

L.N. 117 of 2008**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (INTERNATIONAL MONETARY FUND) ORDER****CONTENTS**

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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.

...

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
6 May 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.