

The Role of Law at the Asian Infrastructure Investment Bank

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The Asian Infrastructure Investment Bank (AIIB) strives to operate in accordance with the highest standards of transparency and accountability. To that end, AIIB undertakes to adhere to the rule of law in its organization, operations and management. This means that AIIB is to be governed within a well-established external and internal legal framework, that proper legal regulatory mechanisms are put in place to ensure its activities strictly follow this framework, and that it may be held to account for adverse consequences in case of contravention or violation of those legal norms.

i. Laws Governing the Operations and Administration of AIIB

A. AIIB Under International Law

AIIB is an international organization established by the AIIB Articles of Agreement (entered into force on Dec. 25, 2015), a multilateral treaty, the Parties to which comprise the Membership of the Bank. Accordingly, AIIB is both constituted and governed by public international law, the sources of which include applicable international conventions, customary international law, general principles of law and subsidiary means for the determination of rules of law.

As an international organization, AIIB possesses international legal personality independent of that of its Members. Under the Articles of Agreement, AIIB possesses 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. Operated under public international law, AIIB has, for instance, concluded a Headquarters Agreement with the Government of the People's Republic of China to define the legal status, privileges and immunities for AIIB's operation and functioning in China. It has also entered into relationship or cooperation agreements with other development-related international organizations and, in particular, other multilateral development banks, to facilitate the fulfilment of its objectives and delivery of its mandate. The Articles of Agreement and the Headquarters Agreement have been registered with the United Nations Secretariat in accordance with Article 102 of the Charter of the United Nations. AIIB has also been granted permanent observer status by the United Nations General Assembly to promote cooperation with the United Nations (UNGA Resolution A/RES/73/216).

Unlike its sovereign Members, AIIB does not possess general competence. In other words, it may only exercise those powers expressly or impliedly bestowed upon it by the Articles of Agree-



AIB's multilateral membership is drawn from around the world. Its Board of Governors meets annually.



Inaugural AIIB Law Lecture.
October 2017, AIIB Headquarters, Beijing.

ment. In the furtherance of AIB's mandate, internal legislation is issued by the governing bodies of AIB, deriving its effect from the Articles of Agreement. The resulting organization and effect of such legislation is established by AIB's Internal Legal Framework.

B. AIB's Internal Legal Framework

AIB's Internal Legal Framework legally and logically arises from the Articles of Agreement and the roles and competence attributed to the Board of Governors, the Board of Directors and the President. It responds to the authority of the Board of Governors to adopt rules and regulations, and the power of the Board of Directors to establish Policies and adopt the Staff Regulations. It is also established in accordance with the generally recognized principles of international administrative law which derive from public international law which governs AIB.

Together, this forms a governance hierarchy, ordering the Board of Governors highest, with the Board of Directors subject to the authority of the Board of Governors, and the President subject to the authority of the Board of Directors. The Articles of Agreement specify that the President is the chief of staff and legal representative of AIB. As such, the President may add to the Policies and the Staff Regulations issued by the Board of Directors, but not detract from them or alter them. The Board of Directors and the President have established various committees, on a formal legal basis, to advise them on issues under their remit and assist them in the supervision and management of the Bank.

Therefore, within AIB, the Board of Governors adopts the By-Laws of the Bank to complement the Articles of Agreement, including provisions governing the organization of annual meeting, membership and financial matters of the Bank, and terms of office of the Governors, Directors and President. It also adopts the Codes of Conduct for Board Officials and Bank Personnel. The Board of Directors adopts all Policies as well as the Staff Regulations. To properly discharge the powers vested in them, the Board of Governors and the Board of Directors adopt their own Rules of Procedure. The President adopts Directives and the Staff Rules. Directives may implement Policies, but they may sometimes be stand-alone initiatives of the President. Directives and Staff Rules may be complemented by Administrative Guidance issued under the delegated authority of the President.

i. **By-Laws, Rules of Procedure of the Board of Governors and Codes of Conduct for Board Officials and Bank Personnel Adopted by the Board of Governors**

The Board of Governors, being AIB's highest governing body, is vested with all powers in the operations of the Bank. Such powers may be delegated to the Board of Directors, except those provided in Article 23(2) or other provisions of the Articles of Agreement.

The Board of Governors has adopted AIB By-Laws under the authority of the Articles of Agreement. To complement the Articles of Agreement and the AIB By-Laws, the Board of Governors has also adopted the Rules of Procedure to govern all matters before it.



To establish principles and ethical standards for Officials on the Board of Directors in relation to their status and responsibilities in the Bank, the Board of Governors has adopted a Code of Conduct for Board Officials, which supplements the Articles of Agreement and the By-Laws of the Bank. The Board of Governors has also adopted a Code of Conduct for Bank Personnel, to set out the guidelines and ethical standards for the conduct of Bank Personnel.



ii. **Rules of Procedure of the Board of Directors, Staff Regulations and Policies Adopted by the Board of Directors**

Rules of Procedure of the Board of Directors

To properly exercise the powers and authorities vested in it, the Board of Directors has adopted its Rules of Procedure. Those Rules are intended to be complementary to the Articles of Agreement and the AIB By-Laws. The Board of Directors has also established various committees to facilitate its work to the extent authorized by the Board of Governors.







AIIB 2017 Legal Conference.
October 2017, AIIB Headquarters, Beijing.

Staff Regulations

In accordance with Article 30(2) of the Articles of Agreement, the Staff Regulations adopted by the Board of Directors set forth the fundamental conditions of service and the basic rights, duties and obligations of AIIB and its staff. They establish the broad policies in accordance with which the President shall organize and manage AIIB staff.



Policies

Pursuant to Article 26(ii) of the Articles of Agreement, the Board of Directors, responsible for the direction of the general operations of the Bank, shall establish the policies of the Bank and take decisions on major operational and financial policies. These policies are intended to cover all major aspects of the operations of the Bank, ranging from its financing, asset liability management and investment operations, to its international relations, corporate procurement and compensation and benefits for its staff.

iii. **Staff Rules and Directives Adopted by AIIB President**

Staff Rules

The Staff Rules are adopted by the President and prescribe the legal employment rights of AIIB staff. The Staff Rules, together with the Staff Regulations and Policy on Compensation and Benefits, form the essential employment law of the AIIB. This is complemented by individual contractual provisions as well as generally recognized principles of international administrative law.



Directives

Directives are binding instructions issued by the President to AIB staff. They may also serve to delegate authority and attribute responsibilities. Directives may implement a Policy adopted by the Board of Directors or may sometimes be stand-alone initiatives by the President. They are one of the ways in which the President, as chief of staff, ensures that AIB staff work together in a coordinated, efficient and confident way that leads to high performance and institutional success.



iv. **Administrative Guidance Issued by AIB Vice Presidents and Other Department Heads**

Directives and Staff Rules are usually supported by Administrative Guidance (AG). AG may contain written administrative practices, forms and details, which AIB staff must follow. AG is issued by Vice Presidents and other Heads of Department reporting directly to the President. AG can be updated and changed as often as needed. AG cannot, however, revise, amend or contradict any Policy, Staff Regulation, Staff Rule or Directive. In order to ensure the functional integrity of AIB, in accordance with the Policy on Public Information, AG is not made public.

ii. Legal Regulatory Mechanisms

Within the Internal Legal Framework, AIB has established various legal regulatory mechanisms, to ensure that the regulations and rules of AIB are fully observed, and that good governance in accordance with the principles of transparency, openness and accountability is realized. These mechanisms were established by AIB's governing bodies at different levels. For instance, the Board of Directors has established an Audit and Risk Committee (comprising Board Officials and external members) in order to review the Bank's financial statements and accounting, auditing and financial reporting practices, procedures and issues, and to assess the effectiveness of the Bank's internal control system. It has also established a Policy on the Project-affected People's Mechanism to review complaints relating to compliance with the Bank's Environment and Social Framework and a Policy on Prohibited Practices in order to investigate corruption-related complaints in connection with the Bank's operations.





Monthly OGC All Staff Meeting.
AIB Headquarters, Beijing.

In addition, an Ethics Committee has been established to consider matters relating to the implementation, interpretation and application of the Code of Conduct for Board Officials. The President, being the Bank's chief of staff, has likewise put in place appropriate mechanisms to ensure compliance with the Bank's internal policies and regulations. These include the establishment of an ethics office to ensure the implementation of the Code of Conduct for Bank Personnel. An internal audit office has also been established under the President's authority, to evaluate and improve the effectiveness of the Bank's governance, risk management and control processes.

iii. Accountability and Redress Mechanisms

To enforce the rule of law, AIIB has also set up various accountability mechanisms to ensure that adequate redress is accessible, and that accountability is attributed in the event of contravention or violation of those rules. For instance, a sanction mechanism has been established for the sanctioning of firms and individuals that are found to have engaged in specified forms of fraud, corruption and other Prohibited Practices in connection with Bank-financed projects. To ensure compliance with its Environmental and Social Policy, AIIB has also established a mechanism to receive submissions from people who believe they have been or are likely to be adversely affected by AIIB's failure to implement the Policy.

In addition, AIIB has established an Administrative Review Procedure to address disputes with its staff in relation to their employment with the Bank. It also uses institutional arbitration clauses widely with AIIB's corporate procurement counterparties. With regard to its financing of projects, AIIB includes dispute resolution clauses, and in particular, consents to arbitration as the exclusive means of resolving disputes in its sovereign agreements.

iv. Office of the General Counsel

The Office of the General Counsel (OGC) provides advice to AIIB's governing bodies, management and staff on all legal aspects of the Bank's investment, financial, institutional and corpo-

rate activities. It supports the drafting and negotiation of all legal agreements, assists in the preparation of AIIB's policies and directives, issues legal opinions and oversees the privileges and immunities of AIIB. Corresponding to the organizational structure of the Vice Presidencies, OGC is divided into four specialist units, with each focused respectively on investment operations, finance, institutional and corporate functions of AIIB.

In addition to performing its routine legal functions, OGC carries out legal outreach, on a regular basis, to promote the rule of law and cultivate legal culture within AIIB. This includes organizing legal conferences and seminars to discuss the most relevant issues affecting AIIB's functioning as an international organization and, in particular, as a multilateral development bank. It also publishes, on an annual basis, the AIIB Yearbook of International Law (AYIL).

OGC is headed by the General Counsel who is responsible for leading the planning, implementation and supervision of the work of OGC. The General Counsel reports directly to the President and is a member of the Executive Committee. The General Counsel provides legal advice and support to the Board of Governors and the Board of Directors, including through participating in all formal or informal meetings held by them. In addition, the General Counsel maintains regular contact and interactions with legal counsels at other international organizations in general, and at other international financial institutions in particular. Notably, the General Counsel attends the Annual Meeting of the General Council of International Financial Institutions, to exchange views and discuss issues of concern to all international financial institutions.

Members of OGC, who were trained in multiple jurisdictions with different legal systems (such as common law, civil law and other traditions), work under the General Counsel's authority. They provide legal services to the committees established by the Board of Directors, the management committees established by the President and other departments of the Bank on their daily work. The General Counsel, together with members of OGC under the General Counsel's authority, provides advice and other legal services independently. This independent role constitutes an essential hallmark of the rule of law in the management of the Bank. It serves to ensure that the Bank is operated in conformity with the principles, objectives and goals established by the Articles of Agreement.

Legal interns are recruited on a regular basis to support the work of OGC.



2018 OGC Retreat.
May 2018, Peking University, Beijing.



OGC, led by General Counsel, Gerard J. Sanders.
July 2019, AIB Headquarters, Beijing.



AIB was granted permanent observer status at the United Nations.
December 2018, UN Headquarters, New York, USA.

A. **Composition and Functions of OGC**

i. **Investment Law Unit**

The Investment Law Unit provides legal services to AIB's investment operations-related functions including sovereign operations and private sector projects. It is responsible for advising the Investment Operations Vice Presidency and coordinating with the Risk Management Department, Policy and Strategy Vice Presidency and the Corporate Secretary Vice Presidency on project-related matters. The Investment Law Unit also advises the Investment Committee, Risk Committee and Operational Procurement Committee of AIB.

ii. **Finance Law Unit**

The Finance Law Unit provides legal services to support AIB's finance-related functions. It is responsible for advising the Finance Vice Presidency, which includes the Office of the Treasury and the Office of the Controller, the Risk Management Department and the Internal Audit Office. The Finance Law Unit also advises the Asset and Liability Management Committee of AIB.

iii. **Institutional Law Unit**

The Institutional Law Unit provides counsel on the legal aspects of AIB's governance, membership, privileges and immunities, inter-agency cooperation, fund raising, special operations and policy and strategy development, as well as the interpretation of AIB's Articles of Agreement and other basic documents. It is responsible for advising the Office of the President, the Policy and Strategy Vice Presidency, the Corporate Secretary Vice Presidency and the Client Relations and Programming Office. The Institutional Law Unit also advises the Special Funds Committee and the Policy and Strategy Committee of the Board of Directors.

iv. **Corporate Law Unit**

The Corporate Law Unit provides legal services to AIB's administrative, ethics, integrity, com-

munications and headquarters-related functions. It is responsible for advising the Administration Vice Presidency, the Complaints-Resolution, Integrity and Evaluation Unit and the Communications Department, and leads on implementation of the Headquarters Agreement, the privileges and immunities of officials of AIIB and dispute resolution. The Administration Vice Presidency incorporates the Human Resources and Facilities and Administration Services Departments and the IT Department. The Corporate Law Unit also advises the Budget and Human Resources Committee of the Board of Directors, and the HR Review Committee, the Strategic Information Technology Committee and the Corporate Procurement Committee of AIIB.

The Corporate Law Unit also incorporates the Legal Information and Knowledge Management function, together with departmental learning and development. A legal library was established in OGC, managed by the Legal Information and Knowledge Officer, to facilitate departmental learning and support the work of OGC.

B. Legal Outreach

To promote the rule of law and cultivate legal culture within the AIIB region, OGC conducts legal outreach through, among other means, organizing legal conferences, seminars, lectures and workshops on a wide range of subjects relevant to the Bank's operations. These include AIIB Legal Conferences and Law Lectures which are held on an annual basis at AIIB's Headquarters, and law lectures or legal seminars hosted by OGC on a regular basis. OGC also manages the Legal Information and Knowledge Series, in which local and international law firms, arbitration centers and other relevant organizations are invited to present their knowledge and expertise in a specific, relevant field to the Bank's operations.

i. AIIB Legal Conferences

AIIB 2018 Legal Conference

Sep. 5-6, 2018, AIIB Headquarters, Beijing

The AIIB 2018 Legal Conference was based on the theme "International Organizations and the Promotion of Effective Dispute Resolution." As legal entities and global actors, international organizations are sustained by the rule of law, in place of the hinterland of states, and the effectiveness of international organizations is aligned with the efficient interaction of the laws



AIIB 2018 Legal Conference Panelists.
September 2018, AIIB Headquarters, Beijing.



Inaugural Meeting of Chief Legal Officers of Asia-based IFIs.
October 2017, AIIB Headquarters, Beijing.



AIIB 2018 Low Lecture.
September 2018, AIIB Headquarters, Beijing.

which enable them to exist and to act. The lawful, effective resolution of disputes is therefore central to the concern of all international organizations. As with the inaugural AIIB Legal Conference in 2017, attendees included senior lawyers from other international organizations along with senior academics, arbitration and other practitioners as well as AIIB Senior Management.

AIIB 2017 Legal Conference

Oct. 17-18, 2017, AIIB Headquarters, Beijing

The 2017 AIIB Legal Conference theme was “Good Governance and Modern International Financial Institutions.” Speakers at the Conference were drawn from academia, International Financial Institutions and practitioners. Four panels were convened, chaired by senior lawyers of OGC, on the topics of “The Governance Role of Multilateral Shareholders,” “Institutional Design and Effective Governance,” “External Dimensions and Governance Mandate” and “Governance and the Rule of Administrative Law.” The Conference concluded with a plenary discussion, chaired by the AIIB’s General Counsel, and closing remarks by AIIB’s President.

ii. Law Lectures

AIIB 2018 Law Lecture

Sep. 6, 2018, AIIB Headquarters, Beijing

The 2018 AIIB Law Lecture was delivered by jurist Georg Nolte, Chair of the International Law Commission of the United Nations (69th Session, 2017/18). The lecture was held on Sep. 6, 2018 at AIIB Headquarters and titled “International Organizations in the Recent Work of the International Law Commission.”

Inaugural AIIB Law Lecture

Oct. 19, 2017, AIIB Headquarters, Beijing

Attendees at the 2017 AIIB Legal Conference were also able to hear the inaugural AIIB Law Lecture on Oct. 19, 2017 at AIIB Headquarters, given by Miguel de Serpa Soares, United Nations Under-Secretary-General for Legal Affairs and Legal Counsel. The title of the Under-Secretary-General’s lecture was “The Necessity of Cooperation between International Organizations.”

iii. **AIIB Yearbook of International Law**

The AIIB Yearbook of International Law, published by Brill Nijhoff, draws upon the dialogues at the AIIB Legal Conferences combining expertise from other international organizations, international law practitioners and eminent academics. Each volume reflects a specific theme of essential concern to multilateral institutions and includes the AIIB Law Lecture. The inaugural volume of AYIL, based upon the contributions to the 2017 AIIB Legal Conference, was published in June 2018 and launched at the AIIB Annual Meeting in Mumbai, India. Contributions emerging from the 2018 AIIB Legal Conference and Law Lecture form the basis of the second volume of AYIL, launched at AIIB's Annual Meeting in Luxembourg.



OGC contributes to AIIB's business development and outreach through the AIIB Legal Seminar Series intended to raise understanding of AIIB's multilateral status, mandate and legal and policy framework in key legal services centers. The first AIIB Legal Seminar was held on Feb. 21, 2019 in Hong Kong, China. It was hosted by Hong Kong International Arbitration Centre and supported by the Department of Justice, Hong Kong Special Administrative Region, ICC and ICC – Hong Kong. The second AIIB Legal Seminar was held in Singapore on March 28, 2019, in partnership with the ICC International Court of Arbitration, Maxwell Chambers and Singapore International Arbitration Centre and supported by ICC – Singapore and the Ministry of Law, Singapore.

iv. **AIIB Legal Seminar Series**

OGC manages the Legal Information and Knowledge Series program. This program invites local and international law firms, arbitration centers and other relevant organizations to present their knowledge and expertise through an hour-long legal presentation on various legal areas of interest to AIIB. These legal presentations are typically held monthly and open to all AIIB staff. This serves as an opportunity to transfer knowledge from the visiting firms and organizations to AIIB staff.

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INTERNATIONAL ORGANIZATIONS AND THE PROMOTION OF EFFECTIVE DISPUTE RESOLUTION

AIIB Yearbook of International Law 2019



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First printed July 2019. Reprinted September 2019.



ASIAN INFRASTRUCTURE
INVESTMENT BANK