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23 June 2022

My Lords,

### **UK Infrastructure Bank Bill: Committee Stage**

Thank you for your contributions to the wide-ranging debate at Committee Stage of the UK Infrastructure Bank Bill. As I promised, I'd like to respond to some questions raised in the debate.

### **Documents underpinning the Bank**

This came up several times during Committee Stage and I'd like to provide more detail on the queries raised.

The Bill is designed to establish the Bank's objectives, core governance arrangements and lending powers in statute. It is not designed to be a comprehensive document on the relationship between HM Treasury and the Bank. More detail on this relationship is set out in the Bank's Framework Document, which was published in June 2021 and is available [online](#)<sup>1</sup>. The Framework Document can have legal relevance - both the Bank and HMT will be expected to abide by it and it could provide relevant context in any legal challenge.

This follows the typical process for how government departments interact with their arm's-length bodies. Further detail on this is set out in Annex 7.2 of Managing Public Money which requires framework documents to set out the arrangements for departments to monitor and understand their arm's length bodies' strategy, performance and delivery. For this reason, HM Treasury has a framework document with its other arm's length bodies including the Office for Budget Responsibility and National Infrastructure Commission, and the British Business Bank has one with the department for Business, Energy and Industrial Strategy. All of these, which I believe have been functioning well to date, are drafted in the same terms as the Bank's Framework Document.

These documents are further supplemented by the Bank's Articles of Association, a legally binding document that sets out the day-to-day operations of the Bank, as well as defining the

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/994437/UK\\_Infrastructure\\_Bank\\_Framework\\_Document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994437/UK_Infrastructure_Bank_Framework_Document.pdf)

purpose of the company. Articles of Association are required under the Companies Act<sup>2</sup> for all registered companies and the Bank's Articles are publicly available on Companies House website. The provisions in the Bill that relate to the Articles of Association are simply to ensure that the two are consistent with each other. It is the Articles that, for example, set out principles of company law relating to the operation of Board meetings.

### **Financial Services and Markets Act**

There was a specific question from Lord Sharkey on the aspects of FSMA the Bank will abide by and a similar one from Lord Teverson on which aspects of the Senior Managers and Certification Regime would not apply to the Bank.

While the Bank has a regulatory exemption, it will report annually on its compliance against the policies and practices it has in place to support best practice in its governance and wider regulatory expectations, including those as relevant to the Senior Managers and Certification Regime. In terms of its current policies and practices, the Bank has considered which regulations and standards of conduct would have applied to the Bank were it a regulated entity and sought to replicate these in a manner tailored to its business model and activities.

On the Senior Managers and Certification Regime (SMCR), the Bank is required by its Framework Document to adhere to the principles of this in as far as it is "reasonably practicable and appropriate for it to do so". Were the Bank a regulated firm, it would be considered a "Core" firm under SMCR. The Bank has aimed to mirror the requirements for a core firm in its own governance arrangements where relevant. The only aspects of SMCR (and the FCA's Principles for Business, Handbook and Conduct Rules) which UKIB has currently elected to disapply are those which not relevant to it - nor would they be to an equivalent regulated firm – because UKIB does not perform the activities which those rules cover. For example:

- compliance with the rules on managing client money (the Bank does not hold or manage client money); and
- the Certification functions *Proprietary Trader*, *CASS Operational Oversight*, *Functions subject to qualification requirements* and *Algorithmic trading* (the Bank does not engage in any of these activities).

The Bank will address the intended outcome of SMCR to ensure that its employees are fit and proper for the roles that they perform by ensuring appropriate referencing and background checks, at least equivalent to the FCA's regulatory reference template and, where appropriate, utilising the Civil Service background and security checks.

There was concern in the debate that the Bank does not have a whistleblowing policy. The Bank does have such a policy in place. As the Framework Document sets out, the Bank is required in any event to act in accordance with best practice in its governance and conduct as a financial institution. This includes adopting and implementing policies to protect the organisation against fraud, theft, corruption, bribery, insider dealing, market abuse and money-laundering. This has been further supported by their recent appointment of a Chief Risk Officer. On financial crime, the Bank will produce an annual Money Laundering Reporting Officer's report for submission to its Board.

## **Accounting structure of the Bank**

Lord Tunnicliffe asked if I could set out the accounting arrangement of the Bank, particularly with respect to additionality. Generally, we don't expect private investment to show up on the Government's balance sheet. If the Bank only has a minority stake in an entity it will typically be only that stake that shows on the Government's balance sheet. The exception to this is if the Bank has a majority stake in an entity or the Government has other controlling powers over that entity; should this happen, it is likely that the whole project will fall on balance sheet. Further, any guarantees issued under the Bank's remit are contingent liabilities, which means they will not show on the Government's balance sheet, unless the Bank has to honour a guarantee.

## **Devolved Administrations**

I promised to get back to you on our engagement with the devolved administrations to-date; this was raised by Lord Thomas and Lord Vaux. We have engaged with the devolved administrations throughout the set-up phases of the Bank, as part of our commitment to ensure that it is able to operate effectively across the whole of the UK. Further, the Bank has also engaged extensively with the devolved administrations, as well as with local authorities across all four nations, and has met with the Welsh Development Bank and the Scottish National Investment Bank.

Ahead of introduction, we wrote to the relevant Ministers in each of the devolved administrations requesting that they begin the LCM process; we have received a response from all of the devolved administration Ministers who have agreed that the Bill requires an LCM. We are now beginning more detailed discussions on the Bill to ensure that the Bank and Bill operate as intended for the whole of the United Kingdom; any devolved issues will be resolved directly with the devolved administrations through the legislative consent process.

## **Establishment of the Board**

Peers will remember I gave an update on the Bank's Board. There was some concern from Baroness Kramer that the Bank was not involved in the recruitment of the Non-Executive Directors. I can reassure her that Chris Grigg, the Chair of the Bank, chaired the recruitment panel for these Non-Executive appointments, alongside a representative of UK Government Investments and a Non-Executive Director of the British Business Bank. This recruitment process followed the strict guidelines from the Office of the Commissioners of Public Appointment, and we expect these appointments to be audited by the Office in due course. Peers will also see the other senior appointments from the Bank that were made public earlier this month.

## **Review**

There was some interest in the review clause in the Bill and the time period we have chosen for the initial review. We discussed this in the debate, but I'd like to elaborate on the benefits of having a slightly longer time period before we conduct the first review. Infrastructure investments by their nature are long term and it takes time to fully evaluate their effectiveness; for example, the Thames Tideway Tunnel began construction in 2016 and is expected to finish in 2025. We can see this with the investments the Bank has undertaken to date too: the Next Energy investment is over a ten-year period, the CityFibre deal on digital infrastructure is to be completed in 2030 and the Teesworks investment aims to allow the project to make a significant contribution to the UK's 50GW ambition for offshore wind by 2030.

We need to allow a nascent institution time to embed itself and fully establish itself in the market. It would be wrong to conduct a detailed and overly wide-ranging review of the Bank's impact before this can sensibly be assessed. But the Government is conducting reviews on particular aspects of the Bank and its activities – for example in the review of its Framework Document which will take place during 2024-25 and include topics such as how the financial services regulatory regime applies to it, and the operation of the Bank's governance. In common with the outcomes of all reviews of arm's-length body Framework Documents, a revised Framework Document will be published once this review has concluded.

### **Strategic plan**

The Bank's strategic plan will be published today, so I will be in touch to offer a further briefing session with interested peers next week, with senior personnel of the Bank.

As ever, please don't hesitate to get in touch if you have any questions at [UKIBBill@hmtreasury.gov.uk](mailto:UKIBBill@hmtreasury.gov.uk)

I will place a copy of this letter in the Library of the House.

A handwritten signature in black ink, appearing to be 'Baroness Penn', with a long horizontal flourish extending to the right.

**BARONESS PENN**