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財經事務及庫務局  
財經事務科

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**CB(1)717/15-16(01)**  
**FINANCIAL SERVICES BRANCH**  
**FINANCIAL SERVICES AND**  
**THE TREASURY BUREAU**  
**GOVERNMENT OF THE HONG KONG**  
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22 March 2016

Ms Connie Szeto  
Clerk to Panel on Financial Affairs  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Szeto,

**Legislative Council Panel on Financial Affairs**

**Articles of Agreement Establishing  
the Asian Infrastructure Investment Bank**

I enclose, for your circulation to Members, an information note on the Government's intent to give effect to relevant provisions concerning the status, privileges and immunities, and its personnel contained in the Articles of Agreement ("AoA") of the Asian Infrastructure Investment Bank ("AIIB").

Members are invited to note the content of the paper. The Government stands ready to answer any query on relevant occasions or in written form.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JF' or similar initials.

( Miss Jeanne Fung )  
for Secretary for Financial Services and the Treasury

## **For information**

### **Information Note for the Legislative Council Panel on Financial Affairs Articles of Agreement Establishing the Asian Infrastructure Investment Bank**

#### **PURPOSE**

This paper briefs Members of the Government's intent to give effect to relevant provisions concerning the status, privileges and immunities, and its personnel contained in the Articles of Agreement ("AoA") of the Asian Infrastructure Investment Bank ("AIIB").

#### **BACKGROUND**

2. The AIIB is a new multilateral financial institution designed to provide financial support for infrastructure development and regional connectivity in Asia. The AIIB is to foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors. It will also promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.

3. To fulfill its purpose, the AIIB will focus on utilizing the resources at its disposal for financing such development. It also aims at encouraging private investment in projects, enterprises and activities contributing to economic development in the region. The AIIB declared open for business on 16 January 2016.

#### **IMPLEMENTATION OF THE ARTICLES OF AGREEMENT**

4. Articles 44 to 52 of the AoA provide for the status, immunities, privileges and exemptions for the AIIB and persons connected therewith to enable the AIIB to fulfil its objectives and carry out its functions. Article 44(2) of the AoA expressly requires all members of the AIIB to make effective in its own territory all such provisions.

5. On 29 June 2015, the Government of the People's Republic of China signed the AoA. The AoA was ratified by the Standing Committee of the National People's Congress of the People's Republic of China on 4 November 2015. In response to the Office of the Commissioner of the Ministry of Foreign Affairs in the Hong Kong Special Administrative Region, we have indicated to the Central People's Government that the HKSAR Government had no objection to the application of the AoA of the AIIB to HKSAR. In line with our established practice, we need to give effect to the provisions of the AoA in relation to its status, privileges and immunities as well as personnel through a piece of local legislation.

6. In this connection, pursuant to section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) ("the Ordinance"), the Chief Executive in Council may, by order in the Gazette, declare that the relevant provisions relating to the status, privileges and immunities of the AIIB and persons connected therewith shall have the force of law in HKSAR. The Government intends to make the International Organizations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Order ("the Order"), under section 3 of the Ordinance.

7. The relevant provisions of the AoA to be implemented via the Order are extracted at **Annex**. The proposed Order is to fulfill China's obligation as a member of the AIIB and is not related to Hong Kong's future membership in the AIIB.

## **WAY FORWARD**

8. We intend to table the Order before the Legislative Council for negative vetting in Q2 2016.

9. Members are invited to note the content of this paper.

**Financial Services and the Treasury Bureau**  
**Financial Services Branch**  
**March 2016**

**Articles of Agreement for Establishing the Asian Infrastructure Investment Bank Provisions to be Given Legal Effect**

The Government intends to declare, through the International Organizations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Order, made under the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), that the following provisions of the Articles of Agreement for establishing the Asian Infrastructure Investment Bank (“the Bank”) have the force of law in Hong Kong –

**(i) Article 44 (Purposes of Chapter)**

- (1) To enable the Bank to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member.
- (2) Each member shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken.

**(ii) Article 45 (Status of the Bank)**

The Bank shall possess full juridical personality and, in particular, the full legal capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
- (iii) to institute and respond to legal proceedings; and
- (iv) to take such other action as may be necessary or useful for its purpose and activities.

**(iii) Article 46 (Immunity from Judicial Proceedings)**

- (1) The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
- (2) Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in the contracts entered into with the Bank.
- (3) Property and assets of the Bank 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.

**(iv) Article 47 (Immunity of Assets and Archives)**

- (1) Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
- (2) The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wheresoever located and by whomsoever held.

**(v) Article 48 (Freedom of Assets from Restrictions)**

To the extent necessary to carry out the purpose and functions of the Bank effectively, 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.

**(vi) Article 49 (Privilege for Communications)**

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of any other member.

**(vii) Article 50 (Immunities and Privileges of Officers and Employees)**

All Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank, including experts and consultants performing missions or services for 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 the immunity and shall enjoy inviolability of all their official papers, documents and records;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

**(viii) Article 51 (Exemption from Taxation)**

- (1) The Bank, its assets, property, income and its operations and transactions pursuant to this Agreement, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
- (2) No tax of any kind shall be levied on or in respect of salaries, emoluments and expenses, as the case may be, paid by the Bank to Directors, Alternate Directors, the President, Vice-Presidents and other officers or employees of the Bank, including experts and consultants performing missions or services for the Bank, ...
- (3) No tax 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.
- (4) No tax 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.

**(ix) Article 52 (Waivers)**

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.