

# Experts: Act gives PM leeway to make the decision

**PETALING JAYA:** The Jurisdictional Immunity for Foreign States 2024 (Act 853) has sparked debate regarding the extensive political and diplomatic powers granted to the Prime Minister.

According to international relations experts, the Act allows the Prime Minister to decide on the immunity of foreign states in Malaysia without needing to adhere to the advice of the Foreign State Immunity Council.

This has raised concerns about the balance of power and the potential influence from foreign entities.

Dr Oh Ei Sun, principal adviser for the Pacific Research Centre of Malaysia, said the Act indicates that the Prime Minister has the power to extend or restrict the immunity of foreign countries without necessarily following the council's advice or decisions.

"It would appear that the Prime Minister would chair the council, which deliberates upon the sovereign immunity of foreign states in Malaysia.

"It is meant for providing the

PM with the widest of political and/or diplomatic leeway in making his decision," he said when contacted.

Oh, who is also a senior fellow at the Singapore Institute of International Affairs, added that similar provisions exist in other countries, where such decisions are made by the executive and may or may not consider political considerations.

"In fact, the rationales for such decisions often may or may not be made public. As Malaysia is a constitutional monarchy, even if such a decision is formally made by the King, the King is obliged to follow the advice of the PM," he added.

Under the Act, the Foreign State Immunity Council is made up of a 12-member body that includes the Deputy Prime Minister and Ministers responsible for law; foreign affairs; home affairs; investment, trade and industry; finance; human resources; transport; defence; domestic trade; and lands. Additionally, the Chief Secretary to the Government is also a member.

The function of the council is to

deliberate and decide on all matters related to foreign state immunity that arise from the implementation of this Act. Additionally, the council is responsible for issuing policies, guidelines and directives to government agencies to ensure the proper enforcement of the Act.

The Prime Minister's role has been debated fiercely by the Opposition lawmakers in the Dewan Rakyat during the tabling of the Act last year, as the clauses 30, 32 and 33 grant a wider scope of authority.

Clause 30 grants the Prime Minister the authority to revoke any or all immunities extended to foreign countries if Malaysia does not receive reciprocal immunity under the Act.

Clause 32 provides the Prime Minister authority to exempt any foreign state from any of the provisions of the Act, while Clause 33 empowers the Prime Minister to make new regulations under the proposed Act.

Political and international relations expert Dr Tunku Mohar Tunku Mohd Mokhtar of the

International Islamic University Malaysia said the Act was subject to Malaysia's international commitments, such as the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963.

The new Act will be protected from potential abuse by the Prime Minister as Malaysia is a signatory to the Vienna Convention, Tunku Mohar said.

"There is speculation that the PM might be influenced by foreign powers in his capacity as the chair of this council, but his decisions and/or actions will inevitably be the outcome of deliberations in the council involving relevant ministers representing different portfolios.

"In this sense, any decision or action announced by the PM will be the result of a collective responsibility," he said, adding that the premier's role is to ensure that Malaysia's national interests are protected in the event of any issues pertaining to foreign states and diplomats.

Tunku Mohar also highlighted

that the Act is similar to relevant legislation that exists in other Commonwealth countries, and Malaysia can definitely learn from their best practices.

"While diplomatic immunity is an old practice in international relations, there are lessons from elsewhere to suggest that there are legitimate ways to remove or waive such immunity," he added.

Commenting further, Oh said a similar Act implemented by the United States - called the US Foreign Sovereign Immunity Act - continues to be clarified with more and more decided cases.

"The Malaysian Act provides a good balance between foreign states exercising their sovereign acts and commercial roles (for which they do not enjoy sovereign immunity)," he added.

Oh said that Malaysia is already behind in adopting the legislation, which is crucial for attaining reciprocal sovereignty immunity for Malaysia in foreign countries.

He highlighted that the implementation of the Act will enhance Malaysia's diplomatic standing in the international community.