

## **AIIB Legal Conference Report**

Christopher Smith\*

### **1. INTRODUCTION**

On October 17 and 18, the Asian Infrastructure Investment Bank (AIIB) held its inaugural Legal Conference. The 2017 Legal Conference was convened as part of AIIB's inaugural Legal Week (October 16-21), organized under the initiative of AIIB's Office of General Counsel. The Legal Week was organized around four events: (i) the Legal Conference; (ii) the inaugural AIIB Law Lecture; (iii) a meeting of Chief Legal Officers of Asia-based international financial institutions (IFIs); and (iv) a series of internal trainings for AIIB staff.

The Legal Conference brought together nearly 100 eminent legal practitioners and academics. Four panel discussions were held on the following topics: (i) the governance role of multilateral shareholders; (ii) institutional design and effective governance; (iii) external dimensions and a governance mandate; and (iv) governance and the rule of administrative law. Following the panel discussions, the Legal Conference convened a plenary session on good governance and modern IFIs, and the President of AIIB, Jin Liqun, delivered closing remarks.

At the close of the Legal Conference, Miguel de Serpa Soares, the United Nations Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, delivered the inaugural AIIB Law Lecture, entitled "The Necessity of Cooperation between International Organizations." The Legal Week continued with a meeting of Chief Legal Officers of Asia-based IFIs, chaired by AIIB's General Counsel, Gerard Sanders, with opening remarks from President Jin and participation of legal chiefs of the Asian Development Bank, the Credit Guarantee & Investment Facility, the ECO Trade and Development Bank, the Eurasian Development Bank, the Green Climate Fund and the International Investment Bank. The Legal Week closed with a series of internal trainings for AIIB staff on a variety of legal topics pertinent to AIIB's operations.

This report is intended to provide a summary of the discussions held as part of the Legal Conference.

### **2. PANEL 1: THE GOVERNANCE ROLE OF MULTILATERAL SHAREHOLDERS**

This panel discussed a number of critical matters with respect to the role of Shareholders. The concept of shareholder veto was examined. Veto power is used relatively frequently in some institutions (i.e., the IMF), but not so much in others. The principal application of the shareholder veto is to amend an institution's charter, a step which certain stakeholders, including bondholders of an institution, would not want an institution to take lightly.

It was noted that shareholder representatives also come in certain flavors (governors and directors). Their respective powers are delineated in an institution's charter, but also touch on the following concerns: providing effective leadership of the organization; mobilizing resources; addressing fiduciary concerns for taxpayer money; establishing a conducive domestic legal environment for the institution; promoting the institution domestically; respecting the international character of the institution; maintaining the institution's relationship with other organizations; and, for some shareholders, maximizing resources for their constituencies. These concerns also involve recurring themes, including reputation risk, transparency and the proper balance between politics and economics.

It was pointed out by some panelists that certain international organizations, for example, the Global Climate Fund (GCF) and the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund), do not have shareholders, but rather stakeholders, which contributes to the ambiguous legal status of such organizations. In the case of both the GCF and the Global Fund, since their funding is entirely donor-based, neither organization is active on the capital markets and, as such, do not need to earn the trust of the financial markets. The panel also discussed the weak accountability chain between the board and the institution and the thin line between board oversight and execution.

---

\*Senior Counsel, Office of the General Counsel, AIIB

The question was raised as to what the role of the legal department is in an international organization? Some panel members pointed out that the general counsel needs to gain the trust of her colleagues and must encourage open communications. There was an suggestion that there should be a special code of conduct for lawyers in international organizations, which would deal, in part, with ethical considerations and confidentiality, which was not widely supported. One general counsel emphasized that the role of general counsel is to represent the institution, not the management, and pointed out that boards may not fully appreciate this independence. Another participant underlined that the role of general counsel is frequently to say no to management, providing an example from his own practice where the general counsel discovered a circumstance where management was not entirely candid with the board.

The discussion then moved to the legal personality of international organizations. It was noted that often, the systemic interests of an international organization differ from the interests of certain member states, which can create substantial tension. It can also lead to what one participant described as “magic”—when the international community comes together to accomplish something that an individual member state is not able to do.

The panel exchanged views on the International Law Commission (ILC)’s draft articles on the responsibility of international organizations, in light of several essential aspects, including privileges and immunities, national law and accountability. One participant discussed the International Oil Pollution Compensation Fund (IOPCF) case, where the UK courts imposed a freezing order on the IOPCF despite the organization’s privileges and immunities.

Another participant asked whether treaty-based independence is the best form of independence for an international organization and whether other ways to demonstrate independence exist (citing, e.g., the delivery of a legal opinion from the organization’s general counsel). One responded that some treaties are more equal than other treaties. Another responded that it is important to understand the domestic mechanisms that underlie the supply of resources to the international organization. For example, callable capital for the IFIs in which the US participates is authorized by the US Congress, but not allocated, and thus is subject to domestic political processes.

Another participant requested the panel to consider distinctions in duties between an international organization’s governors and its nominated board of directors. It was noted that governors are often paid by domestic taxpayers, while directors are paid by the institution, and in one instance a director’s salary was capped by the country whose constituency he represented. Different views were expressed on the implication of a director’s freedom to split her votes and on the functioning of a director of a single-member constituency.

It was noted that the difficulties of enforcing against a sovereign are exacerbated when the sovereign is one of the organization’s member states. The ability of an institution to enforce its preferred creditor status against a sovereign, for example, is not as simple as getting a judgment and executing on the judgment. The IFI would need to rely on other (albeit imperfect) tools.

The panel discussed whether it would be good for the international system if membership in international organizations were required. One participant highlighted that countries’ participation in IFIs is transactional in nature, and if a country believes that its interests continue to be maintained by membership, then it will remain a member.

### **3. PANEL 2: INSTITUTIONAL DESIGN AND EFFECTIVE GOVERNANCE**

A challenge for the AIIB is how to harness its two legitimacies: the input legitimacy (or, political legitimacy) and the output legitimacy (or, quality of work performed by AIIB). AIIB needs to deliver on both of these fronts. It was noted that all IFIs “ride three horses” at the same time: their member states; their own secretariat; and the countries that receive funds.

It was suggested that AIIB can take at least the following five lessons from other organizations regarding the concept of board representation. First, there should be two-way communication between the board and member states. Second, boards should avoid micromanagement. Third, headship selection and accountability and performance review are key to an MDB’s political legitimacy. It was

noted that now is “not the finest hour” for leadership of international organizations, with many heads being forced to resign due to incompetence, harassment or corruption. One speaker noted that the IMF’s decision to establish an annual board review of the managing director is a positive development, but perhaps a little too formal and overly dependent on written statements.

Fourth, and this relates more to the output legitimacy of the bank, is how to collaborate with other, similar organizations in order to avoid duplication and encourage the leveraging of acquired information. Fifth—and again relating to outcome legitimacy—is evaluation. It was noted that organizations often find it very difficult to stomach external, independent evaluation, but it is this type of evaluation that is most effective in picking up on fundamental questions that the public or borrowers are asking.

It was noted that AIIB was set up as an IFI despite the trend towards arguably more novel legal structures, like the GCF. The charters of other IFIs served as the inspiration for AIIB’s Articles of Agreement. Even non-resident boards are not so rare anymore. Debate about whether to have a resident or non-resident board goes back to Bretton Woods. It was noted that the most novel provision of the AIIB Board is its ability to establish an oversight mechanism over management, which demonstrates that board residence doesn’t necessarily mean oversight. One participant remarked as to how surprised he was that it took the IMF over 40 years to establish such an oversight mechanism and that other MDBs “didn’t discover corruption until the mid-1990s.” It was also noted that oversight mechanisms in legacy IFIs were grafted onto existing systems and usually in response to a crisis, whereas with the AIIB such mechanism is baked into bank governance and recognized in its Articles of Agreement.

The panel then discussed the force of geopolitics in IFIs, and for those IFIs that raise funds from the capital markets, the importance of backing by credit worthy member countries.

The discussion subsequently moved to what drives effectiveness in the boards of IFIs, drawing comparisons between IFI boards and boards of commercial financial institutions (CFIs). A few drivers of IFI board effectiveness were proposed and examined, including: (i) size of the board; (ii) leadership of the board; (iii) knowledge, skills and experience of the directors; (iv) director diversity; (v) tenure of directors; (vi) personal commitment of the directors; (vii) workload of the board and distribution of workload in the committee structure; (viii) support of the board and (ix) maintenance of the effectiveness of the board.

The following five reforms were examined as a means to enhance IFI board effectiveness: (i) allow board input on board profile; (ii) lengthen board tenures and “throw some institutional sand” in the replacement mechanism used for board members who exit the board before end of tenure; (iii) explicitly disclose levels of participation or absenteeism in board and committee meetings in board self-evaluation exercise; (iv) expand the format for the participation of outsiders and those with no voting rights and (v) institutionalize board evaluation and report key findings in annual reports, including the role of the President as chairman of the board (and not his performance as CEO).

One participant noted the risk of box-ticking when it comes to establishing a corporate governance framework. Box-ticking is prevalent, which is both good and bad. In banks, there is less shareholder pressure; pressure comes more from those in supervisory roles. In order to institutionalize good corporate governance across an organization, an organization needs to pay attention to the tone at the top and also bring directors closer to the organization. Another participant noted that the tone at the top was not the biggest concern; rather it was “the tone deaf at the top” which was more troubling.

It was noted that development is difficult. The system of development lending is “pro cyclical” and “favoritistic,” i.e., there are certain favored country-recipients. The challenge and opportunity for a new institution like AIIB is to be counter-cyclical and to locate and lend to “donor orphans.”

One participant remarked that it is particularly important for AIIB, as a new comer, to avoid certain pitfalls, such as board micromanagement. AIIB should delegate authorities to the President, but if AIIB is to do so while also demonstrating to the world that it is a *multilateral* (and not Chinese) institution, then AIIB needs to underscore its multilateralism, both in respect of its relationship with members and the outcome of its work. However, another participant reminded the panel that the more AIIB delegates to management, the stronger its oversight mechanism needs to be.

#### 4. PANEL 3: EXTERNAL DIMENSIONS AND A GOVERNANCE MANDATE

The discussion moved to the role of IFIs in setting international labor standards. It was noted that since 1990s, the ILO has become a global leader in the setting of international labor standards, recognizing in 1998 a series of eight international labor conventions as fundamental to the protection of the four core labor rights in the Declaration on the Fundamental Principles and Rights. Since 1998, the ILO has actively encouraged other IFIs to adopt labor standards and rights.

The level of commitment to labor standards varies across IFIs, with different levels of coverage and means of enforcement. It was also noted that the protection of labor is a powerful tool that enhances the legitimacy of IFIs.

The discussion shifted to gender diversity on corporate boards in Asia. Studies suggest that gender equality is not just a moral obligation. Gender diversity is the key to avoiding excessive risk-taking; gender diversity on boards also adds value. It was noted that positive results have been achieved in this regard in Europe, although not so much in Asia.

It was noted that quotas work well in promoting gender diversity on boards. In the absence of quotas, the main driver in promoting gender diversity is a change in company culture. The related practice and rules in Europe, the US and Asia were discussed.

The panel examined then what IFIs are doing to promote gender diversity on boards, given their mandate and their role as investors. To improve gender diversity, it was proposed that IFIs need to continue to work with governments and make a strong business case in favor of diversity (for example, it was pointed out that countries with higher levels of gender equality enjoy higher levels of economic growth and companies with more women on their boards have higher economic returns).

It was noted that law plays an important role in achieving effective governance at IFIs. The discussion, consequently, shifted to how the rule of law is maintained at the IMF and the in-house lawyer's role in fostering such rule of law.

IMF plays a firefighter role in that it assists countries facing balance-of-payments crises. It plays a role in good times too, through the promotion of a stable international monetary system. While the IMF's role has undergone changes over the years in response to various crises, the role of legal counsel at the IMF has also changed (including more frequent travel to member countries to help strengthen their respective legal frameworks). Lawyers at the IMF play a critical role in the institution's rule of law, serving in three broad capacities: (i) traditional in-house counsel role, (ii) trusted advisor to member countries and (iii) public policy contributor.

In its in-house role, legal counsel advises the IMF's three decision-making organs on the consistency of their decisions with the institution's Articles of Agreement, rules and regulations.

In its role as trusted advisor, legal counsel advises member countries, largely through the provision of technical assistance. Traditionally, legal technical assistance focused mainly on central banking, bank resolution and tax/budget policy, but the areas in which assistance is given has expanded in recent years. One discussant noted that many private lawyers are also in a position to offer technical assistance and queried whether there is competition between IMF technical assistance and technical assistance provided by private lawyers. In response, one participant expressed her view that the IMF technical assistance program does not compete with private lawyers' ability to provide similar assistance, reminding the panel that the IMF can only provide technical services to governments.

Regarding IFI cooperation with the private sector, more generally, it was noted that the vast majority of EBRD's investments are in the private sector (and it is EBRD's role to encourage more private sector investment); the link, however, between that private sector work, on the one hand, and legal reform work, on the other hand, is not always easily made.

Legal counsel at the IMF also contributes to the design and implementation of international policies. Legal counsel is able to utilize its "institutional memory" in the design of new policies and, as a repository of institutional information, to ensure that management and the IMF's departments think

through every issue before a policy is enacted. Two policies, in particular, that the IMF's legal counsel has been involved in relate to de-risking and fintech.

The discussion turned to the key ingredients of being an effective legal counsel in the IFI space. First, legal counsel must be independent, objective and consistent. The legal counsel's main client must be the Articles of Agreement. Second, legal counsel must be problem solvers, not just compliance officers. Third, an effective legal counsel needs to understand where the line is between legal and policy advice. On legal issues, lawyers should have exclusive responsibility. On policy issues, lawyers comprise just one group of personnel providing input. Fourth, legal counsel must be effective communicators and must possess the ability to explain their legal advice to non-lawyers, be they directors, management or economists. It was also highlighted that continuity is key—a lawyer's institutional memory is very helpful in ensuring policy coherence and consistency.

The discussion turned to the IMF's governance structure, which, it was noted, is *sui generis*. It combines the features of a private company with those of an international agency.

One participant asked the panel whether IFIs face limits in the setting of standards, particularly in the labor and gender spheres. One respondent noted there are indeed limitations as standards setting is very political since it ultimately reflects national policy choices. Another respondent added that the EBRD in its legal reform work does not impose a particular approach on how countries implement best practices in setting standards, although she notes that countries are indeed very competitive in setting such standards. IFIs have a role to play in sharing best practices (in part because they are seen as relatively independent), and one strategy IFIs could adopt is to leverage the competitiveness of countries: tell one country what an IFI has done for its neighbor in terms of setting standards, and often this will incentivize the country to think about how it could also meet the standards in question. At the same time, it is important for IFIs to recognize that each country has capacity constraints that may prevent it from adopting standards that other countries are better equipped to handle. It is not necessarily fair to insist that all countries adopt identical standards.

From a labor relations standpoint, one of the most difficult issues facing IFIs is how to get their own houses in order. The IMF, for example, focuses on people management and how to motivate people to work (from a non-compensation perspective). It was noted that the IMF has good rules on paper. More generally, IFI rules on labor should be common sensical and easy to implement and they must have "enforcement teeth." There is a connection between human rights and workers' rights, with one participant noting that the Black Sea Trade and Development Bank stipulates in its social framework that labor protection is a fundamental human right.

One participant raised the topic of "smart governance," akin to the concepts of smart cities and smart infrastructure. How will IFIs be innovators? He noted that there is a feeling AIIB may end up just as another sister of the World Bank, while also recognizing that there is an equal chance AIIB may go in a different direction. The AIIB is a work in progress, but the governance structure will be different—with a focus on greater delegation to management and a membership base distinct from other institutions. AIIB does not have the burden of "long-enshrined rules" that other, more mature institutions must cope with. Another participant noted that IFIs do struggle sometimes with innovation, particularly in the field of technology. Before IFIs can cooperate with their clients on new technologies, such as blockchains, IFIs need to take the time to better understand these advancements themselves.

In the context of standards setting, one participant asked why certain standards, and not others, are used, and how IFIs draw boundaries in such a way that choosing which standards to promote is not seen as arbitrary. In response, another participant suggested that such standards could be found in the international legal obligations of IFIs, which itself would be an interesting topic for a future conference.

## 5. PANEL 4: GOVERNANCE AND THE RULE OF ADMINISTRATIVE LAW

The discussion shifted to ways in which IFIs use debarment to combat fraud and corruption. Fighting international, cross-border corruption, in contrast to domestic corruption, is a relatively new concept, with the World Bank spearheading the approach in 1996. It was noted that international organizations will not start something new unless there is external pressure to do so. Fighting international corruption is a sensitive area. On the one hand, IFIs are not supposed to interfere with the political affairs of their member countries. On the other hand, they have a fiduciary duty to use funds for their intended purpose.



It was also noted that corruption is very bad for an organization's bottom line and that research shows a link between high levels of corruption and the rise of terrorism.

There are three units at the World Bank that deal with sanctions issues: The integrity unit (INT) investigates staff who have received bribes, as well as incidences of corruption, fraud or collusion involving a contract financed by the World Bank. In addition to the sanctions process, the World Bank has introduced a settlements process. It was noted that settlement has certain benefits. It provides parties with certainty; it is quicker and can be more efficient than the sanctions process; and it incentivizes respondents to be more cooperative with the investigation, which, in turn, leads to more information for the World Bank to better understand what actually took place.

It was highlighted that international organizations are not governments. Organizations cannot subpoena companies in order to get information. Instead, they rely on the audit clause, which is included in loan agreements with borrowers. International organizations, unlike governments, cannot give whistleblower protection. Instead, they provide confidentiality to witnesses.

The World Bank is obliged to inform relevant country governments (i.e., the host and home countries) if there is evidence of corruption or wrongdoing in connection with a project. It has discretion, however, as to when it informs. One participant advised that, before an organization makes a referral to a country government, it should know the laws of that country. In other words, it should know what it is getting into, ideally by securing a legal opinion from a reputable local law firm in that jurisdiction. A referral to the French government, for example, will not be received in the same way as a referral to the Swiss government.

The question was raised as to what obligations an organization has to inform a country government in the event a staff member violates a local law, particularly in light of an organization's privileges and immunities. One participant mentioned that, in the rare event this has happened, her organization has cooperated with local authorities, but on a voluntary basis and under certain conditions, such as confidentiality and no subpoenaing of staff. As such, this cooperation did not raise issues of waiver of immunity.

The discussion moved to information disclosure policies and open data initiatives and how international organizations can disclose data in a meaningful and transparent manner. Open data systems can help with decision-making, budget planning, donor coordination and civil society empowerment. One person noted that you can't weed out corruption without open data (i.e., without knowing the nature, location and providers of the development assistance being given).

The panel discussed certain lessons that can be learned from previous open data initiatives, lessons that would be particularly useful for a new organization, such as AIIB. First, a new institution has the enviable position of being able to introduce progressive information disclosure policies into its founding policies, which is much easier than to introduce such policies after an institution has been in existence for a long period and thus accustomed to doing things in a certain way. For an institution like the AIIB, which is commonly seen as an instrument of Chinese power, the lack of transparency can be a real hindrance, preventing it from gaining international legitimacy.

The second lesson is that external signals will matter in an institution's information disclosure and transparency policies. It was recommended that AIIB make its co-financing arrangements transparent and clear, an area in which other institutions struggle.

The third lesson is to define end users. It is critical to understand the demand for information, the entities and individuals that can use the information and how such entities and individuals access such data. One participant noted that mapping dashboards have limited audiences – maps should be accessible to those on the ground in the countries where projects are being implemented, not just to professors and others who may have access to robust bandwidth and wi-fi connections. IFIs should not assume that there is a culture of data use. For example, in Honduras, there is a strong, public distrust of data coming out of certain government institutions, and institutions need to be careful not to taint their data by associating it with local agencies that are distrusted.

The fourth lesson, specific to AIIB, is not to wait. There is tremendous interest in the AIIB, particularly in the US. At the same time, there is not a great deal of English language news on aid

coming out of China, which leaves great room for speculation about AIIB and encourages the development of misguided policy stances in the US regarding AIIB. AIIB must proactively combat this information gap and move quickly to develop an information disclosure policy and open data initiative to ensure correct information is released.

It was noted that it is a struggle for an organization to find the right balance between disclosing too much and too little information. An organization must weigh the impact of disclosure against the cost in making such information available. It is important to avoid the “data deluge.” At the same time, an organization does not know which information will be valuable to whom, suggesting it is better to err on the side of disclosure.

The discussion shifted to the jurisprudence of international administrative tribunals. Before 1980, there were only several administrative tribunals in operation, including the ILO administrative tribunal and the UN administrative tribunal. Now there are over 15 tribunals. The question arises as to whether decisions across all tribunals are consistent with one another, or whether the expansion of the number of tribunals is leading to a divergence in case law and decisions.

Many commentators posit that tribunals before 1980 generally followed each other's decisions and adhered to the same principle of laws.

An International Law Association report was discussed, which in 2004 noted that there ought to be consistency and coherence in the decisions of these tribunals and encouraged the tribunals to take note of each other's decisions. It is quite uncommon for the ILO tribunal and the former UN administrative tribunal to cite other tribunals' decisions, which may be because each of these tribunals can rely on its own extensive jurisprudence. In contrast, the World Bank, ADB and IMF tribunals do occasionally cite cases from other tribunals, demonstrating that there are general principles of law recognized by these tribunals.

The recognition of general principles of law across international tribunals does not necessarily mean that the decisions of these tribunals are consistent with one another. In certain areas, there is convergence of views across tribunals, while in others divergence, including the abolition of position, the standard of proof used in disciplinary cases, and the rights of victims who lodge complaints of harassment or retaliation.

The question was raised as to whether a new organization ought to set up its own tribunal or use an existing one. On the one hand, there are not many existing tribunals that allow affiliation across organizations, and tribunals each have their own cultural context that may not be appropriate for other organizations. Being a “small fish in that big pond” may not be advisable. On the other hand, it is quite costly for an organization to set up its own tribunal. The ESM was raised as a case in point. It established its own administrative tribunal in 2014. To mitigate costs, the tribunal sits (and judges are appointed) only when there is a case to be heard and cooperates with EFTA for administrative support.

One participant noted that tribunals are not just costly, but they can also engender bad will. It is worth highlighting the numerous resolution mechanisms, such as mediation, that can be exhausted before perhaps reaching the tribunal stage; there is “room for creativity” in how to leverage these pre-tribunal mechanisms.

This discussion concluded with several thoughts. Tribunals are distinct from one another in how they consider and decide cases. Nevertheless, for several reasons, there is far more convergence, rather than divergence, in their jurisprudence. For example, there are a number of individuals who sit on more than one tribunal, bringing their other experiences with them. Litigants before tribunals look for relevant case law across tribunals, which also reinforces the tendency toward commonality. This begs the question, however, as to whether convergence is desirable or appropriate. On the one hand, staff rules across international organizations and issues facing organizations share a lot in common. On the other hand, an emphasis on harmonization may impede an organization's ability to come up with its own solutions based on its own experiences and interests.

## 6. PLENARY: GOOD GOVERNANCE AND MODERN IFIs

The first part of the plenary session focused on the role of General Counsel in an IFI. Three roles, in particular, were highlighted: (i) protect the IFI's charter; (ii) protect the institution (from both external and internal challenges); and (iii) protect the institution's mission. An IFI's mission changes from time to time, and the General Counsel needs to be aware of this. General Counsel should be aware of political issues facing the institution, but such issues should not affect the General Counsel's responsibility to protect the institution's mission. The General Counsel needs to understand and mitigate conflicts of interest and internal conflicts over internal resources, particularly if the institution engages in both public- and private-sector activities.

It was agreed that transparency and accountability are the real drivers of good behavior in public institutions. Even though international organizations view themselves as self-contained, notions of governance are still informed by domestic considerations.

AIIB, for example, was the first IFI established in China. Therefore, how AIIB and the Chinese government resolve issues around privileges and immunities, and, more generally, how China approaches the roles and responsibilities of hosting an IFI on its territory, will likely set an example for future IFIs in China. Because AIIB is in China, the international community may set higher expectations or impose more requirements on it. The best way to address these higher expectations is for AIIB to commit itself to as much transparency as possible, while also avoiding the "document tsunami," which is often associated with greater levels of transparency.

There will always be tension between an IFI and the host country on matters of governance, particularly in the area of privileges and immunities. One representative of an IFI noted that the only people who really understand the specific character and legal status of the IFI is the institution's legal department.

The discussion shifted to the question of whether an IFI should have a resident or non-resident board, whether a non-resident board is only appropriate for a small institution and whether a non-resident board should have the same scope of responsibilities as a resident board. AIIB's view is that the role of the board can be discharged from a distance. The board can be convened when and as needed, as well as on a quarterly basis. It was noted that there is a provision in AIIB's charter to allow the board to delegate project approval to the President.

A representative from another IFI that allows project delegation confirmed it works well, although a common question that arises is the monetary threshold under which the President can approve under his delegation authority. An alternative to setting monetary thresholds is a policy of principles-based delegation. One of the benefits of allowing management to approve projects is that poor management decisions can be ameliorated by removing the management—in contrast, boards cannot be fired for mistaken decisions. Several participants remarked that having a non-resident board mitigates the risk of micro-management and allows management to do its job.

The plenary session concluded with four closing thoughts and questions. First, there is no common view of what good governance means in every context. There are certainly shared experiences across IFIs, but there are differences as well. Differences are not necessarily a bad thing, and departing from what is viewed as "best practice" does not mean that the alternative does not meet the standard of good governance. Second, good practice for IFIs is an evolving standard. There are changes in demands and expectations of those for whom governance arrangements at IFIs exist. Should IFIs anticipate the types of governance that might be required in the future, and act accordingly, or should they continue to use governance structures that work effectively in the present? Third, should IFIs be pro-active in setting standards of governance, or should IFI governance be reflective of what prevails in current domestic governance structures? Put differently, should IFIs be trailblazers or be instrumentalized by their members? Fourth, AIIB would very much like to be part of the continuing discourse on good IFI governance.



