

For Information

## **Legislative Council Panel on Financial Affairs**

### **Agreement on the New Development Bank**

#### **PURPOSE**

This paper briefs Members on the Government's intent to give effect to the relevant provisions of the Agreement on the New Development Bank ("the Agreement") in respect of the status, privileges and immunities of the New Development Bank ("the Bank") and its personnel.

#### **BACKGROUND**

2. Established by the Agreement in 2014, the Bank is a multilateral development bank founded with the purpose to mobilise resources for funding infrastructure and sustainable development projects in BRICS<sup>1</sup>, other emerging market economies and developing countries, thereby complementing the existing efforts of multilateral and regional financial institutions for global growth and development. The Bank has five members, covering all BRICS countries. The Bank commenced operation in February 2016, with its headquarters situated in Shanghai, China.

3. Articles 28 to 34 and 36 of the Articles of Agreement of the New Development Bank ("AoA"), annexed to the Agreement, provide for the status, immunities, privileges and exemptions of the Bank and its personnel to enable the Bank to fulfil its purpose and carry out its functions. Article 35 of the AoA expressly requires all members of the Bank to make effective in their own territory all those provisions. It is incumbent upon China, as a member of the Bank, to apply the relevant provisions to its territory.

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

4. Under Article 13 of the Basic Law, the Central People's Government ("CPG") shall be responsible for the 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

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<sup>1</sup> BRICS consists of China, Brazil, Russia, India and South Africa.

Agreement to the HKSAR, we have indicated to the CPG that the HKSAR Government has no objection to its application to the HKSAR. The Agreement has applied to the HKSAR since August 2017.

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 Bank and its personnel by local legislation. 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 Bank and its personnel have the force of law in the HKSAR.

6. In this connection, the Government intends to make the International Organizations (Privileges and Immunities) (New Development Bank) Order (“the Order”) under the Ordinance. The relevant provisions of the Agreement to be implemented via the Order are extracted at **Annex**. The Order seeks to fulfil China’s obligation as a member of the Bank.

## **WAY FORWARD**

7. We intend to table the Order before the Legislative Council for negative vetting in Q2 2018.

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

**Financial Services and the Treasury Bureau**  
January 2018

**Articles of Agreement of the New Development Bank  
annexed to the Agreement on the New Development Bank  
Provisions to be Given Legal Effect**

The Administration intends to recommend the Chief Executive in Council to declare, by the International Organizations (Privileges and Immunities) (New Development Bank) Order made under section 3 of the International Organizations (Privileges and Immunities) Ordinance (Cap. 558), that the following provisions of the Agreement on the New Development Bank have the force of law in the HKSAR –

**(1) Article 28 — Purpose of the Chapter**

To enable the Bank effectively to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

**(2) Article 29 — Status**

- a) The Bank shall possess full international personality.
- b) In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity to:
  - (i) contract;
  - (ii) acquire and dispose of immovable and movable property; and
  - (iii) institute legal proceedings.

**(3) Article 30 — Position of the Bank with Regard to Judicial Process**

- a) 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 borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its headquarters or offices, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

- b) Notwithstanding the provisions of paragraph (a) 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 contracts entered into with the Bank.
- c) 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.

**(4) Article 31 — Freedom and Immunity of Assets and Archives**

- a) Property and assets of the Bank, wherever 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.
- b) The archives of the Bank and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.
- c) 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 other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

**(5) Article 32 — 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 other members.

**(6) Article 33 — Personal Immunities and Privileges**

All Governors, Directors, alternates, officers, and employees of the Bank shall have the following privileges and immunities:

- (i) immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity;

- (ii) when not local nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;
- (iii) the same privileges in respect of traveling facilities as are accorded by members to representatives, officials, and employees of comparable rank of other members.

**(7) Article 34 — Exemption from Taxation**

- a) The Bank, its property, other assets, income, transfers and the operations and transactions it carries out pursuant to this Agreement, shall be immune from all taxation, from all restrictions and from all customs duties. The Bank shall also be immune from any obligation relating to the payment, withholding or collection of any tax, or duty.
- b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank ...
- c) 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.
- d) 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.

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**(8) Article 36 — 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 and each 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.