

# STATES OF JERSEY



## **DRAFT ASIAN INFRASTRUCTURE INVESTMENT BANK (IMMUNITIES AND PRIVILEGES) (JERSEY) REGULATIONS 201- (P.68/2017): COMMENTS**

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**Presented to the States on 14th November 2017  
by the Corporate Services Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Summary

1. [P.68/2017 \(re-issue\)](#), the *Draft Asian Infrastructure Investment Bank (Immunities and Privileges) (Jersey) Regulations 201-* (“the Draft Regulations”), were lodged by the Minister for External Relations on 21st July 2017.
2. The report accompanying the Draft Regulations outlines the benefits to Jersey of having the United Kingdom’s membership of the Asian Infrastructure Investment Bank (“the Bank”) extended to the Island. The Draft Regulations themselves also set out the terms by which the membership could be extended to Jersey.
3. In reviewing the Draft Regulations, the Panel received a private briefing on 21st September 2017. The Panel decided, following this briefing, to hold a Public Hearing on 2nd November 2017 to question the Minister for External Relations on the details of the Draft Regulations.<sup>1</sup>
4. The Panel ultimately concluded that no further action on its part was necessary in relation to the Draft Regulations.

### Findings

5. Initial Panel concerns focused predominantly around the immediate cost of joining the Bank, compared to any tangible benefit for Jersey of having the UK’s membership of the Bank extended to it.
6. Long-term queries were also expressed, surrounding the potential for the Bank to set up offices in Jersey. These centred on what regulation the Bank would be subject to in the Island, given that the Draft Regulations set out principles to confer limited diplomatic immunity.
7. Whilst there is a lack of tangible financial gain from the extension of membership to the Bank, the Minister highlighted that there are indirect diplomatic benefits that would be gained from membership, which would enhance the Island’s international profile and reputation.
8. It was highlighted during the Public Hearing that the extension of membership would also be seen by China, along with the other Asian countries who are members of the Bank, that Jersey is interested in increasing its current engagement within the region.
9. Clarification of Jersey’s position within the Bank was asked for, given the lack of any obvious presence that the Island would be displaying as a non-voting, non-shareholding member. The Panel also queried the report accompanying the Draft Regulations, which states that “*By way of precedent, Jersey is currently included in the UK’s membership of the European Bank for Reconstruction and*

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<sup>1</sup> The transcript for the hearing can be found [here](#)

*Development.*<sup>2</sup> The Panel was advised that the benefits and rationale were largely in terms of diplomacy.

10. It was asked whether any specific one-off or recurring costs of having membership of the Bank extended to the Island, had been identified. It was confirmed that beyond the expense of the Law Draftsmen in drafting and preparing the Regulations, there were no joining fees from either the Bank or from the UK.
11. The Minister also stated that he was unaware of any recurring costs that would need to be met, such as those which may have arisen should a representative have needed to attend a meeting of the Bank's members.
12. The rationale behind the Bank's origins was also questioned. It was posed whether the Bank's formation was predominantly a vehicle by which China was advancing its own interests, especially given the country was the largest shareholder. The Minister clarified that to date, none of the projects that had been invested in by the Bank were in China, and were in fact situated elsewhere in Asia. It was also stated that, given China held approximately 30% of the total shares, self-advancement could only occur with the agreement of other members.

#### **Human Rights**

13. Besides queries around the cost versus benefit of membership to the Bank, expanding diplomatic relations to a country where concerns have been raised about human rights records was questioned.
14. It was stated that human rights was one of the risk factors, amongst others, which had been used in assessing the extension of membership.
15. It was further stated that it was a commonly-recognised policy for countries to engage with other nations where there may be concerns around human rights records in order to improve them, and that this is a principle followed by both the UK and United States<sup>3</sup>.

#### **Privileges and Immunities**

16. The proposition outlines limited privileges and immunities attributable to the Bank, in the event that it was to ever operate from, or conduct activity within Jersey.
17. It was thought unlikely that the Bank would establish a presence in Jersey and that if it did so, it would be subject to the full regulatory oversight of the Jersey Financial Services Commission. Furthermore, it was highlighted that the immunities and privileges in the Draft Regulations are carefully couched for official purposes, specific to the Bank and its functions.

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<sup>2</sup> P.68/2017, page 3.

<sup>3</sup> It should be noted that the United States of America is not a member of the Asian Infrastructure Investment Bank.

18. It was noted by the Panel that Regulation 4 of the Draft Regulations (**Archives and Premises**) states that –

*“The official archives and premises of the Bank shall have the like inviolability as, in accordance with Articles 22 and 24 of the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.”*<sup>4</sup>

19. The *Vienna Convention on Diplomatic Relations*, to which the Regulation refers, states, amongst other points that –

*“The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.”*<sup>5</sup>.

20. It was put to the Minister, that whilst at the present time, the likelihood of the Bank operating from premises on the Island was remote, the Panel would express concern if such an event did occur without further detailed discussion and regulatory legislation being fully in place, before the Bank was allowed to commence operations.

21. The Head of International Compliance confirmed to the Panel that this would be the case, highlighting the example of the establishment of the headquarters of the European Bank for Reconstruction and Development in London. In this scenario, the bank had been required to sign an additional agreement, which set out certain further limitations to their freedom to operate.

## **Conclusion**

22. Despite having some initial concerns about the proposals, the Panel was satisfied with the Minister’s responses to its questions in the Public Hearing. It was agreed that a further, more detailed review of the proposals, on its part, was not necessary.
23. The Panel does consider however, that any future proposal that the Bank establish a presence in the Island (however unlikely), should be a matter brought to the States to decide upon, following appropriate scrutiny.

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## **Statement under Standing Order 37A [Presentation of comment relating to a proposition]**

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A. The Panel apologises for the late delivery of these comments, which is due to the close proximity of the Public Hearing on this matter, the debate date, and the timescales for obtaining the transcript.

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<sup>4</sup> P.68/2017, page 11.

<sup>5</sup> United Nations, “*Vienna Convention on Diplomatic Relations*” (1961) ([http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf))