



STATUTORY INSTRUMENTS.

S.I. No. 411 of 2017



ASIAN INFRASTRUCTURE INVESTMENT BANK (PRIVILEGES AND
IMMUNITIES) ORDER 2017

ASIAN INFRASTRUCTURE INVESTMENT BANK (PRIVILEGES AND IMMUNITIES) ORDER 2017

WHEREAS it is enacted by section 40(1) (amended by section 3 of the Diplomatic Relations and Immunities (Amendment) Act 2006 (No. 10 of 2006)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967) that the Government may by order designate an international organisation, community or body of which the State or the Government is or intends to become a member to be an organisation to which Part VIII of that Act applies and may, by the order, make provision for the purposes of section 42 of that Act, as respects inviolability, exemptions, facilities, immunities, privileges and rights (other than inviolability, exemptions, facilities, immunities, privileges or rights not conferred upon, or afforded in relation to, sending states or missions under the Vienna Convention) in relation to the organisation;

AND WHEREAS the Asian Infrastructure Investment Bank is such an international organisation, community or body;

NOW, the Government, in exercise of the powers conferred on them by the said section 40(1), hereby order as follows:

1. This Order may be cited as the Asian Infrastructure Investment Bank (Privileges and Immunities) Order 2017.
2. The Asian Infrastructure Investment Bank is designated as an organisation to which Part VIII of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967) applies.
3. The Schedule shall apply to the Asian Infrastructure Investment Bank for the purposes of section 42 of the Diplomatic Relations and Immunities Act 1967.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 26th September, 2017.

SCHEDULE

Article 1

Status of the Bank

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

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
- (iii) to institute and respond to legal proceedings; and
- (iv) to take such other action as may be necessary or useful for its purpose and activities.

2. Notwithstanding financial controls, regulations or moratoria of any kind that may otherwise be in place or implemented from time to time, the Bank, in accordance with its Articles of Agreement, may, in the Member, freely:

- (i) purchase, hold and dispose of any funds, currencies, financial instruments and security, operate accounts in any currency, engage in financial transactions and conclude financial contracts;
- (ii) transfer its funds, currencies, financial instruments and securities, including mortgages, to or from the Member or within the Member and convert any currency held by it into any other currency; and
- (iii) borrow and lend money in the lawful currency of the Member and issue bonds and other securities denominated in the official currency of the Member.

Article 2

Immunity from Judicial Proceedings

1. 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 raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases 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, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by the Member, or by any agency or instrumentality of the Member, or by any entity or person directly or indirectly acting for or deriving claims from the Member or from any agency or instrumentality of the Member. The Member shall have recourse to such special procedures for

the settlement of controversies between the Bank and its members as may be prescribed in the Articles of Agreement, in the by-laws and regulations of the Bank, or in the contracts entered into with the Bank.

3. 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 3

Immunity of Assets and Archives

1. 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.

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

Article 4

Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of its Articles of Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 5

Privilege for Communications

1. Official communications of the Bank shall be accorded by the Government the same treatment that it accords to the official communications of any other member of the Bank.

2. The Bank shall have the right in the Member to use codes and to dispatch and receive correspondence and other communications either by courier or in sealed bags, which shall have immunities, privileges and exemptions no less favorable than those accorded to diplomatic couriers and bags.

3. The Bank and its officers and employees shall have access to appropriate communication networks and equipment of the Member and may also use their own communication equipment, including satellite, mobile and/or other communication equipment, provided that such networks and equipment comply with the technical requirement of the relevant regulatory framework of the Member, subject to such technical requirements being applicable also to networks and/or equipment used by diplomatic missions of other Members of the Bank in the Member.

Article 6

Immunities and Privileges of Officers and Employees

1. All officers and employees of the Bank, including experts and consultants performing missions or services for the Bank, while on mission in the Member or in transit therein:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity and shall enjoy inviolability of all their official papers, documents and records;
- (ii) shall be immune from personal arrest or detention, and from seizure of their personal baggage;
- (iii) where they are not local citizens or 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 the Government to the representatives, of comparable rank of other Members of the Bank; and
- (iv) shall be granted the same treatment in respect of travelling facilities as is accorded by the Government to representatives, officials and employees of comparable rank of other Members of the Bank.

The Government, or the relevant authorized agency thereof, shall take all measures required to ensure unimpeded entry into and departure from the Member of all officers and employees of the Bank entering the Member on official business.

2. Officers and employees of the Bank shall have the same freedom of movement and travel within the Member, subject to its laws and regulations concerning access to locations requiring special authorization, and the same treatment in respect of travelling facilities as is accorded to officials of comparable rank of diplomatic missions in the Member.

3. The Government shall take appropriate steps to authorize the entry into the Member and shall issue general instructions to its concerned officials to grant visas to any officers and employees of the Bank without delay and without payment of any charges, as required and for the duration of their official business.

Article 7

Exemption from Taxation

1. The Bank, its assets, property, income and its operations and transactions pursuant to this Agreement, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the

payment, withholding or collection of any tax or duty. Accordingly, any payments to the Bank in the Member shall be made free and clear from, and without deduction of, or withholding for, any taxes, fees and/or charges of whatever nature.

2. No tax of any kind shall be levied on or in respect of salaries, emoluments and expenses, as the case may be, paid by the Bank to Directors, Alternate Directors, the President, Vice-Presidents and other officers or employees of the Bank, including experts and consultants performing missions or services for the Bank, except where the Member deposits with its instrument of ratification, acceptance, or approval a declaration that it retains for itself and its political subdivisions the right to tax salaries, and emoluments, as the case may be, paid by the Bank to citizens or nationals of the Member.

3. No tax of any kind shall be levied by the Government 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.

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.

4. Purchases made and/or services used in the exercise of the Bank's official activities shall be exempt from all taxes (including value added tax), fees, and/or charges or mandatory payments of whatever nature. If the price of such purchases and/or services includes taxes, fees, and/or charges or mandatory payments of whatever nature, the Government shall take appropriate measures to grant exemption from such taxes, fees and/or charges, or provide for their reimbursement to the Bank.

5. Goods imported by the Bank into the Member and necessary for the exercise of its official activities shall be imported in the Bank's name and shall be exempt from all import duties, taxes, charges, fees and levies, and from all import prohibitions and restrictions. Goods exported by the Bank from the Member shall be exempt from all export duties, taxes, charges, fees and levies, and from all export prohibitions and restrictions.

6. Services provided by the Bank in the Member in the exercise of its official activities shall not be subject to any form of taxation (including value added tax).

7. All imported and local goods, equipment, material, works and services, including consultancy services, used in the undertaking of any project financed by the Bank, shall be exempt from any taxes, duties or other fees, charges or mandatory payments levied by or in the State.

8. The value of any incentive payments, goods, equipment, works, related services and/or materials provided as a result of financial investments made by the Bank shall be exempt from corporate tax levied by, or in the territory of, the Member and shall not be deemed to be a taxable benefits or taxable income of the entity that may directly or indirectly benefit from such financial investment.

Article 8

Freedom of Operations from Restrictions

1. Subject to the provisions of the Bank's Articles of Agreement, the Bank may freely pursue all official activities within the Member without any restrictions and the necessity for further permits and/or authorizations from the authorities of the Member, including but not limited to anti-monopoly authorities, central bank, and/or other regulators or entities responsible for oversight of a particular sector, types of operations, and/or acquisitions.

2. The provision of the Bank's services and/or loans to entities within the Member, including without limitation, sub-sovereign or municipal entities and/or private sectors, shall not be subject to competitive tender.

Article 9

Waivers

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Schedule in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.



GIVEN under the Official Seal of the Government,
19 September 2017.

LEO VARADKAR,
Taoiseach.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this order is to accord various privileges and immunities to the Asian Infrastructure Investment Bank pursuant to the Diplomatic Relations and Immunities Acts 1967-2006.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

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