

**L.N. 59 of 2018**

**International Organizations (Privileges and Immunities)  
(New Development Bank) 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 1 June 2018.

**2. Interpretation**

In this Order—

*Agreement* (《協議》) means the Agreement on the New  
Development Bank<sup>#</sup> done at Fortaleza, Brazil on 15 July  
2014;

*Articles of Agreement* (《協定》) means the Articles of  
Agreement annexed to the Agreement;

*Bank* (銀行) means the New Development Bank established by  
the Agreement.

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

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

(a) have the force of law in Hong Kong; and

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Note: <sup>#</sup> The Agreement on the New Development Bank was done in a single  
original in the English language.

- (b) for that purpose are to be construed in accordance with subsections (3) and (4).
- (2) A Chinese translation of the specified provisions is set out in the Chinese text of the Schedule.
- (3) In applying Articles 28, 29(b), 30(b), 32 and 33(ii) and (iii) of the Articles of Agreement, *member* is to be construed as meaning a member of the Bank.
- (4) In applying Article 33(ii) of the Articles of Agreement, *local nationals* is to be construed as meaning Chinese nationals or Hong Kong permanent residents.
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## **Schedule**

[s. 3]

### **Provisions of Articles of Agreement Having Force of Law in Hong Kong**

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#### **Chapter VI - Status, Immunities and Privileges**

##### **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.

##### **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

**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.

**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.

### **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.

### **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.

### **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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### **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.

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

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Wendy LEUNG  
Clerk to the Executive Council

COUNCIL CHAMBER

13 March 2018

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### **Explanatory Note**

The New Development Bank (*Bank*) was established by the Agreement on the New Development Bank (*Agreement*) done at Fortaleza, Brazil on 15 July 2014.

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