

ASIAN INFRASTRUCTURE INVESTMENT BANK BILL 2016

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SCHEDULE

A BILL

in title

An Act to give effect to an international agreement for the establishment and operation of the Asian Infrastructure Investment Bank and to enable the Government of Malaysia to be a member thereof and to make provisions for matters connected therewith.

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WHEREAS the Government of Malaysia signed the Articles of Agreement establishing the Asian Infrastructure Investment Bank on 21 August 2015 and is desirous of ratifying the said agreement and thereby becoming a member of the said Bank.

NOW, THEREFORE, **IT IS ENACTED** by the Parliament of Malaysia as follows:

Short title and commencement

- 1. (1)** This Act may be cited as the Asian Infrastructure Investment Bank Act 2016.
(2) This Act comes into operation on the date the Agreement comes into operation for the Government of Malaysia pursuant to Article 58 of the Agreement.

Interpretation

2. In this Act, unless the context otherwise requires—

“member” means a member of the Bank;

“Bank” means the Asian Infrastructure Investment Bank established under the Agreement;

“Government” means the Government of Malaysia;

“Minister” means the Minister charged with the responsibility for finance;

“Agreement” means the Asian Infrastructure Investment Bank Articles of Agreement for the establishment and operation of the Asian Infrastructure Investment Bank signed by the Government in Beijing, China on 21 August 2015, as amended from time to time.

Certain provisions of Agreement to have force of law

3. (1) Notwithstanding anything to the contrary in any other law, the provisions of the Agreement set out in the Schedule shall have the force of law in Malaysia.

(2) Nothing in Article 51 of the Agreement shall be construed as—

- (a) entitling the Bank to import into Malaysia goods free of any customs duty without any restriction on their subsequent sale in Malaysia;
- (b) conferring on the Bank any exemption from taxes or duties which form part of the price of goods sold or services supplied; or
- (c) conferring on the Bank any exemption from taxes or duties which are no more than charges for services rendered.

(3) The Minister may, by order published in the *Gazette*, amend the Schedule in conformity with any amendments to the provisions of the Agreement set out in the Schedule which may subsequently be made and adopted.

Waiver

4. The Bank may waive any of the privileges, immunities and exemptions conferred under Chapter IX of the Agreement 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.

Power to subscribe to shares of the capital stock of the Bank

5. The Minister is authorized to subscribe on behalf of the Government—

- (a) to shares of the original authorized capital stock of the Bank in accordance with paragraph 1 of Article 5 of the Agreement to an amount not exceeding one hundred and nine million and five hundred thousand United States dollars;
- (b) where the shares of the Government have been increased at the request of the Government under paragraph 3 of Article 5 of the Agreement, to the amount of such increase; and
- (c) where the original authorized capital stock of the Bank is increased under paragraph 4 of Article 5 of the Agreement, to a proportion of the increase of stock as provided in that paragraph.

Sums payable to the Bank to be charged on the Consolidated Fund

6. (1) There shall be charged on the Consolidated Fund—

- (a) all sums payable to the Bank by way of subscription to its capital stock under and in accordance with the method of payment thereof as provided in Article 6 of the Agreement;

- (b) all sums payable to the Bank by way of subscription to its callable capital stock as and when required by the Bank, under paragraph 3 of Article 6 of the Agreement;
 - (c) all sums payable to the Bank by way of increased subscription by the Government to the Bank's capital stock in accordance with paragraphs 3 and 4 of Article 5 of the Agreement; and
 - (d) all sums payable to the Bank under any other provisions of the Agreement.
- (2) All the sums charged on the Consolidated Fund under this section shall be paid in United States dollars.

Issue of promissory notes and other obligations

7. (1) The Minister may issue to the Bank in such form as he thinks fit any promissory notes or other obligations, in lieu of the amount to be paid in the Malaysian currency, provided that such amount is not required by the Bank for the conduct of its operations.

(2) Such notes or obligations issued shall be non-negotiable, non-interest bearing and payable to the Bank at par value upon demand.

Receipt

8. All sums received by or on behalf of the Government from the Bank shall be paid into the Consolidated Fund.

Power to make regulations

9. The Minister may make regulations for the purpose of carrying out the provisions of this Act.

SCHEDULE

[Section 3]

PROVISIONS OF THE AGREEMENT HAVING THE FORCE OF
LAW IN MALAYSIA

CHAPTER IX

STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44 Purposes of Chapter

1. To enable the Bank to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member.
2. Each member shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken.

Article 45 Status of the Bank

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.

Article 46 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 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 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 47 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 48 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 this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 49 Privilege for Communications

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

Article 50 Immunities and Privileges of Officers and Employees

All Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank, including experts and consultants performing missions or services for the Bank:

- (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) 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 members to the representatives, officials and employees of comparable rank of other members; and

- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 51 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.

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 a member deposits with its instrument of ratification, acceptance, or approval a declaration that such member 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 such member.

3. 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.

4. 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.

EXPLANATORY STATEMENT

This Bill seeks to give effect to an international agreement for the establishment and operation of the Asian Infrastructure Investment Bank and to enable the Government of Malaysia to be a member thereof and to make provisions for matters connected therewith.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* contains the definitions of certain words and expressions used in the proposed Act.
4. *Clause 3* seeks to provide that the provisions of the Agreement set out in the Schedule shall have the force of law in Malaysia. The Minister may, by order published in the *Gazette*, amend the Schedule in conformity with any amendments to the provisions of the Agreement set out in the Schedule which may subsequently be made and adopted.
5. *Clause 4* seeks to provide that the Bank may waive any of the privileges, immunities and exemptions provided in the Schedule.
6. *Clause 5* seeks to empower the Minister to subscribe to shares of the original authorized capital stock of the Bank and any increase thereto, on behalf of the Government.
7. *Clause 6* seeks to provide that all sums payable to the Bank is to be charged on the Consolidated Fund. These include all sums payable under Article 6 and paragraphs 3 and 4 of Article 5 of the Agreement. All sums charged on the Consolidated Fund shall be paid in United States dollar.
8. *Clause 7* seeks to authorize the Minister to issue to the Bank in such form as he thinks fit any non-negotiable and non-interest bearing promissory notes or other obligations provided that such amount is not required by the Bank for the conduct of its operations.
9. *Clause 8* seeks to provide that all sums received by and on behalf of the Government from the Bank shall be paid into the Consolidated Fund.
10. *Clause 9* seeks to provide the power of the Minister to make regulations for the purpose of carrying out the provisions of the proposed Act.

The Schedule sets out the relevant Articles of Agreement relating to the status, privileges, immunities and exemptions conferred to the Bank.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3029]