



Scrutiny Office

Corporate Services Scrutiny Panel

Asian Infrastructure Investment Bank Hearing

THURSDAY 2nd NOVEMBER 2017

Panel:

Deputy John Alexander Nicholas Le Fondré of St. Lawrence

Deputy Simon Muir Brée of St. Clement

Senator Sarah Craig Ferguson

Witnesses:

Minister for External Relations

Head of Service, External Relations

Head of International Compliance

Assistant Legal Counsel

Legal Adviser

[16:41]

Deputy J.A.N. Le Fondré of St. Lawrence:

Welcome to the next hearing with the Minister for External Relations, on the particular subject of the Asian Infrastructure Investment Bank, which is a proposition that is due to be debated fairly shortly in the States. This is, essentially, an evidence-gathering session. So, again, for the formalities, I will kick off. Then I shall hand over to the Vice-Chairman, Deputy Brée, who will handle the questioning side. So, Minister, you have the notice on your left, which I am sure you are fully aware of but we always draw your attention to it. And to

anybody left in the public seating, again, no electronic devices, please, and no recording.
So, Deputy John Le Fondré, Chairman of the Corporate Services Scrutiny Panel.

Deputy S.M. Brée of St. Clement:

Deputy Simon Brée, Vice-Chairman of the Corporate Services Scrutiny Panel.

Senator S.C. Ferguson:

Senator Sarah Ferguson, member of the Corporate Services Scrutiny Panel.

Minister for External Relations:

Philip Bailhache, Minister of External Relations.

Head of Service, External Relations:

Kate Nutt, Head of Service, External Relations.

Head of International Compliance:

Dan Marcos - Head of International Compliance, External Relations.

Legal Adviser:

Victoria Bell – Law Officer’s Department.

Assistant Legal Counsel:

Charlotte Curtis – Law Officer’s Department.

Deputy J.A.N. Le Fondré:

So, Simon will lead on the questions.

Deputy S.M. Brée:

Thank you very much. Minister, this is a public hearing, as the Chairman said, into P68 2017, which is the draft Asia Infrastructure Investment Bank Immunities and Privileges (Jersey) Regulations, which was lodged by you as a reissue on 21st July this year. First of all, Minister, what is the rationale for Jersey becoming a member of the Asia Infrastructure Investment Bank?

Minister for External Relations:

The broad rationale is that, as we discussed at the last part of this scrutiny panel hearing, we are pursuing a global markets strategy which involves a number of countries. One of those

countries is China and we have some connections with that country at the moment but it is second largest economy in the world and I think I am correct in saying that the annual growth in the Chinese economy is equivalent to the entire economic output of Australia or all of New Zealand's and it is an important country for us to develop relationships with. China was the country behind the establishment of the Asia Infrastructure Investment Bank. We have had advice from the United Kingdom, H.M. Treasury, that the bank is well run and we think it is advantageous to Jersey to become part of this institution.

Deputy S.M. Brée:

Who originally put forward the idea that Jersey should join this particular bank?

Head of International Compliance:

There was internal discussion. I was not there at the time but I believe that the first officers to take it forward were Mike Entwistle [International Affairs Manager] and Colin Powell [International Adviser]. They proposed it to ministers and –

[16:45]

Deputy S.M. Brée:

So, they originated the idea or the concept, or was this pressure from the finance industry locally?

Minister for External Relations:

No, I do not think we have had pressure from the finance industry. It was part of the overall policy of the Ministry of External Relations to develop good relations with China.

Deputy S.M. Brée:

So, what are the direct, tangible economic benefits that have been identified as coming to Jersey on joining this bank?

Minister for External Relations:

It is very difficult, in terms of diplomatic effort, always to be specific about tangible benefits that result from any diplomatic activity. Relationships are important and if one wants to develop an international relationship, one has to show that one is interested in that country and that one is prepared to make an effort to engage in different ways.

Deputy S.M. Brée:

Let me phrase it another way. Are you or your department aware, Minister, whether Jersey has lost any business or revenue by not being a member so far?

Minister for External Relations:

If I may say so, Deputy, that is a rather negative way of looking at it. I prefer to look at it from the positive perspective that this is an opportunity for Jersey to develop its relationship with China and to position Jersey as a more visible and influential partner on the international stage. The members of the bank are all leading jurisdictions and I see no downside at all to Jersey forming part of this group of countries.

Deputy S.M. Brée:

It has been suggested by some leading global economists that China is using the Asia Infrastructure Investment Bank as a vehicle to both fund its own economic development strategy and extend and strengthen its political influence overseas. What can you say to counter such suggestions?

Minister for External Relations:

At the moment, none of the projects that have been funded by the Asia Infrastructure Investment Bank has been in China. They have all been in other countries in Asia. So, I am not sure that it is fair to say that China is using this as a means of getting capital for its own infrastructure. Maybe it will in future seek to put forward some projects for funding by this bank but, as it is a 30 per cent. shareholder in the bank, that would not be surprising.

Deputy S.M. Brée:

So, you are happy that they are not using it for their own economic development strategy, but what about the question of extending and strengthening its political influence overseas?

Minister for External Relations:

Every country tries to do that, Deputy. Jersey is trying to develop its own political influence by becoming a member of, or attached to, this particular international bank. We are trying to develop our profile and our influence. We cannot be surprised if larger countries follow exactly the same policy.

Deputy S.M. Brée:

Looking now at the structure of our proposed membership, what advantages does having membership bring us, given that we would be a non-voting and non-contributing member? When you say we are looking to extend our influence, if we are non-voting and non-contributing how does that achieve that?

Minister for External Relations:

Clearly, we are not putting any money into it. So, it is not surprising that we do not get a vote on how the money, which we have not contributed, is going to be spent. Those who are putting money into the bank are those who are going to have the responsibility of deciding, through the directors, where that money should be directed. I do not think we can expect to have a say when we are not putting any money into the project ourselves.

Deputy S.M. Brée:

So, looking at the structure of the bank and at the figures that we have, as at 30th October this year, China held 32.0243 per cent. of the share capital, which gave it 27.5186 per cent. of the votes. Obviously, as you also said, you are looking to the U.K. as being a member. Are you aware of what percentage the U.K. currently holds?

Minister for External Relations:

In terms of voting share, I think it is round about the 5 per cent mark.

Deputy S.M. Brée:

It is actually 3.0643 per cent. So, when you look at the difference in share capital and the voting rights that those shares give, it is very large. Talking about the decision to join the A.I.I.B. – we shall call it that, if we may; it is easier than the whole title – the background text to the proposition that was attached to P68 states that: “By way of precedent, Jersey is currently included in the U.K.’s membership of the E.B.R.D. (European Bank for Reconstruction and Development).” So, what direct economic benefit has this had for Jersey?

Minister for External Relations:

What direct benefit has membership of the European Bank -?

Deputy S.M. Brée:

The E.B.R.D.

Minister for External Relations:

The answer to that question is really the same as that which I gave in relation to the A.I.I.B. Jersey puts no money into the E.B.R.D. It is part of the bank because, again, particularly at the time when Eastern Europe was coming away from communist rule, it was important to show that we supported the emergence of democratic entities in that part of Europe and –

Deputy S.M. Brée:

Minister, what I am trying to say is that you use as an argument for precedence the fact that we are a member, through the U.K.'s membership, of the E.B.R.D. Surely that precedent, over time, will have given you evidence to prove that it was a good move to make. Do you have that evidence?

Minister for External Relations:

As I said earlier, Deputy, it is difficult to provide express instances of the benefits of diplomatic engagement and of joining particular clubs, if I can put it that way, other than a general sense that we are making the name of Jersey more widely known and demonstrating that we are interested in countries that are outside our 9 miles by 5.

Deputy S.M. Brée:

Just to go back to something that you said earlier, can you confirm that Jersey has no intention of investing in this particular bank; we are not going to be contributory?

Minister for External Relations:

One of the considerations that interested me when this proposal was first put before me as a minister was the financial implications and I asked whether we were going to make a financial contribution to the bank and I asked what the likelihood of a financial downside to Jersey would be and I received answers that satisfied me that there was no serious financial risk to Jersey from being part of the A.I.I.B. There is no intention to subscribe to shares in the bank. We are entirely content to have our membership as part of the membership of the United Kingdom and the United Kingdom has confirmed that its financial contribution will be taken to cover the contribution of Jersey as well.

Deputy S.M. Brée:

So, is there any initial cost involved in having the U.K.'s membership extended to us?

Minister for External Relations:

The cost is in making sure that we have the legal infrastructure in place to accommodate the membership of the A.I.I.B. being extended to us.

Deputy S.M. Brée:

There is no initial requirement for what one might call a joining fee?

Minister for External Relations:

There is no joining fee. There is, obviously, a certain amount of expense in the Law Officer's time, and in law drafting time and bringing the regulations before the States. But that is the only expense of which I am aware.

Deputy S.M. Brée:

What about ongoing cost associated with this type of membership? For example, will a representative of Jersey be required to attend any events or meetings of shareholders even though we are non-voting, or is there no requirement at all there? So, are there no ongoing additional costs?

Minister for External Relations:

Not that I am aware of.

Deputy S.M. Brée:

The proposition provides various guarantees of diplomatic status and immunity to the A.I.I.B. Why are these required?

Minister for External Relations:

These are required because it is an international organisation and it is a requirement of the rules of international law that members of international organisations of this kind should have certain immunities and they are not very extensive. One should not confuse the immunities that are going to apply to the officers of the A.I.I.B. with the diplomatic immunities that attach to diplomats. They are different.

Deputy S.M. Brée:

So, do you anticipate that the A.I.I.B. will ever establish a physical presence on the Island?

Minister for External Relations:

It would certainly be very nice for Jersey if it did but I suspect that it is extremely unlikely.

Deputy S.M. Brée:

So, in the event, however unlikely, that the A.I.I.B. were to establish a physical presence in Jersey, would its activities be subject to full regulatory oversight by the Jersey Financial Services Commission?

Minister for External Relations:

Yes.

Deputy S.M. Brée:

So, would the usual work and housing laws apply to all staff of the bank?

Minister for External Relations:

Yes.

Deputy J.A.N. Le Fondré:

Just one question. Minister, you touched on the different types of immunities that are available. Can you elaborate on how that works?

Minister for External Relations:

As I have the law officers here, perhaps I can turn to them and make them justify their existence.

Deputy J.A.N. Le Fondré:

I would not want them to feel that they had come here just for a rest and a sit down.

Legal Adviser:

Sorry, was your question how do the regulations fit together, or -?

Deputy J.A.N. Le Fondré:

No, the Minister touched on the various guarantees of diplomatic status and immunities for the A.I.I.B.

Deputy S.M. Brée:

Immunities and privileges.

Deputy J.A.N. Le Fondré:

And the Minister has suggested that those are not to be confused with diplomatic immunity, such as would apply to an embassy, but that they are a different type of immunity. So, what are we looking at?

Legal Adviser:

First, all of the immunities and privileges are very carefully couched in official purposes. For example, when the regulations talk about archives and premises and tax rates and duties, all of these immunities are only within the context of the official purposes of the bank.

[17:00]

For instance, there is not the personal liability that there would be with a diplomatic mission. So, the privileges are very much more limited than they would be with diplomatic office.

Deputy J.A.N. Le Fondré:

So, if somebody were to commit a crime on the Island, they would not be able to claim diplomatic immunity, for the sake of argument?

Legal Adviser:

No, because it is not within the context of their official purposes, so the immunities would just lift.

Deputy J.A.N. Le Fondré:

And would individual workers be subject to tax locally?

Legal Adviser:

No, they would not be, but they would be working for an office that had immunity, and that is reflected in the regulations.

Deputy S.M. Brée:

With the difference that is supposed to exist between full diplomatic immunity and restricted immunity and privileges being offered to the bank, may I draw your attention, Minister, to Article 5, Clause 5, which states: "The bank is entitled to relief by way of refund of customs duty paid on any imported hydro-carbon oil." Why is that there?

Minister for External Relations:

Because that is the traditional privilege of officers of international organisations of this kind.

Senator S.C. Ferguson:

What does it mean?

Minister for External Relations:

It means that they get tax-free petrol.

Deputy S.M. Brée:

No, it means that they can import hydro-carbon oil into Jersey without paying duty. As we are aware, the Chinese government is a major buyer of hydro-carbon oil round the world because it has many refineries but very few natural resources.

Head of International Compliance:

It is probably worth pointing out that here that in the unlikely event that the A.I.I.B. decided to establish an office here – at the moment, we understand that there is no regional office outside of China and a number of paying members, voting members, are competing to have the first regional office outside China based in their jurisdictions, so it is unlikely that they would choose Jersey – we would ask for an additional agreement. Take the example of the E.B.R.D. It has its headquarters in London and as part of that, it signed an additional agreement, which set out certain further limits. I think I am right in remembering that one quite specific one is that it would not try to claim back – 14.1 of the official agreement provides that: “Goods exempt from tax, including hydro-carbon oil, shall not be sold in the U.K. without the relevant taxes, duties etc. being paid.”

Deputy S.M. Brée:

Sorry, who does that refer to?

Head of International Compliance:

That refers to the E.B.R.D. In our discussions with the U.K. they said that they would also insist, if the A.I.I.B. were to set up in the U.K., they would –

Deputy S.M. Brée:

But that is not referred to within this proposition, is it?

Head of International Compliance:

Well, no, this proposition is not to do with the establishment of an office in Jersey.

Deputy S.M. Brée:

I would say that it is, because it talks about the establishment of an office and the taxes, rates and duties to be paid by the bank and its employees, so it does. Can we move on slightly because, obviously, I am aware of time. As we have established, and you have confirmed, Minister, China is by far the largest shareholder in the A.I.I.B. Concerns are often raised about China's human rights record. Did you take this into consideration when deciding to lodge this proposition?

Minister for External Relations:

That was one of the risk factors that was taken into consideration with a number of others.

Deputy S.M. Brée:

Therefore, am I right in saying – and we go back to the previous public hearing – that the reward outweighed the risk, if you want to call it that; that you were prepared to put to one side any concerns you may have about China's human rights record in light of the fact that the potential rewards to the Island, in financial terms, are great?

Minister for External Relations:

We are back to the discussion about human rights that we had under the global markets strategy discussion. I may not have said on that occasion, but I certainly have done on previous occasions before this panel, that we follow the approach of the United Kingdom, of the United States and of almost every other civilised country in considering this kind of question and we subscribe to the view that engagement with countries is the best way of ensuring that any deficiencies in human rights records that there might be are improved.

Deputy S.M. Brée:

Minister, that sounds very good but so far what opportunities has Jersey taken, through our closer relations with China, to try to use diplomacy to engage with their government on matters such as human rights?

Minister for External Relations:

Deputy, China is a country of 1.2 billion people I think. Jersey is a territory of 100,000 people. I do not think it is the function of Jersey to lecture the [People's] Republic of China as to how it should conduct its internal affairs. We have had a number of visits from the Chinese Ambassador in London and he has had the opportunity to see the way in which Jersey conducts itself in its approach to human rights and a number of other matters as well.

We think that that is the best way in which a small jurisdiction such as this one can bring its influence, if that is not putting it too high, to bear on a country such as China.

Deputy S.M. Brée:

So, effectively you are saying that even if we did have serious concerns about China and its human rights record, there is very little that we could do about it.

Minister for External Relations:

No, that is not what I am saying. I am saying that we subscribe to the view that engagement with countries and a demonstration of the way in which we approach human rights is the best way to bring about change in countries that have different cultures, different approaches and different histories. If one were to lecture the [People's] Republic of China about human rights, it would probably remind us of the Opium Wars, which took place 100 years ago and which have seared the consciousness of China, and it would not be impressed.

Deputy S.M. Brée:

So, Minister, given that we will be a non-voting, non-contributing member and, as such, have no right to play any part in the decision-making processes, governance or direction that the A.I.I.B. will take, and that any benefits to the Island are somewhat nebulous and intangible, do you, Minister, fully support the fact that, by way of this draft primary law, the A.I.I.B. will be afforded the equivalence of diplomatic status with all the inherent immunities including but not restricted to the non-payment of taxes and rates should they, at some time in the future, elect to establish a physical presence on the Island?

Minister for External Relations:

That is a very long question, raising a number of different issues. I do not accept, Deputy, that the benefits of joining the A.I.I.B. are nebulous. I think they are positive benefits because they show to the [People's] Republic of China and, indeed, to other Asian members of the bank, that Jersey is interested in engaging with those countries and that we are prepared to play a part, to the extent that our involvement in the bank can be described in that way, that is of benefit to Jersey. I do not think that the privileges and so forth that you describe would necessarily attach to the employees of the bank if the bank were to establish itself in Jersey, which is very unlikely, because, as Mr Marcos explained in relation to the E.B.R.D., an agreement is customarily drawn up between the international –

Deputy S.M. Brée:

If I may correct you, Minister, your own proposition states, in Article 6, Clause 7: “No tax of any kind shall be levied on or in respect of emoluments paid by the bank to a person connected with the bank.” Again, in Clause 3 of that: “It does not apply to a person who is a British citizen, British Overseas Territory citizen,” so should the bank set up and staff itself solely with – provided it gets the necessary licences – Chinese nationals or non-British citizens, then that clause does apply. So, we are being very exact in the words we use here, Minister.

Minister for External Relations:

What we are doing under these regulations, Deputy, is establishing the starting point of immunities and privileges for employees of the bank. What we are not doing is necessarily specifying that those immunities and privileges will apply in particular circumstances because that could be qualified by an agreement between the Island, the government, and the institution, were it to apply to establish itself in Jersey. So, what is set out in –

Deputy S.M. Brée:

But nowhere in this law does it state that, does it make provision for that.

Minister for External Relations:

But it does not need to because the bank cannot establish itself in Jersey without the requisite licences from the appropriate authorities in the Island. If the bank were to apply to set up a branch in Jersey then we would seek to negotiate an agreement, which might very well affect some of these privileges.

Deputy S.M. Brée:

Thank you very much indeed, Minister, for your time. That finishes our evidence-gathering phase of this. Thank you, and we will draw this public hearing to a close.

Minister for External Relations:

Thank you very much.

Deputy J.A.N. Le Fondré:

Thank you very much.

[17:12]