

Deputy Moz Scott
Chair
Economic and International Affairs Scrutiny Panel
By email

30 January 2023

Dear Chair

Thank you for your letter of Friday 27th January containing further questions in relation to the Jersey-UAE Bilateral Investment Treaty (“the Agreement”), following the briefing provided to the Panel on Friday 13th January.

Your first question relates to the application of international and domestic law under the provisions contained within the Agreement, and in particular whether Sharia law would apply in the event of a dispute filed under the terms of the Agreement in the United Arab Emirates (“UAE”). In fact, one of the advantages of this BIT is that it contains provisions that would allow qualifying investors to resolve disputes internationally through arbitration under independent legal frameworks rather than relying solely on domestic law.

Article 14 of the text sets out the ability of qualifying investors with qualifying investments (both defined in Article 1) to bring a dispute against the other Contracting Party in the event of an alleged breach of the provisions of the Agreement, and establishes the terms and conditions for doing so.

Through Article 14.4, the text outlines the options available to the qualifying investor to bring forward any such disputes through either: a) local courts; or, importantly in this case, b) a verified ‘menu’ of independent arbitral frameworks, each of which would be conducted under international law. This means that, under the Agreement, the investor will have the option to seek international arbitration rather than relying on local court routes to determine the validity of an alleged breach of investor rights.

It is worth emphasising that, in providing these options, the Agreement gives significant protection to qualifying Jersey investors operating in the UAE (and vice versa); protection which does not presently exist. As it stands, Jersey investors are not guaranteed the ability to redress alleged breaches of treatment in the UAE through such independent mechanisms.

Therefore, it is not the case that qualifying Jersey investors will be restricted to domestic law – including the limited operation of Islamic law – in the UAE in respect of a dispute brought under the Agreement.

For the avoidance of doubt, however, Jersey investors would be required more generally to conform with the domestic laws of the UAE when making investments, just as Emirati investors in Jersey would be required to operate within the Island’s laws. This is true of investors of any jurisdiction and is not impacted by the presence or absence of a Bilateral Investment Treaty

("BIT"). Ultimately, it is for investors to determine whether local laws are conducive to their operations as part of their wider business decisions, and it is not within the scope nor purpose of BITs to opine on these local laws.

This final point also speaks to your second question regarding the wider applicability of Sharia law in this context. To clarify, the Agreement does not create any new legislative or regulatory burdens upon Jersey – nor indeed upon the UAE – and does not in any way impose new conditions upon Jersey or its investors, including the principles or operation of Islamic law.

As with any BIT, the Agreement has a specific and limited purpose to protect and promote investment *without* affecting the ability of each Contracting Party to maintain and manage its own domestic legal, regulatory and economic environments. This BIT also has the advantage of specifically signalling this limited purpose in the pre-ambulatory text – in line with growing international good practice in this area.

I hope that I have sufficiently answered your important questions, and I would be happy to provide any further clarity as required.

Kind regards



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