

立法會
Legislative Council

LC Paper No. CB(1)1230/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/SS/8/17

Subcommittee on International Organizations (Privileges and Immunities)
(New Development Bank) Order

Minutes of first meeting held on
Tuesday, 24 April 2018, at 5:00 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Kenneth LEUNG (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon CHAN Chun-ying

Public Officers attending : Agenda item II
Financial Services and the Treasury Bureau
Ms Eureka CHEUNG
Principal Assistant Secretary (Financial Services)
Department of Justice
Mr Henry CHAN
Senior Government Counsel
Ms Melody HUI
Senior Government Counsel (Treaties & Law)

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Mr Fred PANG
Senior Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I. Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in the Council among members of the Subcommittee present at the meeting, presided over the election of Chairman of the Subcommittee. He invited nominations for the chairmanship

2. Mr Christopher CHEUNG nominated Mr Kenneth LEUNG and the nomination was seconded by Mr CHAN Chun-ying and Mr WU Chi-wai. Mr Kenneth LEUNG accepted the nomination. There being no other nomination, Mr Kenneth LEUNG was elected Chairman of the Subcommittee. Mr LEUNG then took over the chair. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

(L.N. 59 of 2018) — International Organizations
(Privileges and Immunities)
(New Development Bank)
Order

File Ref: B&M/2/1/12C — Legislative Council Brief

LC Paper No. LS48/17-18 — Legal Service Division Report

LC Paper No. CB(1)841/17-18(01) — Assistant Legal Adviser's letter
dated 6 April 2018 to the
Administration

LC Paper No. CB(1)841/17-18(02) — Administration's reply to Assistant Legal Adviser's letter dated 10 April 2018)

3. The Subcommittee deliberated (index of proceedings in the **Appendix**).

Follow-up action to be taken by the Administration

4. The Administration was requested to provide the following information –

Given that Hong Kong was entitled to enter into some international agreements with international organizations (to which the People's Republic of China was not a party), whether there was any mechanism in place whereby Hong Kong could confer privileges and immunities on such international organization (for example, if it intended to set up a regional office in Hong Kong) in such an agreement on its own without seeking the approval of the Central People's Government of the People's Republic of China; and if not, the relevant legal basis thereof.

(Post-meeting note: The Administration's supplementary information was issued to members vide LC Paper No. CB(1)880/17-18(02) on 26 April 2018.)

5. The Subcommittee completed the section-by-section examination of the International Organizations (Privileges and Immunities) (New Development Bank) Order ("the Order").

Legislative timetable

6. The Subcommittee noted that the scrutiny period of the Order would expire on 9 May 2018 and the deadline for giving notice of motion to amend the Order was 2 May 2018. The Subcommittee would not move amendments to the Order. The Chairman would make a verbal report on the deliberations of the Subcommittee to the House Committee at its meeting on 27 April 2018.

III. Any other business

7. There being no other business, the meeting ended at 6:17 pm.

**Proceedings of first meeting of the
Subcommittee on International Organizations (Privileges and Immunities) (New Development Bank) Order
on Tuesday, 24 April 2018, at 5:00 pm
in Conference Room 1 of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
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| Election of Chairman | | | |
| 000235 – 000511 | All members present | Election of Chairman | |
| Meeting with the Administration | | | |
| 000512 – 000722 | Chairman Administration | Briefing by the Administration on the subsidiary legislation | |
| 000723 – 000922 | Chairman Mr CHAN Chun-ying Administration | <p>Mr CHAN Chun-ying enquired about –</p> <p>(a) whether there were examples of subsidiary legislation made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558) where the international organization concerned had not set up any office in the Hong Kong Special Administrative Region ("HKSAR"); and</p> <p>(b) the procedures for handling the New Development Bank ("NDB")'s request for setting up an office in HKSAR in future, and the involvement of the Legislative Council ("LegCo") in this regard.</p> <p>The Administration advised that –</p> <p>(a) there were cases where international organizations, including some multilateral development banks, which had been conferred privileges and immunities under Cap. 558 had not set up offices in HKSAR;</p> <p>(b) the HKSAR Government ("HKSARG") would have to discuss with the international organization which intended to set up an office in HKSAR the relevant specific requirements of its office, and the international organization would need to conclude a host country agreement with the Central People's Government ("CPG") of the People's Republic of China ("PRC") for conferment of privileges and immunities on the international organization and its personnel; and</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | (c) to enable the privileges and immunities provided in the agreement in respect of the international organization and its personnel to have the force of law in Hong Kong, the Administration needed to enact local legislation by way of an order made under Cap. 558. | |
| 000923 – 001127 | Chairman Mr YIU Si-wing Administration | <p>Mr YIU Si-wing enquired about –</p> <p>(a) the tax revenue forgone arising from conferring the relevant privileges/immunities/exemptions on NDB in future; and</p> <p>(b) whether it would be unfair to other banks which did not enjoy the privileges/immunities to be conferred on NDB.</p> <p>The Administration advised that –</p> <p>(a) the International Organizations (Privileges and Immunities) (New Development Bank) Order ("the Order") (L.N. 59) would in theory have financial implications as it granted exemption from taxation to NDB and its personnel;</p> <p>(b) the financial implications would however be insignificant, in view that NDB did not have plan to set up any operation in HKSAR and hence the chance of NDB or its personnel seeking tax exemption would be small; and</p> <p>(c) as the nature of business of NDB was different from that of the local banks, the conferment of the privileges and immunities concerned on NDB should not affect the business environment of local banks.</p> | |
| 001128 – 001426 | Chairman Mr WU Chi-wai Administration | <p>Mr WU Chi-wai enquired about –</p> <p>(a) the number of international organizations which were currently entitled to the similar privileges/immunities to be conferred on NDB; and</p> <p>(b) whether the Administration triggered the process to make a subsidiary legislation under section 3 of Cap. 558 (such as L.N. 59) to confer privileges/immunities on an international organization on the HKSARG's own initiative or upon the request of CPG of PRC.</p> | |

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| | | <p>The Administration advised that –</p> <p>(a) 12 pieces of subsidiary legislation had so far been made under section 3 of Cap. 558 to confer privileges/immunities on international organizations;</p> <p>(b) under Article 13 of the Basic Law, CPG should be responsible for foreign affairs relating to HKSAR, and the conferment of privileges and immunities on international organizations was an act falling within the ambit of foreign affairs; and PRC signed the Agreement on the New Development Bank ("the Agreement") in 2014;</p> <p>(c) when consulted by the Office of the Commissioner of the Ministry of Foreign Affairs of PRC in HKSAR on the application of the Agreement to HKSAR, the Administration had indicated that HKSARG had no objection to its application to HKSAR; and</p> <p>(d) in line with the established practice, the Administration needed to give effect to the provisions of the Agreement in relation to the legal status, privileges, immunities and exemptions of NDB and its personnel by local legislation.</p> | |
| 001427 – 003056 | Chairman Mr WU Chi-wai Administration | <p>Mr WU Chi-wai enquired, given that Hong Kong was entitled to enter into some international agreements with international organizations (to which PRC was not a party), whether there was any mechanism in place whereby Hong Kong could confer privileges and immunities on such international organization in such an agreement on its own without seeking the CPG's approval; and if not, the relevant legal basis thereof.</p> <p>Further to Mr WU Chi-wai's enquiry, the Chairman asked about the mechanism to deal with the request of such international organizations for setting up regional offices in Hong Kong.</p> <p>The Administration advised that authorization from CPG would be required if HKSARG was to confer privileges and immunities on an international organization (including one which intended to set up a regional office in Hong Kong), regardless of whether HKSARG was a party to the agreement establishing that international organization.</p> | |

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| | | <p>In light of Mr WU Chi-wai's suggestion, the Chairman requested the Administration to provide supplementary information to address Mr WU's enquiry</p> | <p>The Administration to follow up as stated in paragraph 4 of the minutes.</p> |
| <p>003057 – 003755</p> | <p>Chairman Mr Alvin YEUNG Administration</p> | <p>In response to Mr Alvin YEUNG's enquiry, the Administration advised on –</p> <p>(a) the nature of the international organizations on which privileges/immunities had been conferred under the 12 pieces of subsidiary legislation that had been made under section 3 of Cap. 558; and</p> <p>(b) the international organization(s) in (a) which had set up representative offices in HKSAR, and the procedures, if any, to go through before these organizations could set up an office in HKSAR.</p> <p>Mr Alvin YEUNG noted that under Article 36 of the Articles of Agreement on the New Development Bank ("AoA") as set out in the Schedule to L.N. 59, the Board of Directors of NDB might waive the immunities, privileges and exemptions conferred on NDB, and enquired about the procedures to exercise the waiver and whether the initiative to invoke the waiver rested on NDB only.</p> <p>The Administration advised that –</p> <p>(a) under Article 36 of AoA, NDB might waive the privileges and immunities conferred on its personnel in cases including the abuse of the privileges and immunities by its personnel;</p> <p>(b) to exercise the waiver, NDB would notify HKSARG and, where appropriate, CPG of PRC; and HKSARG would confirm with NDB in writing in respect of such waiver; and</p> <p>(c) if it came to the notice of HKSARG that there was abuse of any privilege or immunity by the NDB's personnel, HKSARG might raise with NDB whether it would waive the privilege or immunity after duly verifying and confirming with NDB in respect of such abuse.</p> | |

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| 003756 – 005131 | Chairman Dr Junius HO Administration | <p>Dr Junius HO raised enquiries as to –</p> <p>(a) whether the privileges/immunities conferred on NDB under the Order were comparable to diplomatic privileges/immunities; and</p> <p>(b) whether the Order provided the definitions for the expressions "official communications", "officers" and "employees" in Articles 32 and 33 of AoA respectively as specified in the Schedule to L.N. 59.</p> <p>As regards the expressions of "officers" and "employees" in Article 33 of AoA as specified in the Schedule to L.N. 59, the Administration advised that it was the usual practice for the international organization concerned to provide a list of their personnel with their rankings that would be categorized as officers or employees to HKSARG and no ambiguities would be arising therefrom.</p> <p>Dr Junius HO enquired about the reason that the definitions for the expressions mentioned in (b) were not provided in the Order, and whether the absence of such definitions would give rise to interpretation difficulties or dispute.</p> <p>The Administration advised that –</p> <p>(a) as the Order was to give certain articles of AoA relating to status, privileges and immunities the force of law in Hong Kong, only those articles were set out in the Schedule to the Order;</p> <p>(b) as provided in Article 45 of AoA, any question of interpretation of the provisions of the Agreement arising between any member and NDB or between any members of NDB should be submitted to the Board of Directors for decision; and</p> <p>(c) in the case of litigation, the court might take into account the Agreement and AoA as a whole as the context of interpreting the articles set out in the Schedule to the Order, and in general, the court would interpret local legislation implementing an international agreement in a way that was consistent with the international agreement itself.</p> | |
| 005132 – 005700 | Chairman Administration Assistant Legal | <p>The Chairman enquired whether the international organizations on which privileges/immunities were conferred under the 12 pieces of subsidiary legislation made under Cap. 558 included any organizations which</p> | |

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| | Adviser 5 ("ALA5") | <p>were not multilateral development banks or financial institutions, and whether an international organization which would like to enjoy the privileges/immunities similar to those conferred on NDB under the Order had to make a request on its own initiative.</p> <p>The Administration advised that some of the international organizations on which privileges/immunities were conferred under the 12 pieces of subsidiary legislation included organizations which were not multilateral development banks, such as the United Nations High Commissioner for Refugees.</p> <p>In response to the Chairman's enquiry, the Administration explained the qualifying criteria of an international organization.</p> <p>ALA5 advised that section 2 of Cap. 558 provided for the interpretation of the terms "international organization" and "international agreement".</p> | |
| Section-by-section examination of the provisions of the International Organizations (Privileges and Immunities) (New Development Bank) Order (L.N. 59 of 2018) | | | |
| 005701 – 010153 | Chairman Administration ALA5 | <p><i>Section 1 Commencement</i></p> <p><i>Section 2 Interpretation</i></p> <p><i>Section 3 Provisions of Articles of Agreement having force of law in Hong Kong</i></p> <p><i>Schedule</i></p> <p>Members raised no queries.</p> <p>ALA5 drew members' attention that –</p> <p>(a) unlike the International Organizations (Privileges and Immunities) (European Bank for Reconstruction and Development) Order (L.N. 41 of 2017) which contained provisions similar to those of the Order, there was 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 the Order;</p> <p>(b) according to the Administration, the drafting approach in the Order was not the same as that of L.N. 41 of 2017, and the change had been made after a review of the drafting practice by the Department of Justice after taking into account the following reasons –</p> | |

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| | | <p>(i) the Agreement was done in a single original in the English language which did not have an official Chinese text or an official Chinese title;</p> <p>(ii) to assist Chinese readers to identify the Agreement and understand the contents of the relevant provisions of AoA, an unofficial Chinese title of the Agreement and a Chinese translation of the relevant provisions of AoA had been prepared and set out in the Chinese text of the Order; and</p> <p>(iii) the definition of "Agreement" and other terms in the English text of sections 2, 3(3) and (4) of the Order contained the official English title and the terms in English which by themselves were sufficient for the purpose of identifying the Agreement and the relevant terms of AoA, and it was hence not necessary to make reference to the Chinese translated title and terms in the English text.</p> <p>(c) with the above explanation of the Administration, the Legal Service Division considered that the new drafting approach in the Order would not give rise to interpretation difficulties.</p> <p>The Administration advised that as mentioned in LC Paper No. CB(1)841/17-18(02), the Administration would use the new drafting approach in future legislation.</p> | |
| 010154 – 010806 | Chairman All members present Administration ALA5 Clerk | Legislative timetable | |