

STATES OF JERSEY



ASSEMBLY CONSIDERATION OF THE BILATERAL INVESTMENT TREATY WITH THE UNITED ARAB EMIRATES (P.6/2023): SECOND AMENDMENT

Lodged au Greffe on 21st February 2023
by the Minister for External Relations and Financial Services
Earliest date for debate: 28th February 2023

STATES GREFFE

ASSEMBLY CONSIDERATION OF THE BILATERAL INVESTMENT
TREATY WITH THE UNITED ARAB EMIRATES (P.6/2023):
AMENDMENT

1 PAGE 2, PARAGRAPH (a) –

After the words “to take the necessary” insert the word “final”;

For the word “ensure” substitute the word “bring”;

Delete the words “does not come”; and

For the words “until such time as the Treaty has been considered by the States Assembly” substitute the words “as soon as possible”

MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES

Note: After this amendment, the proposition would read as follows –

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 **final** steps to **bring** the Bilateral Investment Treaty with the United Arab Emirates into force **as soon as possible**; 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.

REPORT

The purpose of this amendment is to ensure that the Assembly can, without undue delay, express its view on whether or not the Bilateral Investment Treaty with the United Arab Emirates should come into force.

Jersey has a good reputation as a responsible international actor, and a reliable treaty partner. Following the signing of the Jersey-UAE BIT in 2021, it is important and appropriate that the final steps to allow the treaty to enter into force can now be completed in a constitutionally appropriate manner.

Prior to lodging this amendment, Ministers have liaised with Deputy Mézec in an effort to align the objective of the proposition with the intention of the amendment. Ministers are also grateful to Deputy Sir Philip Bailhache for his open engagement regarding his amendment to part (b) of the proposition, which the Government will be supporting.

Background

The Council of Ministers considers that it has acted openly and in good faith with respect to the negotiation and conclusion of this Bilateral Investment Treaty (“BIT”). This process is set out in R.6/2023. In particular, it is important to re-emphasise that a BIT does not require an Order to be made enabling its entry into force, or new legislation to support its implementation in Jersey. A BIT represents a set of commitments between respective governments to promote and protect foreign direct investment in the signature jurisdictions.

Ministers considered closely the procedural arrangements for the ratification of a BIT. These are again outlined and explained in R.6/2023, which itself was presented in order to provide notification of a 14-working-day period during which any States Member could raise views on the BIT. The arrangements were confirmed by the Law Officers’ Department as being consistent and proportionate. In confirming these procedural arrangements, External Relations engaged comprehensively with the States Greffe, Privileges and Procedures Committee and the Economic and International Affairs Scrutiny Panel.

The amendment

Ministers fully accept that Deputy Mézec, in lodging P.6/2023, has legitimately utilised his right to raise views on the BIT within the 14-working-day period provided for in R.6/2023. The Deputy has, in addition, made a request regarding how the entry into force of such agreements will be handled in the future. Part (a) and (b) of Deputy Mézec’s proposition are separate, although inter-linked, and have been considered as such in the preparation of this amendment and the Government’s consideration of the amendment to part (b) from Deputy Bailhache.

Part (a)

Ministers wish to amend part (a) of the proposition to ensure that the States can consider and indicate its view on the BIT without any further or undue delay.

The amendment therefore asks the Assembly to request the Minister for External Relations to take the necessary steps to enable the BIT’s entry into force. This follows

comprehensive briefing for States Members on the BIT, as outlined in R.6/2023, and the conclusion on Thursday 9th February 2023 of the 14-working-day period during which time States Members were able to raise views on the treaty. That period resulted in one such representation being made in the form of P.6/2023.

Part (b)

Ministers recognise that while a procedure for the entry into force of Bilateral Investment Treaties has been developed, discussed with relevant stakeholders, and then set out in R.6/2023, there should be agreement and clarity over the process in future similar circumstances.

The original wording in Deputy Mézec's proposition, however, creates legal and practical challenges which, in the view of Ministers, can be dealt with through amendments. As mentioned above, Bilateral Investment Treaties are international agreements – akin to contracts – between governments and, accordingly, a function of the executive.

The States Assembly, as legislature, should be involved in the ratification process, with an ability to express its view to the responsible Minister seeking to finalise the entry into force of a BIT or similar agreement. The ability of the Minister – acting as the executive – to proceed with ratification arises by virtue of Regulation 3 of the States of Jersey (Minister for External Relations and Financial services) (Jersey) Regulations 2013 read in conjunction with Article 18(3)(b) of the States of Jersey Law 2005, in accordance with the Common Policy for External Relations.

As already referenced, Ministers are aware that Deputy Bailhache will be bringing forward an amendment to part (b) which will ensure a constitutionally appropriate and formal process is in place for such agreements in the future. It is envisaged that this will be undertaken through legislation which, importantly, means that the process by which future Bilateral Investment Treaties will be considered by the Assembly will itself have to be approved by the Assembly, giving clarity and certainty.

Closing

In adopting this amendment, Members will have a formal opportunity to provide their view on the entry into force of the Jersey-UAE BIT, and ensure that work commences to formalise the Assembly's role in the entry into force of such agreements in future.

The Council respectfully requests that Members adopt this amendment, and the amendment of Deputy Bailhache, and then votes in favour of the amended proposition.

Financial and manpower implications

There are no additional resource implications as a consequence of adopting this amendment, or the proposition as amended by this amendment.