

# STATES OF JERSEY



## ASSEMBLY CONSIDERATION OF THE BILATERAL INVESTMENT TREATY WITH THE UNITED ARAB EMIRATES

---

Lodged au Greffe on 7th February 2023  
by Deputy S.Y. Mézec of St. Helier South  
Earliest date for debate: 28th February 2023

---

STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to request the Minister for External Relations and Financial Services to take the necessary steps to ensure the Bilateral Investment Treaty with the United Arab Emirates does not come into force until such time as the Treaty has been considered by the States Assembly; and
- (b) to request the Council of Ministers, in consultation with the Privileges and Procedures Committee, to bring forward a process by which all Bilateral Investment Treaties are subject to full consultation with, and approval by, the States Assembly before they come into force.

DEPUTY S.Y. MÉZEC OF ST. HELIER SOUTH

## REPORT

The purpose of this proposition is to ensure that a suitable procedure is put into place to enable the States Assembly to formally approve Bilateral Investment Treaties before they come into force. Such a procedure should be compliant and consistent with the Standing Orders of the States Assembly and consider the composition of the States Assembly and Council of Ministers. The process should also protect and maintain Jersey's reputation as a well governed and regulated financial centre.

The Minister for External Relations and Financial Services presented R.6/2023 - [Notification of the conclusion of the bilateral agreement for the promotion and protection of investments between the Government of Jersey and the Government of the United Arab Emirates](#) on 20th January 2023. The main assumption of the report is that its tabling commences a negative consent procedure, however no such provision for negative consent exists within Standing Orders. Therefore, it is questionable whether the Assembly is giving consent.

On page 9 the report states:

*“The first Ministerial Decision presents to the States Assembly the treaty as signed and as approved by the Council of Ministers. The first Decision notifies the States Assembly of the conclusion of the treaty and initiates a 14-working-day period during which States Members may raise views on it.*

*At the end of the above period – provided no issues have arisen that the empowered Minister determines should prevent the Bilateral Investment Treaty's entry into force – Jersey's procedure enabling the entry into force of the treaty is complete. The empowered Minister then writes to the other signatory party to confirm this.”*

No instruction on how States Members may 'raise views' has been given in either the report or any preceding or subsequent documentation to date. Given the workload of the Assembly it is also likely that members may not read the details within the 14-day working day period and many may not be aware that the 14-day period is in effect or that it signifies any form of consent process.

The process put forward by the Minister for External Relations and Financial Services is described in the report as a 'negative consent procedure' as used in other jurisdictions. The Minister has failed to consider that negative consent procedures exist within other parliaments whereas the Standing Orders of the States Assembly does not contain such provision within Standing Orders. For example, within the UK Parliament, a treaty must be laid before Parliament for 21 sitting days, this gives MPs sufficient time to table a motion to annul it<sup>1</sup>. Canada's policy on international treaties states that the House of Commons may debate any treaty if it wishes to do so<sup>2</sup>. In Australia all treaties are considered by the Joint Standing Committee on Treaties, and Government agencies are told to allow a period of 4 to 6 months for the parliamentary scrutiny process to be completed<sup>3</sup>.

The 14 working day period given by the Minister in [R.6/2023](#) does not give States Members sufficient time to lodge and get a proposition debated, and States Members do

---

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2010/25/part/2>

<https://www.parliament.uk/about/how/laws/secondary-legislation/statutory-instruments-commons/>

<sup>2</sup> [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/200845E#ftn21](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/200845E#ftn21)

<sup>3</sup> <https://www.dfat.gov.au/international-relations/treaties/treaty-making-process>

not currently have the same mechanisms available to question or object to a treaty as parliamentarians do in the UK, Canada or Australia.

Further, other jurisdictions that use a ‘negative consent’ procedure are operating within a party-political system, whereby the international relations policies of parties are published and put under public scrutiny during general elections. Ministers with authority to act on behalf of the Government will be doing so as members of a party with a majority or near majority in the legislative assembly, they should also be acting in accordance with an established policy position. The current Government of Jersey policy on International Relations has been approved by the Council of Ministers but may not represent the broader policy perspective of the Assembly due to the composition of members comprising of a majority of independent members. Therefore, there is a higher risk in Jersey that a treaty being approved at Ministerial level, may not reflect the aspiration of the Assembly or the public. Bringing such treaties to the Assembly for approval provides a safeguard to ensure that Ministers do not act unilaterally and without due consideration to any concerns that are raised.

We have worked hard to build and maintain a highly regulated and respected industry and should ensure that due consideration is given to all such International Treaties to ensure that this is maintained. Protection of Jersey’s international reputation, particularly coming up to the MoneyVal assessment of the Island, is crucial and surely worthy of Assembly approval and consideration.

### **Financial and manpower implications**

The impact of this proposition is difficult assess – in the first instance the principal impact would be manpower in relation to consultation with States Members, however the impact is limited. Should consultation commence early enough it could, in fact, be a negligible additional process since any comments would be dealt with during the initial proceedings.

Consideration should be given to the financial impact of not entering into bilateral investment treaties, however it is not possible to calculate the implications of such actions, as there are multiple factors that could impact the Island economy.