

STATES OF JERSEY



ASSEMBLY CONSIDERATION OF THE BILATERAL INVESTMENTS TREATY WITH THE UNITED ARAB EMIRATES (P.6/2023): SECOND AMENDMENT (P.6/2023 AMD.(2)) – COMMENTS

Presented to the States on 24th February 2023
by the Economic and International Affairs Scrutiny Panel

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COMMENTS

Background and context

The Jersey-UAE Bilateral Investment Treaty (“Jersey-UAE BIT”) was signed in November 2021 after three years of negotiation. In December 2022, the Council of Ministers approved the Minister for External Relations and Financial Services completing the necessary steps to bring it into force.

The Economic and International Affairs Scrutiny Panel received a briefing on the Jersey-UAE BIT on 13th January 2023. During the briefing, the Panel was informed that there are three routes by which the provisions in BITs can apply to Jersey:

1. Jersey may have one of the UK’s own treaties with another country extended to it.
2. Jersey may choose to participate in a qualifying UK Free Trade Agreement (FTA) with a third country (or countries), which contains equivalent investor protections.
3. Jersey may negotiate its own BIT with a third country, subject to receiving the UK’s prior permission through a Letter of Entrustment.

Officers from External Relations explained that the third route is the case for the Jersey-UAE BIT and that the conclusion of the treaty would assist in promoting and liberalising cross-border investment.

The Panel identified several questions on the Jersey-UAE BIT which were discussed during the briefing with Officers. The Panel also followed up one particular area of focus (Sharia Law) [in a letter to the Minister](#).

Rationale

The Panel asked for the rationale behind the Agreement with the United Arab Emirates (UAE), particularly as Jersey was a successful jurisdiction for financial services. Officers advised that the BIT could facilitate investment by investors based in the UAE into Jersey, including via Jersey financial institutions and investment funds.

The Panel was advised that BITs offer investors an effective ‘kitemark’ regarding investor protection in the event of dispute, to assure them of fair treatment. Officers explained that BITs negotiated bilaterally as the UAE treaty has been, rather than via the UK, could be helpful owing to the occasional lack of clarity overseas regarding Jersey’s relationship with the UK. The Jersey-UAE BIT does not preclude Jersey adopting measures it considers necessary to protect its essential security interests, ensure compliance with money-laundering regulations and to combat the financing of terrorism or compliance with laws and regulation in relation to financial sanctions.

Human Rights

The Panel raised the issue of the UAE human rights record and Officers explained that seeking furtherance of labour rights and protection had been incorporated into the Agreement. Furthermore, Officers explained that there was a clear commitment from

Jersey in defending its values on human rights, as noted in the Common Policy for External Relations.

Sharia Law

The Panel asked which laws would apply should there be a dispute (Jersey or the UAE) and was informed that the domestic law of where the investor was based would apply and, should a matter be escalated, public international law would apply. In that regard, the Panel asked if Sharia Law would apply in the event of a dispute filed under the terms of the Agreement in the UAE. [In a letter to the Panel](#) dated 30th January, the Minister explained that one of the advantages of the BIT was that it contained provisions that would allow qualifying investors to resolve disputes internationally through arbitration under independent legal frameworks rather than relying solely on domestic law.

The Panel also asked about the wider applicability of Sharia Law for other financial activity. The Minister explained that the Agreement does not create any new legislative or regulatory burdens upon Jersey, nor the UAE, and does not impose new conditions upon Jersey or its investors, including the principles or operation of Islamic Law. The Minister also explained that the Agreement has a specific and limited purpose to protect and promote investment without affecting the ability of each Contracting Party to maintain and manage its own domestic legal, regulatory and economic environments.

Conclusion

The Panel is satisfied that its concerns in relation to the Jersey-UAE BIT have been addressed.