



## **BARGATE MURRAY – THE GREEN INVESTMENT BANK**

**Philip Henson, Partner, and employment law expert** in the City of London law firm **Bargate Murray** discusses the UK Government's "vision" for the **Green Investment Bank**, and the proposed governance and business model.

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### **The Governance and Business model for the Green Investment Bank (GIB) & will it actually be a "bank"?**

After much fanfare the [Department for Business, Innovation and Skills](#) (BIS) has announced detailed plans of the vision for a Green Investment Bank with the aspiration that "The UK will be the first country in the world to create a bank dedicated to the greening of our economy".

#### **Governance and [Business model](#)**

As most of my readers will be interested in the governance and business model of the GIB here is a peek into some of the detail in the progress report behind the seemingly vague vision, referred to above.

#### **The Green Investment Bank will be set up as an enduring institution**

The Green Investment Bank will be established as a Companies Act company and follow "best practice corporate governance". The Green Investment Bank will need state aid approval. Once this is achieved, the Green Investment Bank (GIB) will be enshrined in legislation to confirm its independent status as an enduring institution with a key public role.

The initial capitalisation of the GIB will be £3 billion and the Government will enable the GIB to have borrowing powers from 2015–16 and once the target for debt to be falling as a percentage of GDP has been met. Vince Cable's vision needs to be approved by the [European Commission](#) before the GIB can be established.

It would seem from Dr Cable's introduction that we may have some time to wait until the GIB is up and running:

*"Given the need for early action, my department will start to make direct, state aid compliant investments in green infrastructure projects from April 2012. In due course, we will transfer these investments to the new institution. Once state aid approval is achieved and the final form of the institution is agreed with the Commission, we will move to enshrine the GIB in legislation".*

## Implementation will consist of three phases

The Green Investment Bank will evolve over 3 phases:

- **Phase I – Incubation:** April 2012 to achievement of state aid approval. The government will make direct financial investments prior to the establishment of the Green Investment Bank to accelerate investment in the green economy.
- **Phase II – Establishment:** Following state aid approval, the Green Investment Bank will be established as a standalone institution in line with the proposals in this document.
- **Phase III – Full borrowing Green Investment Bank:** From 2015-16 the Green Investment Bank will be given powers to borrow (subject to [public sector net debt](#) falling as a percentage of GDP). This will enable the upscaling of the Green Investment Bank's activity.

In advance of Phase I and over the period to Phase II, BIS will establish and draw upon an Advisory Group comprising experienced financial professionals to advise on the setting up of the institution.

## Corporate Governance

The update from BIS states that they will put in place best practice corporate governance arrangements and ensure that it operates at arm's length from Government. These will include:

- A well defined charter that contains the GIB's mission and operating principles and provides guidance on its long-term goals
- Clear strategic priorities that outline green priorities, sectors in scope and high level guidance on investment criteria, amongst other things
- Investment criteria, which translate the strategic priorities into metrics to guide the GIB's investment decisions

The governance model will have five components – the Department for Business, Innovation and Skills (via the [Shareholder Executive](#)) as Shareholder, a GIB Policy Group through which ministers will be consulted about priorities, the GIB Corporate Board, the Board Committees and the Executive Management – with the following main responsibilities

**Shareholder:** The Department for Business, Innovation and Skills, via the Shareholder Executive (ShEx) will be the GIB's sole shareholder. ShEx currently works with a number of shareholder departments to support their capabilities as shareholders of businesses such as the [Export Credits Guarantee Department](#) and [National Air Traffic Services](#). The shareholder will, in consultation with the GIB Policy Group, approve the founding articles of the GIB, the GIB charter and the strategic priorities. It will also exercise shareholder controls over board membership, remuneration and other customary matters.

**GIB Policy Group:** The GIB Policy Group will be a forum to co-ordinate departmental priorities. It will also agree the GIB's strategic priorities with the GIB Corporate Board and Executive Management. Its decisions will reflect ministers' policy agendas and priorities. Ministers will also sign off the GIB's strategic priorities.

**The GIB Policy Group** will be chaired by BIS and comprise representatives from relevant government departments. The list of departments will be determined by ministers.

**GIB Corporate Board and its committees:** The GIB Corporate Board and its committees will operate in line with best practice private sector corporate governance guidelines. The Board's main task will be to help the GIB Policy Group set the strategic priorities and ensure the GIB is operating in line with its mission, operating principles and strategic priorities. Its responsibilities will include:

- Setting strategy and plans: Annually review the strategy and business plan for the GIB, developed by the Executive Management, taking into account the strategic priorities agreed with ministers.
- Monitoring performance: Monitor and evaluate the GIB's progress towards accomplishing its strategy and business plan.
- Overseeing key management issues: Appoint the CEO, evaluate the [CEO succession](#) plan, set senior management and CEO compensation and evaluate their performance.
- Ensuring the safety and soundness of the business operation: Oversee risk management and auditing, ensure ethical behaviour and compliance with laws and regulations and accounting principles.
- Overseeing other governance issues: Propose new candidates for the Board, set Board governance processes, and input into personnel strategy.

**Executive Management:** The Executive Management will be responsible for the GIB's day-to-day operations. Its specific responsibilities will include:

- Developing long- and short-term strategy: Developing and proposing the long-term strategy and annual business plan which would include decisions around the investment priorities (e.g., at a sector level) and products.
- Developing investment evaluation criteria: Determining detailed investment criteria, for agreement with the Board.
- Managing performance: Managing the organisation to deliver against the business plan, including creating and building appropriate processes and taking appropriate human resource decisions.
- External reporting: Providing performance reports to BIS, the GIB Policy Group and the general public according to an agreed reporting framework.

## Transparency

The GIB will operate transparently. In particular, BIS envisage it sharing information in two main areas:

**Shareholder report:** The GIB will report at an agreed frequency to the Shareholder. Its metrics will be determined by the Executive Management team in consultation with the Board and BIS. These will be aligned, where appropriate, to Government policy objectives. The reporting is expected to cover information about the GIB's financials (e.g., financial results, capital allocation, risk allocation, operating expenses), its relationship with partner organisations (e.g., amount of funding allocated via different partners), and its green economy impact (e.g., volume of new and total deals by sector, actual and expected 'green impact', cost efficiency). It would also contain specific indicators of value for money.

**Annual report:** The GIB will publish an annual report to inform the Shareholder and the wider public about its activities. The content of this report will be determined by the Board in consultation with BIS and the GIB Policy Group. It is expected to include a summary of its annual financial results and an overview of its impact on the green economy.

Interim reports will be provided for BIS and the GIB Policy Group in case of "major events".

## Will the Green Investment Bank actually be a Bank?

### It would appear not, at least initially...

On Page 25 of the BIS review they state that: **"Legal advice is that the GIB will not initially need to be authorised by the FSA as a bank.** However, the GIB management team may wish to shadow best banking practice in the lead-up to acquiring borrowing powers. This analysis only applies to the GIB before it gains borrowing powers and is based on the assumption that the GIB, at this stage, will not fund itself by soliciting deposits, either from the retail or wholesale market, and will not hold itself out to the market as a securities underwriter or as being willing to buy and sell securities on a continuous basis (i.e., market-making). The GIB will need to determine which borrowing mechanism to use and whether and when to apply for a banking licence.

*Other regulated activities: As the GIB will initially: (i) operate within government or be otherwise wholly owned by government, (ii) deal with or manage only government funds, and (iii) to the extent that it provides advice or other investment services, do so only within government, it will also not need to be authorised to conduct regulated asset management or advisory activities. The GIB's regulatory status will, however, need to be kept under review if and when its business model or product range is developed and, in particular, if the GIB starts to manage third party (i.e., non-government) funds, or provides investment advice on a commercial basis, becomes involved in securities underwriting or placing activities, offers risk transfer or hedging products (such as credit default swaps or contracts of insurance) or otherwise engages directly with the retail financial services market".*

## **BIS update**

[Here](#) is a link to the full update on the Green Investment Bank.

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We welcome your comments on this update, and look forward to hearing from you.

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