclude agreements or memoranda of understanding concerning the maintenance/establishment of an office in the HKSAR.

5. Before reunification, the CPG has consented to the continued maintenance of the office of the United Nations High Commissioner for Refugees (UNHCR) and the office of the Commission of the European Communities (European Commission) in the HKSAR. Moreover, since reunification, the CPG has consented to the establishment of a representative office of the BIS, IMF and IBRD/IFC in the HKSAR. In this respect, the CPG has entered into agreements or memoranda of understanding with the UNHCR, European Commission, BIS, IMF and IBRD/IFC<sup>Note</sup> for the maintenance /establishment of offices in the HKSAR. The HKSAR representative offices of these IOs are -

- (a) the UNHCR Sub-Office;
- (b) the European Commission Office;

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<sup>Note</sup> Pursuant to the memorandum of understanding between the CPG and the IBRD/IFC (the MOU), the Government of the HKSAR and IBRD/IFC have also signed a memorandum of administrative arrangements and have exchanged letters for the purpose of the implementation of the MOU.

- (c) the BIS Representative Office for Asia and the Pacific (BIS Representative Office);
- (d) the IMF Hong Kong Special Administrative Region Sub-Office (IMF Sub-Office); and
- (e) the IFC Regional Office for East Asia and Pacific and the IBRD's World Bank Private Sector Development Office for East Asia and Pacific (IBRD/IFC Joint Office).

### **PRIVILEGES AND IMMUNITIES FOR IOs**

6. The Ps&Is enjoyed by the six IOs mentioned above, their representative offices and personnel are granted under the respective bilateral agreements/memoranda of understanding between the CPG and the IOs, the relevant multilateral international conventions and the statutes of the IOs. The Ps&Is granted to the IOs are largely similar in nature (e.g. inviolability of premises and archives, personal inviolability, immunity from taxation, immunity from legal process and immunity from seizure and expropriation of property and assets).

7. In respect of the UNHCR, Ps&Is are granted to the organisation, the UNHCR Sub-Office and its personnel in the HKSAR pursuant to the Convention on the Privileges and Immunities of the United Nations which was given effect to by the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) and The United Nations (Cap. 190 sub. leg. H). As regards the European Commission, BIS, IMF, IBRD and IFC, their representative offices and personnel in the HKSAR, the granting of Ps&Is is enshrined in the respective bilateral agreements, memoranda of understanding, memorandum of administrative arrangements and letters exchanged as set out at **Annex**, the full texts of which have been published in the Gazette and uploaded onto the Department of Justice's website for the information of the general public.

## LEGISLATIVE PROPOSALS

8. At present, the international agreements signed between the CPG and IOs conferring Ps&Is which are applied to the HKSAR, are given legal effect to generally by a national law applicable to the HKSAR by promulgation under Article 18 of the Basic Law - the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities. In line with the common law practice, provisions of international agreements applicable to the HKSAR which affect private rights and obligations or require exceptions to be made to the existing laws of the HKSAR, should be underpinned by way of local legislation. Moreover, the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) was enacted in 2000 to provide a more flexible framework for underpinning the relevant provisions of the international agreements signed by the CPG/Government of the HKSAR.

9. With the legislative framework in place, we have embarked on a programme of preparing subsidiary legislation in the form of Orders under Cap. 558, to underpin the relevant provisions in the international agreements listed at Annex. When the draft Orders were ready, we also consulted the signatories to the international agreements to ensure that they were satisfied with the content of the Orders. The Order relating to the Ps&Is conferred on the European Commission, its Office and personnel in the HKSAR, was enacted in November 2003. As regards the remaining international agreements listed at Annex, consultation with the relevant IOs has recently been completed and we shall shortly submit to the Legislative Council the Orders underpinning the Ps&Is conferred on the four IOs concerned, namely BIS, IMF, IBRD and IFC, and their offices and personnel in the HKSAR.

Administration Wing  
Chief Secretary for Administration's Office  
March 2008

**List of the International Agreements between the  
CPG and IOs Relating to Privileges and Immunities  
Conferred on the IOs' Representative Offices in the HKSAR**

	<b>Date of Application to the HKSAR</b>
1. Agreement Constituted by Exchange of Letters Between the Government of the People's Republic of China and <b>the Commission of the European Communities</b> Concerning the Maintenance of the Office of the Commission of the European Communities in the Hong Kong Special Administrative Region of the People's Republic of China	1 Jul 1997
2. Host Country Agreement Between the Government of the People's Republic of China and <b>the Bank for International Settlements</b> Relating to the Establishment and Status of a Representative Office of the Bank for International Settlements in the Hong Kong Special Administrative Region of the People's Republic of China	11 May 1998
3. Memorandum of Understanding Between the Government of the People's Republic of China and <b>the International Monetary Fund</b> Concerning the Establishment of a Sub-Office in the Hong Kong Special Administrative Region by the Resident Representative Office of the Fund in the People's Republic of China including Annex - Administrative Arrangements Concerning the Establishment of the Hong Kong Special Administrative Region Sub-Office of the Resident Representative Office of the International Monetary Fund in the People's Republic of China	23 Sept 2000

**Date of  
Application to  
the HKSAR**

4. Memorandum of Understanding Between the Government of the People's Republic of China and the **International Bank for Reconstruction and Development and the International Finance Corporation** Concerning the Establishment of the IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific in the Hong Kong Special Administrative Region of the People's Republic of China
- Memorandum of Administrative Arrangements Relating to the IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific in the Hong Kong Special Administrative Region of the People's Republic of China
- Letters Between the Hong Kong Monetary Authority and the International Bank for Reconstruction and Development and the International Finance Corporation Relating to the Memorandum of Understanding
- 28 Sept 2000