

Australia's ratification of the Asian Infrastructure Investment Bank Articles of Agreement

Introduction

3.1 The proposed treaty action is to ratify the Asian Infrastructure Investment Bank Articles of Agreement (AIIB Articles) and establish Australia as a founding member of the new Asian Infrastructure Investment Bank (the AIIB). Australia signed the AIIB Articles in Beijing on 29 June 2015.

Overview

- 3.2 The AIIB Articles will, at the point at which they enter into force, commence the operations of the AIIB.¹ The purpose of the AIIB is to:
- foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors²; and
 - promote regional cooperation in addressing development challenges by working with other multilateral and bilateral development institutions.³
- 3.3 A primary goal of the AIIB is to address infrastructure funding needs that are not being met by existing international financial institutions and private investment sources.⁴

1 National Interest Analysis [2015] ATNIA 13, *Australia's ratification of the Asian Infrastructure Investment Bank Articles of Agreement* [2015] ATNIF 23 (hereafter referred to as the NIA), paras 2 and 3.

2 AIIB Articles, Article 1.

3 AIIB Articles, Article 1.

4 Mr Chris Legg, Chief Negotiator, Asian Infrastructure Investment Bank Taskforce, The Treasury, *Committee Hansard*, 14 September 2015, p. 3.

- 3.4 The National Interest Analysis [2015] ATNIA 13 (NIA) advises that Australia intends to have an active membership in the AIIB and contribute both financially and to the new bank's governance.⁵
- 3.5 The Australian initial shareholding in the AIIB will be \$US 3,691,200,000 (or 3.7 per cent of the \$US 100 billion capital stock).⁶ Twenty per cent of this, or \$US 738,240,000, will be paid-in capital that Australia pays to the bank in five equal instalments over five years.⁷ The remainder is callable capital that would be called on by the Bank, if needed, to meet its liabilities.⁸

Reasons for Australia to take the proposed treaty action

- 3.6 The NIA states that the AIIB has the potential to be a major regional institution that will deliver substantial new infrastructure in the region. Treasury representatives highlighted the estimated multi-trillion dollar shortfall for infrastructure spending in Asia, and suggested that increased spending on infrastructure is needed for the region to fulfil its economic potential.⁹ The NIA concludes that new infrastructure will drive economic growth and jobs, and provide opportunities for Australian trade and business.¹⁰
- 3.7 If Australia has an active role in the Bank, it may also provide an opportunity to build stronger links with other anticipated member States.¹¹ It will also ensure Australia is part of an important addition to the multilateral framework in the region, as explained by a Treasury representative:
- ... the largest shareholder will be our largest trading partner and a very important player in the region, and [the AIIB] therefore has the potential to play an important role in shaping the leadership of countries in the region through multilateralism. Australia would see that as a good thing – that we have a multilateral approach to supporting infrastructure in the region...¹²

5 NIA, para 10.

6 AIIB Articles, Schedule A.

7 NIA, paras 36 and 37.

8 AIIB Articles, Article 20.

9 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 3.

10 NIA, para 9.

11 NIA, para 10.

12 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 3.

- 3.8 Australia's financial exposure will be limited to the amount already committed, and callable capital will not be drawn on unless extreme circumstances arise. Treasury representatives advised that the AIIB's sound financial, lending and risk management policies would protect Australia's financial investment.¹³
- 3.9 Australian businesses will be able to compete for contracts on Bank-funded projects. The NIA advises that the Bank will have a policy of open procurement.¹⁴
- 3.10 Australia may withdraw from the AIIB at any time by providing a minimum of six months' notice in writing. Australia's shares would be repurchased at the value of the time of withdrawal, although Australia would remain liable for all obligations that existed at the time when the notice of withdrawal was provided.¹⁵
- 3.11 Although no projects have been identified, the NIA advises that the AIIB is likely to focus its efforts on developing countries with significant infrastructure gaps.¹⁶ It is therefore unlikely that Australia will be a recipient of AIIB funding for a major infrastructure project.

AIIB's role and purpose

- 3.12 The Bank has the following four functions:
- to promote investment for development purposes, in particular for infrastructure;
 - to utilise the resources at its disposal for financing development in the region, having special regard to the needs of less developed members;
 - to encourage private investment in projects, and to supplement private investment on reasonable terms and conditions; and
 - to undertake such other activities and services to further its functions.¹⁷
- 3.13 According to the Department of Foreign Affairs and Trade and the Treasury, the AIIB will differ from and complement existing multilateral development banks, which are not meeting demand for infrastructure projects in Asia.¹⁸

13 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 6.

14 NIA para 13.

15 NIA paras 46, 48.

16 NIA, para 14.

17 AIIB Articles, Article 2.

18 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 3.

- 3.14 For example, while the Asian Development Bank invests in infrastructure in the region, it has a broader mandate and more diverse aims. The AIIB will not seek to directly influence social development or policy and will:

... focus on projects which have the potential to make a big difference quickly to economic capacity and connectivity in the region.¹⁹

It is anticipated that this targeted approach will assist the AIIB to address infrastructure funding gaps.²⁰

- 3.15 The AIIB will reflect the growing role of emerging market economies in the region and will allow these countries more influence; encouraging greater investment and participation. The Committee heard that existing multilateral institutions may not adequately represent emerging nations. This can undermine the relevance of those institutions and reduce the willingness of emerging countries to fully participate.²¹

- 3.16 The AIIB may also be better placed to encourage private sector investment, as explained by the a Treasury representative:

We expect this bank will focus much more on supporting private sector investment than is done by some of the other players, and that will be a plus. There is clearly a large amount of private sector financing potentially available if particular risks associated with that can be dealt with in a targeted way – and we would see this bank as a way of doing that.²²

The Committee was told that some private sector investors find engagement with existing international financial institutions difficult, and that the AIIB is in a position to foster better collaboration with the private sector.²³

Governance and operational processes

- 3.17 The AIIB will be governed by a Board of Governors, with each member appointing one Governor and Alternate Governor to represent that member on the Board. The Board of Governors exercises all powers of the AIIB.²⁴ Most matters are decided on a simple majority,²⁵ with major

19 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 5.

20 Ms Natasha Smith, First Assistant Secretary, Multilateral Development Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 14 September 2015, p. 4.

21 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 4.

22 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 4.

23 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 5.

24 AIIB Articles, Article 22 and 23.

25 AIIB Article, Article 28.

operational and financial policies and delegation decisions requiring a Super Majority (two-thirds of Governors representing at least 75 per cent of the total voting power).²⁶

3.18 Voting power on the Board is calculated by a combination of:

- basic votes (12 per cent of the total number of votes, shared equally among members);
- share votes (equal to the number of shares held by the member); and
- Founding Member votes (600 additional votes for each Founding Member).²⁷

3.19 The result of the vote structure is that members with the most shares have the largest voting power. However the Committee heard that, at around 15 per cent, the AIIB's proportion of fixed votes not determined by financial share is relatively high compared to other international financial institutions, including the World Bank. The AIIB's share structure therefore:

... tends to dilute the voice of the larger countries and increase the voice of the smaller countries to ensure there is some balance between weight and democracy...²⁸

3.20 There will also be a 12-person Board of Directors, with nine Directors elected by regional members, and three elected by non-regional members. The Board of Directors is responsible for the general operations of the bank and will make decisions on a simple majority vote.²⁹ Directors are able to cast the votes of the Governor who elected that Director, and also the votes of any Governors who have assigned their votes to that Director.³⁰

3.21 The Board of Directors can also delegate operational decisions to management. Decisions to delegate powers will require a 75 per cent vote of the Board of Directors.³¹

3.22 According to a Treasury representative, the power to delegate to management will increase efficiency and was an outcome desired by Australian negotiators. Delegation will result in:

... a non-resident board that holds management accountable but does not try to micromanage the institution. We want the board to

26 AIIB Article, Article 26 and 28.

27 AIIB Article, Article 28.

28 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 4.

29 AIIB Article, Article 26.

30 AIIB Article, Article 28 and Schedule B.

31 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 5.

have clear authority over the operations, but to be able to delegate them.³²

- 3.23 Major operational policies, such as those that relate to environmental, human rights and labour protections, will require a Super Majority 75 per cent vote from the Board of Directors. Treasury representatives are satisfied that this governance framework will ensure quality policies that adhere to international standards.³³
- 3.24 The AIIB's approach to safeguards and standards will be principles-based, rather than strictly regulatory. This approach is based on the experience and evolving practices of the World Bank and Asian Development Bank, and is expected to lower transactional costs, especially for small borrowers.³⁴
- 3.25 The NIA advises that Australia is negotiating to lead a constituency of regional members, which would be able to secure a seat on the Board of Directors.³⁵ If successful, this position should allow Australia to influence decisions made by the AIIB.
- 3.26 The staffing structure of the AIIB is yet to be determined. Negotiators expect a relatively small staff, based on preferences expressed by the Secretary General of the Bank's Multilateral Interim Secretariat.³⁶

Membership

- 3.27 There are 57 Prospective Founding Members, who may become Founding Members after ratification of the Agreement and contribution of the initial subscriptions to the authorised capital stock. Thirty-seven are regional members, including Australia, and twenty are non-regional members. Fifty of these members signed the Articles at Beijing on 29 June 2015.
- 3.28 Regional members will contribute 75 per cent of the stock, and non-regional members 25 per cent. The ten largest subscribers are:³⁷
- | | |
|-----------|-------|
| ■ China | 29.8% |
| ■ India | 8.4% |
| ■ Russia | 6.6% |
| ■ Germany | 4.5% |

32 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 5.

33 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 5.

34 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 5.

35 NIA, para 16.

36 Mr Legg, The Treasury, *Committee Hansard*, 14 September 2015, p. 6.

37 AIIB Articles, Schedule A.

- Korea 3.8%
- Australia 3.7%
- Indonesia 3.4%
- France 3.4%
- Brazil 3.1%
- United Kingdom 3.1%.

Timing and entry into force

3.29 Australia participated in negotiations of the Articles as one of the 57 Prospective Founding Member states, and signed the Articles on 29 June 2015.³⁸ The AIIB Articles will enter into force, and the AIIB will commence, when instruments of ratification have been deposited by at least ten signatories whose total initial subscriptions comprise not less than 50 per cent of the total subscriptions.³⁹ The NIA states that this is likely to occur before the end of 2015.

3.30 The NIA advises that it is important that Australia becomes a founding member or joins the bank shortly after commencement. Membership before or shortly after commencement has a number of benefits. Founding or early membership would give Australia the opportunity to influence key decisions made in the AIIB's formation:⁴⁰

The articles have been agreed, but there will be other governance documents that can only be approved by the Board of Directors once the Board of Directors is established. There will be operational policies, which are being discussed now by chief negotiators but will only be approved once the Board of Directors is established by the Board of Governors. And if we think this institution is important—and we do—then we would like to be there to shape those policies, and we can only do that by being there when the institution starts or as soon as possible thereafter.⁴¹

Founding membership would reflect Australia's position in the region, and would signal the importance Australia attaches to the AIIB and multilateral approaches to infrastructure development in the region.⁴²

38 NIA para 7.

39 AIIB Articles, Article 59.

40 NIA, para 4.

41 Mr Legg, *The Treasury, Committee Hansard*, 14 September 2015, p. 3.

42 Mr Legg, *The Treasury, Committee Hansard*, 14 September 2015, p. 3.

Founding membership also grants 600 founding member votes, which will increase Australia's total voting share.

Obligations

- 3.31 The NIA sets out financial, governance, and privileges and immunities obligations arising from the AIIB Articles.⁴³
- 3.32 Privileges and immunities obligations are placed on each member.⁴⁴ Each member must ensure that in its own territory the AIIB has immunity from every form of legal process (except in connection with the exercise of its powers to raise funds, guarantee obligations or to buy and sell securities).⁴⁵ The member must also ensure the AIIB has:
- immunity of its property and assets from search and confiscation;⁴⁶
 - inviolability of its archives and documents;⁴⁷
 - freedom of property and assets from restrictions and regulations;⁴⁸
 - immunity of all officials and employees from legal process for acts performed in an official capacity;⁴⁹
 - the same immunity of officials and employees from immigration and registration requirements as are granted to officials and employees of State members;⁵⁰ and
 - the same treatment for official communications of the Bank as is given to official communications of State members.⁵¹
- 3.33 The AIIB is also exempt from taxation and customs duties, including salaries and expenses paid to Directors and officers of the AIIB.⁵² The Articles allow a member to declare that it retains the right to tax salaries paid by the AIIB to its own citizens. Australia intends to lodge such a declaration.⁵³

43 NIA, paras 17 to 31.

44 AIIB Article, Chapter IX.

45 AIIB Article, Article 46.

46 AIIB Article, Article 47.

47 AIIB Article, Article 47.

48 AIIB Article, Article 48.

49 AIIB Article, Article 50.

50 AIIB Article, Article 50.

51 AIIB Article, Article 49.

52 AIIB Article, Article 51.

53 NIA, paras 5 and 30.

Implementation

Enabling domestic legislation is required to implement Australia's obligations under the Articles.⁵⁴ The *Asian Infrastructure Investment Bank Bill 2015* (the Bill) was introduced to the House of Representatives on 13 August 2015 and to the Senate on 7 September 2015. It contains four main clauses:

- allowing Australia to make payments to the Bank as a share subscription;⁵⁵
- allowing the Minister to issue promissory notes to the Bank;⁵⁶
- an appropriation for the payments and promissory notes;⁵⁷ and
- providing for regulations to confer privileges and immunities on officers of the Bank.⁵⁸

Costs

- 3.34 The Australian initial shareholding in the bank will \$US 3,691,200,000 (or 3.7 per cent of the \$US 100 billion capital stock).⁵⁹ Twenty per cent of this, or \$US 738,240,000, will be paid-in capital that Australia pays to the bank in five equal instalments over five years.⁶⁰ The remainder is callable capital that would be called on by the Bank, if needed, to meet its liabilities.⁶¹
- 3.35 Payments to the AIIB will not be funded from the Department of Foreign Affairs and Trade aid budget because the payments are not classified as official development assistance. Treasury will administer the payments on behalf of the Australian Government.⁶²
- 3.36 There are no anticipated regulatory impacts or compliance costs to Australian businesses or individuals arising out of this treaty action.⁶³

54 NIA, para 32.

55 The *Asian Infrastructure Investment Bank Bill 2015* (the Bill), clause 5.

56 The Bill, clause 6.

57 The Bill, clause 7.

58 The Bill, clause 18.

59 AIIB Article, Schedule A.

60 NIA, paras 36 and 37.

61 AIIB Article, Article 20.

62 NIA, para 40.

63 NIA, para 39.

Conclusion

- 3.37 The Committee supports Australia's ratification of the *Asian Infrastructure Investment Bank Articles of Agreement* and recommends that binding treaty action be taken.

Recommendation 2

- 3.38 **The Committee supports Australia's ratification of the *Asian Infrastructure Investment Bank Articles of Agreement* and recommends that binding treaty action be taken.**

Mr Angus Taylor MP
Chair

15 October 2015