

ASIAN INFRASTRUCTURE INVESTMENT BANK BILL 2017

SAMOA

Explanatory Memorandum

1.0 Object and reasons

- 1.1 The Bill seeks to give effect to the Articles of Agreement between the Government and the Asian Infrastructure Investment Bank (Bank).
- 1.2 The Articles of Agreement is between the Bank and all its member countries (including Samoa once our membership is completed). The Articles of Agreement requires an instrument of ratification, acceptance or approval indicating Samoa's consent to be bound by the Articles of Agreement. This, together with Samoa's payment of its first installment of paid-in capital, will complete Samoa's membership process and allow the Bank to extend development financing to Samoa as early as possible.
- 1.3 The objectives of the Bill is to authorise borrowing and receiving of grants from the Bank. This is not limited to just Government – the Bank may also provide these to other persons in Samoa (other than Government) e.g. a private entity/organisation. The Bank is to some extent a combination of the World Bank and IFC, by offering financing on developmental terms to both public and private sectors. Where financing is provided by the Bank to the private sector Government has the right to refuse (approve on the basis of no-objection).

- 1.4 The Bill also provides for privileges, immunities and tax exemptions accorded to the Bank similar to treatment of other international organisations recognised by Samoa. The Bank enjoys functional privileges and immunities only (as opposed to diplomatic privileges and immunities). This means, that the Bank's tax-exempt status only applies when the Bank is performing its official functions.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - provides for the terms and definitions in the Bill.
- Clause 3:** - binds the Government.
- Clause 4:** - authorises the Government to borrow or acquire money on behalf of Samoa from the Bank in accordance with an agreement. The sum borrowed is to be determined by the Minister responsible for finance (Minister) considering the list of factors listed and is to be paid in to a designated special fund and spent only for the purposes for which such sum is borrowed.
- Clause 5:** - provides for matters on how the Government implements its obligations under the agreements. It empowers the Minister or a person authorised in writing by the Minister (on behalf of the Government to issue bonds, promissory notes or other instruments to give effect to the terms and conditions of the relevant loan agreement. Bonds, promissory notes or any other instruments issued under this section are exempted from stamp duty or tax. Loan obtained under the agreement is exempted from any tax liability.

- Clause 6:** - provides for arbitration available if there is any dispute between the Bank and the Government under an agreement conferred by this Bill or under any bond, promissory note or instrument issued under any loan agreement.
- Clause 7:** - provides for the status of the bank and its legal capacity to enter into contracts, acquire and dispose of immovable and movable property, to institute and respond to legal proceedings and to take other action as may be necessary or useful for its purpose and activities.
- Clause 8:** - provides for the application of privileges and immunities accorded to international organisations under the Diplomatic Privileges and Immunities Act 1978 to the Bank.
- Clause 9:** - provides that the Bank shall enjoy immunity from any form of legal process except in cases as listed i.e. to raise funds, through borrowings or other means, to guarantee obligations etc.
- Clause 10:** - provides for the immunity of assets and archives of the Bank from search, requisition, confiscation or any other form of interference or taking or foreclosure by executive or legislative action.
- Clause 11:** - provides for privileges for communications accorded to the Bank and its members.
- Clause 12:** - provides for immunities and privileges accorded to the Bank and its employees and officers while on mission in Samoa or in transit relating to legal process, personal arrest or detention, inspection of personal baggage etc.

- Clause 13:** - provides for circumstances whereby the Bank is exempted from paying tax and duty. It also indicates Samoa’s intention to reserve the right to tax Samoan citizens or nationals employed by the Bank – and such reservation is required to be recorded in the Instrument of ratification, acceptance or approval of the Articles of Agreement and deposited with the Bank as this is the only chance for a member county to make this reservation.
- Clause 14:** - provides for further exemptions accorded to the Bank for purchases made or services used in the exercise of the Bank’s official activities or services provided by the Bank in Samoa in the exercise of its official activities.
- Clause 15:** - empowers the Bank to pursue freely all official activities within Samoa without any restrictions subject to the Articles of Agreement.
- Clause 16:** - provides for the discretion of the Bank to waive any privileges, immunities and exemptions conferred under the Bill.
- Clause 17:** - empowers the Head of State to make regulations for the purposes of the Bill and to give full effect for the due administration of the Bill.
- Schedule 1:** - provides for the Articles of Agreement.

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(Hon SILI Epa Tuioti)
MINISTER FOR FINANCE