

Departmental Disclosure Statement

International Finance Agreements Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

2 September 2015.

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Part One: General Policy Statement

This Bill amends the International Finance Agreements Act 1961 in order to enable the Government of New Zealand to become a member of the Asian Infrastructure Investment Bank (the **Infrastructure Bank**) and to implement New Zealand's obligations under the Articles of Agreement of the Infrastructure Bank (the **Infrastructure Bank Agreement**). The Infrastructure Bank Agreement will be the governing document of the Infrastructure Bank. The Infrastructure Bank is a multilateral investment bank established to address the gap in infrastructure investment across the Asian region. The purpose of the Infrastructure Bank is to foster sustainable economic development and to promote regional co-operation and partnership in addressing development challenges by working in partnership with other multilateral and bilateral development institutions. New Zealand is joining the Infrastructure Bank as a founding member, to contribute to strong and sustained regional growth, consolidate New Zealand's economic and political relationships in Asia, and participate in an institution that will further regional economic co-operation and integration.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The Foreign Affairs Defence and Trade Select Committee published a report on the National Interest Analysis in August 2015. It can be found at: http://www.parliament.nz/en-nz/pb/sc/documents/reports/51DBSCH_SCR64742_1/international-treaty-examination-of-the-asian-infrastructure	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
The Bill gives effect to the Articles of Agreement of the Asian Infrastructure Investment Bank (the Infrastructure Bank Agreement). A copy of the Infrastructure Bank Agreement is in the Schedule to the Bill.	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
The Asian Infrastructure Investment Bank Articles of Agreement National Interest Analysis was prepared by the Treasury and the Ministry of Foreign Affairs and Trade. It was presented to the House on 28 July 2015. It can be accessed on the Parliamentary website at: http://www.parliament.nz/resource/en-nz/00DBSCH_ITR_64575_1/dd94abd4d8e237fe33af9a4ff0a05ccadd7929c4	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The regulatory changes proposed to the International Finance Agreements Act will be minor and have little direct impact on New Zealanders. The proposal (and associated Asian Infrastructure Investment Bank Articles of Agreement National Interest Analysis, or NIA) was exempt from the Regulatory Impact Analysis requirements on the basis that the changes will affect the internal administrative or governance arrangements of the government and will have no or only minor impact on businesses, individuals or not-for-profit entities. The National Interest Analysis can be accessed on the Parliamentary website at: http://www.parliament.nz/resource/en-nz/00DBSCH_ITR_64575_1/dd94abd4d8e237fe33af9a4ff0a05ccadd7929c4	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

The capital contribution for regional members is based on the relative share of Gross Domestic Product.

On joining, New Zealand will make a paid-in contribution to the AIIB's capital over the next five years of US\$92.3 million. The remaining US\$369.2 million will be callable capital, making a total capital subscription for New Zealand of US \$461.5 million.

Treasury has entered a forward contract to remove exchange rate risk for the paid-in capital, drawing down five tranches of US dollars in line with anticipated payments. The New Zealand dollar payments will total NZ \$144.8 million.

In the unlikely event that members are asked for a drawdown of callable capital by the AIIB, the New Zealand dollar cost would be determined both by our pro rata share of the amount of capital sought, and on exchange rates at the time the payment is made.

The AIIB will operate in a commercial environment and will generate a rate of return on the capital invested in the organisation. The Articles of Agreement provide a mechanism for shareholders to agree on the use of the return on shareholder capital.

The direct economic consequences of the investment in the AIIB for New Zealand are likely to be modest. The nature of the investments makes it difficult to conduct meaningful quantitative cost-benefit economic modelling for the benefits to New Zealand. Assumptions would need to be made regarding:

- type, scale and pace of investments made;
- extent of AIIB contribution (as some projects are likely to be co-financed, including with the World Bank and ADB)
- where in Asia they are made and their consequent economic impact for the recipient country; and
- the direct flow-on effect for New Zealand (through New Zealand firms winning contracts) and the indirect flow-on effects of increased economic growth in Asia helping increase the

An additional consideration is that the Bank would have been established irrespective of New Zealand's capital contribution (we are contributing some 0.4% of the total subscribed capital). An accurate counterfactual would have had to take a Bank without New Zealand's involvement as the baseline for assessing the costs and benefits.

There are also non-economic benefits to New Zealand from joining AIIB, as it augments New Zealand's existing relationships in the Asian region and bilateral relationship with China.

Additionally, by our involvement, New Zealand is able to contribute to the implementation of best practice policies, operational standards and economic and social safeguards by the AIIB.

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The AIIB has been designed to complement existing international financial institutions. Treasury and MFAT consider that the Bill is consistent with New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

As this Bill confers similar status on this institution as is provided to those New Zealand is already a member of, there will be no impact on the government's Treaty of Waitangi obligations.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, are accessible on the Ministry's website at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Clause 9 of the Bill gives certain articles of the Infrastructure Bank Agreement force of law in New Zealand. Articles 46 to 51 of the Infrastructure Bank Agreement provide for various privileges and immunities including from legal proceedings for the Infrastructure Bank and its officials vis-à-vis actions performed in their official capacity. However, such an exemption is balanced by the fact that the AIIB will need to establish mechanisms to adjudicate complaints against the AIIB from states or individuals in the exercise of its mandate. In addition, as a shareholder, the New Zealand Government will be able to exercise its governance rights to pursue potential concerns with AIIB actions.
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3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

The provisions contained in this Bill extend the same immunities and privileges to the Asian Infrastructure Investment Bank as are already extended to the IMF and the International Bank for Reconstruction and Development under the International Finance Agreements Act.
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
There is not expected to be any impact on the New Zealand public in general, nor on any particular groups. No prior public consultation was undertaken before the National Interest Analysis was considered by the Foreign Affairs Defence and Trade select committee as part of the Parliamentary Treaty Examination process. As part of that process, public submissions were invited. We understand that none were made.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
The domestic regulatory impact of New Zealand joining the AIIB is limited. Treasury consulted with the Ministry of Foreign Affairs and Trade, Inland Revenue and the Reserve Bank of New Zealand. All Agencies consulted agree that the impact of joining the AIIB is limited to administrative changes to accord the AIIB and its personnel similar privileges and immunities as those extended to existing international financial institutions and the financial authority for New Zealand to pay in its capital contribution. Therefore no further testing of the impact of the Bill was considered necessary.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Clause 9 gives article 51 of the Infrastructure Bank Agreement force of law in New Zealand. Article 51 exempts the Infrastructure Bank and its officers and employees from taxation in New Zealand. (The text of article 51 is set out in full in Appendix Three)</p> <p>It is a standard practice for the founding document of international financial institutions to require its members to exempt that institution from tax in the country in which it operates. A similar exemption is included for the Asian Development Bank, for example. The practical effect on revenue for New Zealand, which will not be borrowing from the Infrastructure Bank or be a destination for investment, is likely to be minimal. In addition, the objective of the Infrastructure Bank, which is to support infrastructure investment, will have wider national benefits for New Zealand.</p> <p>It is also a standard practice for the founding document of international financial institutions to require its members to exempt their employees' income from the institution from tax. The Infrastructure Bank Agreement does allow members to tax an employee's income derived from the Infrastructure Bank to the extent that the employee is a national of that country, if the member deposits with its instrument of ratification a declaration that it reserves the right to tax the salaries, emoluments and expenses paid by the Infrastructure Bank to its nationals. As New Zealand's general approach is to tax individuals on their worldwide income if they are tax resident in New Zealand, New Zealand may deposit with its instrument of ratification a declaration that it reserves the right to tax the salaries, emoluments and expenses paid by the Infrastructure Bank to New Zealand nationals.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Clause 9 gives article 50 of the Infrastructure Bank Agreement force of law in New Zealand. Article 50 gives all staff of the Bank immunity from civil and criminal proceedings in New Zealand when the action is performed in their official capacity.</p> <p>This is consistent with the immunity afforded to the staff of other international financial institutions in accordance with the International Finance Agreements Act. The Infrastructure Bank can also waive the immunity.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>Clause 2 provides that the Act will come into force on a date to be appointed by the Governor-General by Order in Council. It is intended that the Bill will be brought into force when New Zealand becomes a member of the Infrastructure Bank. Two things must happen before that occurs. First, New Zealand must have ratified the Infrastructure Bank Agreement. Secondly, the Infrastructure Bank Agreement must have entered into force; that is, it must have been ratified, accepted, or approved by at least 10 signatories whose initial capital subscriptions together comprise not less than 50 percent of the total initial capital subscriptions. (See Articles 58 and 59 of the Infrastructure Bank Agreement set out in the <i>Schedule</i> of the Bill.)</p>	

Appendix One: Further Information Relating to Part Four

Charges in the nature of a tax- question 4.2

Article 51—Exemption from taxation

1. The Bank, its assets, property, income and its operations and transactions pursuant to this Agreement, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. No tax of any kind shall be levied on or in respect of salaries, emoluments and expenses, as the case may be, paid by the Bank to Directors, Alternate Directors, the President, Vice-Presidents and other officers or employees of the Bank, including experts and consultants performing missions or services for the Bank, except where a member deposits with its instrument of ratification, acceptance, or approval a declaration that such member retains for itself and its political subdivisions the right to tax salaries, and emoluments, as the case may be, paid by the Bank to citizens or nationals of such member.
3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.