



23 October 2023

IBNI BRIEFING NOTE
BOARD OVERSIGHT OF IBNI FUNDING AND FINANCING DECISIONS

1. **Introduction**

- 1.1 The International Bank for Nuclear Infrastructure (IBNI) is a proposed new International Financial Institution (IFI), to be created by a multilateral treaty, using the similar mechanism as countries have employed to create existing IFIs such as the World Bank Group (WBG), the European Bank for Reconstruction and Development (EBRD), and the European Investment Bank (EIB).
- 1.2 The IBNI Implementation Organisation Strategic Advisory Group (IBNI-IO SAG) is an international team seeking to establish, as a precursor to IBNI, a new nongovernmental organisation (NGO) – namely the IBNI Implementation Organisation (IBNI-IO) – to build the coalition necessary to create IBNI on an accelerated basis. In the discussions that team members have had with governments and other interested parties, one of the questions that is frequently asked is: *What governance arrangements will exist in regard to the oversight, by the IBNI's Board of Directors, of funding and financing initiatives recommended by IBNI management – specifically, will the Directors hold votes to determine which particular funding and financing applications are approved or rejected?*
- 1.3 This Briefing Note sets out the IBNI-IO SAG's current views on this question. Of course, the governance arrangements for the IBNI Board will, ultimately, be determined by the IBNI member countries. Accordingly, the views herein should simply be regarded as initial suggestions.

2. **Board Composition and Voting Arrangements**

- 2.1 The 2021 IBNI *Initial Report and Action Plan*¹ proposes a governance structure for IBNI that would be similar to that used by the existing IFIs. There would be a Board of Governors, consisting of all member countries, which would be the senior decision-making body of IBNI. The Governors would delegate the task of overseeing IBNI management to a smaller Board of Directors. The Governors, who would meet annually, would select the Directors, with each Governor voting the shares held by his/her country. The Directors would be non-resident, but would meet more frequently (perhaps every few months). Each Director would represent either an individual large shareholder or a group of smaller shareholders. The voting rights of each Director would reflect the shareholdings of the country or countries which the Director represented.

3. **A Key Governance Issue: Potential Conflicts of Interest of IBNI Directors**

- 3.1 A key issue raised by the proposed governance arrangements is that, if Directors were called upon to vote on individual funding or financing decisions, they might find themselves in situations where their national loyalties and their duties as Directors are in conflict. For example, if IBNI's management proposed that IBNI provide supplemental financing for an initiative in Host Country A using nuclear technology

¹ IBNI-IO SAG (2021). *Initial Report and Action Plan*, <https://nuclearbank-io-sag.org/>, at Page 93.

developed by Exporting Country X, and if Exporting Country Y also hoped to sell its competing nuclear technology to Host Country A, then the Director representing Exporting Country Y (or a group of countries that included Country Y) might feel compelled to vote against the management proposal, regardless of the merits of the initiative.

3.2 Although all IFIs face this issue of potential conflicts of interest amongst Board members, it is likely that this concern will be particularly acute for IBNI Directors, given the very large capital requirements of many nuclear initiatives, and their corresponding high political profile. This is one of the key ‘unique features’ of a multilateral nuclear infrastructure bank.

4. The Role of the Board in Approving IBNI’s Standards & Criteria and Evaluation Procedures

4.1 As a preliminary point, it should be emphasised that the primary duty of the IBNI Directors ought to be approving and amending the IBNI Standards & Criteria and the IBNI Evaluation Procedures, i.e. the tools that will be used by management to evaluate funding and financing applications, as discussed in Chapter 5 of the IBNI *Initial Report and Action Plan*. Settling the Standards & Criteria and the Evaluation Procedures should be the main mechanisms whereby the Directors can determine the ‘direction of travel’ for IBNI. In this regard, it is recommended that decisions in respect of both the IBNI Standards & Criteria and the Evaluation Procedures must be taken by a majority of not less than two-thirds of the total voting power of the Directors casting votes, as is the case for “general policy decisions” taken by the Board of Directors of the EBRD.²

5. Dealing with Potential Conflicts of Interest

5.1 The IBNI-IO SAG has examined how the issue of potential for conflicts of interest has been dealt with by the other IFIs and has considered a variety of alternative approaches to deal with the concern. Three approaches are presented below, as possible solutions which the IBNI member states could examine during their deliberations on IBNI’s future governance arrangements. Of course, there are many possible approaches, and many combinations and variations of the three approaches discussed below.

1. The ‘Supermajority Review Approach’. One possible approach for dealing with potential conflicts of interest would be for the Directors to delegate to the IBNI Chief Executive Officer (CEO) the power to approve or reject funding and financing applications – but on the basis that any such decision of the CEO could be overturned by a two-thirds supermajority vote (similar to that used for votes on the Standards & Criteria and the Evaluation Procedures) taken by the Board of Directors within a prescribed timeframe (perhaps 30 days). This would allow the Directors to oversee decisions taken in regard to funding/financing applications, but would prevent such decisions being overturned by a narrow majority of shareholders.
2. The Independent Evaluator Approach. A second approach would allow the Directors to vote on each funding/financing recommendation made by IBNI management, but on the basis that each such recommendation (above a specified dollar value) would be reviewed by an Independent Evaluator, with the Independent Evaluator’s report being presented to the Board alongside management’s recommendation. This would be somewhat similar to the

² See the *Agreement Establishing the European Bank For Reconstruction and Development*, Art. 29 (3), available at <https://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html>.

Independent Evaluation Group process currently used by many IFIs, with the key difference being that, for the IBNI, the Independent Evaluator would be rendering an opinion – at the beginning of the process – as to the compliance of the funding/financing application with the IBNI Standards and Criteria.³ This approach would make it more difficult for a Director to vote, on an entirely arbitrary basis, against a recommendation made by management.

3. **The ‘Portfolio Vote Approach’.** Under this approach, IBNI management would periodically submit to the Directors a list of all the recommended funding/financing applications, on the basis that the Directors would vote either to approve or reject the entire package – as opposed to its individual elements.⁴ Under this mechanism, the pressure on Directors – to oppose a particular initiative for purely nationalistic reasons – would be significantly mitigated and diluted, especially when the portfolio contained a mix of initiatives involving a variety of supplier technologies. Importantly, this ‘portfolio approach’ would also have the benefit of encouraging IBNI management to take a balanced approach when selecting initiatives, thereby assisting the development of a diversity of competitive suppliers.

- 5.2 As noted, the three approaches presented above are offered to facilitate the discussions on governance issues which will eventually be held by IBNI member countries. A variety of other alternatives could also be considered, and the Strategic Advisory Group recommends that, when the IBNI-IO nongovernmental organisation is established, the NGO should continue to examine this question, consulting more broadly and deeply with existing IFIs, as well as with rating agencies, to define the governance arrangements in a way that will help to achieve IBNI’s target AAA credit rating, and that will build upon the current IFI’s global best practices.

³ Using independent experts to evaluate funding applications is an approach used by the European Commission’s European Climate, Infrastructure and Environment Executive Agency (CINEA) to make grant determinations under CINEA’s Innovation Fund program – see https://cinea.ec.europa.eu/programmes/innovation-fund/sign-expert_en.

⁴ The concept of a ‘portfolio approach’ was inspired, in part, by the experience of the Government of Canada in respect of the state-owned Canada Infrastructure Bank (CIB). During its initial years of operation, the CIB submitted to the Government details as to each of the individual infrastructure projects which the CIB proposed to support. However, that governance arrangement has now been changed to one where the CIB provides the Government with a periodic outline of its portfolio plans. See Page 12 of the 2023 *Legislative Review of the Canada Infrastructure Bank Act 2017-2022*, available at <https://publications.gc.ca/site/eng/9.923733/publication.html>.