

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury
Asian Infrastructure Investment Bank Bill 2015
14 September 2015

Topic: Asian Infrastructure Investment Bank Bill 2015

Senator: Wong

Question:

Senator WONG: I want to go back to the February 2014 until June 2015 transition. Can I first go back to the February 2014 invitation that is referenced in my question on notice. Who provided the invitation in February 2014 and who received it?

Mr Chisholm: The suggestion that Australia could join the AIIB first came up around that time. You are referring to February—

Senator WONG: In answer to question on notice 1025, the Minister for Foreign Affairs said: 'Australia received an invitation from China in February 2014 to consider an MOU relating to the AIIB. The government decided not to sign the MOU on the AIIB at this time.' It then goes on to explain some of the issues that you have referenced. I just want to know who received it and who it was from.

Mr Chisholm: The responsible agency within the Chinese government is the Ministry of Finance. The invitation would have come via the Ministry of Finance and/or the relevant Chinese minister responsible for the development of the AIIB.

Senator WONG: You are giving me a hypothetical. If you are unable to tell me, can you find out.

Mr Chisholm: The reason I am not pinpointing an exact date is that it is possible the invitation arose on more than one occasion, but it would have been around February or March. So the minister's answer is not incorrect.

Senator WONG: That is fine. I just want to know from whom it was received.

Mr Chisholm: To whom?

Senator WONG: We have not got to that bit. You said it might be this or it might be that.

Mr Chisholm: The relevant minister, the Chinese minister responsible for the Ministry of Finance, who would have provided the invitation to the Australian government.

Senator WONG: Please do not speculate. This is a Senate hearing. If you do not know, that is fine—well, I do not think it is fine—

Mr Chisholm: I do know.

Senator WONG: Can I finish?

Mr Chisholm: I am not trying to be tricky. The answer to your question is—

Senator WONG: Chair!

CHAIR: Mr Chisholm—

Senator WONG: You are saying it would have. I just want to know who it was. If you do not know, could you take it on notice and provide us with the answer.

Mr Chisholm: Yes. The invitation was from the Chinese government to the Australian government.

Senator WONG: Thank you for that, but I am trying to narrow it down. I am trying to find out who in the Chinese government it was from—the Ministry of Finance?

Mr Chisholm: Yes.

Senator WONG: And to whom?

Mr Chisholm: To the Australian government.

Senator WONG: No kidding!

Mr Chisholm: And it would have been passed to our—

Senator WONG: You are doing it again—'would have'. Was it to the Prime Minister, was it to the Treasurer, was it to the Foreign Affairs minister?

Mr Chisholm: No. It was to the Treasury portfolio via the embassy in China.

Senator WONG: So it was from the Chinese Ministry of Finance and you are not sure whether it was the relevant minister or someone more junior in the ministry?

Mr Chisholm: It would have been more junior than the minister, yes.

Senator WONG: Sorry, I do not mean to push you but we do not accept 'would have'. It either is or it isn't—and if you do not know you can take it on notice. We do not speculate.

Mr Legg: We will check. I think we are concerned that we may have received a number of invitations at the time, so we want to make sure we cover them all.

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Senator WONG: Then give me those on notice. It is fine. I have got an answer to a question on notice and I am asking for some details about it. It does not say Australia received multiple invitations, it says Australia received one invitation. I want to go back. You say it went from the embassy to Treasury. Is that right?

Mr Chisholm: The invitation was passed to the Australian government via the embassy in China.

Senator WONG: I am trying to ascertain the level at which it is passed.

Mr Legg: We will confirm that.

Senator WONG: Is it to the Treasurer or is it to a lower level—to the secretary? Is it an official level exploration? From the Foreign Minister's response, it reads as being a more senior position. No?

Mr Legg: We will check that and give you a firm answer.

Senator WONG: So you will tell me who issued the invitation and who received it, and you will tell me that in relation to how many invitations were actually issued and received? Is that—

Mr Chisholm: We will give you the answer of when the formal invitation was provided to Australia.

Senator WONG: I thought I had that, which is the February 2014—was this not a correct question on notice answer?

Mr Chisholm: We will give you confirmation of the details of the invitation.

Answer:

The Government was invited to become a founding member of the AIIB at numerous occasions in 2014.

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Question:

Senator WONG: Maybe you can assist me with the nine, four and five discussion. Mr Robb said publicly in this article that I have made reference to earlier from 8 December, 2014. It says:

In August, Australia gave China nine provisions that it believes mirror the Asian Development Bank and World Bank governance provisions, which it would like to see included in the new AIIB regime.

Beijing responded in September, Mr Robb said. “They picked up four of the nine fully, and adapted half of the other five.”

That was Mr Robb's direct quote. He also went on to say:

“They provided a covering letter intimating that they would go further on these five, but had run out of time for now because they needed to confer with the other countries which had indicated they would sign up” in time to announce the launch during last month's APEC summit in Beijing ...

I am quoting from Mr Robb there.

My questions still stands: I want to know what the nine are and I want to understand which four were fully picked up and which five were half adapted. But I also want to obtain a copy of the covering letter.

Ms Smith: I would have to take on notice the covering letter. I am afraid I do not have it with me and I have not read it myself, so I will have to take that on notice, I am afraid.

Mr Chisholm: I can assist you with the nine. This is to the best of my recollection. They are that the membership of the bank was open to all countries; that the design of the bank would protect the interest of minority shareholders; that no one country would dominate the bank; that the board of directors would have control over investment decisions; that the design of the bank would have transparent management, open procurement, fiduciary controls and social and environmental safeguards that are comparable with those of other MDBs; that it would have high lending standards, including reference to debt sustainability; that the allocation of investment decisions would be similar to those of how other development banks or other multilateral banks would design these things—

Senator WONG: What does that mean?

Mr Chisholm: It would be comparable to other MDBs in terms of how investment decisions are developed.

Senator WONG: How does that differentiate from the board controlling investment, which was condition four?

Mr Chisholm: In a way the two relate to each other—and this is No. 8.

Senator WONG: I know: No. 8.

Mr Chisholm: Please stop me, if you have not got all that down—that the selection of staff will be merit based and there will be competitive selection processes; and, finally, that—and this was a technical issue at the time to do with the MOU that China had proposed that countries sign to indicate whether they would become prospective founding members. We would have preferred—

Senator WONG: Sorry?

Mr Chisholm: The last condition, No. 9, relates to the MOU and the language in there which was treaty like. We have a preference for these documents to be a little less treaty like before we sign them. What the committee is considering, obviously, is legislation to give effect to a treaty that we have signed, and the MOU at the time had some language in it that was what we described as treaty like. We would have preferred that it was probably a bit less like that, but it was a technical issue. So that is the nine.

Senator WONG: Are you able to tell me which are the five and which are the four?

Mr Chisholm: Given that following that time, the government later announced—and I am referring here to the press release that was issued by the Prime Minister, I think, in March of this year—that the two conditions of no one country controlling or dominating the bank and that directors would have control over investment decisions gives you a sense of how the view was reached that all of those other issues had been addressed to our satisfaction. But, having said that, some of those nine are bundled up into that question of board control and also the question of no one country controlling the bank. The view was that, by that stage there had been enough work done to provide assurance that those issues were likely to be addressed—a lot of those other issues that I referred to—and that the government was then focused on, in particular, that question of: no one country controlling and a board of directors having control over investment decisions of the bank.

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Answer:

In relation to the nine provisions requested by Australia referred to by Mr Robb, these were outlined in verbal evidence.

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Question:

Senator WONG: Earlier you did a bit of a short summary of a comparison between these governance arrangements and those of the ADB and the World Bank. Would you like to add to that? I am conscious we do not have a lot of time, so you can either take it on notice or add to it now. Your fundamental proposition is the blocking majority proposition—the blocking stake—or, to put it the other way around, the supermajority provision. You have agreed there is a non-resident board with this institution but you have resident boards with the ADB and the World Bank—is that correct?

Mr Legg: Yes, and the EBRD.

Senator WONG: It would be useful to understand what the other differences are. I would also like to know why you do not regard them as of significance.

Mr Legg: I do not have a very structured checklist in my head, so it may be good to reserve the right to go away and review that. But there are a number of differences which I think are useful—in terms of the strength of governance. One is the fact, for example, that there is a clear commitment in the articles to transparency, that there will be a policy about disclosure of information that does not exist, as far as I am aware, in the World Bank—I do not know about the ADB, but I do not believe it exists there either. There is a clear understanding that directors can put items on the agenda. From my own experience at the World Bank, that does not happen.

Senator WONG: But that is a convention, not a—

Mr Legg: That is a convention, but it does not happen. So it was good to strengthen the understanding that it should happen, especially for a non-resident board.

Senator WONG: So directors can—

Mr Legg: put items on the agenda, yes. There were clear understandings about oversight mechanisms in the articles which again I do not believe are in the articles of the other institutions. I may be wrong; we will have to check. But certainly I do not think they are in the World Bank articles, which were written a long time ago. There will be some decisions to which special or supermajorities apply which will differ between the institutions. They are not a neat one-for-one match. I think it is more a judgement on our part that the overall outcome of this is broadly the same—as opposed to saying that they match exactly those other institutions.

Answer:

We confirm the verbal statement we made at the hearing as to differences in the governance arrangements of the AIIB and the World Bank was correct.

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Question:

Senator WONG: Can you please explain to me why—I think section 8 of the bill talks about privileges and immunities, which you are going to confer by regulation.

Ms Delaney: Yes.

Senator WONG: Can I have a draft of that regulation?

Ms Smith: I do not know what stage it is at at the moment, but—

Senator WONG: We would like to understand but it would expedite consideration of the legislation if the opposition could understand the scope of what you are proposing.

Mr Legg: I am sure we can do that as soon as we have got—

Senator WONG: If you can—I understand you may wish to but, for the purposes of the consideration of this legislation, it would be useful. The other way of doing it would be for the minister—perhaps you can outline what are the privileges and immunities to be conferred. Are you able to tell me that?

Ms Smith: I can tell you that they are very similar to those already provided to other international organisations. I do not have a full list that I can list out for you. We could certainly take that on notice and provide it to you, but they are very similar to what we would have with the World Bank and other sorts of organisations. There are some slight differences and some updated wording changes just to reflect changes in drafting practice but otherwise they are very similar.

Senator WONG: It just might expedite matters.

Ms Smith: Sure.

Answer:

The privileges and immunities that Australia is obligated to provide, under Chapter IX (Status, Immunities, Privileges and Exemptions) of the AIIB Articles of Agreement (attached) will be conferred by the regulations. The regulations are currently in the process of being drafted.

The new Regulations will:

- specify the privileges and immunities of the AIIB including conferring upon it judicial personality and such legal capacities as are necessary for the exercise of the powers and the performance of the functions of the AIIB;
- specify the privileges and immunities of the AIIB and persons connected with the AIIB;
- specify the tax exemptions for the AIIB including for persons connected with the AIIB, and provisions for the indirect tax concession scheme (note: Australia will lodge a declaration reserving the right to tax salaries, emoluments and expenses of Australian citizens and nationals, similar to the Asian Development Bank);
- make provision for or in relation to the waiver of any privileges and immunities of the AIIB and related persons.