

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 210

Asian Development Bank (Privileges and Immunities) Amendment Regulations 2005 (No. 1)

The Asian Development Bank (ADB) is an international organisation that provides financial assistance for development projects in the Asia Pacific region. Australia is a member country of the ADB and signed the ADB Agreement in 1966. Australia's obligations under the Agreement to grant the ADB certain privileges and immunities (for example, immunity from suit or other legal process, exemptions from currency and exchange restrictions) are implemented by the *Asian Development Bank (Privileges and Immunities) Regulations 1967* made under the *International Organisations (Privileges and Immunities) Act 1963*.

The amendment Regulations will give effect to an arrangement between the Australian Government and the ADB on the establishment of an office in Australia. This office was opened in August 2005, and is one of two missions established to service the special needs of Pacific island countries. The arrangement further clarifies and expands the privileges and immunities available to ADB staff under Australian law. A copy of the text of this arrangement is included in Schedule 3 of the amendment Regulations.

The amendment Regulations will extend two additional privileges and immunities to ADB staff: the right to import furniture and effects free of duty and goods and services tax when first taking up a post in Australia; and income tax exemptions for Australian resident national staff of the office. The amendment Regulations will also clarify that Australian authorities may enter ADB offices in the case of fire or other emergency requiring immediate protective action.

Details of the Regulations are set out in the Attachment.

All relevant Commonwealth Government Departments were consulted prior to the drafting of these Regulations.

Details of the *Asian Development Bank (Privileges and Immunities) Amendment Regulations 2005 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Asian Development Bank (Privileges and Immunities) Amendment Regulations 2005 (No. 1)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of *Asian Development Bank (Privileges and Immunities) Regulations 1967*

This regulation provides that the *Asian Development Bank (Privileges and Immunities) Regulations 1967* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Transitional

This regulation provides that although the Regulations repeal subregulation 6 (2) of the Principal Regulations, that subregulation continues to apply to salary and emoluments received from the Bank by a person to the extent to which they are for services provided in Australia before the commencement of the proposed Regulations.

Schedule 1 – Amendments

Item [1] – Regulation 2, after definition of *member of the family*

Regulation 2 of the Principal Regulations provides for the definition of certain terms used in the Principal Regulations. This item inserts after the definition of *member of the family* definitions of “*MOU*” and “*Resident Representative*”.

The term *MOU* is defined as the document entitled ‘Arrangement between the Government of Australia and the Asian Development Bank regarding the Pacific Liaison and Coordination Office of the Asian Development Bank’, a copy of which is set out in Part 1 of Schedule 3 of the proposed Regulations. The term *MOU* also includes the Agreed Minutes relating to the arrangement, a copy of which is set out in Part 2 of Schedule 3 of the proposed Regulations.

The term *Resident Representative* has the same meaning under the proposed Regulations as in the *MOU*, that is, *Resident Representative* means the Resident Representative or any other principal executive official of the Office appointed by the ADB.

Item [2] – Regulation 5

Regulation 5 of the Principal Regulations provides that the ADB has such privileges and immunities as specified in the First Schedule to the Act as are required by the

Agreement to be conferred on the ADB. This item inserts the words “and the MOU” after “Agreement” which means that the ADB also has privileges and immunities as required by the MOU.

Item [3] – Subregulation 6 (1)

Subregulation 6 (1) of the Principal Regulations limits the privileges and immunities which apply to officers of the ADB other than the President to specified paragraphs of Part 1 of the Fourth Schedule to the Act. This item extends the privileges and immunities of other officers of the ADB to include all the privileges and immunities set out in Part 1 of the Fourth Schedule to the Act as are required by the Agreement and the MOU.

Item [4] – Subregulation 6 (2)

Subregulation 6 (2) of the Principal Regulations provides that salary and emoluments paid by the ADB to a person (i) employed in Australia, (ii) providing services in Australia and (iii) considered a resident of Australia for income tax purposes are not exempt from taxation unless the person is not an Australian citizen and came to Australia solely for the purpose of working for the ADB. Although this item repeals subregulation 6 (2) it will continue to apply by virtue of Regulation 4 (see above) to the extent to which the salary and emoluments are for services provided in Australia before the commencement of the proposed Regulations.

Item [5] – Paragraph 7C (a)

Paragraph 7C (a) of the Principal Regulations provides that a claim for payment under Regulation 7A, which deals with acquisitions under the indirect tax concession scheme, must be signed by, or for, the President of the ADB. By inserting the words “or the Resident Representative” this item provides that the Resident Representative of the ADB office in Australia can also sign, or someone can sign on his or her behalf, such claims.

Item [6] – Regulation 7D

Regulation 7D of the Principal Regulations provides that a payment to the ADB under the indirect tax concession scheme is to be paid to a recipient or account nominated by, or for, the President of the ADB. By inserting the words “or the Resident Representative” this item provides that the Resident Representative of the ADB office in Australia can also nominate, or someone can nominate on his or her behalf, a recipient or account to which such payments can be made.

Item [7] – Regulation 10

Regulation 10 of the Principal Regulations provides that the emblem in the First Schedule to the Principal Regulations is the official emblem of the ADB for the purposes of section 12 of the Act. This section of the Act provides protection for the names, seals, emblems of international organisations. This item replaces the reference to the “First Schedule to these Regulations” in Regulation 10 with a reference to “Schedule 1”.

Item [8] – Regulation 11

Regulation 11 of the Principal Regulations provides that the design of the seal set out in the Second Schedule to the Principal Regulations is the official seal of the ADB for the purposes of section 12 of the Act. This section of the Act provides protection for the names, seals, emblems of international organisations. This item replaces the reference to the “Second Schedule to these Regulations” in Regulation 11 with a reference to “Schedule 2”.

Item [9] – Schedules

There are two Schedules in the Principal Regulations which deal with the official emblem and seal of the ADB. This item omits the title **The Schedules**.

Item [10] – First Schedule, heading

The official emblem of the ADB is set out in the First Schedule of the Principal Regulations. This item replaces the heading **First Schedule** with the heading **Schedule 1 Official Emblem of the Bank**.

Item [11] – First Schedule

This item deletes the words OFFICIAL EMBLEM OF THE BANK from the First Schedule as a consequence of the change in heading under item [10] above.

Item [12] – Second Schedule, heading

The design of the official seal of the ADB is set out in the Second Schedule of the Principal Regulations. This item replaces the heading **Second Schedule** with the heading **Schedule 2 Design of the Official Seal of the Bank**.

Item [13] – Second Schedule

This item deletes the words DESIGN OF THE OFFICIAL SEAL OF THE BANK from the Second Schedule as a consequence of the change in heading under item [12] above.

Item [14] – After Second Schedule

This item inserts a new Schedule 3 to appear after Schedule 2 in the Principal Regulations. Schedule 3 includes a copy of the text of the Arrangement between the Government of Australia and the Asian Development Bank regarding the Pacific Liaison and Coordination Office of the Asian Development Bank (referred to as the MOU in item [1] above) and the Agreed Minutes relating to the arrangement.