

## LEGISLATIVE COUNCIL BRIEF

### INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (BANK FOR INTERNATIONAL SETTLEMENTS) ORDER

### INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (INTERNATIONAL MONETARY FUND) ORDER

### INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND INTERNATIONAL FINANCE CORPORATION) ORDER

## INTRODUCTION

At the meeting of the Executive Council on 6 May 2008, the Council ADVISED and the Chief Executive ORDERED that the following Orders should be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) -

- (a) the International Organizations (Privileges and Immunities) (Bank for International Settlements) Order, at **Annex A**;
- (b) the International Organizations (Privileges and Immunities) (International Monetary Fund) Order, at **Annex B**; and
- (c) the International Organizations (Privileges and Immunities) (International Bank for Reconstruction and Development and International Finance Corporation) Order, at **Annex C**.

## **BACKGROUND AND JUSTIFICATIONS**

### Granting of Privileges and Immunities

2. International Organizations (IOs) are not sovereign States. Their entitlement to privileges and immunities (Ps&Is) is provided for in the IOs' respective statutes or in the relevant international convention. 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.

### Bilateral Agreements between the Central People's Government and IOs

4. The Central People's Government (CPG) has concluded agreements or memoranda of understanding with six IOs, namely the United Nations High Commissioner for Refugees (UNHCR), the Commission of the European Communities (European Commission), 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), for the maintenance/establishment of their representative offices in the Hong Kong Special Administrative Region (HKSAR).

5. In respect of the UNHCR, Ps&Is granted to the organization, its office and personnel in the HKSAR pursuant to the Convention on the Privileges and Immunities of the United Nations have been given effect to by the International Organizations and Diplomatic Privileges Ordinance (Cap. 190) and The United Nations (Cap. 190 sub. leg. H).

6. As regards the European Commission, the International Organizations (Privileges and Immunities) (Office of the Commission of the European Communities) Order (Cap. 558 sub. leg. A), which gives effect to

the Ps&Is conferred on the organization, its office and personnel in the HKSAR, was enacted in November 2003.

7. The current legislative exercise concerns the CPG's bilateral agreements or memoranda of understanding with BIS<sup>(1)</sup>, IMF<sup>(2)</sup> and IBRD/IFC<sup>(3)</sup> for the establishment of their representative offices<sup>(4)</sup> in the HKSAR, which came into force on 11 May 1998, 23 September 2000 and 28 September 2000 respectively. These bilateral agreements/memoranda of understanding confer Ps&Is on the respective IOs, and their representative offices and personnel in the HKSAR. In addition, Ps&Is are also conferred on these IOs under the relevant multilateral international conventions<sup>(5)</sup> and the

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**Notes** (1) Host Country Agreement Between the Government of the People's Republic of China and the Bank for International Settlements 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.

(2) Memorandum of Understanding Between the Government of the People's Republic of China and the International Monetary Fund 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.

(3) 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 and 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.

(4) They are -

(a) the BIS Representative Office for Asia and the Pacific;

(b) the IMF Hong Kong Special Administrative Region Sub-Office; and

(c) the IFC Regional Office for East Asia and Pacific and the IBRD's World Bank Private Sector Development Office for East Asia and Pacific.

(5) Namely, the Protocol Regarding the Immunities of the Bank for International Settlements, which the People's Republic of China acceded to in December 1997, in the case of BIS; and 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.

IOs' respective statutes<sup>(6)</sup>.

8. Examples of Ps&Is enjoyed by the BIS, IMF and IBRD/IFC, and their representative offices and personnel in the HKSAR, are -

- (a) inviolability of the office premises of the IOs concerned, its archives and documents, and personal inviolability of certain personnel of the IOs;
- (b) immunity from all forms of seizure or execution in respect of the property and assets of the IOs;
- (c) immunity from legal process in respect of acts performed in the exercise of official functions, and
- (d) exemption from taxation and customs duties.

### Need for Local Legislation

9. 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 transformed onto the domestic legal plane. Having regard to our common law tradition, the best means of underpinning the relevant provisions of the above bilateral agreements or memoranda of understanding<sup>(7)</sup> is to enact local legislation setting them out expressly and specifically under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558).

## **THE ORDERS**

10. The three Orders seek to declare that certain provisions relating to the Ps&Is of the respective IOs, and their representative offices and personnel

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**Notes** <sup>(6)</sup> Namely, the respective Articles of Agreement of IMF, IBRD and IFC.

<sup>(7)</sup> At present, these bilateral agreements or memoranda of understanding are given legal effect to in the HKSAR by the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities, which is a national law applicable to the HKSAR by promulgation under Article 18 of the Basic Law.

in the HKSAR, under the bilateral agreements or memoranda of understanding signed between the CPG and the IO concerned, the relevant multilateral international conventions and the IOs' respective statutes, shall have the force of law in the HKSAR.

## **LEGISLATIVE TIMETABLE**

11. The Orders will be published in the Gazette on 16 May 2008. We propose that the Orders should come into operation on 18 July 2008, taking into account the lead time required for negative vetting upon gazettal.

## **IMPLICATIONS OF THE PROPOSAL**

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The three Orders will not affect the current binding effect of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558).

13. The Ps&Is conferred upon BIS, IMF, IBRD and IFC, and their representative offices and personnel in the HKSAR under the respective Orders do not have significant financial implications for Government.

14. The proposal has no civil service, economic, productivity, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

15. We have consulted the IOs concerned (through their representative offices in the HKSAR) on the draft Orders. We have also issued a paper to the Panel on Administration of Justice and Legal Services in March 2008 to brief Members on this subject.

## **PUBLICITY**

16. A spokesman will be available to answer possible media and public enquiries.

## ENQUIRY

17. Any enquiries on the brief should be addressed to Mr Y K LEE, Deputy Director of Protocol, on 2810 2798.

Administration Wing  
Chief Secretary for Administration's Office  
14 May 2008

**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND  
IMMUNITIES) (BANK FOR INTERNATIONAL  
SETTLEMENTS) ORDER**

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# **INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (BANK FOR INTERNATIONAL SETTLEMENTS) 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 18 July 2008.

## **2. Interpretation**

In this Order –

“Bank” (銀行) means the Bank for International Settlements;

“Brussels Protocol” (《布魯塞爾議定書》) means the Protocol regarding the immunities of the Bank for International Settlements, done at Brussels on 30 July 1936;

“Host Country Agreement” (《東道國協定》) means the Host Country Agreement Between the Government of the People’s Republic of China and the Bank for International Settlements 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, done at Basle on 11 May 1998;

“Representative Office” (代表處) means the Representative Office of the Bank in Hong Kong.

## **3. Certain provisions of Host Country Agreement have force of law in Hong Kong**

(1) It is declared that the provisions of the Host Country Agreement as specified in Schedule 1 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2), (3), (4), (5), (6) and (7).



(2) In applying those provisions of the Host Country Agreement, “senior resident representative” shall be construed as meaning the senior resident representative of the Representative Office referred to in paragraph 1 of Article 2 of the Host Country Agreement.

(3) In applying paragraph 5 of Article 5 of the Host Country Agreement, “Headquarters Agreement” shall be construed as meaning the Agreement between the Swiss Federal Council and the Bank to determine the Bank’s legal status in Switzerland, done at Berne on 10 February 1987, as amended from time to time.

(4) In applying paragraph 3 of Article 6 of the Host Country Agreement, “International Telecommunication Convention” shall be construed as meaning the Convention of the International Telecommunication Union, done at Geneva on 22 December 1992 and as amended in 1994.

(5) In applying Article 13 of the Host Country Agreement, the reference to “flagrant instances of criminal offence” shall be construed as a reference to any offence punishable on a first conviction with imprisonment for a term of up to 5 years or with a more severe sentence.

(6) In applying Article 14 of the Host Country Agreement, “senior officials” shall be construed as meaning the Deputy Chief Representative, the Head of Regional Treasury, Asia Pacific and any other officials of the Representative Office of a rank comparable to that of a senior official of any Specialized Agency of the United Nations in the Hong Kong Special Administrative Region.

(7) In applying paragraph 1 of Article 21 of the Host Country Agreement, the reference to “safeguard” shall be construed as including any safeguard that the Central People’s Government authorizes the Government of the Hong Kong Special Administrative Region to apply.

#### **4. Article 1 of Brussels Protocol has force of law in Hong Kong**

(1) It is declared that Article 1 of the Brussels Protocol as specified in Schedule 2 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsection (2).

(2) In applying Article 1 of the Brussels Protocol –  
 “Agreement with Germany” (《與德國的協定》) shall be construed as meaning the Agreement concerning the settlement of financial questions resulting from World War One that the government of Germany entered into with the governments of 16 other countries at The Hague;  
 “Constituent Charter” (組織章程) shall be construed as meaning the Constituent Charter of the Bank granted by the Swiss Federal Government.

#### **5. The Bank to have legal personality in Hong Kong**

The Bank has legal personality in Hong Kong as a body corporate and has all the powers of a natural person of full age and capacity including power -

- (a) to enter into contracts;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute and defend legal proceedings.

### SCHEDULE 1

[s. 3]

## PROVISIONS OF HOST COUNTRY AGREEMENT HAVING FORCE OF LAW IN HONG KONG

...

### Article 3

#### Freedom of Action of the Bank

...

5. The Bank shall not be subject to any form of financial or banking supervision or obliged to implement any form of accounting standard, or to comply with any form of licensing or registration requirement.

#### **Article 4**

##### **Inviolability**

1. All or any part of the premises, regardless of ownership, occupied from time to time as offices by the Representative Office shall be considered as premises of the Bank in the HKSAR and shall be inviolable; such premises shall be under the control and authority of the Bank. No representative of ... the HKSAR authorities, may enter upon the premises of the Representative Office to perform any duty without the express consent of, and under the conditions, if any, agreed to by the President of the Bank, or the General Manager of the Bank, or the Assistant General Manager of the Bank, or the senior resident representative, or their duly authorized representative. Consent of the senior resident representative may, however, be assumed in the case of fire or other disaster requiring prompt protective action, if he or she cannot be reached in time.

2. All archives and records of the Bank and, in general, all documents and any data or data media belonging to the Bank or in its possession, shall be inviolable at any time and in any place.

...

#### **Article 5**

##### **Immunities from Jurisdiction and Execution**

1. All deposits entrusted to the Bank, all claims against the Bank and the shares issued by the Bank shall, without the express prior agreement of the Bank, wherever located and by whomsoever held, be immune from any form of seizure, attachment, sequestration, execution, requisition, confiscation, expropriation, freeze or any other form of seizure by executive, judicial or legislative action.

2. The Bank, including the Representative Office, shall enjoy immunity from every form of legal process in ... the HKSAR, except:

(a) with respect to contracts relating to real estate in the HKSAR or to the supply of goods or services for the Representative Office, which are concluded with a person resident or a body incorporated or having its principal place of business or domicile in the HKSAR at the time of the conclusion of the contract, unless otherwise agreed; or

(b) in the case of any civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of the Bank, or in respect of a motor traffic offence involving such a vehicle.

3. The immunity provided for above may be expressly waived in individual cases by the President, the General Manager or the Assistant General Manager of the Bank or their duly authorized representative, in writing or in a duly authenticated telecommunication or by the terms of a contract.

4. Property and assets of the Bank shall be exempt from any measure of compulsory execution in ... the HKSAR, except for any final judgment rendered by any HKSAR court which has jurisdiction over the Bank pursuant to paragraph 2 above.

5. The Administrative Tribunal of the Bank (as described in Article 4.2 of the Headquarters Agreement of the 10th February 1987 determining the legal status of the Bank in Switzerland) shall have exclusive and final jurisdiction over all disputes arising in connection with employment, welfare and pension matters between the Bank and its personnel or its former personnel, or persons claiming through them.

## **Article 6**

### **Communications**

1. All official correspondence and communications to or from the Representative Office, by whatever means and in whatever form transmitted or received, shall be immune from censorship and any other form of interception or interference.
2. The Bank shall be entitled to use codes and encryption for its official communications. The Bank shall also be entitled to send and receive official correspondence and communications, on any form of data media, including by duly identified couriers or in sealed bags, which shall have privileges and immunities as accorded to the Specialized Agencies of the United Nations. The Bank shall in particular be entitled to unfettered access to world-wide telecommunication links of its choice. The Bank may, with the consent of the relevant HKSAR authority regarding technical requirements, use a wireless transmitter in the HKSAR and install and operate in the HKSAR point-to-point telecommunication facilities and such other telecommunications and transmission facilities as may be necessary to facilitate communications with the Representative Office both from within and outside the HKSAR.
3. The Bank shall benefit, in respect of all official communications, from the same treatment as granted by the Government to any Specialized Agency of the United Nations insofar as such treatment is compatible with the International Telecommunication Convention.

#### **Article 7**

##### **Publications, Data and Data Media**

The importation of publications and all kinds of data or data media for the Bank's use, and the exportation of the Bank's publications and all kinds of data or data media, shall not be subject to any restriction.

#### **Article 8**

##### **Tax Exemptions**

1. The Bank, its assets, income and other property shall be exempt from all direct taxes and other taxes, dues, duties or rates of any kind except:

(a) excise duties, taxes on the sale of movable and immovable property and taxes on the provision of services which form part of the price to be paid ...;

(b) charges for specific services rendered to the Representative Office, provided such charges are non-discriminatory and generally levied; and

(c) the government rent levied by the Government of the HKSAR under Article 121 of the Basic Law or the terms of land leases.

2. The Bank shall not be subject to taxation on the rent or lease for any premises rented by it and occupied by its services or personnel.

3. The operations of the Bank shall be exempt from all taxes, dues, duties or rates of any kind.

4. The Bank shall not be liable for the collection or payment of any tax, due, duty or rate of any kind.

## **Article 9**

### **Customs Treatment**

1. The Bank shall be exempt in the HKSAR from all customs duties, license fees, taxes and other levies, and from economic restrictions on imports and exports, on all goods and articles, including motor vehicles, spare parts, publications, data and data media, which are imported or exported by the Bank for its official use, and from any obligation for the payment, withholding or collection of any customs duty. ...

2. The Bank shall receive the same preferential customs treatment as that granted by the Government to any Specialized Agency of the United Nations in the HKSAR.

...

**Article 11****Pension and Special Funds**

The pension fund of the Bank (and any special fund created by the Bank in connection with other welfare arrangements provided by it, in particular in order to accumulate reserves) shall enjoy, irrespective of whether or not the fund has a separate legal personality, the same exemptions, privileges and immunities as are enjoyed by the Bank itself with regard to its property. These funds are exempt only to the extent that they are exclusively for the benefit of the Bank or its personnel or its former personnel or persons claiming through them.

**Article 12****Social Welfare**

1. The Bank, as an employer, shall be exempt from the Employment Ordinance, the Employees' Compensation Ordinance, the Mandatory Provident Fund Schemes Ordinance and any legislation applicable in the HKSAR regarding old-age and surviving-dependents insurance, or incapacity insurance, or unemployment insurance, or insurance for health care or against accident, or occupational pension schemes, or welfare systems of any kind, save in respect of any person who is engaged by the Representative Office as a local employee.
2. The Representative Office's personnel, other than any person who is engaged by the Representative Office as a local employee, shall be exempt from such legislation as is referred to in paragraph 1 above and, in particular, from any mandatory contribution to any insurance or welfare scheme, unless an agreement to the contrary is reached between the Bank and the relevant HKSAR authorities. This exemption does not apply in relation to the employment of any person by personnel of the Representative Office in their private capacity.

...

### Article 13

#### **Privileges, Immunities and Exemptions of Members of the Board of Directors, the President of the Bank, the General Manager and Assistant General Manager of the Bank and Representatives of the Bank's Member Central Banks**

Members of the Board of Directors of the Bank, the President of the Bank, the General Manager of the Bank, the Assistant General Manager of the Bank and representatives of the central banks which are members of the Bank shall enjoy the following privileges, immunities and exemptions while carrying out official Bank activities and throughout their journey to or from the place where a meeting is held in the HKSAR:

(a) immunity from arrest or imprisonment and immunity from inspection or seizure of personal baggage, except in flagrant instances of criminal offence;

(b) immunity from inspection or seizure of official baggage;

(c) inviolability of all papers, documents, data or data media;

(d) immunity from the jurisdiction of any ... HKSAR ... court or tribunal with respect to things done or omitted to be done in connection with official Bank activities, including words spoken and writings, even after their mission has been accomplished;

(e) the same customs privileges and facilities as those granted by the Government to officials of comparable rank of any Specialized Agency of the United Nations in the HKSAR;

...

(h) the right to use codes or encryption in official communications, and the right to receive or send official documents or correspondence by means of duly identified couriers or sealed bags.



#### **Article 14**

##### **Status of the Senior Resident Representative and Senior Officials of the Representative Office**

The senior resident representative, as well as such senior officials as are designated by the General Manager of the Bank, or the Assistant General Manager of the Bank, and who are neither Chinese nationals nor permanent residents of the HKSAR, upon the notification of their designation to the relevant HKSAR authorities, shall enjoy the same privileges, immunities, exemptions and facilities as those granted by the Government to officials of comparable rank of any Specialized Agency of the United Nations in the HKSAR. In particular, such persons shall be granted, by the appropriate government authorities, the same customs privileges and facilities as those granted to officials of comparable rank of any Specialized Agency of the United Nations in the HKSAR.

#### **Article 15**

##### **Privileges, Immunities and Exemptions Granted to All Personnel of the Representative Office**

All personnel of the Representative Office, regardless of nationality or permanent residence status, shall be immune from the jurisdiction of any HKSAR court or tribunal with respect to things done or omitted to be done while carrying out official Bank activities, including words spoken and writings, even when such persons are no longer employed by the Bank.

#### **Article 16**

##### **Privileges, Immunities and Exemptions Granted to Personnel of the Representative Office Who Are neither Chinese Nationals nor HKSAR Permanent Residents**

Personnel of the Representative Office together with their respective spouse and dependent children under the age of 21, who are neither Chinese nationals nor permanent residents of the HKSAR, shall:

...

(e) enjoy immunity from inspection or seizure of official baggage;

(f) enjoy the same customs privileges and facilities as those granted by the Government to the personnel of comparable rank of any Specialized Agency of the United Nations in the HKSAR;

(g) be exempt from any tax on salaries, fees, emoluments and allowances paid to them by the Bank; and

(h) be exempt, at the time of payment, from any tax on capital payments, if any, paid to them by the Bank, including capital payments paid to them by way of indemnity for sickness or accident; income derived from such capital payments, as well as annuities and pensions paid to former personnel of the Bank, shall not be exempt from tax.

...

## **Article 18**

### **Experts**

1. Experts who are neither Chinese nationals nor permanent residents of the HKSAR and who carry out temporary missions for the Bank shall, in connection with their missions, be assimilated to the personnel of the Representative Office with respect to the privileges, immunities and exemptions specified in Articles 15 and 16 of this Agreement.

2. Experts who are Chinese nationals or permanent residents of the HKSAR and who carry out temporary missions for the Bank shall, in connection with their missions, enjoy the privileges, immunities and exemptions specified in Article 15 of this Agreement.

## **Article 19**

### **Purpose of, Waiver of, and Exceptions to, Immunity**

1. The privileges, immunities, exemptions, facilities, assurances and other rights referred to in this Agreement are solely granted to ensure, in all

circumstances, the freedom of action of the Bank and the complete independence of persons performing official activities for the Bank, and are not granted for the personal benefit of those persons.

...

3. The President of the Bank, or the General Manager of the Bank, or the Assistant General Manager of the Bank shall, if they consider that the immunity of any member of the personnel of the Representative Office or expert is being used to hinder the normal course of justice, and that it is possible to waive such immunity without prejudicing the interests of the Bank, waive that immunity.

...

5. No person enjoying the privileges, immunities or exemptions referred to in this Agreement shall be immune from jurisdiction or, where applicable, from execution, in the event of legal proceedings against them with respect to damage occasioned by a motor vehicle in their ownership or control.

...

...

### **Article 21**

#### **Security of the HKSAR**

1. Nothing in this Agreement shall affect the right of the Government to apply any appropriate safeguard in the interests of the security of the HKSAR. ...

...

### **Article 22**

#### **Scope and Implementation**

...

2. All commitments undertaken and privileges, immunities, exemptions, facilities, assurances and other rights provided for in this Agreement shall, as the case may be, apply to:

(a) the Bank;

(b) the Representative Office and any branch and any wholly owned subsidiary established and carrying out activities in the performance of the Bank's objects;

(c) any investment fund or similar fund which is established and maintained by the Bank in the performance of the Bank's objects and which is wholly controlled by the Bank; and

(d) subsidiaries of the Bank which are not wholly owned by the Bank but are carrying out activities in the performance of the Bank's objects, and which are approved by the Government for these purposes.

...

4. Unless otherwise provided in this Agreement, the privileges and immunities conferred on the Bank by this Agreement shall be no less than those granted by the Government to the Specialized Agencies of the United Nations under the Convention on the Privileges and Immunities of the Specialized Agencies of 21st November 1947.

## SCHEDULE 2

[s. 4]

### ARTICLE 1 OF BRUSSELS PROTOCOL HAVING FORCE OF LAW IN HONG KONG

#### Article 1

The Bank for International Settlements, its property and assets as well as all the property and assets which are or will be entrusted to it, whether coin or

other fungible goods, gold bullion silver or any other metal, precious objects, securities or any other objects the deposit of which is admissible in accordance with banking practice, are exempt from the provisions or measures referred to in paragraph 2 of Article X of the Agreement with Germany and in Article 10 of the Constituent Charter consecutive to the Convention with Switzerland, of the 20th January 1930.

The property and assets of third parties, held by any other institution or person, on the instructions, in the name or for the account of the Bank for International Settlements, shall be considered as entrusted to the Bank for International Settlements and as enjoying the immunities laid down by the Articles above-mentioned by the same right as the property and assets which the Bank for International Settlements holds for the account of others, in the premises set apart for this purpose by the Bank, its branches or agencies.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

In December 1997, the Government of the People's Republic of China acceded to the Brussels Protocol which confers on the Bank for International Settlements certain immunities. In May 1998, it entered into an agreement with the Bank relating to the establishment and status of a representative office of the Bank in Hong Kong. This Order declares that certain provisions relating to the privileges and immunities of the Bank, its representative office and their personnel, etc. under the agreement and the Protocol are to have the force of law in Hong Kong.

**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND  
IMMUNITIES) (INTERNATIONAL MONETARY FUND)  
ORDER**

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# **INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (INTERNATIONAL MONETARY FUND) 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 18 July 2008.

## **2. Interpretation**

In this Order –

“Administrative Arrangements” (《行政安排》) means the 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 that is annexed to and constituting an inalienable part of the Memorandum of Understanding;

“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;

“Fund” (基金組織) means the International Monetary Fund;

“Memorandum of Understanding” (《諒解備忘錄》) means the Memorandum of Understanding Between the Government of the People’s Republic of China and the International Monetary Fund 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, done on 23 September 2000.

### **3. Certain provisions of Administrative Arrangements have force of law in Hong Kong**

(1) It is declared that the provisions of the Administrative Arrangements as specified in Schedule 1 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2), (3), (4) and (5).

(2) In applying those provisions of the Administrative Arrangements, “Hong Kong Sub-Office” shall be construed as meaning the office established in Hong Kong pursuant to the Memorandum of Understanding and known as 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.

(3) In applying paragraph 10(1)(d) of the Administrative Arrangements, “this Annex” shall be construed as meaning the Administrative Arrangements.

(4) In applying paragraph 10(2) of the Administrative Arrangements, the reference to “(e) to (h) inclusive” shall be construed as a reference to “(g)”.

(5) In applying paragraph 14 of the Administrative Arrangements, “the Memorandum” shall be construed as meaning the Memorandum of Understanding.

### **4. Certain 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 Schedule 2 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2), (3), (4), (5), (6) and (7).

(2) In applying those provisions of the 1947 Convention, a reference to “specialized agency” (however expressed) shall be construed as a reference to the Fund.



- (3) In applying section 11 of the 1947 Convention –
- (a) the reference to “the territory of each State party to this Convention in respect of that agency” shall be construed as a reference to the area of the Hong Kong Special Administrative Region of the People’s Republic of China;
  - (b) the reference to “the Government of such State” shall be construed as a reference to the Central People’s Government of the People’s Republic of China.

(4) In applying section 13 of the 1947 Convention, the reference to “representatives of members” shall be construed as a reference to representatives of members of the Fund.

(5) In applying section 15 of the 1947 Convention, the reference to “present in a member State” shall be construed as a reference to present in the Hong Kong Special Administrative Region of the People’s Republic of China.

- (6) In applying section 16 of the 1947 Convention –
- (a) the reference to “representatives of members” shall be construed as a reference to representatives of members of the Fund;
  - (b) a reference to “member” shall be construed as a reference to member of the Fund.

(7) In applying section 17 of the 1947 Convention, that section shall be construed as if it reads as follows : “The provisions of sections 13, 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 Chinese national or is or has been a representative of the People’s Republic of China.”.

##### **5. Certain provisions of Articles of Agreement of the Fund have force of law in Hong Kong**

It is declared that the provisions of Article IX of the Articles of Agreement of the Fund as specified in Schedule 3 shall have the force of law in Hong Kong.

## **6. The Fund to have legal personality in Hong Kong**

The Fund has legal personality in Hong Kong as a body corporate and has all the powers of a natural person of full age and capacity including power –

- (a) to enter into contracts;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute and defend legal proceedings.

### SCHEDULE 1

[s. 3]

#### PROVISIONS OF ADMINISTRATIVE ARRANGEMENTS HAVING FORCE OF LAW IN HONG KONG

...

2. The premises of the Hong Kong Sub-Office shall be inviolable and shall be under the control and authority of the Fund. No ... person exercising any public authority within the Hong Kong Special Administrative Region (“HKSAR”), may enter the premises of the Hong Kong Sub-Office to perform any duties therein except with the consent of the Fund or the Hong Kong Sub-Office. Such consent may, however, be assumed in the case of fire or other disaster requiring prompt protective action, if such consent cannot be obtained in a timely manner.

...

4. (1) The Fund, the Hong Kong Sub-Office, and the assets, property, income and operations and transactions of the Fund authorized by its Articles of Agreement, are immune from all taxation, dues, duties or rates of any kind. Neither the Fund nor the Hong Kong Sub-Office shall be liable for the collection or payment of any tax, dues, duties or rates save those specifically referred to in this paragraph.

...

(3) The Fund shall not be exempt from:

(a) charges for specific services rendered, provided that such charges are non-discriminatory and generally levied; and

(b) the government rent levied by the Government of the HKSAR (“HKSARG”) under Article 121 of the Basic Law or the terms of land leases.

5. Goods, including motor vehicles and spare parts thereof, imported into or exported from the HKSAR by the Fund for its official use shall be exempt from customs duties, taxes, licence fees and other charges, and from economic prohibitions and restrictions on imports and exports save those imposed within the HKSAR on strategic commodities. ...

6. The Fund, as an employer, shall be exempt from the Employment Ordinance, the Employees’ Compensation Ordinance, the Mandatory Provident Fund Schemes Ordinance, and any legislation applicable in the HKSAR regarding old-age and surviving dependents insurance, or incapacity insurance or unemployment insurance, or insurance for health care or against accident, or occupational pension schemes, or welfare systems of any kind, in respect of officers and employees appointed by the Fund to the Hong Kong Sub-Office (“Officers and Employees”) who are not locally recruited. The Officers and Employees other than those who are locally recruited shall be exempt from such legislation and, in particular, from any mandatory contribution to any insurance or welfare scheme, unless an agreement to the contrary is reached between the Fund and the HKSARG. The exemptions under this paragraph do not apply in relation to the employment of any person by the Officers and Employees in their private capacity. ...

7. All official communications to and from the Hong Kong Sub-Office, by whatever means or in whatever form transmitted, shall be immune from censorship and any other form of interception or interference. The Fund shall be entitled to use codes and encryption for its official communications. ... The Fund shall also be entitled to dispatch and receive correspondence and other communications by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

8. The Fund may, with the consent of the relevant HKSAR authority regarding technical requirements, use a wireless transmitter in the HKSAR. ...

...

10. (1) Subject to sub-paragraph (2) below, Officers and Employees and other officers and employees of the Fund on mission in the HKSAR or in transit therein, including technical assistance experts referred to in paragraphs 9(1)(b) and (c) above, enjoy the following privileges and immunities:

(a) immunity from inspection or seizure of official baggage;

(b) immunity from legal process with respect to acts performed by them in their official capacity;

(c) exemption from taxation on or in respect of salaries and emoluments paid by the Fund in accordance with Article IX, Section 9(b) of the Fund's Articles of Agreement and Article VI, Section 19(b) of the United Nations Convention on the Privileges and Immunities of the Specialised Agencies;

(d) exemption from social contributions, except in cases where the Fund contributes to social security and welfare schemes in respect of any locally recruited Officers and Employees as provided under paragraph 6 of this Annex;

...

(g) exemption from customs duties with respect to articles for personal use imported into the HKSAR at the time they take up their appointment or assignment to the Hong Kong Sub-Office; ...

...

(2) The privileges and immunities set out in (e) to (h) inclusive above shall not apply to any persons who are Chinese nationals or HKSAR permanent residents.

11. (1) Subject to sub-paragraph (2) below, the HKSARG in its discretion may accord to the Resident Representative of the Hong Kong Sub-Office and such Officers and Employees as it may agree for the purpose of this paragraph and their respective spouses and dependent children under the age of 21, exemption from payment of:

(a) first registration tax under the Motor Vehicle (First Registration Tax) Ordinance;

(b) vehicle registration fee under the Road Traffic Ordinance;

(c) vehicle licence fee under the Road Traffic Ordinance;

(d) driving licence fee under the Road Traffic Ordinance;

(e) duty on tobacco and liquor under the Dutiable Commodities Ordinance;

(f) duty on hydrocarbon oil under the Dutiable Commodities Ordinance;

(g) air passenger departure tax under the Air Passenger Departure Tax Ordinance; ...

...

(2) The privileges and immunities provided in sub-paragraph (1) of this paragraph shall not be accorded to those persons who are Chinese nationals or HKSAR permanent residents or who carry on any private gainful occupation in the HKSAR.

...

14. The privileges, immunities, exemptions and facilities accorded in the Memorandum are granted in the interests of the Fund and not for the personal benefit of individuals themselves. Without prejudice to the privileges, immunities, exemptions and facilities provided for in the Memorandum, the persons referred to in paragraph 10 shall not be immune from jurisdiction or where applicable, from execution, in the event of legal proceedings against them in respect of damage occasioned by a motor vehicle in their ownership or control except when such proceedings arise out of acts performed by them in their official capacity. The Fund shall have the right and duty to waive any immunity from legal process conferred under the Memorandum where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.

...

## SCHEDULE 2

[s. 4]

### 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 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 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:

...

(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.

...

### ***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 21*

..., 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.

...

*Article X – Annexes and Application to Individual Specialized Agencies*

...

*Section 34*

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

...

SCHEDULE 3

[s. 5]

PROVISIONS OF ARTICLES OF AGREEMENT OF THE FUND  
HAVING FORCE OF LAW IN HONG KONG

**ARTICLE IX**

**Status, Immunities, and Privileges**

### **Section 1. Purposes of Article**

To enable the Fund to fulfill the functions with which it is entrusted, the ... immunities, and privileges set forth in this Article shall be accorded to the Fund ... .

...

### **Section 6. Freedom of assets from restrictions**

To the extent necessary to carry out the activities provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

...

### **Section 8. Immunities and privileges of officers and employees**

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, Section 3(j), advisors of any of the foregoing persons, officers, and employees of the Fund:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;

...

### **Section 9. Immunities from taxation**

...

(c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because of its origin; 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 Fund.

...

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

On 23 September 2000, the Government of the People's Republic of China and the International Monetary Fund ("Fund") signed a Memorandum of Understanding concerning the establishment of a sub-office in Hong Kong ("Hong Kong Sub-Office") by the Resident Representative Office of the Fund in the People's Republic of China. Privileges and immunities enjoyed by the Fund and by the Hong Kong Sub-Office, its staff and their dependents are set out in the Annex to the Memorandum "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". In addition, privileges and immunities are also conferred on the Fund by the Convention on the Privileges and Immunities of the Specialized Agencies 1947 ("the 1947 Convention") and the Articles of Agreement of the International Monetary Fund, both of which are applicable to Hong Kong.

2. This Order declares that certain provisions relating to the privileges and immunities of the Fund and of the Hong Kong Sub-Office, its staff and their dependents under the Administrative Arrangements, the 1947 Convention and the Fund's Articles of Agreement are to have the force of law in Hong Kong.

**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND  
IMMUNITIES) (INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT AND  
INTERNATIONAL FINANCE CORPORATION) ORDER**

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**INTERNATIONAL ORGANIZATIONS (PRIVILEGES  
AND IMMUNITIES) (INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT AND  
INTERNATIONAL FINANCE CORPORATION)  
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 18 July 2008.

**2. Interpretation**

In this Order –

“Bank” (銀行) means the International Bank for Reconstruction and Development;

“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;

“Corporation” (公司) means the International Finance Corporation;

“Joint Office” (聯合辦事處) means the office established in Hong Kong pursuant to the Memorandum of Understanding and known as The IFC Regional Office for East Asia and Pacific and the World Bank Private Sector Development Office for East Asia and Pacific;

“Memorandum of Administrative Arrangements” (《行政安排備忘錄》) means the 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 between the Government of the Hong Kong Special Administrative Region of the



People's Republic of China and the Bank and the Corporation done at Prague on 28 September 2000;

“Memorandum of Understanding” (《諒解備忘錄》) means the 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, done at Prague on 28 September 2000.

### **3. Certain provisions of Memorandum of Understanding have force of law in Hong Kong**

(1) It is declared that the provisions of the Memorandum of Understanding as specified in Schedule 1 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2) and (3).

(2) In applying paragraph 6 of the Memorandum of Understanding – “court of competent jurisdiction” (有管轄權的法院), in relation to Hong Kong, shall be construed as meaning a court, tribunal, adjudication board or other body having jurisdiction under the law of Hong Kong;

“final judgment” (終審判決), in relation to any action brought in Hong Kong, shall be construed as including any award, order or other determination of a final nature;

“member” (成員國) shall be construed as meaning member of the Bank or as meaning member of the Corporation, and “members” (成員國) shall be construed accordingly.

(3) In applying paragraph 13 of the Memorandum of Understanding, “Officers and Employees” (聯合辦事處官員及僱員) shall be construed as

meaning the head of the Joint Office and other officers and employees appointed to the Joint Office by the Bank and the Corporation.

**4. Certain provisions of Memorandum of Administrative Arrangements have force of law in Hong Kong**

It is declared that the provisions of the Memorandum of Administrative Arrangements as specified in Schedule 2 shall have the force of law in Hong Kong.

**5. Certain part of letter issued by Hong Kong Monetary Authority has force of law in Hong Kong**

It is declared that the part of the letter of 28 September 2000 issued by the Hong Kong Monetary Authority to the Bank and the Corporation as specified in Schedule 3 shall have the force of law in Hong Kong.

**6. Certain 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 Schedule 4 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2), (3), (4), (5), (6), (7) and (8).

(2) In applying those provisions of the 1947 Convention, a reference to “specialized agency” (however expressed) shall be construed as a reference to the Bank or as a reference to the Corporation.

(3) In applying section 11 of the 1947 Convention –

(a) the reference to “the territory of each State party to this Convention in respect of that agency” shall be construed as a reference to the area of the Hong Kong Special Administrative Region of the People’s Republic of China;

(b) the reference to “the Government of such State” shall be construed as a reference to the Central People’s Government of the People’s Republic of China.

(4) In applying section 13 of the 1947 Convention, the reference to “representatives of members” shall be construed as a reference to representatives of members of the Bank or as a reference to representatives of members of the Corporation.

(5) In applying section 15 of the 1947 Convention, the reference to “present in a member State” shall be construed as a reference to present in the Hong Kong Special Administrative Region of the People’s Republic of China.

(6) In applying section 16 of the 1947 Convention –

(a) the reference to “representatives of members” shall be construed as a reference to representatives of members of the Bank or as a reference to representatives of members of the Corporation;

(b) a reference to “member” shall be construed as a reference to member of the Bank or as a reference to member of the Corporation.

(7) In applying section 17 of the 1947 Convention, that section shall be construed as if it reads as follows : “The provisions of sections 13, 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 Chinese national or is or has been a representative of the People’s Republic of China.”.

(8) In applying section 19(f) of the 1947 Convention, the reference to “taking up their post in the country in question” shall be construed as a reference to taking up their post in the Hong Kong Special Administrative Region of the People’s Republic of China.

**7. Certain provisions of Articles of Agreement of the Bank have force of law in Hong Kong**

(1) It is declared that the provisions of Article VII of the Articles of Agreement of the Bank as specified in Schedule 5 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsection (2).

(2) In applying Article VII, Section 9(b) of the Articles of Agreement of the Bank, the reference to “local citizens, local subjects, or other local nationals” shall be construed as a reference to Chinese nationals or Hong Kong permanent residents.

**8. Certain provisions of Articles of Agreement of the Corporation have force of law in Hong Kong**

(1) It is declared that the provisions of Article VI of the Articles of Agreement of the Corporation as specified in Schedule 6 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsection (2).

(2) In applying Article VI, Section 9(b) of the Articles of Agreement of the Corporation, the reference to “local citizens, local subjects, or other local nationals” shall be construed as a reference to Chinese nationals or Hong Kong permanent residents.

**9. The Bank and the Corporation to have legal personality in Hong Kong**

(1) The Bank has legal personality in Hong Kong as a body corporate and has all the powers of a natural person of full age and capacity including power –

- (a) to enter into contracts;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute and defend legal proceedings.

(2) The Corporation has legal personality in Hong Kong as a body corporate and has all the powers of a natural person of full age and capacity including power –

- (a) to enter into contracts;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute and defend legal proceedings.

## SCHEDULE 1

[s. 3]

### PROVISIONS OF MEMORANDUM OF UNDERSTANDING HAVING FORCE OF LAW IN HONG KONG

...

4 The Government will extend to the head of the Joint Office (including any official acting on his/her behalf during the latter's absence from duty) and his/her spouse and dependent children under the age of 21, privileges, immunities, exemptions and facilities not less favorable than those accorded to heads of other United Nations Specialized Agencies in the HKSAR.

...

6 ... actions may be brought against the Bank or the Corporation only in a court of competent jurisdiction in the territories of a member in which the Bank or the Corporation 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 or the Corporation 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 or the Corporation.

7 The premises of the Joint Office shall be inviolable and shall be under the control of the Bank and the Corporation. No ... person exercising any public authority within the HKSAR may enter the premises of the Joint Office without the consent of the head of the Joint Office or his/her representative. Such consent, may, however, be assumed in the case of fire or other disaster requiring prompt protective action.

8 No censorship shall be applied to the official correspondence and other official communications of the Joint Office. The Joint Office 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.

...

10 All goods imported into or exported from the HKSAR by the Bank or the Corporation for its official use shall be exempt from customs duties, taxes, licence fees and other charges, and from economic prohibitions and restrictions on imports and exports.

...

13 ...

(2) The privileges, immunities, exemptions and facilities accorded herein are granted in the interests of the Bank and the Corporation and not for the personal benefit of individuals themselves. Without prejudice to the privileges, immunities, exemptions and facilities provided for in this Memorandum, Officers and Employees shall not be immune from jurisdiction or where applicable, from execution, in the event of legal proceedings against them including in respect of damage occasioned by a motor vehicle in their ownership or control except when such proceedings arise out of acts performed by them in

their official capacity. The Bank and the Corporation shall have the right and duty to waive any immunity from legal process conferred under this Memorandum where, in their opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank and the Corporation.

...

## SCHEDULE 2

[s. 4]

### PROVISIONS OF MEMORANDUM OF ADMINISTRATIVE ARRANGEMENTS HAVING FORCE OF LAW IN HONG KONG

...

3. ... (a) the tax immunities of the Bank and the Corporation under their respective Articles of Agreement and the Convention on the Privileges and Immunities of the Specialized Agencies shall extend to rates levied by the Government of the HKSAR; and (b) the Bank and the Corporation shall not be exempt from the government rent levied by the Government of the HKSAR under Article 121 of the Basic Law of the HKSAR or the terms of land leases.

...

## SCHEDULE 3

[s. 5]

### PART OF LETTER ISSUED BY HONG KONG MONETARY AUTHORITY HAVING FORCE OF LAW IN HONG KONG

... the government of the HKSAR may, in its discretion, accord to the head of the Joint Office and senior officers and employees appointed to the Joint Office, who are not Chinese nationals or HKSAR permanent residents and who do not

carry on any private gainful occupation in the HKSAR, additional exemptions from the following ... –

- (a) first registration tax under the Motor Vehicle (First Registration Tax) Ordinance;
- (b) vehicle registration fee under the Road Traffic Ordinance;
- (c) vehicle licence fee under the Road Traffic Ordinance;
- (d) driving licence fee under the Road Traffic Ordinance;
- (e) duty on tobacco and liquor under the Dutiable Commodities Ordinance;
- (f) duty on hydrocarbon oil under the Dutiable Commodities Ordinance;
- (g) air passenger departure tax under the Air Passenger Departure Tax Ordinance.

...

#### SCHEDULE 4

[s. 6]

### 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 III – Property, Funds and Assets*

...

#### *Section 5*

... 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:

...

(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.

...

#### ***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.

...

*Article X – Annexes and Application to Individual Specialized Agencies*

...

*Section 34*

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

...

SCHEDULE 5

[s. 7]

PROVISIONS OF ARTICLES OF AGREEMENT OF THE BANK  
HAVING FORCE OF LAW IN HONG KONG

**ARTICLE VII**

**Status, Immunities and Privileges**

**Section 1. Purposes of the Article**

To enable the Bank to fulfill the functions with which it is entrusted, the ... immunities and privileges set forth in this Article shall be accorded to the Bank ... .

...

**Section 6. Freedom of assets from restrictions**

To the extent necessary to carry out the operations provided for in this Agreement 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.

...

**Section 8. Immunities and privileges of officers and employees**

All governors, executive directors, alternates, officers and employees of the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

...

**Section 9. Immunities from taxation**

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

(c) No taxation 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.

(d) No taxation 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 or place of business maintained by the Bank.

...

## SCHEDULE 6

[s. 8]

### PROVISIONS OF ARTICLES OF AGREEMENT OF THE CORPORATION HAVING FORCE OF LAW IN HONG KONG

#### ARTICLE VI

#### **Status, Immunities and Privileges**

**Section 1. Purposes of Articles**

To enable the Corporation to fulfill the functions with which it is entrusted, the ... immunities and privileges set forth in this Article shall be accorded to the Corporation ... .

...

**Section 6. Freedom of assets from restrictions**

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, Section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

...

**Section 8. Immunities and privileges of officers and employees**

All Governors, Directors, Alternates, officers and employees of the Corporation:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;

...

**Section 9. Immunities from taxation**

(a) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.



(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is issued by the Corporation; 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 Corporation.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

...

Clerk to the Executive Council

COUNCIL CHAMBER

2008

### **Explanatory Note**

On 28 September 2000, the Government of the People's Republic of China and the International Bank for Reconstruction and Development ("the Bank") and the International Finance Corporation ("the Corporation") signed a Memorandum of Understanding 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 ("the Joint Office") in Hong Kong. Privileges and immunities enjoyed by the Bank and the Corporation, and by the Joint Office, its staff and their dependents are set out in –

- (a) the Memorandum of Understanding;
- (b) the 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, entered into between the Government of Hong Kong and the Bank and the Corporation in accordance with paragraph 12 of the Memorandum of Understanding; and
- (c) a letter of 28 September 2000 issued by the Hong Kong Monetary Authority to the Bank and the Corporation.

In addition, privileges and immunities are also conferred on the Bank and the Corporation by the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations 1947 ("the 1947 Convention"), the Articles of Agreement of the International Bank for Reconstruction and Development and the Articles of Agreement of the International Finance Corporation, all of which are applicable to Hong Kong.

2. This Order declares that certain provisions relating to the privileges and immunities of the Bank and the Corporation, and of the Joint Office, its staff and their dependents under the Memorandum of Understanding, the Memorandum of Administrative Arrangements, the letter from the Hong Kong Monetary

Authority, the 1947 Convention and the respective Articles of Agreement of the Bank and the Corporation are to have the force of law in Hong Kong.