

LEGISLATIVE COUNCIL BRIEF

International Organizations (Privileges and Immunities) Ordinance
(Chapter 558)

INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT) ORDER

INTRODUCTION

At the meeting of the Executive Council on 14 March 2017, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order (“the Order”), at **Annex**, should be made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (“the Ordinance”).

JUSTIFICATIONS

2. Established in 1991, the European Bank for Reconstruction and Development (“EBRD”) is a multilateral development bank which supports development in recipient member countries with a view to fostering their transition towards open market-oriented economies. The EBRD has 67 members and operates in 36 recipient member countries, spanning from Central and Eastern Europe, to Southern and Eastern Mediterranean, and Central Asia. China joined the EBRD in January 2016 as a non-recipient member.

3. Articles 44 to 53 and 55 of the Agreement Establishing the European Bank for Reconstruction and Development (“Agreement”) provide for the status, immunities, privileges and exemptions of the EBRD and its personnel to enable the EBRD to fulfil its purposes and carry out its functions. Article 54 of the Agreement expressly requires all members of the EBRD to make effective in their own territory all such provisions. It is

incumbent upon China, as a member of the EBRD, to apply the relevant provisions to its territory.

4. Under Article 13 of the Basic Law, the Central People's Government ("CPG") is responsible for foreign affairs relating to the Hong Kong Special Administrative Region ("HKSAR"). The conferment of privileges and immunities on international organisations is an act falling within the ambit of foreign affairs. When consulted on the application of the Agreement to the HKSAR, we have indicated to the CPG that the Government has no objection to its application to the HKSAR.

5. In line with the established practice, we need to give effect to the provisions of the Agreement in relation to the legal status, privileges, immunities and exemptions of the EBRD and its personnel by local legislation. Pursuant to section 3 of 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 EBRD and its personnel have the force of law in the HKSAR.

THE ORDER

6. The Order seeks to recognise the legal status of the EBRD in the HKSAR, and to accord the privileges and immunities as provided under the Agreement in our legal framework. The main provisions of the Order are set out as follows –

- (a) **Section 3** declares that the provisions of the Agreement as specified in the Schedule to the Order have the force of law in the HKSAR; and
- (b) **The Schedule** contains the provisions of the Agreement that are to have the force of law in the HKSAR, viz –
 - (i) Article 44 which relates to the recognition of the status, immunities, privileges and exemptions to the EBRD in the territory of each member of the EBRD to fulfil its purpose and functions;
 - (ii) Article 45 which relates to the legal personality of the EBRD;

- (iii) Articles 46 to 50 which relate to the immunity of the EBRD from relevant judicial proceedings, and the privileges and immunities in respect of, among others, its property and assets, archives and documents and official communications;
- (iv) Articles 51 and 52 which relate to the immunity of the EBRD's personnel from relevant legal process with respect to acts performed in their official capacity, and their privileges and immunities in respect of, among others, immigration restrictions;
- (v) Article 53 which relates to the exemptions of the EBRD and its personnel in respect of taxation; and
- (vi) Article 55 which relates to the waiver of immunities, privileges and exemptions exercisable by the EBRD.

7. These immunities, privileges and exemptions are commensurate with the functions of the EBRD as a multilateral development bank.

LEGISLATIVE TIMETABLE

8. The Order will be published in the Gazette on 24 March 2017. According to section 34 of the Interpretation and General Clauses Ordinance (Chapter 1), the Order will be tabled before the Legislative Council on 29 March 2017. Subject to negative vetting by the Legislative Council, the Order will come into operation on 14 June 2017.

IMPLICATIONS OF THE PROPOSAL

9. The Order is in conformity with the Basic Law, including provisions concerning human rights. The Order will not affect the current binding effect of the Ordinance. It has no civil service, economic, productivity, environmental, sustainability, family or gender implications. Additional work, if any, arising from the enforcement of the Order will be absorbed by the relevant departments with existing resources.

Financial Implications

10. The provision of tax exemption to EBRD (including the scope of such exemption) is in line with the HKSAR's practice all along for international organisations of similar nature, and is required for the HKSAR to honour China's obligations under the Agreement. As the EBRD does not plan to set up any office in the HKSAR, any revenue forgone by the Government due to the exemption from taxation and customs duties for the EBRD and its personnel as proposed in the Order is expected to be insignificant.

PUBLIC CONSULTATION

11. We issued an information note to the Legislative Council Panel on Financial Affairs in February 2017 to inform members of this legislative initiative.

PUBLICITY

12. We will issue a press release upon the issuance of this brief. A spokesperson will be available to answer media and public enquiries.

ENQUIRIES

13. Enquiries relating to this brief can be directed to Ms Eureka Cheung, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

Financial Services and the Treasury Bureau
22 March 2017

International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order

Section 1

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International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) 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 comes into operation on 14 June 2017.

2. Interpretation

In this Order—

Agreement (《協定》) means the Agreement Establishing the European Bank for Reconstruction and Development (which is translated into Chinese as “《歐洲復興開發銀行成立協定》” in this Order)[#] done at Paris, France on 29 May 1990;

Bank (銀行) means the European Bank for Reconstruction and Development (which is translated into Chinese as “歐洲復興開發銀行” in this Order) established by the Agreement.

3. Provisions of Agreement having force of law in Hong Kong

(1) It is declared that the provisions of the Agreement as specified in the Schedule (*specified provisions*)—

Note: [#] The Agreement Establishing the European Bank for Reconstruction and Development (which is translated into Chinese as “《歐洲復興開發銀行成立協定》” in this Order) was done in a single original, whose English, French, German and Russian texts are equally authentic.

International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order

Section 3

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- (a) have the force of law in Hong Kong; and
 - (b) for that purpose are to be construed in accordance with subsections (3) and (4).
- (2) A Chinese translation of the specified provisions is also set out in the Schedule.
- (3) In applying Articles 44, 46 and 50, paragraph 1 of Article 52 and paragraphs 2, 4 and 6 of Article 53 of the Agreement, **member** (which is translated into Chinese as “成員” in this Order) is to be construed as meaning a member of the Bank.
- (4) In applying paragraph 1(i) of Article 52 of the Agreement, **local nationals** (which is translated into Chinese as “當地國民” in this Order) is to be construed as meaning Chinese nationals or Hong Kong permanent residents.
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Schedule

[s. 3]

Provisions of Agreement Having Force of Law in Hong Kong

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Chapter VIII: Status, immunities, privileges and exemptions

Article 44: Purposes of chapter

To enable the Bank to fulfil its purpose and the functions with which it is entrusted, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member country.

Article 45: Status of the Bank

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

- i) to contract;
- ii) to acquire, and dispose of, immovable and movable property;
and
- iii) to institute legal proceedings.

Article 46: Position of the Bank with regard to judicial process

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, 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 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.

Article 47: Immunity of assets from seizure

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.

Article 48: Immunity of archives

The archives of the Bank, and in general all documents belonging to it or held by it, shall be inviolable.

Article 49: Freedom of assets from restrictions

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

Article 50: Privilege for communications

The 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.

Article 51: Immunities of officers and employees

All Governors, Directors, Alternates, officers and employees of the Bank and experts performing missions for the Bank shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, employee or expert.

Article 52: Privileges of officers and employees

- I. All Governors, Directors, Alternates, officers and employees of the Bank and experts of the Bank performing missions for the Bank:
 - i) not being local 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
 - ii) 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.

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Article 53: Exemption from taxation

1. Within the scope of its official activities the Bank, its assets, property, and income shall be exempt from all direct taxes.
2. When purchases or services of substantial value and necessary for the exercise of the official activities of the Bank are made or used by the Bank and when the price of such purchases or services includes taxes or duties, the member that has levied the taxes or duties shall, if they are identifiable, take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement.
3. Goods imported by the Bank and necessary for the exercise of its official activities shall be exempt from all import duties and taxes, and from all import prohibitions and restrictions. Similarly goods exported by the Bank and necessary for the exercise of its official activities shall be exempt from all export duties and taxes, and from all export prohibitions and restrictions.
4. Goods acquired or imported and exempted under this Article shall not be sold, hired out, lent or given away against payment or free of charge, except in accordance with conditions laid down by the members which have granted exemptions or reimbursements.
5. The provisions of this Article shall not apply to taxes or duties which are no more than charges for public utility services.
6. Directors, Alternate Directors, officers and employees of the Bank shall be subject to an internal effective tax for the benefit of the Bank on salaries and emoluments paid by the Bank ... From the date on which this tax is applied, such salaries and emoluments

shall be exempt from national income tax. The members may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

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8. Paragraph 6 of this Article shall not apply to pensions and annuities paid by the Bank.

9. 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.

10. 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; place of business maintained by the Bank.

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Article 55: Waiver of immunities, privileges and exemptions

The immunities, privileges and exemptions conferred under this Chapter are granted in the interest of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine any of the immunities, privileges and exemptions conferred under this Chapter in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Bank, other than the President, Vice-President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President and each Vice-President.

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(Chinese Translation)

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第 VIII 章：地位、豁免權、特權及免稅權

第 44 條：本章的目的

為使銀行能實現其宗旨及執行其所負職能，銀行在各成員國境內享有本章所規定的地位、豁免權、特權及免稅權。

第 45 條：銀行的地位

銀行具有完全法人資格，尤其具有完全法律行為能力：

- i) 以訂立合約；
- ii) 以取得和處置不動產及動產；及
- iii) 以提起法律程序。

第 46 條：銀行就司法程序而言的情況

只有在銀行已於某國家內設有辦事處、任命代理人專門接受訴訟傳票或通知或發行或擔保證券的情況下，該國家境內具司法管轄權的法院，才能受理對銀行提起的訴訟。但成員、代表成員的人或從成員獲得債權的人，不得提起訴訟。在對銀行作出最終判決之前，銀行的財產及資產(不論位於何處及由何人持有)，均免受各種形式的沒收、查封或強制執行。

第 47 條：資產豁免被沒收

銀行的財產及資產(不論位於何處及由何人持有)，均免受藉行政或立法行動而作出的搜查、徵用、沒收、徵收或任何其他形式的取用或止贖。

第 48 條：檔案豁免

銀行的檔案，以及屬於銀行或由銀行持有的所有文件，均屬不可侵犯。

第 49 條：財產不受限制

銀行的所有財產及資產，在對實現其宗旨及執行其職能屬必需的範圍內，並在符合本協定條款的情況下，均不受任何性質的限制、規管、管制及延緩償付所限。

第 50 條：通訊特權

每名成員給予銀行的公務通訊的待遇，須等同於該成員給予任何其他成員的公務通訊的待遇。

第 51 條：高級職員及普通職員的豁免權

銀行的所有理事、董事、副理事、副董事、高級職員、普通職員，以及為銀行執行任務的專家，就以他們的公務身分作出的作為而言，均享有法律程序豁免權，但如銀行放棄該項豁免權，則屬例外。他們的所有公務文件及文書，均屬不可侵犯。但如因上述理事、董事、副理事、副董事、高級職員、普通職員或專家所導致的道路交通意外而引起損害，則該項豁免權並不適用於在該情況下所須承擔的民事法律責任。

第 52 條：高級職員及普通職員的特權

1. 銀行的所有理事、董事、副理事、副董事、高級職員、普通職員，以及為銀行執行任務的專家：
 - i) (如該等人士不屬當地國民)就出入境限制、外籍人士登記規定及國民服役義務而言，所享有的豁免權，相同於各成員給予其他成員相若級別的代表、官員及僱員的豁免權；就外匯管制而言，所享有的便利，相同於各成員給予其他成員相若級別的代表、官員及僱員的便利；及
 - ii) 就交通方面的便利而言，所享有的待遇，相同於各成員給予其他成員相若級別的代表、官員及僱員的待遇。

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第 53 條：免稅

1. 銀行及其資產、財產及收入，在其公務活動的範圍內，均免納一切直接稅。
2. 凡銀行因執行其公務活動，而需作出具重大價值的採購，或需使用具重大價值的服務，而該項採購或服務的價格包含稅項或關稅，則徵收該稅項或關稅的成員須採取適當措施，在該稅項或關稅可識別的情況下，免除或退還有關稅款或關稅。
3. 凡銀行執行其公務活動而需進口的貨物，免納一切進口關稅及稅項，亦無須受一切進口禁制及限制所限。同樣地，凡銀行執行其公務活動而需出口的貨物，免納一切出口關稅及稅項，亦無須受一切出口禁制及限制所限。
4. 根據本條取得或進口並獲免稅的貨物，不得有償或無償出售、出租、借出或送出，但按照給予免稅或退稅的成員所訂下的條件而出售、出租、借出或送出者，則屬例外。
5. 如稅項或關稅僅為公共事業服務收費，則本條不適用於該稅項或關稅。
6. 銀行的董事、副董事、高級職員及普通職員，須就銀行向其支付的薪金及報酬，向銀行繳付內部稅款.....從該稅項適用之日起，該等薪金及報酬免納國家入息稅。但成員在計算其他來源的收入的稅額時，可將上述獲免稅的薪金及報酬考慮在內。

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8. 本條第 6 款不適用於銀行支付的養老金及年金。

9. 對於銀行所發行的任何債券或證券(包括就之而產生的股息或利息)，不論由任何人持有，如屬以下情況，均不得徵稅：
 - i) 該種稅項僅因該債券或證券是由銀行發行而歧視該債券或證券；或
 - ii) 如徵收該種稅項的唯一管轄權基礎，是發行、兌付或支付該債券或證券的地點或所使用的貨幣，或銀行所維持經營的任何辦事處或業務地點的位置。
10. 對於銀行所擔保的任何債券或證券(包括就之而產生的股息或利息)，不論由任何人持有，如屬以下情況，均不得徵稅：
 - i) 該種稅項僅因該債券或證券是由銀行擔保而歧視該債券或證券；或
 - ii) 如徵收該種稅項的唯一管轄權基礎，是銀行所維持經營的任何辦事處、業務地點的位置。

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第 55 條：放棄豁免權、特權及免稅權

本章是為了銀行的利益而授予豁免權、特權及免稅權。如董事會認為，在其決定的範圍內和按其決定的條件，放棄本章授予的任何豁免權、特權及免稅權，就符合銀行的最大利益而言屬適當，則董事會可作出上述放棄的作為。如行長認為有關豁免權、特權或免稅權會妨礙司法程序，且放棄該等權利並不損害銀行的利益，則行長有權且有責任放棄銀行任何高級職員、普通職員或專家(行長、副行長除外)的任何豁免權、特權或免稅權。在類似的情況下並根據相同的條件，董事會有權且有責任放棄行長及每名副行長的任何豁免權、特權或免稅權。

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Clerk to the Executive Council

COUNCIL CHAMBER

2017

Explanatory Note

The European Bank for Reconstruction and Development (*Bank*) was established by the Agreement Establishing the European Bank for Reconstruction and Development (*Agreement*) done at Paris, France on 29 May 1990.

2. This Order declares that certain provisions of the Agreement relating to the status of the Bank and the immunities, privileges and exemptions of the Bank and its personnel, as specified in the Order, have the force of law in Hong Kong.