

**National Interest Analysis [2015] ATNIA 13**

**with attachment on consultation**

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

**(Beijing, 29 June 2015)**

**[2015] ATNIF 23**

**Attachments:**

**Attachment I      Consultation**

**Attachment II     Current list of Prospective Founding Members of the Asian  
Infrastructure Investment Bank**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

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

**(Beijing, 29 June 2015)**

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#### **Nature and timing of proposed treaty action**

1. The treaty action relates to Australia's proposed ratification of the *Asian Infrastructure Investment Bank Articles of Agreement* ('AIIB Articles'), which Australia signed in Beijing on 29 June 2015.
2. Under **Article 59** (Entry into Force) of the AIIB Articles, the treaty will enter into force once instruments of ratification, acceptance or approval have been deposited by at least ten (10) signatories whose initial subscriptions, as set forth in **Schedule A** to the Articles, in the aggregate comprise not less than fifty (50) per cent of total of such subscriptions.
3. Entry into force of the AIIB Articles and consequential commencement of the operations of the Asian Infrastructure Investment Bank ('Bank') is expected to occur relatively quickly; likely by the end of 2015. If Australia is not among the initial 10 signatories to ratify the treaty, the AIIB Articles will enter into force for Australia on the date on which Australia lodges its instrument of ratification with the depositary (China) in accordance with **Article 58** (Ratification, Acceptance or Approval). The AIIB Articles are open for ratification by signatories until 31 December 2016.
4. It is proposed that Australia lodge its instrument of ratification as soon as practicable once all necessary domestic treaty processes are completed. While signatories have until 31 December 2016 to deposit their instruments of ratification, acceptance or approval (in accordance with **Article 58** (1)), it is important that Australia completes its domestic treaty requirements and ratifies the AIIB Articles by the end of 2015 to ensure that it is able to become a member of the Bank when, or as soon as possible after, the Bank commences operations. Early ratification of the AIIB Articles will secure Australia's influence on the operation of the Bank and avoid the risk that Australia is excluded from key decisions made in the formative stages of the Bank.
5. When Australia deposits its Instrument of Ratification, Australia proposes to make a reservation (described as a 'declaration' under **Article 51** (2) of the AIIB Articles), that it retains the right to tax salaries, emoluments and expenses of Australian citizens and nationals paid by the Bank.

## Overview and national interest summary

6. The purpose of this proposed treaty action is to allow Australia to ratify the AIIB Articles and thus become a founding member of the Bank.
7. Australia signed the non-binding AIIB *Memorandum of Understanding on Establishing the Asian Infrastructure Investment Bank* dated 24 October 2014 on 29 March 2015. Australia consequently became a Prospective Founding Member ('PFM') of the Bank on 13 April 2015. Australia participated in negotiations on the AIIB Articles as one of 57 PFM States and signed the AIIB Articles in Beijing on 29 June 2015.
8. The Bank will be a new international financial institution designed to assist funding of major infrastructure projects throughout Asia. The Bank will seek to catalyse private sector investment and will potentially co-finance projects with other development banks (such as the World Bank and the Asian Development Bank – 'ADB') and private sector financiers.
9. Australia's prosperity and economic growth is tied closely to the Asian region. The Bank has the potential to be a major regional institution that will drive economic growth and jobs in our region by delivering much needed infrastructure. This will provide opportunities for Australian trade and businesses.
10. The Bank also presents an opportunity for Australia to be part of a new element in the regional economic architecture. Australia intends to have an active membership and contribute to the Bank both financially and through participating in its governance. Membership of the Bank is also an opportunity to strengthen Australia's engagement with the region, as well as build stronger inter-linkages with other anticipated member States, including China, States that are members of the Association of Southeast Asian Nations ('ASEAN'), India, Korea, New Zealand, the United Kingdom, Germany and France.

## Reasons for Australia to take the proposed treaty action

11. Fifty States (including 33 regional countries from Asia and Oceania) signed the AIIB Articles on 29 June 2015 in Beijing. As a result, the Bank will initially have **US\$100 billion** of total authorised capital to assist in addressing the substantial infrastructure financing gap in the Asia-Pacific region, estimated by the ADB Institute to require an additional **US\$8 trillion** between 2010 and 2020. The Bank will leverage private financing flows and help drive economic growth and jobs. It will also potentially co-finance with other multilateral development banks.
12. Regional interconnectedness will result in stronger growth in Asia, which is of direct benefit to Australia. Australian trade with the Asian region should benefit as the quality of infrastructure linkages improve. Australia has a strong focus on infrastructure in the region and strongly advocated this during its G20 Presidency.
13. Australian businesses will also be able to compete for contracts on Bank-funded projects. Under **Article 13.8** (Operating Principles), the Bank will have a policy of open procurement, with the intention being that the Bank's procurement processes will be based on international best practice.
14. In its start-up phase (2016-2018), the Bank's investments will likely be concentrated in traditional transport, energy, and water sectors. In the latter stages of the Bank's operations (2019 and beyond), investments may be undertaken in port, environmental protection, urban

development and logistics, information technology and telecommunications, rural infrastructure and agriculture development. The Bank is likely to focus its efforts in developing countries in the Asian region with significant infrastructure gaps. No particular countries have been identified at this stage. As a result, Australia is unlikely to be a destination for investment by the Bank; however, the AIIB Articles would not prevent the Bank from investing in Australia at some point in the future.

15. The Bank also presents an opportunity for Australia to be part of, and to influence, a new regional economic architecture. The AIIB Articles, which provide the governing rules for the Bank, establish a framework that is broadly comparable with existing multilateral development banks, such as the World Bank and the ADB.
16. If Australia ratifies the AIIB Articles, it will be the fifth-largest regional shareholder of the Bank and is expected to lead a constituency of countries (currently under negotiation). Under **Article 25** (Board of Directors: Composition) of the AIIB Articles, the proposed constituency would secure a seat on the Bank's Board of Directors. This would place Australia in a strong position to influence the decisions made by the Bank. Furthermore, by joining as a founding member of the Bank, Australia will be able to influence the procedures and policies of the Bank.

## **Obligations**

### Financial

17. **Article 5** (Subscription of Shares) of the AIIB Articles obliges each member to subscribe to shares of the capital stock of the Bank upon becoming a member, in the amounts set out in **Schedule A** of the AIIB Articles, based on a calculation derived from each member's national GDP. This shareholding is divided into paid-in capital and callable capital (in the proportion two to eight).
18. **Article 6** (Payment of Subscriptions) of the AIIB Articles obliges each member to pay the amount of paid-in capital in five equal instalments as follows:
  - (a) The first instalment is payable by each Bank member within 30 days after entry into force of the AIIB Articles, or the date on which the member deposits its instrument of ratification, acceptance or approval, whichever is the later;
  - (b) The second instalment is due one year after entry into force of the AIIB Articles; and
  - (c) The remaining three instalments are due successively one year from the date of entry into force.
19. Under **Article 6** (3), callable capital stock shall be subject to call only as and when required by the Bank to meet its liabilities.
20. Under **Article 20** (2) (Methods of Meeting Liabilities of the Bank) of the AIIB Articles, any losses arising in the Bank's ordinary operations shall only be met by callable capital after charging such losses to provisions maintained by the Bank against possible losses, net income, against reserves and retained earnings, and against unimpaired paid-in capital.

21. Under **Article 7** (Terms of Shares) of the AIIB Articles, the liability of members on shares is limited to the unpaid portion of their issue price. No member shall be liable, by reason of its membership, for obligations of the Bank.
22. **Article 19** (Currencies) obliges members not to impose any restrictions on currencies (including in respect of the Bank or any recipient from the Bank) for payments in any country.

### Governance

23. **Article 22(1)** (Board of Governors: Composition) of the AIIB Articles obliges each member of the Bank to appoint one Governor and one Alternate Governor to the Board of Governors, which ensures that each member is represented on the Board. Under **Article 23** (Board of Governors: Powers), all the powers of the Bank are vested in the Board of Governors. The governance structure for decision-making by the Bank also includes a Board of Directors, a President, one or more Vice-Presidents, and officers and staff, as set out in **Articles 25 to 30**. Members participate in the decision-making of the Bank in accordance with these Articles.
24. A member's ability to participate in decision-making by the Board of Governors and the Board of Directors depends on its voting power as calculated in accordance with **Article 28** (Voting). Certain decisions by the Board of Governors, such as capital increases, can only be made by a 'Super Majority' vote (being two-thirds of the total number of Governors, representing at least three-fourths of the total voting power of members).
25. **Article 26** (Board of Governors: Powers) of the AIIB Articles assigns key operational responsibilities to the Board of Directors, including establishing policies, taking decisions on the operations of the Bank, supervising management and approving the strategy, annual plan and budget of the Bank. Generally, decisions of the Board of Directors will require a simple majority. Delegation from the Board of Directors to the President of decisions on major operational and financial policies and the Bank's operations will, however, require support from Directors representing at least 75 per cent of voting power. Under **Article 25**, the Bank's Board of Directors will have nine (9) Directors representing regional members and three (3) Directors representing non-regional members. Each member of the Bank will be represented by one of the Directors.
26. **Article 33** (Channel of Communication; Depositories) obliges each Bank member to designate an appropriate official entity for communication with the Bank, and to designate its central bank (or such other institution as may be agreed upon with the Bank) as a depository with which the Bank may keep its holdings of currency of that member as well as other assets of the Bank.
27. **Article 34** (2) (Reports and Information) obliges members to furnish to the Bank such information it may reasonably request of them in order to facilitate the performance of the Bank's functions. **Article 34** (3) also obliges the Bank to transmit and publish:
  - (a) an annual report containing an audited statement of its accounts to its members; and
  - (b) a quarterly summary statement of its financial position and a profit and loss statement showing the results of its operations.

## Privileges and immunities

28. **Article 44** (Purposes of the AIIB Articles) obliges members to promptly take action to make effective the privileges and immunities set out in **Chapter IX** of the AIIB Articles. This includes immunity of the Bank from every form of legal process (subject to certain exceptions), immunity of the property and assets of the Bank from search, requisition, confiscation, expropriation or any other form of taking, and inviolability of the archives of the Bank and in general, all documents belonging to it or held by it.
29. Under **Article 50** (Immunities and Privileges of Officers and Employees) of the AIIB Articles, all Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank (including experts and consultants) shall be immune from legal process in respect of acts performed by them in their official capacity except when the Bank waives the immunity. Where they are not local citizens or nationals, they shall also be accorded the same immunities from immigration restrictions and alien registration requirements as accorded by members to persons of comparable rank of other members.
30. Under **Article 51** (Exemption from Taxation), no tax shall be levied on salaries, emoluments and expenses paid by the Bank to Directors and officers, subject to any declaration made by a member in respect of its citizens and nationals (a declaration which Australia proposes to make, as set out in **Paragraph 5** above).
31. Under **Article 51** (1) of the AIIB Articles, the Bank, its assets, property, income and its operations and transactions shall be exempt from all taxation and all customs duties, and under **Article 51** (3) and (4) no tax shall be levied on any obligation or security issued or guaranteed by the Bank which discriminates on the basis that it is issued or guaranteed by the Bank or is based solely on the location or place of business maintained by the Bank.

## **Implementation**

32. Enabling Commonwealth domestic legislation will be required to implement Australia's obligations at international law under the AIIB Articles following Australia's ratification. This will involve the passing of the *Asian Infrastructure Investment Bank Bill 2015* ('Bill') by Parliament. The Treasury is seeking the agreement of the Joint Standing Committee on Treaties ('JSCOT') to early introduction of the Bill to Parliament prior to consideration of this treaty action in order to expedite Australia's ratification of the AIIB Articles.
33. The Bill will prescribe the conditions under which Australia's initial and future contributions to the Bank are made and to allow the fulfilment of its financial obligations as a member of the Bank.
34. In addition, new regulations will also need to be made to extend the privileges and immunities detailed in **Paragraphs 28 to 30** above to the Bank, its staff, and for related purposes.
35. The proposed *Asian Infrastructure Investment Bank Act 2015* and associated regulations will need to be passed by both Houses of Parliament prior to Australia depositing its Instrument of Ratification with the Bank's depository.

## Costs

36. Australia's total initial shareholding in the Bank will be **US\$3.7 billion** (approximately **A\$4.6 billion** based on 22 May 2015 exchange rates), comprising **US\$738 million** (approximately **A\$932 million**) in paid-in capital. These figures would need to be adjusted to take account of current exchange rates at the time of consideration by JSCOT.
37. Australia's paid-in capital of **A\$932 million** will be paid in five instalments as set out at **Paragraph 18** above. There will also be related public debt interest costs of approximately **A\$59.2 million**. There will be zero impact on the underlying cash balance, fiscal balance and net debt, as using cash to purchase shares represents a change in the composition of the Australian Government's assets.
38. The remaining **US\$2.9 billion** (approximately **A\$3.7 billion**) will be callable capital, which constitutes a contingent liability against the Commonwealth (ie. an amount that may need to be paid at some stage in the future). This would be called on if the Bank is unable to meet its financial liabilities in the circumstances set out above.
39. There are not expected to be any regulatory impacts or compliance costs to Australian businesses or individuals arising out of this treaty action.
40. All indications are that the Bank is not official development assistance-eligible. Accordingly, payments to the Bank will not be funded out of the Department of Foreign Affairs and Trade aid budget. Treasury will administer the payments for Australia's expected paid-in capital contribution of **A\$932 million** on behalf of the Australian Government

## Regulation Impact Statement

41. The Office of Best Practice Regulation was consulted by The Treasury on 2 July 2015 and has confirmed that a Regulation Impact Statement is not required.

## Future treaty action

42. Under **Article 53 (1)** (Amendments), the AIIB Articles may be amended only by a resolution of the Board of Governors approved by a 'Super Majority' vote. Under **Article 53(2)**, approval of any amendment modifying the right to withdraw from the Bank, limitations on the liability of the Bank and rights pertaining to purchase of capital stock requires the unanimous agreement of the Board of Governors.
43. Under **Article 53 (3)** of the AIIB Articles, any future amendments to the AIIB Articles will enter into force three months after the date of communication of the amendment to Bank members, unless the Board of Governors specifies a different period.
44. Any proposed future amendment of the AIIB Articles would constitute a treaty action requiring tabling in Parliament, consideration by JSCOT and Executive Council approval prior to entry into force for Australia.
45. The AIIB Articles do not provide for the negotiation of future instruments or annexes. The nature of an international financial institution or multilateral development bank means that the AIIB Articles outline the broad framework for the establishment and purpose of the

institution, with detailed strategy and operations policies to be decided by the Board of Governors or Board of Directors.

### **Withdrawal or denunciation**

46. Under **Article 37** (Withdrawal of Membership) of the AIIB Articles, any member may withdraw from the Bank at any time by delivering a notice in writing to the Bank at its principal office. Withdrawal by a member shall become effective, and its membership shall cease, on the date specified in its notice but in no event less than six (6) months after the date that notice has been received by the Bank.
47. The specified period (six months) for withdrawal of a member from the Bank is similar to, or the same as, those of existing international financial institutions and multilateral development banks. It allows sufficient time for relevant administrative issues to be organised.
48. Under **Article 37(3)**, a withdrawing member shall remain liable for all direct and contingent obligations to the Bank to which it was subject at the date of delivery of the withdrawal notice. If the withdrawal becomes finally effective, the member shall not incur any liability for obligations resulting from operations of the Bank effected after the date on which the withdrawal notice was received by the Bank.
49. Under **Article 39** (Settlement of Accounts), the withdrawing member's shares shall be repurchased at the value shown by the books of the Bank on the date the country ceases to be a member.

### **Contact details**

1. International Development Unit,  
International Policy and Engagement Division  
The Treasury
2. Regional Banks Section  
Multilateral Development & Partnerships Division  
Department of Foreign Affairs and Trade



## Attachment I

### ATTACHMENT ON CONSULTATION

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

(Beijing, 29 June 2015)

[2015] ATNIF 23

#### CONSULTATION

50. Between 6 and 13 July 2015, Treasury sought views from state and territory governments on the AIIB Articles. Key issues of focus included the Asian Infrastructure Investment Bank's ('Bank') possible future investment in Australia and any concerns with the privileges and immunities proposed to be extended to the Bank.
51. Treasury received responses from the New South Wales ('NSW'), Tasmanian, Victorian and Western Australia ('WA') Governments. The NSW Government noted that it "would welcome potential investment from the Bank in major infrastructure projects across NSW" and expressed a desire "to work closely with the Australian Government in assessing the merits and associated conditions" of any infrastructure investments in NSW. The Victorian Government also expressed a desire, in the event that the Bank invests in Victoria, to be "properly consulted" and have "the proper mechanisms to influence the types of investment". The Victorian Government also questioned whether it would have the power to veto "inappropriate investments". Tasmania and WA did not raise any concerns.
52. Under **Article 13(3)** of the AIIB Articles, the Bank "shall not finance any undertaking in the territory of a member if that member objects to such financing". The Australian Government, in considering a potential Bank investment in Australia, would consult closely with the relevant state and territory government. In any case, the Bank is likely to focus on major projects. As such, state and territory governments would likely be a key stakeholder in any application for financing by the Bank (if not the applicant themselves). Therefore, it is unlikely that investments will be considered by the Bank that have not already been endorsed by the relevant state and territory government. Treasury will ensure that the views above are taken into account during the development of both Australian Government and internal Bank policies relating to Bank investments.
53. While a public consultation process has not been undertaken given that the Bank will not directly affect the general Australian public, a range of industry groups and companies have publicly expressed their views on Australia's membership of the Bank. The following statements were released on 24 June 2015 – the date on which the Government announced that Australia will join the Bank:

"Ai Group welcomes Australia's participation in the Asian Infrastructure Investment Bank. We have argued for some time that the Bank's objective of financing infrastructure development in the Asia-Pacific region will foster greater trade and economic development in the region of Australia's closest and most important economic partners... Given our national ambitions to be more thoroughly engaged in the Asian region, it makes clear sense for Australia to become a founding member of the Bank and to work to ensure its success." (Australian Industry Group)

“The Business Council of Australia (‘BCA’) welcomes the government’s decision to join the Asian Infrastructure Investment Bank (‘Bank’) as a founding member... As a founding member, Australia can play a key role in setting the direction of this body and the decisions it will make to finance projects that address Asia’s infrastructure gaps... Australian companies will benefit from opportunities to participate in developing and building new Bank financed infrastructure, as well as having access to improved infrastructure which facilitates trade in the region.” (Business Council of Australia)

“The federal government’s decision to sign Australia up as a member of the Asia Infrastructure Investment Bank (‘Bank’) will unlock billions of dollars of infrastructure investment opportunities in the region... This move will be a huge fillip for Australian expertise in funds management, engineering, construction, architecture and legal services which could be widely applied to projects financed by the Bank.” (Industry Super Australia)

“Fortescue Metals Group welcomes the Federal Government’s announcement today that Australia will become a founding member of the Asian Infrastructure Investment Bank (‘Bank’) as another positive step in furthering economic ties with China and other countries in the region.” (Fortescue Metals Group)

## Attachment II

### List of Prospective Founding Members and indicative voting share

<u>Regional</u>		<u>Non-Regional</u>	
Country	Voting power (per cent)	Country	Voting Power (per cent)
China	26.06	Germany	4.15
India	7.51	France	3.19
Russia	5.93	Brazil	3.02
Korea	3.50	UK	2.91
Australia	3.46	Italy	2.49
Indonesia	3.17	Spain	1.79
Turkey	2.52	Netherlands	1.16
Saudi Arabia	2.47	Poland**	0.98
Iran	1.63	Switzerland	0.87
Thailand**	1.50	Egypt	0.83
United Arab Emirates	1.29	Sweden	0.81
Pakistan	1.16	South Africa**	0.77
Philippines**	1.11	Norway	0.74
Israel	0.91	Austria	0.70
Kazakhstan	0.89	Denmark**	0.58
Bangladesh	0.84	Finland	0.53
Vietnam	0.84	Luxembourg	0.32
Qatar	0.79	Portugal	0.32
Kuwait**	0.73	Iceland	0.28
New Zealand	0.66	Malta	0.27
Sri Lanka	0.50		
Myanmar	0.49		
Oman	0.49		
Azerbaijan	0.48		
Singapore	0.48		
Uzbekistan	0.45		
Jordan	0.37		
Malaysia**	0.36		
Nepal	0.33		
Cambodia	0.32		
Georgia	0.31		
Brunei Darussalam	0.31		
Lao P.D.R.	0.30		
Mongolia	0.30		
Tajikistan	0.29		
Kyrgyz Republic	0.29		
Maldives	0.27		

\*\* Indicates countries that did not sign the AIIB Articles on 29 June 2015.