

L.N. 104 of 2022

**International Organizations (Privileges and Immunities)
(World Intellectual Property Organization) 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 15 July 2022.

2. Interpretation

In this Order—

1947 Convention (《1947年公約》) means the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations by resolution adopted on 21 November 1947;

Annex XV (《附件十五》) means the final text of Annex XV to the 1947 Convention, approved by the WIPO Coordination Committee at its eleventh session held in Geneva from 26 September to 4 October 1977;

WIPO (世界知識產權組織) means the World Intellectual Property Organization established under the Convention Establishing the World Intellectual Property Organization signed at Stockholm on 14 July 1967.

3. Provisions of 1947 Convention and Annex XV having force of law in Hong Kong in relation to WIPO

- (1) The following provisions have the force of law in Hong Kong in relation to WIPO and are for that purpose to be construed in accordance with subsections (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12)—
 - (a) the provisions of the 1947 Convention as set out in Schedule 1; and
 - (b) the provisions of Annex XV as set out in the English text of Schedule 2 (*Annex XV provisions*).

Note without legislative effect—

Annex XV was drawn up in 2 authentic texts in the English and French languages.

- (2) A Chinese translation of the Annex XV provisions is set out in the Chinese text of Schedule 2.
- (3) In applying those provisions of the 1947 Convention, a reference to “specialized agency” (however expressed) is to be construed as meaning WIPO.
- (4) In applying section 9(b) of the 1947 Convention, the reference to “will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country” is to be construed as meaning “will not be sold in the People’s Republic of China except under conditions agreed to with the Central People’s Government of the People’s Republic of China”.
- (5) In applying section 11 of the 1947 Convention—
 - (a) the reference to “the territory of each State party to this Convention in respect of that agency” is to be construed as meaning the area of the Hong Kong Special Administrative Region of the People’s Republic of China; and

- (b) the reference to “the Government of such State” is to be construed as meaning the Central People’s Government of the People’s Republic of China.
- (6) In applying section 12 of the 1947 Convention, the reference to “a State party to this Convention” is to be construed as meaning the People’s Republic of China.
- (7) In applying section 13 of the 1947 Convention, the reference to “representatives of members” is to be construed as meaning representatives of members of WIPO.
- (8) In applying section 15 of the 1947 Convention, the reference to “a member State” is to be construed as meaning the Hong Kong Special Administrative Region of the People’s Republic of China.
- (9) In applying section 16 of the 1947 Convention—
 - (a) the reference to “representatives of members” is to be construed as meaning representatives of members of WIPO; and
 - (b) a reference to “member” is to be construed as meaning member of WIPO.
- (10) In applying section 17 of the 1947 Convention, that section is to be construed as if it reads as follows: “The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of the Hong Kong Special Administrative Region of the People’s Republic of China if the person concerned is a Chinese national or is or has been a representative of the People’s Republic of China.”.
- (11) In applying section 19(f) of the 1947 Convention, the reference to “the country in question” is to be construed as meaning the Hong Kong Special Administrative Region of the People’s Republic of China.

- (12) In applying section 33 of the 1947 Convention, the reference to “the final (or revised) text of the annex relating to that agency” is to be construed as meaning Annex XV.
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Schedule 1

[s. 3]

Provisions of 1947 Convention Having Force of Law in Hong Kong in relation to WIPO

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Article I

DEFINITION AND SCOPE

Section 1

In this Convention:

(i) The words “standard clauses” refer to the provisions of articles II to IX.

...

(iv) For the purposes of article III, the words “property and assets” shall also include property and funds administered by a specialized agency in furtherance of its constitutional functions.

(v) For the purposes of articles V ..., the expression “representatives of members” shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations.

(vi) In sections 13, 14, 15 ..., the expression “meetings convened by a specialized agency” means meetings: (1) of its assembly and of its executive body (however designated), and (2) of any commission provided for in its constitution; (3) of any international conference convened by it; and (4) of any committee of any of these bodies.

(vii) The term “executive head” means the principal executive official of the specialized agency in question, whether designated “Director-General” or otherwise.

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Article II

JURIDICAL PERSONALITY

Section 3

The specialized agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.

Article III

PROPERTY, FUNDS AND ASSETS

Section 4

The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 5

The premises of the specialized agencies shall be inviolable. The property and assets of the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 6

The archives of the specialized agencies, and in general all documents belonging to them or held by them, shall be inviolable, wherever located.

...

Section 9

The specialized agencies, their assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the specialized agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;

(c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of their publications.

...

Article IV

FACILITIES IN RESPECT OF COMMUNICATIONS

Section 11

Each specialized agency shall enjoy, in the territory of each State party to this Convention in respect of that agency, for its official communications, treatment not less favourable than that accorded by

the Government of such State to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

Section 12

No censorship shall be applied to the official correspondence and other official communications of the specialized agencies.

The specialized agencies shall have the right to use codes and to dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency.

Article V

REPRESENTATIVES OF MEMBERS

Section 13

Representatives of members at meetings convened by a specialized agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

...

(f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 14

In order to secure for the representatives of members of the specialized agencies at meetings convened by them complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 15

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the specialized agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

Section 16

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the specialized agencies. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 17

The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

Article VI

OFFICIALS

...

Section 19

Officials of the specialized agencies shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;

...

(f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

...

Section 21

In addition to the immunities and privileges specified in sections 19 ..., the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the

privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 22

Privileges and immunities are granted to officials in the interests of the specialized agencies only and not for personal benefit of the individuals themselves. Each specialized agency shall have the right and the duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialized agency.

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Article X

ANNEXES AND APPLICATION TO INDIVIDUAL SPECIALIZED AGENCIES

Section 33

In their application to each specialized agency, the standard clauses shall operate subject to any modifications set forth in the final (or revised) text of the annex relating to that agency ...

Section 34

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

...

Schedule 2

[s. 3]

Provisions of Annex XV Having Force of Law in Hong Kong in relation to WIPO

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“In their application to the World Intellectual Property Organization (hereinafter called ‘the Organization’), the standard clauses shall operate subject to the following modifications:

“1. The privileges, immunities, exemptions and facilities referred to in article VI, section 21, of the standard clauses shall also be accorded to the Deputy Directors General of the Organization.

“2. (a) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connexion with service on such committees or missions:

“(i) Immunity from personal arrest or seizure of their personal baggage;

“(ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;

- “(iii) The same facilities ... in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
- “(iv) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization;
- “(v) For their communications with the Organization, the right to use codes and to receive documents and correspondence by courier or in sealed dispatch bags.

In connexion with (iv) and (v) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

“(b) Privileges and immunities are granted to the experts referred to in paragraph (a) above in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.”

Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

10 May 2022

Explanatory Note

Privileges and immunities are conferred on the World Intellectual Property Organization (*WIPO*) by the Convention on the Privileges and Immunities of the Specialized Agencies 1947 (*Convention*). Annex XV to the Convention (*Annex XV*) modifies such privileges and immunities of WIPO.

2. The People's Republic of China (*China*) notified the United Nations of the application of the Convention to WIPO in China, including Hong Kong, on 21 October 2021.
3. Certain provisions of the Convention and Annex XV relating to the following matters must be implemented by legislation—
 - (a) the status, privileges and immunities of WIPO; and
 - (b) the privileges and immunities of certain persons connected with WIPO.
4. This Order declares that those provisions of the Convention and Annex XV have the force of law in Hong Kong in relation to WIPO.