

立法會
Legislative Council

LC Paper No. LS48/17-18

**Paper for the House Committee Meeting
on 13 April 2018**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 29 March 2018**

Tabling in LegCo : Council meeting of 11 April 2018

Amendment to be made by : Council meeting of 9 May 2018 (or that of 30 May 2018 if extended by resolution)

**International Organizations (Privileges and Immunities)
(New Development Bank) Order**

(L.N. 59)

L.N. 59 is made by the Chief Executive in Council under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558). It declares that certain provisions (i.e. articles 28 to 33 and 36 and some provisions of article 34) of the Articles of Agreement of the New Development Bank ("AoA"), annexed to the Agreement on the New Development Bank ("NDB"), have the force of law in Hong Kong. These articles relate to the status of NDB, the privileges and immunities of NDB and its personnel (including immunity from judicial proceedings if certain conditions are satisfied), immunities of NDB's property and assets from seizure and exemption of NDB from taxation.

2. According to the Legislative Council Brief (File Ref: B&M/2/1/12C) issued by the Financial Services and the Treasury Bureau on 28 March 2018, NDB is a multilateral development bank founded with the purpose to mobilize resources for funding infrastructure and sustainable development projects in BRICS (which consists of Brazil, Russia, India, China and South Africa), other emerging market economies and developing countries, thereby complementing the existing efforts of multilateral and regional financial institutions for global growth and development. NDB has five members, covering all BRICS countries. Under article 35 of the AoA, each NDB member shall take the necessary actions for the purposes of implementing articles 28 to 36 of the AoA.

3. It is noted that unlike the International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order (Cap. 558L) which contains provisions similar to those of L.N. 59, there is no reference to the Chinese translations of the terms "Agreement on the New Development Bank", "New Development Bank", "member" and "local nationals" in the English text of

sections 2, 3(3) and (4) of L.N. 59. In response to our enquiries on the reason for the different drafting approach, the Administration explained that the change was made after a recent review of the drafting practice by the Department of Justice for the following reasons:

- (a) the Agreement on NDB was done in a single original in the English language which does not have an official Chinese text or an official Chinese title;
- (b) to assist Chinese readers to identify the Agreement and understand the contents of the relevant provisions of the AoA, an unofficial Chinese title of the Agreement and a Chinese translation of the relevant provisions of the AoA have been prepared and set out in the Chinese text of L.N. 59; and
- (c) the definition of "Agreement" and other terms in the English text of sections 2, 3(3) and (4) contain the official English title and the terms in English which by themselves are sufficient for the purpose of identifying the Agreement and the relevant terms of the AoA. It is hence not necessary to make reference to the Chinese translated title and terms in the English text.

According to the Administration, the new drafting approach will be used in future legislation.

4. With the above explanation of the Administration, we consider that the new drafting approach in L.N. 59 will not give rise to interpretation difficulties.

5. As advised by the Clerk to the Panel on Financial Affairs, the Government has provided an information paper on L.N. 59 to the Panel and the paper was circulated to Panel members vide LC Paper No. CB(1)615/17-18(01) on 23 February 2018. L.N. 59 has not been discussed by the Panel.

6. L.N. 59 comes into operation on 1 June 2018.

7. Subject to members' views on the matters mentioned in paragraph 3 above, no difficulties have been identified in the legal and drafting aspects of L.N. 59.

Prepared by

CHENG Kiu-fung, Vanessa
Assistant Legal Adviser
Legislative Council Secretariat
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