



MINISTER FOR FOREIGN AFFAIRS

Departmental No.64.....

Executive Council Meeting No.24.....

Minute Paper for the Executive Council

Subject

International Organisations (Privileges and Immunities) Act 1963

International Organisations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Regulation 2015

Approved in Council

Recommended for the approval of His Excellency the Administrator in Council that he make a Regulation in the attached form.

s 22(1)(a)(ii)

Paul de Jersey
Administrator

29 OCT 2015

Filed in the Records
of the Council

s 22(1)(a)(ii)

to the Executive Council

s 22(1)(a)(ii)

June Bishop
Minister for Foreign Affairs



International Organisations (Privileges and Immunities—Asian Infrastructure Investment Bank) Regulation 2015

Select Legislative Instrument No. , 2015

I, the Honourable Paul de Jersey AC QC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated *24th October* 2015

s 22(1)(a)(ii)

Paul de Jersey
Administrator

By His Excellency's Command

s 22(1)(a)(ii)

Minister for Foreign Affairs

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Part 1—Preliminary

1 Name

This is the *International Organisations (Privileges and Immunities—Asian Infrastructure Investment Bank) Regulation 2015*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as sections 3 to 9 of the <i>Asian Infrastructure Investment Bank Act 2015</i> commence.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *International Organisations (Privileges and Immunities) Act 1963*.

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Part 1 Preliminary

Section 4

4 Definitions

In this instrument:

Act means the *International Organisations (Privileges and Immunities) Act 1963*.

Bank means the Asian Infrastructure Investment Bank.

tax invoice has the meaning given by section 29-70 of the GST Act.

Part 2—Asian Infrastructure Investment Bank

5 Act applies to the Bank

The Bank is an international organisation to which the Act applies.

6 Bank to have juridical personality and legal capacities

The Bank:

- (a) is a body corporate with perpetual succession; and
- (b) is capable, in its corporate name:
 - (i) of entering into contracts; and
 - (ii) of acquiring, holding and disposing of real and personal property; and
 - (iii) of instituting, and being a party to, legal proceedings.

7 Privileges and immunities of the Bank

The Bank has the privileges and immunities specified in items 6, 7 and 8 of the First Schedule to the Act.

Note: See also the *Asian Infrastructure Investment Bank (Privileges and Immunities) Regulation 2015*, which confers additional privileges and immunities on the Bank.

Part 3 Indirect tax concession scheme

Section 8

Part 3—Indirect tax concession scheme**8 Indirect tax concession scheme—acquisitions**

- (1) For paragraph 11C(1)(a) of the Act, acquisitions by the Bank are covered by this instrument.
- (2) However, an acquisition by the Bank is covered by this instrument only if, at the time of the acquisition, it was intended for the official use of the Bank.

9 Indirect tax concession scheme—conditions

- (1) For paragraph 11C(3)(a) of the Act, the amount mentioned in subsection 11C(1) of the Act is payable to the Bank only if the following conditions are satisfied:
 - (a) the Bank has entered into a written agreement with the Commonwealth to repay to the Commonwealth the amount worked out under subsection (3) if:
 - (i) for a payment in relation to an acquisition of a motor vehicle—the Bank disposes of the motor vehicle (except to a person entitled to an indirect tax concession under another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 3 years after it was acquired; or
 - (ii) for a payment in relation to an acquisition of goods other than a motor vehicle—the Bank disposes of the goods (except to a person entitled to an indirect tax concession under another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 2 years after the goods were acquired; or
 - (iii) for a payment in relation to an acquisition of services—the Bank assigns the services to another person (except to a person entitled to an indirect tax concession under another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory; or

Section 9

- (iv) for a payment in relation to any other acquisition—the Bank assigns the thing acquired to another person (except to a person entitled to an indirect tax concession under another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory;
 - (b) if the Bank has breached a previous agreement under paragraph (a)—the Bank complies with any written requirements, including a requirement to give security, that the Minister considers necessary to ensure that the Bank complies with the agreement.
- (2) For subparagraphs (1)(a)(i) and (ii):
- (a) a sale of goods to a finance company as part of a sale and lease-back arrangement is not a disposal of the goods; and
 - (b) the Bank is taken to have disposed of goods to which one of those subparagraphs applies within the period mentioned in that subparagraph to a person who is not entitled to an indirect tax concession in relation to similar acquisitions if:
 - (i) the Bank disposes of the goods to a person who is entitled to the concession; and
 - (ii) that person disposes of the goods to another person; and
 - (iii) the series of disposals of the goods to other persons continues (if necessary) until the goods are eventually acquired, within the period mentioned in that paragraph, by a person who is not entitled to the concession.
- (3) For paragraph (1)(a), the amount to be repaid is:
- (a) for an acquisition to which subparagraph (1)(a)(i) or (ii) applies—the proportion of the amount paid under section 11C of the Act in relation to the acquisition that is equal to the proportion of the period mentioned in that subparagraph remaining after the Bank disposes of the goods; and
 - (b) for an acquisition to which subparagraph (1)(a)(iii) or (iv) applies—the amount paid under section 11C of the Act in relation to the acquisition.

Part 3 Indirect tax concession scheme

Section 10

- (4) However, for an acquisition to which subparagraph (1)(a)(i) or (ii) applies, the Bank is not required to repay an amount paid under section 11C of the Act in relation to a lease payment that relates to a period before the Bank disposes of the goods.
- (5) The amount mentioned in subsection 11C(1) of the Act is not payable if:
- (a) an amount was payable for a similar acquisition; and
 - (b) the Minister tells the Bank in writing that, in his or her opinion, the Bank's reasonable needs were met by that acquisition.

10 Indirect tax concession scheme—claims for payment

A claim for payment under section 8:

- (a) must be signed by, or on behalf of, the President of the Bank; and
- (b) must be sent with the tax invoice for the acquisition; and
- (c) must be sent:
 - (i) for an acquisition of a motor vehicle—to the Protocol Branch of the Department of Foreign Affairs and Trade; or
 - (ii) in any other case—to the Australian Taxation Office; and
- (d) for an acquisition of a motor vehicle or an acquisition of real property by lease—may be sent at any time after the acquisition; and
- (e) for an acquisition (other than an acquisition covered by paragraph (d)) that is subject to an arrangement:
 - (i) that is between the Bank and the Commonwealth; and
 - (ii) that specifies when a claim for payment may be sent; may only be sent as specified in the arrangement; and
- (f) for an acquisition that is not covered by paragraph (d) or (e)—may only be sent:
 - (i) with another claim; or
 - (ii) at least 3 months after another claim from the Bank is sent.

Section 11

Note: Paragraph (f) is intended to limit the number of claims from the Bank to one in each quarter, to minimise delays in the processing of claims.

11 Indirect tax concession scheme—manner of payment

For paragraph 11C(3)(b) of the Act, the amount is to be paid to a single recipient, or an account, nominated by, or on behalf of, the President of the Bank.

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Part 4 Other matters

Section 12

Part 4—Other matters

12 Waiver of privileges and immunities

The Bank may waive any privileges or immunities to which the Bank is entitled by virtue of the Act or this instrument.

13 Delegation by the Minister

The Minister may, by writing, delegate to a person the Minister's powers under paragraphs 9(1)(b) and (5)(b).

EXPLANATORY MEMORANDUM

Minute No. 64 of 2015 - Minister for Foreign Affairs

Subject - *International Organisations (Privileges and Immunities) Act 1963*
International Organisations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Regulation 2015

The *International Organisations (Privileges and Immunities) Act 1963* allows privileges and immunities to be conferred on 'international organisations' and 'overseas organisations', including persons connected to the organisations. The 'international organisations' and 'overseas organisations' are declared by regulations under the Act

Section 13 of the *International Organisations (Privileges and Immunities) Act 1963* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *International Organisations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Regulation 2015* (the Proposed Regulation) will enable the extension of certain privileges and immunities to the Asian Infrastructure Investment Bank (the Bank), thereby giving effect to Australia's obligations as a prospective member of the Bank and facilitating Australia's ratification of the Asian Infrastructure Investment Bank Articles of Agreement.

The Proposed Regulation provides that the Bank: is an international organisation to which the Act applies; has juridical personality and legal capacities; and specifies the privileges and immunities under the Act which apply to the Bank. In particular, the Bank will be exempt from: customs duties on the import or export of goods imported or exported by the Bank for its official use and on its publications; the liability to pay or collect taxes on its income, property, assets and transactions; taxes of obligations and securities issued or guaranteed by the Bank and of interest and dividends on such obligations and securities.

The Proposed Regulation also provides, for the purposes of section 11C of the Act regarding the application of the indirect tax concession scheme, that acquisitions by the Bank are covered by the Regulation.

Details of the Proposed Regulation are set out in the Attachment

A separate regulation, the *Asian Infrastructure Investment Bank Regulation 2015*, will be made under the *Asian Infrastructure and Investment Bank Act 2015* (the AIIB Act) to confer additional privileges and immunities on the Bank, and to extend certain privileges and immunities to persons connected with the Bank.

The Proposed Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act specifies no conditions that needed to be satisfied before the power to make the Regulation could be exercised.

The Proposed Regulation would commence at the same time as sections 3 to 9 of the AIIB Act.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 13 of the *International Organisations (Privileges and Immunities) Act 1963.*

ATTACHMENTDetails of the International Organisations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Regulation 2105**Part 1 – Preliminary****Section 1 - Name**

Section 1 provides that the name of the Regulation will be the *International Organisations (Privileges and Immunities) (Asian Infrastructure Investment Bank) Regulation 2015* (the Regulation).

Section 2 - Commencement

Section 2 provides that the Regulation will commence at the same time as sections 3 to 9 of the *Asian Infrastructure Investment Bank Act 2015* on the date of lodgement, or on the day on which the Bank is established (whichever is the later).

Section 3 - Authority

Section 3 provides that the Regulation is made under the authority of the *International Organisations (Privileges and Immunities) Act 1963* (the Act).

Section 4 – Definition

Section 4 provides for the definition of certain terms used in the Regulation, including ‘Act’, ‘Bank’ and ‘tax invoice’.

Part 2 – Asian Infrastructure Investment Bank**Section 5 – Act applies to the Bank**

Section 5 provides that the Bank is an international organisation to which the Act applies, and regulations may therefore be made under the Act in relation to the Bank.

Section 6 - Bank to have judicial personality and legal capacities

Section 6 confers legal personality and capacities on the Bank. Specifically it provides that the Bank is a body corporate with perpetual succession, and is able to: enter into contracts; acquire, hold and dispose of assets and property; institute and be a party to legal proceedings.

Section 7 - Privileges and Immunities of the Bank

Section 7 states that the Bank will have the privileges and immunities specified in items 6, 7 and 8 of the First Schedule to the Act.

These include exemptions from;

- duties on the importation or exportation of goods by the organisation for its official use and publications of the organisation imported or exported by it.
- the liability to pay or collect taxes on duties, income, property, assets and transactions of the organisation.
- taxes of obligations and securities issued or guaranteed by the organisation and of interest and dividends on such obligations and securities.
- currency and exchange restrictions

As noted above, a separate regulation (the Asian Infrastructure Investment Bank Regulation 2015) will be made under the Asian Infrastructure Investment Bank Act 2015 to confer

s 22(1)(a)(ii)

additional privileges and immunities on the Bank, and to extend certain privileges and immunities to person's connected to the Bank.

Part 3 - Indirect tax concession scheme

Section 8 – Indirect tax concession scheme - acquisitions

Section 8 provides for indirect tax concessions for the acquisition of goods and services intended for the official use of the Bank.

Regulation 9 – Indirect tax concession scheme - conditions

Section 9 sets out the conditions that must be met in order for the Bank to receive tax concessions for the acquisition of motor vehicles and other goods and services intended for the official use of the Bank.

Tax concessions are not available if the Bank disposes of motor vehicles within 3 years or other goods within 2 years after they were acquired (except where the Bank disposes of the motor vehicle/goods to a person entitled to an indirect tax concession). Tax concessions are not available on services assigned to a person who is not entitled to an indirect tax concession. The sale of goods as part of a sale and lease-back arrangement is not a disposal of the goods.

If the Bank disposes of goods within the period specified (3 years for motor vehicles and 2 years for other goods) to a person who is not entitled to a tax concession, there will be an amount to be repaid to the Commonwealth which is specified under sections 9(3) and 9(4) of the Regulation.

Section 10 – Indirect tax concession scheme – claims for payment

Section 10 outlines the procedure for claiming a payment under section 9, which deals with acquisitions under the indirect tax concession scheme, including that a claim for payment must be signed by, or on behalf of, the President of the Bank and must be sent with the tax invoice for the acquisition. Section 10 also specifies where claims must be sent for processing, and timeframes for making a claim. .

Section 11 – Indirect tax concession scheme – manner of payment

Section 11 provides that a payment to the Bank under the indirect tax concession scheme is to be paid to a single recipient, or an account nominated by, or on behalf of, the President of the Bank.

Part 4 – Other matters

Section 12 – Waiver of privileges and immunities

Section 12 provides that the Bank may waive any privileges or immunities to which the Bank is entitled because of the Act or the Regulation.

Section 13 – Delegation by the Minister

Section 13 provides that the Minister may by writing delegate by writing the Minister's powers under paragraphs 9(1)(b) and (5)(b) of the Regulation.