

Oxford Public International Law



Asian Infrastructure Investment Bank (AIIB)

Xuan Gao, Peter Quayle

Content

type: Encyclopedia entries

Article last

updated: February 2018

Product: Max Planck

Encyclopedia of Public

International Law

[MPEPIL]

Subject(s):

Sustainable development — International financial law — Practice and procedure of international organizations

Published under the auspices of the Max Planck Foundation for International Peace and the Rule of Law under the direction of Rüdiger Wolfrum.

A. Historical Background

1 The idea to create a multilateral 'Asian Investment Bank' to help address the sizeable infrastructure development needs in the region dates to a 2005 study by the United Nations Economic and Social Commission for Asia and the Pacific. However, the proposal did not develop further until referenced by the president of → *China*, Xi Jinping, during a meeting in Jakarta with the president of Indonesia, Susilo Bambang Yudhoyono, in October 2013.

2 China's announcement reflected a premise that its financial resources, along with expertise gained in rapidly expanding its own infrastructure, could be brought to bear in the Asia region in which increased connectivity is widely identified as a precondition to greater economic development. As such, it was initially conceived as an Asian member-only institution, although this definition of Asia was to be broader than usual, to include the Middle East. Rival narratives implicated China's geopolitical aims of stabilizing and connecting its neighbours to serve as profitable marketplaces—in particular through the 'One Belt One Road' initiative—and to counterbalance the → *World Bank Group*, led by the United States of America, and the Asian Development Bank, led by Japan, in which China's unreformed financial shareholding, and thus its influence, no longer relates to its present-day economic strength.

3 Subsequently, the first meeting of chief negotiators of Bangladesh, Brunei Darussalam, Cambodia, China, India, Indonesia, Kazakhstan, Kuwait, Laos, Malaysia, Mongolia, Myanmar, Nepal, Oman, Pakistan, the Philippines, Qatar, Singapore, Sri Lanka, Thailand, Uzbekistan, and Vietnam took place in Kunming, China, in November 2014. Negotiations were based upon a memorandum of understanding signed between these prospective members the preceding month.

4 The second meeting of chief negotiators in Mumbai, India, in January 2015 expanded the Asia-based prospective membership to include Oceania, adding representatives from New Zealand as well as Maldives, Saudi Arabia, and Tajikistan. At the third meeting that took place in Almaty, Kazakhstan, in March 2015, the Asian-Oceanian basis of the envisaged institution was enlarged to include non-regional Members and thus potentially universal membership, reflected by the inclusion of chief negotiators from Luxembourg, Switzerland, and the United Kingdom, in addition to Jordan.

5 At the fourth round of negotiations, in Beijing, China, in April 2015, both the regional and non-regional groupings expanded significantly with the addition of Australia, Azerbaijan, Georgia, Iran, Israel, the Republic of Korea, the Kyrgyz Republic, Turkey, and the United Arab Emirates on the one hand, and Austria, Denmark, Finland, France, Germany, Iceland, Italy, Malta, the Netherlands, Norway, Poland, Portugal, Spain, and Sweden on the other. This fourth round also saw the inclusion for the first time of prospective Members from Africa (Egypt and South Africa) and South America (Brazil). It also included Russia, whose regional or non-regional status remained to be determined.

6 The final text of the Articles of Agreement of the Asian Infrastructure Investment Bank (the 'AoA' of the 'AIIB', or 'the Bank'), the constituent instrument of the AIIB, was agreed at the fifth Chief Negotiators meeting of all 57 prospective founding Members in Singapore on 22 May 2015. Russia's status as a regional 'Asian' Member was resolved at this meeting. The AoA was signed by founding Members on 29 June 2015 in Beijing, China. In accordance with Art. 59 of the AoA, with the ratification of at least ten signatories, comprising no less than 50% of the subscribed share capital, the AoA entered into force on 25 December 2015. Art. 32 (1) of the AoA establishes Beijing, China, as the Bank's headquarters (Headquarters Agreement between the Government of the People's Republic of China and the Asian Infrastructure Investment Bank, 16 January 2016), where the board of governors met for the first time and elected the board of directors on 16–17 January 2016.

7 Membership and prospective membership of the Bank has since grown steadily, with the

notable inclusion of Canada and the first sub-sovereign member, → *Hong Kong*, China. By the end of 2017, the total number of the Bank's Members together with approved membership applications had reached 84. The only foremost economies that have yet to join or formally express interest in joining the AIIB are Japan, Mexico, and the United States.

B. Structure

8 The AIIB is institutionally structured along the lines conventional to multinational development banks ('MDBs', see → *Financial Institutions, International*), governed by the AoA, which is largely derived from the constituent instruments of the Asian Development Bank and the European Bank for Reconstruction and Development. It comprises three governance organs: a board of governors, a board of directors, and a president.

9 Membership of the Bank, under Art. 3 (1) of the AoA, is open to existing Members of the → *International Bank for Reconstruction and Development (IBRD)* or the Asian Development Bank. Membership is subdivided into regional and non-regional Members. Regional Members include Members located in Asia and Oceania as defined by the United Nations for statistical purposes, Members otherwise accepted by the Board of Governors as regional (Art. 1 (2) AoA), and Russia, which is determined to be regional by the AoA (Schedule A AoA). All other Members are non-regional. Sub-sovereign Members require sponsorship by the Member with responsibility for their international relations (Art. 3 (3) AoA).

10 The US\$100 billion capital stock of the Bank is divided into one million US\$100,000 par value shares of which 1/5 is paid-in capital and 4/5 callable capital (Art. 4 (1) AoA). The regional shareholding cannot fall below 75% of the subscribed shares without authorization of the board of governors (Art. 5 (3) AoA). Shares are allocated based largely upon the relative share of the global economy of Members within the regional and non-regional groupings (Report on the Articles of Agreement by the Chief Negotiators for Establishing the Asian Infrastructure Investment Bank). China is the largest shareholder with 31% of the total capital shares and 27% of the total votes as of February 2018. The next largest shareholder, India, holds 8.8% of the Bank's capital. The third largest is Russia, with 6.8% of the shareholding. The liability of the Members is limited to the shares they have subscribed to, including the uncalled portion of such shares.

11 The total voting power of the Bank's Members is an expression of the combination of 600 votes allocated to each founding Member, a number of votes equal to the number of shares held by the Member, and an equal division between the Members of 12% of the aggregate of basic votes, share votes, and founding Member votes (Art. 28 (1) (i) AoA). Decision-making by the board of governors is on the basis of a simple majority of the votes cast, a special majority (representing a majority of both Members and total voting power), or a supermajority (comprising 2/3 of the Members representing not less than 3/4 of the total voting power, Art. 28 AoA). Matters before the board of directors are normally decided by a simple majority of the votes cast. However, certain important operational and financial policies and decisions require a majority of 3/4 of the total voting power of the Members (Art. 26 (ii) AoA).

12 The board of governors is constituted by one governor for each Member (Art. 22 (1) AoA) and is expressed to have all the powers of the Bank vested in it by the constituent instrument (Art. 23 (1) AoA). The board of governors meets at least annually. The first annual meeting in 2016 was held in Beijing, China. The second was held in 2017 in Jeju Island, Korea. The third annual meeting, in 2018, is scheduled to take place in Mumbai, India. Under Art. 24 (2) of the AoA, the majority of the governors constitutes a quorum. It is thought that the annual meeting will return to Beijing, China, in 2020 to the newly opened permanent headquarters of the Bank provided by China.

13 The board of directors prepares the work of the board of governors, establishes the policies of the Bank, takes decisions on operations, supervises the management and operation of the Bank by the president, approves the strategy, annual plan, and budget, forms committees, and prepares audited accounts (Art. 26 AoA). The board of directors is composed of twelve directors, of whom nine are elected by the regional membership and three by the non-regional membership (Art. 25 (1) AoA).

14 The president, appointed by the board of governors by a supermajority (Art. 29 (1) AoA), chairs the board of directors, is chief of staff and legal representative of the Bank, and conducts the 'current business' of the AIIB under the direction of the board of directors (Art. 29 AoA). As chief of staff, the president is responsible for the management of the Bank's staff, in accordance with Staff Regulations adopted by the Board of Directors. The staff of the Bank is appointed on a competitive basis from amongst both Member and non-Member nationalities, with 'due regard to the recruitment of personnel on as wide a regional geographic basis as possible' (Art. 30 (3) AoA and Art. 5 of the Staff Regulations).

15 These governance arrangements are unremarkable for an MDB. However, the AIIB is distinguished from some of its antecedents in several regards. The board of directors is non-resident and meets on a quarterly basis, physically, and at other times, electronically (Art. 27 (1) AoA). The supervisory role of the board of directors is enhanced by an 'oversight mechanism' intended to address such areas as audit, evaluation, fraud and corruption, project complaints, and staff grievances (Art. 26 (iv) AoA and Report on the Articles of Agreement by the Chief Negotiators for Establishing the Asian Infrastructure Investment Bank). A Director holding votes of more than one Member may cast the votes for those Members separately (Art. 28 (3) (i) AoA). The president and vice-presidents of the Bank are to be appointed on 'an open, transparent and merit-based process' (Arts 29 (1) and 30 (1) AoA). The Bank is obliged to establish and comply with policies addressing the environmental and social impacts of its activities (Art. 12 (4) AoA) and on the public disclosure of information (Art. 34 (4) AoA).

C. International Legal Status

16 The AIIB possesses an international legal personality as an international organization, based upon a constituent instrument governed by public international law, exhibiting an international legal identity separate from the status of its Members. Chapter IX of the AoA affords the Bank the conventional privileges and immunities *acquis* of international organizations, although unlike some other international organizations, the AIIB possesses absolute immunity arising from its constituent instrument (Art. 46 (1) AoA, 'immunity from every form of legal process'), except for suits connected to the raising of funds through issuing bonds. Notwithstanding this exception, no suit whatsoever may be brought against the Bank by or through a Member (Art. 46 (2) AoA).

17 As with other MDBs and international organizations, the staff of the AIIB are international civil servants (see → *International Organizations or Institutions, Secretariats*) possessing functional immunity within the scope of their official activities (Art. 50 AoA) and owe an undivided duty of loyalty to the institution (Art. 31 (3) AoA). Similar to most other MDBs, the staff of the Bank are also enjoined by the constituent instrument to political neutrality, and must discount the 'political character' of Members and only weigh 'economic considerations' in their activities (Art. 31 (2) AoA). The Bank's internal legal framework constitutes a hierarchy in accordance with the AoA, including both a Code of Conduct for Bank Personnel and a Code of Conduct for Board Officials adopted by the Board of Governors, Policies and Regulations adopted by the Board of Directors, and Staff Rules and Directives issued by the president, complemented by Administrative Guidance issued by vice-presidents and other staff reporting directly to the president.

D. Activities

18 Art. 1 of the AoA establishes the purpose of the Bank, ‘to foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors’ as well as collaborating closely with other multilateral and bilateral development institutions. The AIIB’s financing activities must be based upon ‘sound banking principles’ (Art. 12 (1) AoA), and may encompass both sovereign-backed and private sector financing, extended to the recipient in the form of co-financed or direct loans, equity investment, guarantees, technical assistance, and other types of financing as determined by the board of governors (Art. 11 (1) AoA).

19 Financing by the Bank cannot be undertaken in a Member’s territory over the objection of that Member (Art. 13 (3) AoA) and financing could take place outside the membership if approved by a supermajority of the board of governors. Whilst financing must be consistent with the purpose of the AIIB—namely, ‘to foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia’—this may be achieved by investments outside the region. Likewise, the Bank is permitted to invest not only in infrastructure but also in ‘other productive sectors’. The Bank also imposes no nationality restriction upon the procurement of goods and services using AIIB financing (Art. 13 (8) AoA).

20 In its first two years of operation the Bank approved financing for 24 projects in the amount of US\$4.2 billion. These have comprised both sovereign-backed and private sector projects involving both debt and equity transactions and ranged from a broadband infrastructure project in Oman and a solar power project in Egypt to a road improvement project in Tajikistan and a coal replacement and air quality improvement project for Beijing, China. The majority of these projects have been collaborations, co-financed with other MDBs, including the World Bank, the → *International Finance Corporation (IFC)*, the Asian Development Bank, and the European Bank for Reconstruction and Development. Projects have largely been at an advanced ‘shovel-ready’ stage, and within the Bank’s stated ‘thematic priorities’ of sustainable infrastructure, cross-country connectivity, and private capital mobilization. To date, India is the Member that has received the greatest amount of financing from the AIIB.

21 Over time, the majority of the resources used to finance projects are expected to be raised by the Bank, like other major MDBs, from the international capital markets by issuing AIIB debt securities to investors (Art. 16 (1) AoA). The Bank has been assigned the highest credit ratings by the S&P Global Ratings, Fitch Ratings, and Moody’s Investors Service, reflective of the sovereign personality and strong finances of most of its Members, the backing of its callable capital, and the Bank’s prudent financial policies and management together with the development, rather than profit maximization, basis of the Bank. In addition, the Bank may create special funds with resources contributed by Members or other qualified sources to finance its special operations (Art. 17 AoA). As of the end of 2017 there is one such fund, the AIIB Project Preparation Special Fund, with contributions from China (US\$50 million), Korea (US\$8 million), and the United Kingdom (US\$50 million).

E. Evaluation

22 Notably, the inception of the AIIB was accompanied both by hopes and by concerns that it would be a disruptive force in the MDB field. The establishment of a new multilateral development financing institution must arise, at least in part, from the premise that something is missing from the mandate, methods, or Member interests of existing MDBs. Yet, by basing the AIIB so squarely upon the template of existing international financial institutions, the Bank’s Members also demonstrated confidence in the relevance and durability of the MDB model. However, ultimately, the future of the AIIB is, as with most international organizations, likely to be one not entirely anticipated today.

Select Documents

Annual Report of the Asian Infrastructure Investment Bank (2016).

Articles of Agreement of the Asian Infrastructure Investment Bank (done 29 June 2015, entered into force 25 December 2015).

Headquarters Agreement between the Government of the People's Republic of China and the Asian Infrastructure Investment Bank (16 January 2016).

Report on the Arts of Agreement by the Chief Negotiators for Establishing the Asian Infrastructure Investment Bank (22 May 2015).

Staff Regulations of the Asian Infrastructure Investment Bank (November 2016).