

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

ASIAN INFRASTRUCTURE INVESTMENT BANK - ARTICLES OF AGREEMENT

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 27th November, 2018, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that an Ordinance should be enacted under the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 to implement the required privileges and immunities as set out in Chapter IX of the Asian Infrastructure Investment Bank Articles of Agreement.
2. To direct the Law Officers to prepare such legislation as may be required to give effect to the above.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

ASIAN INFRASTRUCTURE INVESTMENT BANK – ARTICLES OF AGREEMENT

Presiding Officer
Royal Court
St Peter Port
Guernsey

27th November, 2018

Dear Sir

1. Executive Summary

- 1.1 The Asian Infrastructure Investment Bank (AIIB) is a multilateral development bank that was launched in 2015 by the Chinese Government, with its headquarters in Beijing. It has been seen as both a rival and, potentially, a complement to the World Bank and the Asian Development Bank, and its focus will be on supporting access to finance for infrastructure projects and to boost investment across a range of sectors in Asia. Since its launch 57 countries have signed the AIIB Articles of Agreement, including the UK, Australia, New Zealand and several EU Member States.
- 1.2 Following consultation from HM Treasury, on 13th December 2016, the Policy & Resources Committee resolved to make a formal application to the UK Government for extension of the AIIB Articles of Agreement. The Policy and Finance Committee in Alderney and the Policy and Performance Committee in Sark agreed that the extension should cover the entire Bailiwick.
- 1.3 A formal request for extension was submitted by the Policy & Resources Committee on 7th August 2018. This followed consultation with the finance sector in Guernsey, which welcomed the proposed extension of the AIIB Articles of Agreement on the basis that it could provide promotional value in demonstrating Guernsey's links with and commitment to Asia, as well as possible business development and investment opportunities for Guernsey businesses. This will also bring Guernsey into line with other international finance centres.
- 1.4 In order for the Articles of Agreement to be formally extended it is necessary for the Bailiwick of Guernsey to adopt legislation to recognise the Privileges and Immunities in respect of the AIIB. Privileges and Immunities are standard for multilateral institutions like the AIIB, and are required to ensure the independent functioning of the AIIB as an international organisation, and the equality of its member states.

2. Background

- 2.1 The AIIB's purpose, as set out in the Articles of Agreement¹, is to:
- Foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors
 - Promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.

- 2.2 In order to achieve its purpose the AIIB will:

“promote investment in the region of public and private capital for development purposes, in particular for development of infrastructure and other productive sectors; utilise the resources at its disposal for financing such development in the region [...] encourage private investment in projects, enterprises and activities in the region [...] and to supplement private investment when private capital is not available on reasonable terms and conditions”.

3. Legislation

- 3.1 In order for the AIIB Articles of Agreement to be extended to Guernsey it will be necessary for legislation to be put in place to recognise the privileges and immunities in respect of the AIIB and its officers and employees. These are set out in more detail in Chapter IX of the Articles of Agreement (see **Appendix 1**), and include immunity from judicial proceedings, freedom of assets from restrictions, privileges for communications and exemption from taxation. Privileges and immunities are standard for multilateral organisations such as the AIIB, and are required to ensure the independent functioning of the AIIB as an international organisation, and the equality of its member states.
- 3.2 There is not a precedent for the UK ratification of Articles of Agreement of other Multilateral Development Banks having been expressly extended to Guernsey. However statutory privileges and immunities were enacted in respect of the European Bank for Reconstruction and Development (EBRD), through the introduction of the European Bank for Reconstruction and Development (Guernsey and Alderney) Law, 1994 and equivalent legislation in Sark. This followed a resolution of the States of 13th November 1991, in relation to Article IV of Billet d'État XXIV of 1991, to enact legislation to give effect to the required privileges and immunities in order for the UK ratification of the EBRD Articles of Agreement to be extended to the Bailiwick.

¹ Articles of Agreement for the Asian Infrastructure Investment Bank: https://www.aiib.org/en/about-aiib/basic-documents/download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf

- 3.3 Similar privileges and immunities were also enacted in respect of the Organisation for Economic Co-operation and Development, although this is not a Multilateral Development Bank. This followed the formal extension of the UK signature of the OECD Convention to Guernsey in 1990, and the required privileges and immunities were introduced through the Organisation for Economic Co-operation and Development (Guernsey and Alderney) Law, 1994.
- 3.4 It has been identified by the Law Officers that the privileges and immunities required by the Articles of Agreement for the AIIB could be implemented by Ordinance made under Section 1 of the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004.

4. Consultation

- 4.1 The Policy & Resources Committee has consulted with the Committee *for* Economic Development. The Committee's view was that, while no direct economic benefits for Guernsey through the extension of the UK's ratification of the Articles of Agreement have been identified, it could provide promotional value in demonstrating Guernsey's links with and commitment to Asia, as well as possible business development opportunities.
- 4.2 The Policy & Resources Committee has also consulted with the Policy and Finance Committee in Alderney and the Policy and Finance Committee in Sark. Both Committees have requested the extension of the AIIB Articles of Agreement and agree with the proposal to implement legislation to recognise the privileges and immunities of the AIIB in the Bailiwick.

5. Recommendation

- 5.1 The States are asked to decide whether they are of the opinion:-
1. To agree that an Ordinance should be enacted under the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 to implement the required privileges and immunities as set out in Chapter IX of the Asian Infrastructure Investment Bank Articles of Agreement.
 2. To direct the preparation of such legislation as may be required to give effect to the above.

6. Proposition

- 6.1 In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

ASIAN INFRASTRUCTURE INVESTMENT BANK – ARTICLES OF AGREEMENT

CHAPTER IX – STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44 - Purposes of Chapter

1. To enable the Bank to fulfil 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.

Article 52 - Waivers

1. The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter 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.