

PARLIAMENT OF THE REPUBLIC OF FIJI

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

REPORT ON THE REVIEW OF THE ASIAN INFRASTRUCTURE INVESTMENT BANK-ARTICLES OF AGREEMENT



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CHAIR'S FOREWORD

I am pleased to present the report of the Standing Committee on Foreign Affairs and Defence (SCFAD), which was assigned to examine the **Asian Infrastructure Investment Bank (AIIB)-Articles of Agreement**.

This report provides the committee's review, conclusion and recommendations from oral and written submissions received and deliberated upon by the Committee as per Standing Orders (SO) 110(e).

The report is divided into four parts:

Part 1 covers the role and responsibilities of the Standing Committee and the inquiry process in undertaking a review of the Asian Infrastructure Investment Bank (AlfB)-Articles of Agreement.

Part 2 provides a brief overview of the AIIB -Articles of Agreement.

Part 3 details the Standing Committee's observations of the AIIB - Articles of Agreement.

Part 4 provides a summary of key provisions of the AIIB - Articles of Agreement.

Accession to the AIIB - Articles of Agreement will be beneficial to Fiji in terms of:

- (i) it will offer a new multilateral development financing platform committed to development in Fiji;
- (ii) the current stance and medium term outlook is that the Fijian Government will require sources to undertake capital expenditure such as (construction of roads, jetties and bridges etc.) and joining the Bank will allow an additional financing source for Fiji;
- (iii) in providing finance to member countries, only economic considerations are relevant to the Bank's decisions, the Bank is not influenced by the political character of any member;
- (iv) it reinforces our constructive and positive relationship with the People's Republic of China (PRC);
- (v) it will enable Fiji to negotiate better terms for loans with existing multilateral donors such as ADB and World Bank as the Bank will provide competition for these multilaterals; and
- (vi) the Bank will also provide technical assistance and will work with its members to engage services within the region. The Bank will recruit qualified personnel globally and the criteria for recruitment will be based on technical competence and experience in related sectors.

I commend this report to Parliament for its consideration.

Hon. Netani B. Rika

Chairman

LIST OF ACRONYMS

ADB	Asian Development Bank	
AllB	Asian Infrastructure Investment Bank	
FDB	Fiji Development Bank	
HFC	Home Finance Company Bank	<u> </u>
IMF	International Monetary Fund	
PRC	People's Republic of China	
RBF	Reserve Bank of Fiji	
SCFAD	Standing Committee on Foreign Affairs and Defence	
SO	Standing Orders	
USP	University of the South Pacific	
USD	United State Dollars	/

1.0 RECOMMENDATION:

The Committee recommends that Parliament ratify and Fiji sign the Instrument of Acceptance to the Articles of Agreement of the Asian Infrastructure Investment Bank with reservation under Article 51(2).

2.0 INTRODUCTION

The Parliament Standing Committee on Foreign Affairs and Defence undertook a review of the Asian Infrastructure Investment Bank Articles of Agreement.

2.1 The Standing Committee on Foreign Affairs and Defence

The Standing Committee is established under Standing Order (109(2)(e) of the Parliament of the Republic of Fiji. It is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.

Under SO 110(1)(e) the Committee is also tasked with reviewing international treaties and conventions ratified by the Government and monitor their implementation.

Section 51 of the Constitution states that "an international treaty or convention binds the State only after it has been approved by Parliament".

The Committee comprises of five Members of Parliament drawn from both sides of the House.

2.2 Committee Members

The members of the Standing Committee on Foreign Affairs and Defence are:

- 1. Hon. Netani Rika (Chairman)
- 2. Hon. Howard Politini
- 3. Hon. Alexander O'Connor
- 4. Hon. Mosese Bulitavu
- 5. Hon, Ratu Suliano Matanitobua

During the Standing Committee's meetings, the following alternate membership arose pursuant to Standing Order 115(5):

6. Hon, Jilila Kumar

2.3 Procedure and Program

The Committee placed advertisements in the Fiji Sun and the Fiji Times from the 3rd to 12th June, 2017.

The Committee received oral submissions on the AIIB Articles of Agreement in the Parliament Complex from relevant stakeholders from the 8th to 27th June, 2017.

3.0 REVIEW OF THE ASIAN INFRASTRUCTURE INVESTMENT BANK ARTICLES OF AGREEMENT

3.1 Background

On 23rd May 2017, the AIIB Articles of Agreement was referred by Parliament to SCFAD for review.

3.1.1 The Bank is a multilateral investment bank established to address the gap in infrastructure investment across the Asian region. The purpose of the 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. It is similar to other financing development institutions such as the International Monetary Fund ('IMF'), the World Bank Group ('World Bank') and Asian Development Bank ('ADB').

3.2 Purpose of the AllB-Articles of Agreement

- 3.2.1 The purpose of the Bank shall be to:
 - 3.21.1 foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors; and
 - 3.21.2 promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.

3.3 Why is it relevant?

3.3.1 Fiji's membership to AllB will enable sourcing of funds and technical assistance in infrastructure development, especially with the severe weather patterns due to climate change and we need to build climate resilient infrastructure.

3.4 Key Provisions

- 3.4.1 As a member of the Bank, Fiji is required to make a capital contribution as payment for its shareholding. Fiji shall subscribe up to US\$12,500,000 (FJD \$26,360,186) of shares in the Bank of which US\$2,500,000 (FJ\$5,272,037) shall be paid-in capital and US\$10,000,000 (FJD \$21,088,148) shall be callable.
- 3.4.2 Payment of paid-in capital shares shall be made in five (5) instalments of US\$500,000 (FJD \$1,054,407) each. The first instalment shall be paid on or before the date of deposit on Fiji's behalf of its instrument of acceptance of the Agreement and subsequent instalments annually on or before each anniversary date.

3.5 Requirements For Implementation

- 3.5.1 According to article 58, the Agreement will enter into force with respect to Fiji on the date on which Fiji lodges its instrument of acceptance with the depositary (PRC) certifying that Fiji has undertaken all domestic legislative processes required to give effect to the Agreement and therefore, becoming a member of the Bank.
- 3.5.2 Fiji is required to convey to the Bank the following documents:
 - i. Instrument of acceptance:
 - ii. Letter of appointment of Governor and Alternate Governor;
 - iii. Letter of Support signed by the appointed Governor for the fulfilment of Articles 44.2 obligations;
 - iv. Letter signed by a duly authorised person designating the Depository;
 - v. Letter signed by a duly authorised person designating the formal channel of communication:
 - vi. Letter signed by the Governor/Alternate Governor assigning votes to a Director; and
 - vii. Evidence of pay

3.6 Reservations

- 3.6.1 Reservations expressed by State parties to a treaty or convention may be exercised to exclude or to modify the legal effect of certain provisions of the treaty or convention in its application to that State part. There is no specific provision for reservations to the Articles of Agreement; however, Article 51(2) provides that a member may deposit with its instrument of ratification, acceptance or approval, a reservation (described as a 'declaration') to retain the right to tax salaries, emoluments and expense of Fijian citizens and nationals paid by the Bank.
 - 3.6.1.1 Countries such as Australia and New Zealand have made reservations to the Articles of Agreement pursuant to Article 51(2). Similarly, it is recommended that the Fijian Government also make a reservation under Article 51(2) to retain the right to tax salaries, emoluments and expense of Fijian citizens and nationals paid by the Bank in accordance with Fijian law.

4.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN

4.1 Stakeholders' Observations

Submissions were received from relevant stakeholders on the Convention and the overwhelming majority were for ratification.

4.2 Gender Equality

The Parliament of Fiji Standing Orders 110(2) specifically states that a committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. The Committee is satisfied that the matters considered in this report will impact both women and men equally and as such, ratifying will not have an adverse impact on gender equality.

4.3 National Interest Analysis

4.3.1 Positive Aspects of the AllB Articles of Agreement to Fiji

- 4.3.1.1 it will offer a new multilateral development financing platform committed to development in Asia;
- 4.3.1.2 the current stance and medium term outlook is that the Fijian Government will require financing sources to undertake development projects such as construction of roads, jetties and bridges in Fiji and joining the Bank will allow an additional financing source for Fiji;

4.3.2 Challenges

- 4.3.2.1 Countries such as Australia and New Zealand have made reservations to the Articles of Agreement pursuant to Article 51(2). Similarly, it is recommended that the Fijian Government also make a reservation under Article 51(2) to retain the right to tax salaries, emoluments and expense of Fijian citizens and nationals paid by the Bank in accordance with Fijian law.
- 4.3.2.2 Finding competent, suitable and qualified Fijian professionals in the International Banking, Finance spheres and Asia-Pacific Region Infrastructure Development to work in the AIIB secretariat in Beijing, China.

4.3.3 Opportunities

- 4.3.3.1 The acceptance of the AIIB Articles of Agreement will help bring Fiji's laws and practice in line with international standards.
- 4.3.3.2 Being a part of the AIIB will promote certainty and predictability in laws, policies, best practices and work ethics to promote the Asia Pacific Infrastructure Investment and Related Developments in the Region.

4.3.4 Cost

The AIIB Articles of Agreement will not have any significant cost implications for Fiji.

5.0 CONCLUSION

- 5.1 The membership to the AIIB gives Fiji access to a new multilateral development financing platform committed to development in the Asia-Pacific Region.
- 5.2 Better access to funding and technical assistance for the development of Fiji's infrastructure aligned to national and international efforts and commitments to address climate change adaptation and mitigation.
- 5.3 The Committee has put forward observations and recommendations to Parliament for the ratification of AIIB Articles of Agreement as essential in advancing Fiji as per international best practices.

6.0 CONSIDERATION OF THE ARTICLES OF AGREEMENT ARTICLE BY ARTICLE

The Committee considered the Convention Article by Article and agreed with the Articles as summarized below:

- 6.1 The Agreement consists of 60 articles which are divided into 11 Chapters. Chapter I contains articles 1 to 3 setting out the purpose, functions and membership details of the Bank.
- 6.2 Chapter II is made up of articles 4 to 8 specifying the details of capital, subscription of shares, payment of subscriptions, terms of shares, and ordinary resources. According to Chapter II, the authorised capital stock of the Bank is US\$100 billion.
- 6.3 Chapter III deals with the operations of the Bank and consists of articles 9 to 15. According to Chapter III, the resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth in the Agreement.
- 6.4 Chapter IV of the Agreement sets out the general powers of the Bank, special funds, allocation and distribution of net income, currencies and methods of meeting liabilities of the Bank. Chapter IV consists of articles 16 to 20.
- 6.5 Chapter V deals with governance of the Bank and contains articles 21 to 31. This Chapter sets out the following:
 - (i) structure of the Bank, composition, powers and procedure of board of governors;
 - (ii) composition, powers and procedure, of board of directors;
 - (iii) voting power of each member;
 - (iv) election of the president;
 - (v) appointment of officers and staff of the Bank; and
 - (vi) the international character of the Bank.
- 6.6 The key elements of the Bank's governance structure are the Board of Governors, the Board of Directors, the President and the Vice Presidents. All powers of the Bank are vested in the Board of Governors. Article 22(1) enables member countries to appoint one Governor and one Alternate Governor to represent the country at the Board of Governors.
- 6.7 Chapter VI encompasses articles 32 to 36 and outlines the general provisions of the Bank pertaining to channel of communications, reports and information. Under this Chapter, the Bank shall transmit to its members an annual report containing an audited statement of accounts and shall publish such report. It also provides that the principal office of the Bank shall be located in Beijing, People's Republic of China ('PRC').
- 6.8 Chapter VII includes articles 37 to 39 and deals with withdrawal and suspension of members as well as settlement of accounts. Under this Chapter, a member may withdraw from the Bank at any time by delivering a notice to the Bank at its principal office. Suspension of membership may occur if a member fails to fulfil any of its obligations to the Bank.
- 6.9 Chapter VIII contains articles 40 to 43 and deals with the suspension and termination of operations of the Bank. Under this Chapter, the Bank may terminate its operations by a resolution of the Board of Governors approved by a Super Majority vote (an affirmative vote of two-thirds of

- the total number of Governors, representing not less than three-fourths of the total voting power of the members).
- 6.10 Chapter IX contains articles 44 to 56 and relates to status, immunities, privileges and exemptions of the Bank. All members are required to extend specific status, immunities, privileges and exemptions to the Bank to enable it to fulfil its purpose and carry out its functions.
- 6.11 Chapter XI comprises of articles 57 to 60 and sets out the provisions for ratification, acceptance or approval of the Agreement.

APPENDICES

Asian Infrastructure Investment Bank

Articles of Agreement

The countries on whose behalf the present Agreement is signed agree as follows:

CONSIDERING the importance of regional cooperation to sustain growth and promote economic and social development of the economies in Asia and thereby contribute to regional resilience against potential financial crises and other external shocks in the context of globalization;

ACKNOWLEDGING the significance of infrastructure development in expanding regional connectivity and improving regional integration, thereby promoting economic growth and sustaining social development for the people in Asia, and contributing to global economic dynamism;

REALIZING that the considerable long-term need for financing infrastructure development in Asia will be met more adequately by a partnership among existing multilateral development banks and the Asian Infrastructure Investment Bank (hereinafter referred to as the "Bank");

CONVINCED that the establishment of the Bank as a multilateral financial institution focused on infrastructure development will help to mobilize much needed additional resources from inside and outside Asia and to remove the financing bottlenecks faced by the individual economies in Asia, and will complement the existing multilateral development banks, to promote sustained and stable growth in Asia;

HAVE AGREED to establish the Bank, which shall operate in accordance with the following:

Chapter I

PURPOSE, FUNCTIONS AND MEMBERSHIP

Article 1 Purpose

- 1. The purpose of the Bank shall be to: (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors; and (ii) promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.
- 2. Wherever used in this Agreement, references to "Asia" and "region" shall include the geographical regions and composition classified as Asia and Oceania by the United Nations, except as otherwise decided by the Board of Governors.

Article 2 Functions

To implement its purpose, the Bank shall have the following functions:

- (i) to promote investment in the region of public and private capital for development purposes, in particular for development of infrastructure and other productive sectors;
- (ii) to utilize the resources at its disposal for financing such development in the region, including those projects and programs which will contribute most effectively to the harmonious economic growth of the region as a whole and having special regard to the needs of less developed members in the region;
- (iii) to encourage private investment in projects, enterprises and activities contributing to economic development in the region, in particular in infrastructure and other productive sectors, and to supplement private investment when private capital is not available on reasonable terms and conditions; and
- (iv) to undertake such other activities and provide such other services as may further these functions.

Article 3 Membership

- 1. Membership in the Bank shall be open to members of the International Bank for Reconstruction and Development or the Asian Development Bank.
 - (a) Regional members shall be those members listed in Part A of Schedule A and other members included in the Asia region in accordance with paragraph 2 of Article 1. All other members shall be non-regional members.

- (b) Founding Members shall be those members listed in Schedule A which, on or before the date specified in Article 57, shall have signed this Agreement and shall have fulfilled all other conditions of membership before the final date specified under paragraph 1 of Article 58.
- 2. Members of the International Bank for Reconstruction and Development or the Asian Development Bank which do not become members in accordance with Article 58 may be admitted, under such terms and conditions as the Bank shall determine, to membership in the Bank by a Special Majority vote of the Board of Governors as provided in Article 28.
- 3. In the case of an applicant which is not sovereign or not responsible for the conduct of its international relations, application for membership in the Bank shall be presented or agreed by the member of the Bank responsible for its international relations.

CHAPTER II CAPITAL

Article 4 Authorized Capital

- 1. The authorized capital stock of the Bank shall be one hundred billion United States dollars (\$100,000,000,000), divided into one million (1,000,000) shares having a par value of 100,000 dollars (\$100,000) each, which shall be available for subscription only by members in accordance with the provisions of Article 5.
- 2. The original authorized capital stock shall be divided into paid-in shares and callable shares. Shares having an aggregate par value of twenty billion dollars (\$20,000,000,000) shall be paid-in shares, and shares having an aggregate par value of eighty billion dollars (\$80,000,000,000) shall be callable.
- 3. The authorized capital stock of the Bank may be increased by the Board of Governors by a Super Majority vote as provided in Article 28, at such time and under such terms and conditions as it may deem advisable, including the proportion between paid-in and callable shares.
- 4. The term "dollar" and the symbol "\$" wherever used in this Agreement shall be understood as being the official currency of payment of the United States of America.

Article 5 Subscription of Shares

1. Each member shall subscribe to shares of the capital stock of the Bank. Each subscription to the original authorized capital stock shall be for paid-in shares and callable shares in the proportion two (2) to eight (8). The initial number of shares available to be subscribed by countries which become members in accordance with Article 58 shall be that set forth in Schedule A.

- 2. The initial number of shares to be subscribed by countries which are admitted to membership in accordance with paragraph 2 of Article 3 shall be determined by the Board of Governors; provided, however, that no such subscription shall be authorized which would have the effect of reducing the percentage of capital stock held by regional members below seventy-five (75) per cent of the total subscribed capital stock, unless otherwise agreed by the Board of Governors by a Super Majority vote as provided in Article 28.
- 3. The Board of Governors may, at the request of a member, increase the subscription of such member on such terms and conditions as the Board may determine by a Super Majority vote as provided in Article 28; provided, however, that no such increase in the subscription of any member shall be authorized which would have the effect of reducing the percentage of capital stock held by regional members below seventy-five (75) per cent of the total subscribed capital stock, unless otherwise agreed by the Board of Governors by a Super Majority vote as provided in Article 28.
- 4. The Board of Governors shall at intervals of not more than five (5) years review the capital stock of the Bank. In case of an increase in the authorized capital stock, each member shall have a reasonable opportunity to subscribe, under such terms and conditions as the Board of Governors shall determine, to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total subscribed capital stock immediately prior to such increase. No member shall be obligated to subscribe to any part of an increase of capital stock.

Article 6 Payment of Subscriptions

- 1. Payment of the amount initially subscribed by each Signatory to this Agreement which becomes a member in accordance with Article 58 to the paid-in capital stock of the Bank shall be made in five (5) installments, of twenty (20) per cent each of such amount, except as provided in paragraph 5 of this Article. The first installment shall be paid by each member within thirty (30) days after entry into force of this Agreement, or on or before the date of deposit on its behalf of its instrument of ratification, acceptance or approval in accordance with paragraph 1 of Article 58, whichever is later. The second installment shall become due one (1) year from the entry into force of this Agreement. The remaining three (3) installments shall become due successively one (1) year from the date on which the preceding installment becomes due.
- 2. Each installment of the payment of initial subscriptions to the original paidin capital stock shall be paid in dollars or other convertible currency, except as provided in paragraph 5 of this Article. The Bank may at any time convert such payments into dollars. All rights, including voting rights, acquired in respect of paid-in and associated callable shares for which such payments are due but have not been received shall be suspended until full payment is received by the Bank.

- 3. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its liabilities. In the event of such a call, payment may be made at the option of the member in dollars or in the currency required to discharge the obligations of the Bank for the purpose of which the call is made. Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.
- 4. The Bank shall determine the place for any payment under this Article, provided that, until the inaugural meeting of the Board of Governors, the payment of the first installment referred to in paragraph 1 of this Article shall be made to the Government of the People's Republic of China, as Trustee for the Bank.
- 5. A member considered as a less developed country for purposes of this paragraph may pay its subscription under paragraphs 1 and 2 of this Article, as an alternative, either:
 - (a) entirely in dollars or other convertible currency in up to ten (10) installments, with each such installment equal to ten (10) percent of the total amount, the first and second installments due as provided in paragraph 1, and the third through tenth installments due on the second and subsequent anniversary dates of the entry into force of this Agreement; or
 - (b) with a portion in dollars or other convertible currency and a portion of up to fifty (50) per cent of each installment in the currency of the member, following the schedule of installments provided in paragraph 1 of this Article. The following provisions shall apply to payments under this sub-paragraph (b):
 - (i) The member shall advise the Bank at the time of subscription under paragraph 1 of this Article of the proportion of payments to be made in its own currency.
 - (ii) Each payment of a member in its own currency under this paragraph 5 shall be in such amount as the Bank determines to be equivalent to the full value in terms of dollars of the portion of the subscription being paid. The initial payment shall be in such amount as the member considers appropriate hereunder but shall be subject to such adjustment, to be effected within ninety (90) days of the date on which such payment was due, as the Bank shall determine to be necessary to constitute the full dollar equivalent of such payment.
 - (iii) Whenever in the opinion of the Bank, the foreign exchange value of a member's currency has depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an additional amount of its currency required to maintain

- the value of all such currency held by the Bank on account of its subscription.
- (iv) Whenever in the opinion of the Bank, the foreign exchange value of a member's currency has appreciated to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank on account of its subscription.
- (v) The Bank may waive its rights to payment under subparagraph (iii) and the member may waive its rights to payment under sub-paragraph (iv).
- 6. The Bank shall accept from any member paying its subscription under subparagraph 5 (b) of this Article promissory notes or other obligations issued by the Government of the member, or by the depository designated by such member, in lieu of the amount to be paid in the currency of the member, provided such amount is not required by the Bank for the conduct of its operations. Such notes or obligations shall be non-negotiable, non-interest-bearing, and payable to the Bank at par value upon demand.

Article 7 Terms of Shares

- 1. Shares of stock initially subscribed by members shall be issued at par. Other shares shall be issued at par unless the Board of Governors by a Special Majority vote as provided in Article 28 decides in special circumstances to issue them on other terms.
- 2. Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall be transferable only to the Bank.
- 3. The liability of the members on shares shall be limited to the unpaid portion of their issue price.
- 4. No member shall be liable, by reason of its membership, for obligations of the Bank.

Article 8 Ordinary Resources

As used in this Agreement, the term "ordinary resources" of the Bank shall include the following:

- (i) authorized capital stock of the Bank, including both paid-in and callable shares, subscribed pursuant to Article 5;
- (ii) funds raised by the Bank by virtue of powers conferred by paragraph 1 of Article 16, to which the commitment to calls provided for in paragraph 3 of Article 6 is applicable;

- (iii) funds received in repayment of loans or guarantees made with the resources indicated in sub-paragraphs (i) and (ii) of this Article or as returns on equity investments and other types of financing approved under sub-paragraph 2 (vi) of Article 11 made with such resources;
- (iv) income derived from loans made from the aforementioned funds or from guarantees to which the commitment to calls set forth in paragraph 3 of Article 6 is applicable; and
- (v) any other funds or income received by the Bank which do not form part of its Special Funds resources referred to in Article 17 of this Agreement.

CHAPTER III OPERATIONS OF THE BANK

Article 9 Use of Resources

The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth, respectively, in Articles 1 and 2, and in accordance with sound banking principles.

Article 10 Ordinary and Special Operations

- 1. The operations of the Bank shall consist of:
- (i) ordinary operations financed from the ordinary resources of the Bank, referred to in Article 8; and
- (ii) special operations financed from the Special Funds resources referred to in Article 17.

The two types of operations may separately finance elements of the same project or program.

- 2. The ordinary resources and the Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of entirely separately from each other. The financial statements of the Bank shall show the ordinary operations and special operations separately.
- 3. The ordinary resources of the Bank shall, under no circumstances, be charged with, or used to discharge, losses or liabilities arising out of special operations or other activities for which Special Funds resources were originally used or committed.
- 4. Expenses appertaining directly to ordinary operations shall be charged to the ordinary resources of the Bank. Expenses appertaining directly to special operations shall be charged to the Special Funds resources. Any other expenses shall be charged as the Bank shall determine.

Article 11 Recipients and Methods of Operation

- 1. (a) The Bank may provide or facilitate financing to any member, or any agency, instrumentality or political subdivision thereof, or any entity or enterprise operating in the territory of a member, as well as to international or regional agencies or entities concerned with economic development of the region.
- (b) The Bank may, in special circumstances, provide assistance to a recipient not listed in sub-paragraph (a) above only if the Board of Governors, by a Super Majority vote as provided in Article 28: (i) shall have determined that such assistance is designed to serve the purpose and come within the functions of the Bank and is in the interest of the Bank's membership; and (ii) shall have specified the types of assistance under paragraph 2 of this Article that may be provided to such recipient.
- 2. The Bank may carry out its operations in any of the following ways:
- (i) by making, co-financing or participating in direct loans;
- (ii) by investment of funds in the equity capital of an institution or enterprise;
- (iii) by guaranteeing, whether as primary or secondary obligor, in whole or in part, loans for economic development;
- (iv) by deploying Special Funds resources in accordance with the agreements determining their use;
- (v) by providing technical assistance in accordance with Article 15; or
- (vi) through other types of financing as may be determined by the Board of Governors, by a Special Majority vote as provided in Article 28.

Article 12 Limitations on Ordinary Operations

- 1. The total amount outstanding of loans, equity investments, guarantees and other types of financing provided by the Bank in its ordinary operations under sub-paragraphs 2 (i), (ii), (iii) and (vi) of Article 11 shall not at any time be increased, if by such increase the total amount of its unimpaired subscribed capital, reserves and retained earnings included in its ordinary resources would be exceeded. Notwithstanding the provisions of the preceding sentence, the Board of Governors may, by a Super Majority vote as provided in Article 28, determine at any time that, based on the Bank's financial position and financial standing, the limitation under this paragraph may be increased, up to 250% of the Bank's unimpaired subscribed capital, reserves and retained earnings included in its ordinary resources.
- 2. The amount of the Bank's disbursed equity investments shall not at any time exceed an amount corresponding to its total unimpaired paid-in subscribed capital and general reserves.

Article 13 Operating Principles

The operations of the Bank shall be conducted in accordance with the principles set out below.

- 1. The Bank shall be guided by sound banking principles in its operations.
- 2. The operations of the Bank shall provide principally for the financing of specific projects or specific investment programs, for equity investment, and for technical assistance in accordance with Article 15.
- 3. The Bank shall not finance any undertaking in the territory of a member if that member objects to such financing.
- 4. The Bank shall ensure that each of its operations complies with the Bank's operational and financial policies, including without limitation, policies addressing environmental and social impacts.
- 5. In considering an application for financing, the Bank shall pay due regard to the ability of the recipient to obtain financing or facilities elsewhere on terms and conditions that the Bank considers reasonable for the recipient, taking into account all pertinent factors.
- 6. In providing or guaranteeing financing, the Bank shall pay due regard to the prospects that the recipient and guarantor, if any, will be in a position to meet their obligations under the financing contract.
- 7. In providing or guaranteeing financing, the financial terms, such as rate of interest and other charges and the schedule for repayment of principal shall be such as are, in the opinion of the Bank, appropriate for the financing concerned and the risk to the Bank.
- 8. The Bank shall place no restriction upon the procurement of goods and services from any country from the proceeds of any financing undertaken in the ordinary or special operations of the Bank.
- 9. The Bank shall take the necessary measures to ensure that the proceeds of any financing provided, guaranteed or participated in by the Bank are used only for the purposes for which the financing was granted and with due attention to considerations of economy and efficiency.
- 10. The Bank shall pay due regard to the desirability of avoiding a disproportionate amount of its resources being used for the benefit of any member.
- 11. The Bank shall seek to maintain reasonable diversification in its investments in equity capital. In its equity investments, the Bank shall not assume responsibility for managing any entity or enterprise in which it has an investment and shall not seek a controlling interest in the entity or enterprise concerned, except where necessary to safeguard the investment of the Bank.

Article 14 Terms and Conditions for Financing

- 1. In the case of loans made or participated in or loans guaranteed by the Bank, the contract shall establish, in conformity with the operating principles set forth in Article 13 and subject to the other provisions of this Agreement, the terms and conditions for the loan or the guarantee concerned. In setting such terms and conditions, the Bank shall take fully into account the need to safeguard its income and financial position.
- 2. Where the recipient of loans or guarantees of loans is not itself a member, the Bank may, when it deems it advisable, require that the member in whose territory the project concerned is to be carried out, or a public agency or any instrumentality of that member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.
- 3. The amount of any equity investment shall not exceed such percentage of the equity capital of the entity or enterprise concerned as permitted under policies approved by the Board of Directors.
- 4. The Bank may provide financing in its operations in the currency of the country concerned, in accordance with policies that minimize currency risk.

Article 15 Technical Assistance

- 1. The Bank may provide technical advice and assistance and other similar forms of assistance which serve its purpose and come within its functions.
- 2. Where expenditures incurred in furnishing such services are not reimbursable, the Bank shall charge such expenditures to the income of the Bank.

CHAPTER IV

FINANCES OF THE BANK

Article 16 General Powers

In addition to the powers specified elsewhere in this Agreement, the Bank shall have the powers set out below.

- 1. The Bank may raise funds, through borrowing or other means, in member countries or elsewhere, in accordance with the relevant legal provisions.
- 2. The Bank may buy and sell securities the Bank has issued or guaranteed or in which it has invested.
- 3. The Bank may guarantee securities in which it has invested in order to facilitate their sale.

- 4. The Bank may underwrite, or participate in the underwriting of, securities issued by any entity or enterprise for purposes consistent with the purpose of the Bank.
- 5. The Bank may invest or deposit funds not needed in its operations.
- 6. The Bank shall ensure that every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government, unless it is in fact the obligation of a particular Government, in which case it shall so state.
- 7. The Bank may establish and administer funds held in trust for other parties, provided such trust funds are designed to serve the purpose and come within the functions of the Bank, under a trust fund framework which shall have been approved by the Board of Governors.
- 8. The Bank may establish subsidiary entities which are designed to serve the purpose and come within the functions of the Bank, only with the approval of the Board of Governors by a Special Majority vote as provided in Article 28.
- 9. The Bank may exercise such other powers and establish such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 17 Special Funds

- 1. The Bank may accept Special Funds which are designed to serve the purpose and come within the functions of the Bank; such Special Funds shall be resources of the Bank. The full cost of administering any Special Fund shall be charged to that Special Fund.
- 2. Special Funds accepted by the Bank may be used on terms and conditions consistent with the purpose and functions of the Bank and with the agreement relating to such Funds.
- 3. The Bank shall adopt such special rules and regulations as may be required for the establishment, administration and use of each Special Fund. Such rules and regulations shall be consistent with the provisions of this Agreement, except for those provisions expressly applicable only to ordinary operations of the Bank.
- 4. The term "Special Funds resources" shall refer to the resources of any Special Fund and shall include:
- (i) funds accepted by the Bank for inclusion in any Special Fund;
- (ii) funds received in respect of loans or guarantees, and the proceeds of any equity investments, financed from the resources of any Special Fund which, under the rules and regulations of the Bank governing that Special Fund, are received by such Special Fund;
- (iii) income derived from investment of Special Funds resources; and

(iv) any other resources placed at the disposal of any Special Fund.

Article 18 Allocation and Distribution of Net Income

- 1. The Board of Governors shall determine at least annually what part of the net income of the Bank shall be allocated, after making provision for reserves, to retained earnings or other purposes and what part, if any, shall be distributed to the members. Any such decision on the allocation of the Bank's net income to other purposes shall be taken by a Super Majority vote as provided in Article 28.
- 2. The distribution referred to in the preceding paragraph shall be made in proportion to the number of shares held by each member, and payments shall be made in such manner and in such currency as the Board of Governors shall determine.

Article 19 Currencies

- 1. Members shall not impose any restrictions on currencies, including the receipt, holding, use or transfer by the Bank or by any recipient from the Bank, for payments in any country.
- 2. Whenever it shall become necessary under this Agreement to value any currency in terms of another or determine whether any currency is convertible, such valuation or determination shall be made by the Bank.

Article 20 Methods of Meeting Liabilities of the Bank

- 1. In the Bank's ordinary operations, in cases of arrears or default on loans made, participated in, or guaranteed by the Bank, and in cases of losses on equity investment or other types of financing under sub-paragraph 2 (vi) of Article 11, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate provisions against possible losses.
- 2. Losses arising in the Bank's ordinary operations shall be charged:
- (i) first, to the provisions referred to in paragraph 1 above;
- (ii) second, to net income;
- (iii) third, against reserves and retained earnings;
- (iv) fourth, against unimpaired paid-in capital; and
- (v) last, against an appropriate amount of the uncalled subscribed callable capital which shall be called in accordance with the provisions of paragraph 3 of Article 6.

CHAPTER V GOVERNANCE

Article 21 Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents, and such other officers and staff as may be considered necessary.

Article 22 Board of Governors: Composition

- 1. Each member shall be represented on the Board of Governors and shall appoint one Governor and one Alternate Governor. Each Governor and Alternate Governor shall serve at the pleasure of the appointing member. No Alternate Governor may vote except in the absence of his principal.
- 2. At each of its annual meetings, the Board shall elect one of the Governors as Chairman who shall hold office until the election of the next Chairman.
- 3. Governors and Alternate Governors shall serve as such without remuneration from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings.

Article 23 Board of Governors: Powers

- 1. All the powers of the Bank shall be vested in the Board of Governors.
- 2. The Board of Governors may delegate to the Board of Directors any or all its powers, except the power to:
- (i) admit new members and determine the conditions of their admission;
- (ii) increase or decrease the authorized capital stock of the Bank;
- (iii) suspend a member;
- (iv) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
- (v) elect the Directors of the Bank and determine the expenses to be paid for Directors and Alternate Directors and remuneration, if any, pursuant to paragraph 6 of Article 25;
- (vi) elect the President, suspend or remove him from office, and determine his remuneration and other conditions of service;
- (vii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Bank;
- (viii) determine the reserves and the allocation and distribution of the net profits of the Bank;
- (ix) amend this Agreement;

- (x) decide to terminate the operations of the Bank and to distribute its assets;
- (xi) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.
- 3. The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Directors under paragraph 2 of this Article.

Article 24 Board of Governors: Procedure

- 1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board of Governors or called by the Board of Directors. Meetings of the Board of Governors shall be called by the Board of Directors whenever requested by five (5) members of the Bank.
- 2. A majority of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds of the total voting power of the members.
- 3. The Board of Governors shall by regulation establish procedures whereby the Board of Directors may obtain a vote of the Governors on a specific question without a meeting and provide for electronic meetings of the Board of Governors in special circumstances.
- 4. The Board of Governors, and the Board of Directors to the extent authorized, may establish such subsidiary entities, and adopt such rules and regulations, as may be necessary or appropriate to conduct the business of the Bank.

Article 25 Board of Directors: Composition

- 1. The Board of Directors shall be composed of twelve (12) members who shall not be members of the Board of Governors, and of whom:
- (i) nine (9) shall be elected by the Governors representing regional members; and
- (ii) three (3) shall be elected by the Governors representing non-regional members.

Directors shall be persons of high competence in economic and financial matters and shall be elected in accordance with Schedule B. Directors shall represent members whose Governors have elected them as well as members whose Governors assign their votes to them.

2. The Board of Governors shall, from time to time, review the size and composition of the Board of Directors, and may increase or decrease the size or revise the composition as appropriate, by a Super Majority vote as provided in Article 28.

- 3. Each Director shall appoint an Alternate Director with full power to act for him when he is not present. The Board of Governors shall adopt rules enabling a Director elected by more than a specified number of members to appoint an additional Alternate Director.
- 4. Directors and Alternate Directors shall be nationals of member countries. No two or more Directors may be of the same nationality nor may any two or more Alternate Directors be of the same nationality. Alternate Directors may participate in meetings of the Board but may vote only when the Alternate Director is acting in place of the Director.
- 5. Directors shall hold office for a term of two (2) years and may be reelected.
 - (a) Directors shall continue in office until their successors shall have been chosen and assumed office.
 - (b) If the office of a Director becomes vacant more than one hundred and eighty (180) days before the end of his term, a successor shall be chosen in accordance with Schedule B, for the remainder of the term, by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. The Governors who elected a Director may similarly choose a successor if the office of a Director becomes vacant one hundred and eighty (180) days or less before the end of his term.
 - (c) While the office of a Director remains vacant, an Alternate Director of the former Director shall exercise the powers of the latter, except that of appointing an Alternate Director.
- 6. Directors and Alternate Directors shall serve without remuneration from the Bank, unless the Board of Governors shall decide otherwise, but the Bank may pay them reasonable expenses incurred in attending meetings.

Article 26 Board of Directors: Powers

The Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

- (i) prepare the work of the Board of Governors;
- (ii) establish the policies of the Bank, and, by a majority representing not less than three-fourths of the total voting power of the members, take decisions on major operational and financial policies and on delegation of authority to the President under Bank policies;
- (iii) take decisions concerning operations of the Bank under paragraph 2 of Article 11, and, by a majority representing not less than three-fourths of

- the total voting power of the members, decide on the delegation of such authority to the President;
- (iv) supervise the management and the operation of the Bank on a regular basis, and establish an oversight mechanism for that purpose, in line with principles of transparency, openness, independence and accountability;
- (v) approve the strategy, annual plan and budget of the Bank;
- (vi) appoint such committees as deemed advisable; and
- (vii) submit the audited accounts for each financial year for approval of the Board of Governors.

Article 27 Board of Directors: Procedure

- 1. The Board of Directors shall meet as often as the business of the Bank may require, periodically throughout the year. The Board of Directors shall function on a non-resident basis except as otherwise decided by the Board of Governors by a Super Majority vote as provided in Article 28. Meetings may be called by the Chairman or whenever requested by three (3) Directors.
- 2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two-thirds of the total voting power of the members.
- 3. The Board of Governors shall adopt regulations under which, if there is no Director of its nationality, a member may send a representative to attend, without right to vote, any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.
- 4. The Board of Directors shall establish procedures whereby the Board can hold an electronic meeting or vote on a matter without holding a meeting.

Article 28 Voting

- 1. The total voting power of each member shall consist of the sum of its basic votes, share votes and, in the case of a Founding Member, its Founding Member votes.
- (i) The basic votes of each member shall be the number of votes that results from the equal distribution among all the members of twelve (12) per cent of the aggregate sum of the basic votes, share votes and Founding Member votes of all the members.
- (ii) The number of the share votes of each member shall be equal to the number of shares of the capital stock of the Bank held by that member.
- (iii) Each Founding Member shall be allocated six hundred (600) Founding Member votes.

In the event a member fails to pay any part of the amount due in respect of its obligations in relation to paid-in shares under Article 6, the number of share votes to be exercised by the member shall, as long as such failure continues, be reduced proportionately, by the percentage which the amount due and unpaid represents of the total par value of paid-in shares subscribed to by that member.

- 2. In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he represents.
- (i) Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the votes cast.
- (ii) A Super Majority vote of the Board of Governors shall require an affirmative vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.
- (iii) A Special Majority vote of the Board of Governors shall require an affirmative vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members.
- 3. In voting in the Board of Directors, each Director shall be entitled to cast the number of votes to which the Governors who elected him are entitled and those to which any Governors who have assigned their votes to him, pursuant to Schedule B, are entitled.
- (i) A Director entitled to cast the votes of more than one member may cast the votes for those members separately.
- (ii) Except as otherwise expressly provided in this Agreement, all matters before the Board of Directors shall be decided by a majority of the votes cast.

Article 29 The President

- 1. The Board of Governors, through an open, transparent and merit-based process, shall elect a president of the Bank by a Super Majority vote as provided in Article 28. He shall be a national of a regional member country. The President, while holding office, shall not be a Governor or a Director or an Alternate for either.
- 2. The term of office of the President shall be five (5) years. He may be reelected once. The President may be suspended or removed from office when the Board of Governors so decides by a Super Majority vote as provided in Article 28.
 - (a) If the office of the President for any reason becomes vacant during his term, the Board of Governors shall appoint an Acting President

for a temporary period or elect a new President, in accordance with paragraph 1 of this Article.

- 3. The President shall be Chairman of the Board of Directors but shall have no vote, except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote.
- 4. The President shall be the legal representative of the Bank. He shall be chief of the staff of the Bank and shall conduct, under the direction of the Board of Directors, the current business of the Bank.

Article 30 Officers and Staff of the Bank

- 1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President, on the basis of an open, transparent and merit-based process. A Vice-President shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, a Vice-President shall exercise the authority and perform the functions of the President.
- 2. The President shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations adopted by the Board of Directors, with the exception of Vice-Presidents to the extent provided in paragraph 1 above.
- 3. In appointing officers and staff and recommending Vice-Presidents, the President shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, pay due regard to the recruitment of personnel on as wide a regional geographical basis as possible.

Article 31 The International Character of the Bank

- 1. The Bank shall not accept Special Funds, loans or assistance that may in any way prejudice, limit, deflect or otherwise alter its purpose or functions.
- 2. The Bank, its President, officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.
- 3. The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

CHAPTER VI

GENERAL PROVISIONS

Article 32 Offices of the Bank

- 1. The principal office of the Bank shall be located in Beijing, People's Republic of China.
- 2. The Bank may establish agencies or offices elsewhere.

Article 33 Channel of Communication; Depositories

- 1. Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement.
- 2. Each member shall 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.
- 3. The Bank may hold its assets with such depositories as the Board of Directors shall determine.

Article 34 Reports and Information

- 1. The working language of the Bank shall be English, and the Bank shall rely on the English text of this Agreement for all decisions and for interpretations under Article 54.
- 2. Members shall furnish the Bank with such information it may reasonably request of them in order to facilitate the performance of its functions.
- 3. The Bank shall transmit to its members an annual report containing an audited statement of its accounts and shall publish such report. It shall also transmit quarterly to its members a summary statement of its financial position and a profit and loss statement showing the results of its operations.
- 4. The Bank shall establish a policy on the disclosure of information in order to promote transparency in its operations. The Bank may publish such reports as it deems desirable in the carrying out of its purpose and functions.

Article 35 Cooperation with Members and International Organizations

- 1. The Bank shall work in close cooperation with all its members, and, in such manner as it may deem appropriate within the terms of this Agreement, with other international financial institutions, and international organizations concerned with the economic development of the region or the Bank's operational areas.
- 2. The Bank may enter into arrangements with such organizations for purposes consistent with this Agreement, with the approval of the Board of Directors.

Article 36 References

- 1. References in this Agreement to Article or Schedule refer to Articles and Schedules of this Agreement, unless otherwise specified.
- 2. References in this Agreement to a specific gender shall be equally applicable to any gender.

CHAPTER VII

WITHDRAWAL AND SUSPENSION OF MEMBERS

Article 37 Withdrawal of Membership

- 1. Any member may withdraw from the Bank at any time by delivering a notice in writing to the Bank at its principal office.
- 2. 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. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.
- 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.

Article 38 Suspension of Membership

- 1. If a member fails to fulfill any of its obligations to the Bank, the Board of Governors may suspend such member by a Super Majority vote as provided in Article 28.
- 2. The member so suspended shall automatically cease to be a member one (1) year from the date of its suspension, unless the Board of Governors decides by a Super Majority vote as provided in Article 28 to restore the member to good standing.
- 3. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Article 39 Settlement of Accounts

1. After the date on which a country ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans, guarantees, equity investments or other forms of financing under paragraph 2 (vi) of Article 11 (hereinafter, other financing) contracted before it ceased to be a member is outstanding, but it shall not incur liabilities with respect to loans, guarantees, equity investments or other

financing entered into thereafter by the Bank nor share either in the income or the expenses of the Bank.

- 2. At the time a country ceases to be a member, the Bank shall arrange for the repurchase of such country's shares by the Bank as a part of the settlement of accounts with such country in accordance with the provisions of paragraphs 3 and 4 of this Article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the date the country ceases to be a member.
- 3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:
- (i) Any amount due to the country concerned for its shares shall be withheld so long as that country, its central bank or any of its agencies, instrumentalities or political subdivisions remains liable, as borrower, guarantor or other contracting party with respect to equity investment or other financing, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the contingent liability of the country for future calls on its subscription for shares in accordance with paragraph 3 of Article 6. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date on which the country ceases to be a member.
- (ii) Payments for shares may be made from time to time, upon surrender of the corresponding stock certificates by the country concerned, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities, on loans, guarantees, equity investments and other financing referred to in subparagraph (i) of this paragraph, until the former member has received the full repurchase price.
- (iii) Payments shall be made in such available currencies as the Bank determines, taking into account its financial position.
- (iv) If losses are sustained by the Bank on any loans, guarantees, equity investments or other financing which were outstanding on the date when a country ceased to be a member and the amount of such losses exceeds the amount of the reserve provided against losses on that date, the country concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 3 of Article 6, to the same extent that it would have been required to respond if the impairment of capital had occurred

and the call had been made at the time the repurchase price of its shares was determined.

4. If the Bank terminates its operations pursuant to Article 41 within six (6) months of the date upon which any country ceases to be a member, all rights of the country concerned shall be determined in accordance with the provisions of Articles 41 to 43. Such country shall be considered as still a member for purposes of such Articles but shall have no voting rights.

CHAPTER VIII

SUSPENSION AND TERMINATION OF OPERATIONS OF THE BANK

Article 40 Temporary Suspension of Operations

In an emergency, the Board of Directors may temporarily suspend operations in respect of new loans, guarantees, equity investment and other forms of financing under sub-paragraph 2 (vi) of Article 11, pending an opportunity for further consideration and action by the Board of Governors.

Article 41 Termination of Operations

- 1. The Bank may terminate its operations by a resolution of the Board of Governors approved by a Super Majority vote as provided in Article 28.
- 2. After such termination, the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 42 Liability of Members and Payments of Claims

- 1. In the event of termination of the operation of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
- 2. All creditors holding direct claims shall first be paid out of the assets of the Bank and then out of payments to the Bank or unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims.

Article 43 Distribution of Assets

- 1. No distribution of assets shall be made to members on account of their subscriptions to the capital stock of the Bank until:
- (i) all liabilities to creditors have been discharged or provided for; and
- (ii) the Board of Governors has decided, by a Super Majority vote as provided in Article 28, to make such distribution.

- 2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of asset. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.
- 3. Any member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

CHAPTER IX

STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44 Purposes of Chapter

- 1. To enable the Bank to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member.
- 2. Each member shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken.

Article 45 Status of the Bank

The Bank shall possess full juridical personality and, in particular, the full legal capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
- (iii) to institute and respond to legal proceedings; and
- (iv) to take such other action as may be necessary or useful for its purpose and activities.

Article 46 Immunity from Judicial Proceedings

- 1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
- 2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly

acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in the contracts entered into with the Bank.

3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 47 Immunity of Assets and Archives

- 1. Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
- 2. The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wheresoever located and by whomsoever held.

Article 48 Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 49 Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of any other member.

Article 50 Immunities and Privileges of Officers and Employees

All Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank, including experts and consultants performing missions or services for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity and shall enjoy inviolability of all their official papers, documents and records;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

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.

Article 52 Waivers

1. The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

CHAPTER X

AMENDMENT, INTERPRETATION AND ARBITRATION

Article 53 Amendments

1. This Agreement may be amended only by a resolution of the Board of Governors approved by a Super Majority vote as provided in Article 28.

- 2. Notwithstanding the provisions of paragraph 1 of this Article, the unanimous agreement of the Board of Governors shall be required for the approval of any amendment modifying:
- (i) the right to withdraw from the Bank;
- (ii) the limitations on liability provided in paragraphs 3 and 4 of Article 7; and
- (iii) the rights pertaining to purchase of capital stock provided in paragraph 4 of Article 5.
- 3. Any proposal to amend this Agreement, whether emanating from a member or the Board of Directors, shall be communicated to the Chairman of the Board of Governors, who shall bring the proposal before the Board of Governors. When an amendment has been adopted, the Bank shall so certify in an official communication addressed to all members. Amendments shall enter into force for all members three (3) months after the date of the official communication unless the Board of Governors specifies therein a different period.

Article 54 Interpretation

- 1. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Bank, or between two or more members of the Bank, shall be submitted to the Board of Directors for decision. If there is no Director of its nationality on that Board, a member particularly affected by the question under consideration shall be entitled to direct representation in the Board of Directors during such consideration; the representative of such member shall, however, have no vote. Such right of representation shall be regulated by the Board of Governors.
- 2. In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

Article 55 Arbitration

If a disagreement should arise between the Bank and a country which has ceased to be a member, or between the Bank and any member after adoption of a resolution to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the country concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as may have been prescribed by regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

Article 56 Approval Deemed Given

Whenever the approval of any member is required before any act may be done by the Bank except under paragraph 2 of Article 53, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

CHAPTER XI

FINAL PROVISIONS

Article 57 Signature and Deposit

- 1. This Agreement, deposited with the Government of the People's Republic of China (hereinafter called the "Depository"), shall remain open until December 31, 2015 for signature by the Governments of countries whose names are set forth in Schedule A.
- 2. The Depository shall send certified copies of this Agreement to all the Signatories and other countries which become members of the Bank.

Article 58 Ratification, Acceptance or Approval

- 1. This Agreement shall be subject to ratification, acceptance or approval by the Signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depository not later than December 31, 2016, or if necessary, until such later date as may be decided by the Board of Governors by a Special Majority vote as provided in Article 28. The Depository shall duly notify the other Signatories of each deposit and the date thereof.
- 2. A Signatory whose instrument of ratification, acceptance or approval is deposited before the date on which this Agreement enters into force, shall become a member of the Bank, on that date. Any other Signatory which complies with the provisions of the preceding paragraph, shall become a member of the Bank on the date on which its instrument of ratification, acceptance or approval is deposited.

Article 59 Entry into Force

This Agreement shall enter into force when 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 this Agreement, in the aggregate comprise not less than fifty (50) per cent of total of such subscriptions.

Article 60 Inaugural Meeting and Commencement of Operations

1. As soon as this Agreement enters into force, each member shall appoint a Governor, and the Depository shall call the inaugural meeting of the Board of Governors.

- 2. At its inaugural meeting, the Board of Governors:
- (i) shall elect the President;
- (ii) shall elect the Directors of the Bank in accordance with paragraph 1 of Article 25, provided that the Board of Governors may decide to elect fewer Directors for an initial period shorter than two years in consideration of the number of members and Signatories which have not yet become members;
- (iii) shall make arrangements for the determination of the date on which the Bank shall commence its operations; and
- (iv) shall make such other arrangements as necessary to prepare for the commencement of the Bank's operations.
- 3. The Bank shall notify its members of the date of the commencement of its operations.

DONE at Beijing, People's Republic of China on June 29, 2015, in a single original deposited in the archives of the Depository, whose English, Chinese and French texts are equally authentic.

SCHEDULE A

Initial Subscriptions to the Authorized Capital Stock for Countries Which May Become Members in accordance with Article 58

N	umber of Shares	Capital Subscription (in million \$)
PART A. REGIONAL MEMBERS		
Australia	36,912	3,691.2
Azerbaijan	2,541	254.1
Bangladesh	6,605	660.5
Brunei Darussalam	524	52.4
Cambodia	623	62.3
China	297,804	29,780.4
Georgia	539	53.9
India	83,673	8,367.3
Indonesia	33,607	3,360.7
Iran	15,808	1,580.8
Israel	7,499	749.9
Jordan	1,192	119.2
Kazakhstan	7,293	729.3
Korea	37,388	3,738.8
Kuwait	5,360	536.0
Kyrgyz Republic	268	26.8
Lao People's Democratic Republ	ic 430	43.0
Malaysia	1,095	109.5
Maldives	72	7.2
Mongolia	411	41.1
Myanmar	2,645	264.5
Nepal	809	80.9
New Zealand	4,615	461.5
Oman	2,592	259.2
Pakistan	10,341	1,034.1

Philippines	9,791	979.1
Qatar	6,044	604.4
Russia	65,362	6,536.2
Saudi Arabia	25,446	2,544.6
Singapore	2,500	250.0
Sri Lanka	2,690	269.0
Tajikistan	309	30.9
Thailand	14,275	1,427.5
Turkey	26,099	2,609.9
United Arab Emirates	11,857	1,185.7
Uzbekistan	2,198	219.8
Vietnam	6,633	663.3
Unallocated	16,150	1,615.0
TOTAL	750,000	75,000.0
PART B. NON-REGIONAL MEMBE	RS	
Austria	5,008	500.8
Brazil	31,810	3,181.0
Denmark	3,695	369.5
Egypt	6,505	650.5
Finland	3,103	310.3
France	33,756	3,375.6
Germany	44,842	4,484.2
Iceland	176	17.6
Italy	25,718	2,571.8
Luxembourg	697	69.7
Malta	136	13.6
Netherlands	10,313	1,031.3
Norway	5,506	550.6
Poland	8,318	831.8
Portugal	650	65.0
South Africa	5,905	590.5

Spain	17,615	1,761.5
Sweden	6,300	630.0
Switzerland	7,064	706.4
United Kingdom	30,547	3,054.7
Unallocated	2,336	233.6
TOTAL	250,000	25,000.0
GRAND TOTAL	1,000,000	100,000.0

SCHEDULE B

ELECTION OF DIRECTORS

The Board of Governors shall prescribe rules for the conduct of each election of Directors, in accordance with the following provisions.

- 1. <u>Constituencies</u>. Each Director shall represent one or more members in a constituency. The total aggregate voting power of each constituency shall consist of the votes which the Director is entitled to cast under paragraph 3 of Article 28.
- 2. <u>Constituency Voting Power</u>. For each election, the Board of Governors shall establish a Minimum Percentage for constituency voting power for Directors to be elected by Governors representing regional members (Regional Directors) and a Minimum Percentage for constituency voting power for Directors to be elected by Governors representing non-regional members (Non-Regional Directors).
 - (a) The Minimum Percentage for Regional Directors shall be set as a percentage of the total votes eligible to be cast in the election by the Governors representing regional members (Regional Governors). The initial Minimum Percentage for Regional Directors shall be 6%.
 - (b) The Minimum Percentage for Non-Regional Directors shall be set as a percentage of the total votes eligible to be cast in the election by the Governors representing non-regional members (Non-Regional Governors). The initial Minimum Percentage for Non-Regional Directors shall be 15%.
- 3. <u>Adjustment Percentage</u>. In order to adjust voting power across constituencies when subsequent rounds of balloting are required under paragraph 7 below, the Board of Governors shall establish, for each election, an Adjustment Percentage for Regional Directors and an Adjustment Percentage for Non-Regional Directors. Each Adjustment Percentage shall be higher than the corresponding Minimum Percentage.
 - (a) The Adjustment Percentage for Regional Directors shall be set as a percentage of the total votes eligible to be cast in the election by the Regional Governors. The initial Adjustment Percentage for Regional Directors shall be 15%.
 - (b) The Adjustment Percentage for Non-Regional Directors shall be set as a percentage of the total votes eligible to be cast in the election by the Non-Regional Governors. The initial Adjustment Percentage for Non-Regional Directors shall be 60%.
- 4. <u>Number of Candidates</u>. For each election, the Board of Governors shall establish the number of Regional Directors and Non-Regional Directors to be

elected, in light of its decisions on the size and composition of the Board of Directors pursuant to paragraph 2 of Article 25.

- (a) The initial number of Regional Directors shall be nine.
- (b) The initial number of Non-Regional Directors shall be three.
- 5. <u>Nominations</u>. Each Governor may only nominate one person. Candidates for the office of Regional Director shall be nominated by Regional Governors. Candidates for the office of Non-Regional Director shall be nominated by Non-Regional Governors.
- 6. <u>Voting</u>. Each Governor may vote for one candidate, casting all of the votes to which the member appointing him is entitled under paragraph 1 of Article 28. The election of Regional Directors shall be by ballot of Regional Governors. The election of Non-Regional Directors shall be by ballot of Non-Regional Governors.
- 7. <u>First Ballot</u>. On the first ballot, candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected as Directors, provided that, to be elected, a candidate shall have received a sufficient number of votes to reach the applicable Minimum Percentage.
 - (a) If the required number of Directors is not elected on the first ballot, and the number of candidates was the same as the number of Directors to be elected, the Board of Governors shall determine the subsequent actions to complete the election of Regional Directors or the election of Non-Regional Directors, as the case may be.
- 8. <u>Subsequent Ballots</u>. If the required number of Directors is not elected on the first ballot, and there were more candidates than the number of Directors to be elected on the ballot, there shall be subsequent ballots, as necessary. For subsequent ballots:
 - (a) The candidate receiving the lowest number of votes in the preceding ballot shall not be a candidate in the next ballot.
 - (b) Votes shall be cast only by: (i) Governors who voted in the preceding ballot for a candidate who was not elected; and (ii) Governors whose votes for a candidate who was elected are deemed to have raised the votes for that candidate above the applicable Adjustment Percentage under (c) below.
 - (c) The votes of all the Governors who cast votes for each candidate shall be added in descending order of number, until the number of votes representing the applicable Adjustment Percentage has been exceeded. Governors whose votes were counted in that calculation shall be deemed to have cast all their votes for that Director, including the Governor whose votes brought the total over the

- Adjustment Percentage. The remaining Governors whose votes were not counted in that calculation shall be deemed to have raised the candidate's total votes above the Adjustment Percentage, and the votes of those Governors shall not count towards the election of that candidate. These remaining Governors may vote in the next ballot.
- (d) If in any subsequent ballot, only one Director remains to be elected, the Director may be elected by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the last Director.
- 9. <u>Assignment of Votes</u>. Any Governor who does not participate in voting for the election or whose votes do not contribute to the election of a Director may assign the votes to which he is entitled to an elected Director, provided that such Governor shall first have obtained the agreement of all those Governors who have elected that Director to such assignment.
- 10. <u>Founding Member Privileges</u>. The nomination and voting by Governors for Directors and the appointment of Alternate Directors by Directors shall respect the principle that each Founding Member shall have the privilege to designate the Director or an Alternate Director in its constituency permanently or on a rotating basis.



ASIAN INFRASTRUTURE INVESTMENT BANK ARTICLES OF AGREEMENT

WRITTEN ANALYSIS

1.0 INTRODUCTION

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- 1.1 The final text of the Articles of Agreement ('Agreement') of the Asian Infrastructure Investment Bank ('Bank') was adopted on 22 May 2015. On 25 December 2015, the Agreement entered into force. The Agreement is a treaty level document establishing the framework that will guide the governance, finances and operations of the Bank and forms the legal basis for the Bank. The Bank currently has 52 member States, the full list of the Bank member States is attached as Annex A. Fiji has recently been granted prospective membership.
- 1.2 The Bank is a multilateral investment bank established to address the gap in infrastructure investment across the Asian region. The purpose of the 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. It is similar to other financing development institutions such as the International Monetary Fund ('IMF'), the World Bank Group ('World Bank') and Asian Development Bank ('ADB').

2.0 **SUMMARY OF AGREEMENT**

- 2.1 The Agreement consists of 60 articles which are divided into 11 Chapters. Chapter I contains articles 1 to 3 setting out the purpose, functions and membership details of the Bank.
- 2.2 Chapter II is made up of articles 4 to 8 specifying the details of capital, subscription of shares, payment of subscriptions, terms of shares, and ordinary resources. According to Chapter II, the authorised capital stock of the Bank is US\$100 billion.
- 2.3 Chapter III deals with the operations of the Bank and consists of articles 9 to 15. According to Chapter III, the resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth in the Agreement.

- 2.4 Chapter IV of the Agreement sets out the general powers of the Bank, special funds, allocation and distribution of net income, currencies and methods of meeting liabilities of the Bank. Chapter IV consists of articles 16 to 20.
- 2.5 Chapter V deals with governance of the Bank and contains articles 21 to 31. This Chapter sets out the following:
 - (i) structure of the Bank, composition, powers and procedure of board of governors;
 - (ii) composition, powers and procedure, of board of directors;
 - (iii) voting power of each member;
 - (iv) election of the president;
 - (v) appointment of officers and staff of the Bank; and
 - (vi) the international character of the Bank.
- 2.6 The key elements of the Bank's governance structure are the Board of Governors, the Board of Directors, the President and the Vice Presidents. All powers of the Bank are vested in the Board of Governors. Article 22(1) enables member countries to appoint one Governor and one Alternate Governor to represent the country at the Board of Governors.
- 2.7 Chapter VI encompasses articles 32 to 36 and outlines the general provisions of the Bank pertaining to channel of communications, reports and information. Under this Chapter, the Bank shall transmit to its members an annual report containing an audited statement of accounts and shall publish such report. It also provides that the principal office of the Bank shall be located in Beijing, People's Republic of China ('PRC').
- 2.8 Chapter VII includes articles 37 to 39 and deals with withdrawal and suspension of members as well as settlement of accounts. Under this Chapter, a member may withdraw from the Bank at any time by delivering a notice to the Bank at its principal office. Suspension of membership may occur if a member fails to fulfil any of its obligations to the Bank.
- 2.9 Chapter VIII contains articles 40 to 43 and deals with the suspension and termination of operations of the Bank. Under this Chapter, the Bank may terminate its operations by a resolution of the Board of Governors approved by a Super Majority vote (an affirmative vote of two-thirds of the total number of

Governors, representing not less than three-fourths of the total voting power of the members).

- 2.10 Chapter IX contains articles 44 to 56 and relates to status, immunities, privileges and exemptions of the Bank. All members are required to extend specific status, immunities, privileges and exemptions to the Bank to enable it to fulfil its purpose and carry out its functions.
- 2.11 Chapter XI comprises of articles 57 to 60 and sets out the provisions for ratification, acceptance or approval of the Agreement.

3.0 REQUIREMENTS FOR IMPLEMENTATION

- 3.1 According to article 58, the Agreement will enter into force with respect to Fiji on the date on which Fiji lodges its instrument of acceptance with the depositary (PRC) certifying that Fiji has undertaken all domestic legislative processes required to give effect to the Agreement and therefore, becoming a member of the Bank.
- 3.2 Fiji is required to convey to the Bank the following documents:
 - (vii) Instrument of acceptance;
 - (viii) Letter of appointment of Governor and Alternate Governor;
 - (ix) Letter of Support signed by the appointed Governor for the fulfilment of Articles 44.2 obligations;
 - (x) Letter signed by a duly authorised person designating the Depository;
 - (xi) Letter signed by a duly authorised person designating the formal channel of communication;
 - (xii) Letter signed by the Governor/Alternate Governor assigning votes to a Director; and
 - (xiii) Evidence of payment of the first instalment for paid-in shares subscribed.

4.0 CONDITIONS OF MEMBERSHIP

Capital subscription

4.1 As a member of the Bank, Fiji is required to make a capital contribution to the Bank as payment for its shareholding. Fiji shall subscribe up to US\$12,500,000

- (FJ\$26,360,186) of shares in the Bank of which US\$2,500,000 (FJ\$5,272,037) shall be paid-in capital and US\$10,000,000 (FJ\$21,088,148) shall be callable.
- 4.2 Payment of paid-in capital shares shall be made in five (5) instalments of US\$500,000 (FJ\$1,054,407) each. The first instalment shall be paid on or before the date of deposit on Fiji's behalf of its instrument of acceptance of the Agreement and subsequent instalments annually on or before each anniversary.

5.0 **RESERVATIONS**

- 5.1 Reservations expressed by State parties to a treaty or convention may be exercised to exclude or to modify the legal effect of certain provisions of the treaty or convention in its application to that State part. There is no specific provision for reservations to the Articles of Agreement; however, Article 51(2) provides that a member may deposit with its instrument of ratification, acceptance or approval, a reservation (described as a 'declaration') to retain the right to tax salaries, emoluments and expense of Fijian citizens and nationals paid by the Bank.
- 5.2 Countries such as Australia and New Zealand have made reservations to the Articles of Agreement pursuant to Article 51(2). Similarly, it is recommended that the Fijian Government also make a reservation under Article 51(2) to retain the right to tax salaries, emoluments and expense of Fijian citizens and nationals paid by the Bank in accordance with Fijian law.

6.0 IMPACT OF THE AGREEMENT ON FIJI

- 6.1 Accession to the Agreement will provide the following benefits to Fiji:
 - (i) it will offer a new multilateral development financing platform committed to development in Asia;
 - (ii) the current stance and medium term outlook is that the Fijian Government will require financing sources to undertake development projects such as construction of roads, jetties and bridges in Fiji and joining the Bank will allow an additional financing source for Fiji;

- (iii) in providing finance to members, only economic considerations are relevant to the Bank's decisions, the Bank is not influenced by the political character of any member;
- (iv) it reinforces our constructive and positive relationship with PRC;
- (v) it will enable Fiji to negotiate better terms for loans with existing multilateral donors such as ADB and World Bank as the Bank will provide competition for these multilaterals; and
- (vi) the Bank will also provide technical assistance and will work with its members to enhance services within the region. The Bank will recruit qualified personnel globally and the criteria for recruitment will be based on technical competence and experience in related sectors.
- 6.2 The above will give enormous support to our infrastructure development needs in the medium to long term.
- 6.3 Obligations under the Agreement include:

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- (i) providing an agreed share of capital to the Bank, both paid-in and callable shares:
- (ii) not imposing capital constraints on the Bank's transactions;
- (iii) appointing a Governor and Alternate Governor;
- (iv) accepting decisions made in votes at the Bank, with vote share determined primarily by the size of a member's subscription;
- (v) providing information to facilitate the Bank's operations;
- accepting a decision to suspend our membership if we fail to fulfil our obligations;
- (vii) liability for decisions made by the Bank, limited to the size of our shareholding;
- (viii) liability if the Bank's operations are terminated, limited to the size of our shareholding;
- (ix) the extension of privileges, status and similar to those accorded existing international financial institutions.
- 6.4 In order to implement our obligations under the Agreement, specific domestic legislation needs to be enacted. This will enable Fiji to become a member of the

Bank, as well as to give effect to obligations regarding taxation and immunity and privileges accorded to the Bank and its employees.

7.0 RECOMMENDATION

7.1 It is recommended that Fiji sign the Instrument of Acceptance to the Articles of Agreement of the Asian Infrastructure Investment Bank with reservation under Article 51(2).

APPENDIX 1

POWERPOINT PRESENTATION



your partner in progress

Review of Article of Agreement Asian Infrastructure Investment Bank

Brief Overview

- Asian Infrastructure Investment Bank (AIIB) is a multilateral financial Institution, adoption of AOA in May 2015.
 - FDB access MFIs for technical services
- Assist to stimulate growth and improve access to basic services.
- FDB mandate is to stimulate economic growth for the country

Brief Overview cont'd

- AOA provides framework that guides governance, finances and operations of AIIB
- Provides the opportunity to align to the standards.
- AIIB has 52 member states and 25 prospective members, including Samoa.
- The AOA permits the AIIB to provide financing to its members.

for Fiji's Sustainable Development Impact on Sources of Fund

- Increase in Fiji's Funding Base
- Greater opportunity to fund projects jointly with other development institutions
- Address Cost of Funds

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Positive and Negative Aspects of the **AOA** for Fiji

• Positive

- Opportunity to contribute to policy decisions
- Contribute to Economic Growth
- Capital Market developments
- Easy access to Funds
- Assist other PCI's (Regionalism)

Positive and Negative Aspects of the AOA for Fiji cont'd

- Negative
- Increase in Foreign Debt of the Country
- Low cost of capital can influence the domestic market rate
- Negative impact of the local funders (FNPF, Insurance companies, Banks)

Over supply vs low Demand

Reservation under Article 51(2)

- Australia and New Zealand have made reservations to the AOA
- FDB also supports the reservations as this forms as a source of income for the government.

Impact of AOA in Fiji's Ability to source climate Financing

Depends on the Objective of AIIB and COP 23

• Are they in agreement?

Building Climate Resilience Infrastructure.

Additional Points

- Analysis of Country Development Plan
- Analysis on Cost of Fund and Fund Accessibility level.
- FDB be the conduit for Infrastructure Financing (PPP).

Thank you



Presentation to the Parliament Standing Committee on Foreign Affairs and Defence

INVESTMENT BANK ('AIIB') ARTICLES OF AGREEMENT ASIAN INFRASTRUCTURE

Joint Submission by the Ministry of Economy- Climate Change Unit/COP 23 Office, Ministry of Foreign Affairs and the Office of the Solicitor-General 14 June 2017



1. OVERVIEW OF AIIB

- AIIB is a multilateral investment bank established in 2015 to address the gap in infrastructure investment across the Asian region and member countries.
- It provides finance for projects in energy and power, transportation and water supply and sanitation, environmental protection, urban telecommunications, rural infrastructure and agriculture development, development and logistics.
- It is similar to other financing development institutions such as the World Bank Group ('World Bank') and the Asian Development Bank ('ADB')
- Currently, there are 57 countries that have ratified, accepted or approved the AIIB Articles of Agreement.



AIIB ARTICLES OF AGREEMENT

- On 23 March 2017, the Board of Governors of AIIB approved Fiji's application to join the AIIB.
- Fiji is now a prospective member and will officially join AIIB once Fiji has accepted the AIIB Articles of Agreement.
- provides the purpose and main powers of AIIB, voting rights of The AIIB Articles of Agreement is a founding document that members, and guides the general operations of AIIB.



MEMBERSHIP REOUIREMENTS

Fiji is required to:

accept the Articles of Agreement and terms and conditions of membership of the AIIB; take necessary steps to make effective in Fiji the provisions of Chapter IX of the Articles of Agreement of the AIIB;

join a constituency in the AIIB and assign votes to an elected Director; and

iv. designate a Governor and Alternate Governor.

will be issued by the AIIB and Fiji will officially become a member of After all conditions have been satisfied, a Certificate of Membership



CONDITIONS OF MEMBERSHIP

- To become a member of AIIB, Fiji is required to make a capital contribution to the AIIB as payment for its shareholding.
- Fiji has to subscribe US\$12,500,000 (FJ\$26,360,186) of shares in AIIB of which US\$2,500,000 (FJ\$5,272,037) shall be paid-in capital and US\$10,000,000 (FJ\$21,088,148) shall be callable.
- paid on or before the date of deposit of Fiji's instrument of Payment of paid-in capital shares shall be made in five instalments of US\$500,000 (FJ\$1,054,407) each. The first instalment shall be acceptance of the Articles of Agreement and subsequent instalments annually on or before each anniversary.



JOINING A CONSTITUENCY

- Fiji is required to join a constituency in the AIIB. The Republic of Korea ('Korea') has invited Fiji to join its constituency which comprises of Korea, Israel, Mongolia and Uzbekistan.
- Korea is the fifth largest shareholder in the AIIB and in its proposal has stated that it will give its full support to Fiji on any assistance required from AIIB. Korea has also maintained a close relationship with AIIB which is shown through Korea hosting the AIIB Annual Meeting of the Board of Governors in June this year. (June 16-18 2017).
- economic cooperation between the two countries. Fiji and Korea have • Fiji joining the Korea constituency will also strengthen the bilateral been expanding the scope of economic cooperation through signing Memoranda of Understandings in areas including health, national defence and port development.



LENDINGS APPROVED BY AIIB

Date of Approval	Country	Project	Amount (SUS million)
24 June 2016	Tajikistan	Dushanbe-Uzbekistan Border Road Improvement Project	27.5
24 June 2016	Bangladesh	Distribution System Upgrade and Expansion Project	165
24 June 2016	Pakistan	National Motorway M-4 (Shorkot-Khanewal Section) Project	100
24 June 2016	Indonesia	National Slum Upgrading Project	216.5
27 September 2016	Pakistan	Tarbela 5 Hydropower Extension Project	300
27 September 2016	Myanmar	Myingyan Power Plant Project	20
8 December 2016	Oman	Railway System Preparation Project	36
8 December 2016	Oman	Duqm Port Commercial Terminal and Operational Zone Development Project	265
21 December 2016	Azerbaijan	Trans Anatolian Natural Gas Pipeline Project	009
22 March 2017	Indonesia	Regional Infrastructure Development Fund Project	100
22 March 2017	Indonesia	Dam Operational Improvement and Safety Project Phase II	125
22 March 2017	Bangladesh	Natural Gas Infrastructure and Efficiency Improvement Project	09
2 May 2017	India	Andhra Pradesh 24x7 – Power For All	160



2. HOW WILL THE ARTICLES OF AGREEMENT IMPACT MULTILATERAL AND BILATERAL DEVELOPMENT DEVELOPMENT IN PARTNERSHIP WITH OTHER SOURCING OF FUNDS FOR FIJI'S SUSTAINABLE INSTITUTIONS?

- and potentially co-finance projects with other development banks • Membership to AIIB has the potential to stimulate investment in Fiji such as the World Bank and ADB.
- The AIIB will complement the efforts of other financing and local partnerships with multilateral and national development development institutions and establish a network of global, regional
- environmental protection, urban development and logistics. All of • In terms of funds for Fiji's sustainable development, AIIB provides financing for sustainable projects in energy and power, transportation, rural infrastructure, water supply and sanitation, which greatly facilitate the growth of Fiji. This falls within Fiji's National Priorities and the overall Sustainable Development Goals.



3. BENEFITS OF JOINING AIIB

- It will offer a new multilateral development financing platform committed to development in member countries including Fiji.
- such as ADB and World Bank as AIIB will provide competition for these It will enable Fiji to negotiate better terms for loans with existing multilateral donors multilaterals.
- AIIB will also provide technical assistance and will work with its members to enhance services within the region. The AIIB recruits qualified personnel globally and the criteria for recruitment is based on technical competence and experience in related sectors.
- The above will give enormous support to our infrastructure development needs in the medium to long term.



Fijian citizens and nationals paid by the Bank in accordance retain the right to tax salaries, emoluments and expense of 4. What is our position with regards to the reservation on Article 51(2) of the Articles of Agreement for the Bank to with Fijian law?

- Article 51(2) provides that a member may deposit with its instrument of ratification, acceptance or approval, a reservation (described as a 'declaration') to retain the right to tax the salaries, emoluments and expenses of citizens paid by AIIB.
- Fiji can deposit with its instrument of acceptance, a declaration that it reserves the right to tax the salaries, emoluments and expenses employee's income derived from AIIB to the extent that the paid by AIIB to its citizens. This would allow Fiji to tax an employee is a Fijian citizen.



5. WAY FOWARD

- and accept the AIIB Articles of Agreement to become a member of · If Fiji (through Parliament's approval of course) does agree to sign AIIB, Fiji must deposit its instrument of acceptance with the Government of the People's Republic of China ('Depository') with the declaration under Article 51(2).
- enter into force on the date on which Fiji lodges its instrument of • Finally, according to Article 58, the AIIB Articles of Agreement will acceptance with the Depositary certifying that Fiji has undertaken all domestic legislative processes required to give effect to the AIIB Agreement and therefore, becoming a member of AIIB.

AIIB ARTICLES OF AGREEMENT



The Articles of Agreement of the Bank consists of 60 articles which are divided as follows:

- Chapter I contains articles 1 to 3 setting out the purpose, functions & membership
- Chapter II is made up of articles 4 to 8 specifying the details of capital and subscriptions.
- Chapter III consists of articles 9 to 15 and deals with the operations of the Bank.
- Chapter IV consists of articles 16 to 20 and sets out the general powers of the Bank.
 - Chapter V contains articles 21 to 31 and deals with governance of the Bank.
- Chapter VI encompasses articles 32 to 36 and outlines the channel of communications.
- Chapter VII includes articles 37 to 39 and deals with withdrawal/suspension of members.
- Chapter VIII contains articles 40 to 43 and concerns termination of operations of Bank.
- Chapter IX contains articles 44 to 56 and relates to status, immunities and exemptions.
- Chapter XI comprises of articles 57 to 60 and sets provisions for acceptance of the Agreement.

AIIB CONSTITUENCIES



Voting Share	4.6	5.2	4.4	14.9
Constituency	Brazil Egypt South Africa	Israel Republic of Korea Mongolia Uzbekistan	Bangladesh Malaysia Maldives Nepal Philippines Thailand	Austria Finland France Germany Italy Luxembourg Malta Netherlands Portugal Spain
Voting Share %	7.5	8.2	4.8	7.2
Constituency	India	Iran Kazakhstan Russia Tajikistan	Cambodia Indonesia Laos Myanmar Sri Lanka	Denmark Iceland Norway Poland Sweden Switzerland United Kingdom
Voting Share	26.1	5.4	5.1	6.1
Constituency	China	Australia New Zealand Singapore Vietnam	Azerbaijan Brunei Georgia Kyrgyz Republic Pakistan Turkey	Jordan Kuwait Oman Qatar Saudi Arabia United Arab Emirates



THANK YOU

Foreign Affairs and Defence Standing Committee on **Parliament**

Doha Amendment to Kyoto Protocol And Asian Infrastructure Investment Bank-Articles of Agreement

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Key Areas of Talk

- Overview of Kyoto Protocol and International Solar Alliance Conventions and its implications on Fiji's Economy;
- Impacts on sourcing of funds for Sustainable Development in partnership with Multilateral and Bilateral Development Institutions;
- Advantages of the two conventions for Fiji and the Asia Pacific Region;
- Impacts on Fiji's accessibility to Climate financing given its leadership role in the COP23;
- Impact of conventions on reshaping Fiji's Weather Office and other Centers capability to respond to Global Climate Change;
- Lessons learnt and Way Forward;
- Recommendation(s)

UNFCCC

- The Convention recognized that there was a problem;
- Sets lofty but specific goals
- Puts the onus on the developed countries to lead the way;
- Directs new funds to Climate Change activities in developing countries;
- Keeps tab on the problem and what's being done about it;
- Charts the beginning of a path to strike a delicate balance;
- Kicks off formal consideration of adaptation to climate change

Kyoto Protocol

- negotiations and Convention took effect in 1994 started in 1995;
- Kyoto text was accepted in 1997;
- Entered into force on 16 February 2005;
- First commitment period started in 2008 and ended in
- The Kyoto Protocol has 28 articles
- that takes it into the 2nd implementation commitment Doha Amendment is an amendment to Kyoto Protocol period over 2013 to 2020.

Kyoto Protocol – Major Features

- Mandatory targets on GHG emission for worlds leading economies which have accepted it;
- Targets range from 8% to 10% of 1990 levels and at least by 5% between 2008-12;
- Limits calls for significant reductions in currently projected emissions;
- Commitments vary from country to country;
- Agreement offers flexibility in how countries may meet their targets;
- Several mechanisms have been set for this purpose
- . Emission Trading
- 2. Clean Development Mechanism
- 3. Joint Implementation Plan
- Fiji is a signatory to Kyoto Protocol.

Doha Agreement

- Doha Agreement is an amendment to Kyoto Protocol to UNFCCC and adopted on 08 December 2012 in Doha, Qatar;
- Doha amendment establishes the 2nd commitment period to Kyoto Protocol extending from 2013 to 2020 for developed countries (Annex I) under the Convention;
- House Gases (GHG) by at least 18% below 1990 levels over 2013-2020 period; It sets targets for Annex I countries to reduce Green
- Doha to Fiji does not have any commitments Agreement as a developing country.

Doha Agreement

The amendment contains 2 articles and these are:

Article I:Amendments to Kyoto Protocol; and

amendment in accordance with Articles Article 2: entry into force for the 20 and 21 of Kyoto Protocol.

Doha Agreement - Requirements

- on the 19th day after Secretary General (SG) of UN who is the depository of this protocol, receives 144 instruments of The Doha Amendment will enter into force acceptance;
- Protocol, Fiji is required to deposit an instrument of acceptance; • In order to accept the Amendment to Kyoto
- Fiji is yet to submit an instrument acceptance and ratify Doha Amendment.

Impact - Doha Agreement

- It commits Annex I countries to the convention to emission reduction targets;
- Since Fiji is a Non Annex I Country, it does not have any commitment or obligations;
- It will beneficial for Fiji to submit an instrument of acceptance of Doha Amendment;
- This will re-affirm Fiji's continuing commitment and support to the implementation of Kyoto Protocol;
- to increase climate action and reduce GHG emissions. and taking lead role while calling developed countries Will give strong base for Fiji's Presidency to COP23

Implications on Fiji's Economy

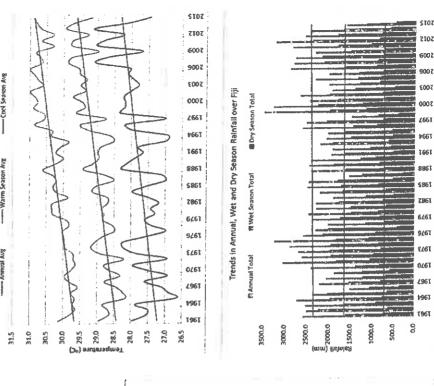
- Increasing ambition to reduce emissions of GHG emissions benefits the Fiji's economy by reducing warming, SLR and reducing ocean acidification;
- Reduced warming is likely to reduce the number of extreme events šuch as droughts, floods and tropical cyclone intensity;
- Reduced ocean acidification will protect the health of fisheries and coral reefs, coastlines, oceans, tourism;
- Will reduce on the cost of adaptation, disaster risk reduction, disaster management and recovery.

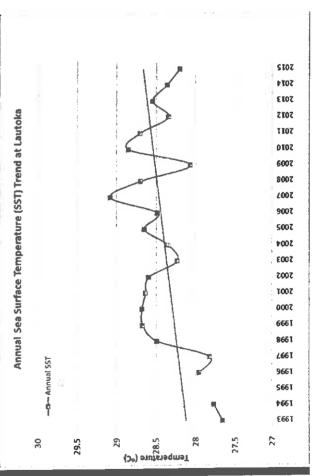
Impacts on sourcing of funds for Sustainable Development

- The SDG 13 address the Climate Change;
- Climate Change is expected to increase the frequency of Extreme Weather, Climate, and Hydrological events;
- Instrument of acceptance on Asian Infrastructure Asian Bank will offer new multilateral development financing platform;
- Will allow financing mechanisms for building more climate resilient infrastructure to Climate Change;
- existing multilateral donors such as Asian Development Bank Will provide stronger negotiating power for loans with and World Bank;

Impact of conventions on reshaping Fiji's Weather Office and other Centers capability to respond to Global Climate Change

Trends in Annual, Warm and Cool Season Maximum Temperature over Fiji







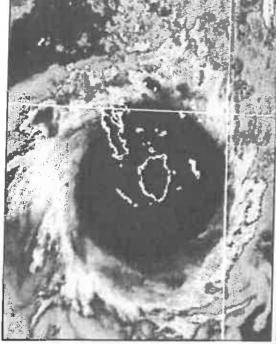
Changes for Weather Office

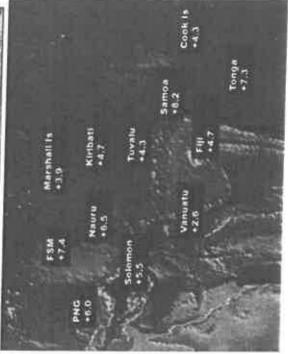
The IPCC AR5 provides guidance as how climate is expected to change in future GHG emission scenarios;

FMS provides Climate Science and Projections for Fiji. Frequency and intensity of extreme hydrometeorological events are projected to increase in a warmer climate;



- Temperature expected to rise
- Dry seasons expected to become drier
- Wet seasons expected to become wetter
- Sea level to rise and likely to be faster than anticipated
- Stronger Cyclones are anticipated





Changes for Weather Office

- Fiji will have to invest in weather infrastructure to effectively monitor and predict hydrological events;
- Will require manpower to meet the demands of Fijian population to address different sector needs;
- Develop capacity of current workforce to meet the emerging needs;
- and and Invest and modernize Meteorological early detection hydrological services for warning services.

Lessons Learnt

- The issues of emissions reductions are adverse effect of climate change and health of our oceans in keeping with SDG13 & critical to protect the our islands from SDG14;
- When Fiji's forests are considered, Fiji's emissions are already net negative;
- foundation tool for the Paris Agreement and establishing Fiji's leadership in COP23. The Suva Declaration was a critical

Way Forward - Doha Amendment

- Way forward for the Fiji Meteorological Service in addressing meteorological phenomenon (cyclones, droughts, floods) attributed to Climate Change;
- Set directions in accessing technical assistance and funding from bilateral and multilateral donor agencies such as Green Climate Fund (GCF), AIIB,
- Strengthen Fiji's role as COP 23 Presidency;
- Good ground to establish internal partnerships with the Department of Environment, Department of Fisheries and Department of Forests, Climate Change Unit, Agriculture, Health, etc.
- on Fiji's climatic patterns, expected changes and adapt to changing Build on Climate Change Awareness, Adaptation and Resilience based

Way Forward - AIIB

- Provide Fiji with flexibility in applying for development and infrastrúcture upgrade in responding to climate change;
- Bank Funding will assist upgrade of modern technology, training of staff and equipment to assist in weather and climate forecasting; Asian Infrastructure Investment
- that impact on the nation's environment, Way forward in addressing weather patterns economy and people's livelihoods.

Recommendation

It is recommended that:

Doha Amendment to its the Kyoto Protocol and submit instrument of acceptance to Depository of the Kyoto Protocol; Fiji accept the

Fiji sign and ratify the Framework Agreement on establishment of the International Solar Alliance.

APPENDIX 2

WRITTEN SUBMISSIONS

RESERVE BANK OF FIJI



Acting Governor

Our Reference: D17/8506

Your Reference:

27 June 2017

Honourable Netani Rika Chairman Standing Committee on Foreign Affairs and Defence Government Buildings SUVA

Dear Honourable Rika

Re: Asian Infrastructure Investment Bank Articles of Agreement

We refer to your letter dated 6 June 2017 and thank you for giving the Reserve Bank of Fiji the opportunity to present its views in issues relating to the Asian Infrastructure Investment Bank Articles of Agreement. We also acknowledge the comprehensive analysis provided for our information.

Benefits and Implications in the Fijian Economy – funding and technical assistance

The Reserve Bank of Fiji concurs with the written analysis and acknowledges that the benefits will be immense with Fiji's membership of the AIIB. This will widen the ambit of Fiji's membership in the international community.

The AIIB will be another agency where Fiji can seek technical advice and assistance as well as another source of finance or funding, in particular capital expenditure. We need to build climate resilient infrastructure given the recent experiences with the floods and cyclones. Fiji's position will be consolidated as we collaborate with countries similar in size and nature to effectively ensure that our voice is heard in many more international forums.

In terms of funding, apart from multilateral organisations like the Asian Development Bank, World Bank, International Fund, the AIIB provides another opportunity for sources of loans including the ability to negotiate better terms and conditions of lending for Fiji.

Similar to other international organisations, the AIIB provides funding for technical assistance and Fiji can tap on these resources as well.

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Regional Office and Presence in the Region

In time to come, we hope to see more Pacific Island countries join the AIIB. Currently Timor-Leste is a regional prospective member like Fiji. In time, Fiji could encourage the AIIB to set up a regional office in Fiji similar to the IMF, World Bank, IFC, ADB and UNDP.

Fiji's position

Fiji is a regional prospective member of the AIIB and needs to comply with a few processes to give effect to the Agreement and therefore, become a member of the AIIB.

The Agreement also reinforces our relationship and commitment with the People's Republic of China and the one China policy that we currently adhere to.

The Hon Prime Minister for Fiji Voreqe Bainimarama has said on record in July 2015 that joining the AIIB as a member will benefit Fiji and the Region.

The Permanent Secretary for Economy led the Fiji delegation to the first annual meeting of the AIIB in June 2016 in Beijing. The delegation met with Vice President Sir Danny Alexander and Corporate Secretary Henry Bell. The discussions focused on the requirements for Fiji to become a full member of the AIIB. Fiji has demonstrated its commitment in this regard.

In fact, one of Fiji's former Permanent Secretary Mr John Samy is currently the Senior Advisor to the President on policy.

The RBF stands ready to assist the Ministry of Foreign Affairs and Ministry of Economy in implementing the requirements of the Agreement, in particular the financial transactions required. We will also assist the Ministry in any other issues required as necessary.

We hope that our views are helpful in your deliberation. Please let us know if you require more information.

Yours faithfully

Acting Governor