International
Capital
Market
Association

ICMA

23 November, 2010

ICMA SOVEREIGN BOND CONSULTATION PAPER

For members of ICMA

INTRODUCTION

Objectives of the consultation

1 ICMA's primary objective is to support the creation of orderly and well-functioning international capital markets. In line with ICMA's mission, this involves setting standards of best market practice, including on practical and technical features of market documentation.

2 Transparency has always been one of the fundamental pillars of the international capital markets. The purpose of ICMA's Sovereign Bond Consultation Paper is to promote improvements in the standards of transparency relating to the issuance of sovereign bonds sold to investors internationally, and to propose standards of best market practice relating to their contractual terms and conditions. If sovereign issuers deviate from the standards of best market practice, it is proposed that this should be disclosed.

3 The Consultation Paper addresses all sovereign issuance, both inside and outside the euro area. The proposals in the paper are, for example, designed to be complementary to any future crisis resolution mechanism agreed at European Union level, so that they incorporate processes and procedures in the event of an orderly reorganisation.

4 The proposals in the Consultation Paper are set out as a basis for discussion with ICMA's members. Taking account of comments received by 17 December 2010, ICMA plans to develop rules and recommendations in consultation with its members so as to set standards of best market practice in the sovereign bond markets.

Why are we taking this initiative now?

5 Experience in the past two years has brought to light deficiencies in market documentation, and the sovereign bond markets have come under increasing scrutiny, particularly in the past six months. There are two main reasons why.

6 First, the market has evolved. As a result of the launch of the euro, for example, the distinction between domestic and international issuance of bonds by sovereign issuers in the euro area has become blurred. All euro-area sovereign issuance, whether it is auctioned or launched as a syndicated public bond, is now effectively sold to investors not just within but also outside the issuer's own country. The intention is to standardise covenants and procedures across all sovereign issuance as far as possible, regardless of the original method by which the bonds may have been distributed or the nationality of the investors.

7 Second, in response to the sovereign debt crisis, investors have paid increasing attention to the fact that sovereign bonds are not risk-free, and the credit quality of each

sovereign issuer is different. Consequently they want to know more about the contractual terms and conditions of individual sovereign issues. For example, earlier during the sovereign debt crisis, it appears that some investors did not know whether the sovereign bonds they had bought were issued under national law or under foreign law and the implications for their holdings; and that they were not familiar with the specific rights afforded to them as bondholders.

8 One of the reasons for this is that the full contractual terms and conditions of sovereign bond issues are not all easily available, especially in the case of issuance governed by national law. In the European Economic Area, for example, sovereign issuers are exempt from the terms of the EU Prospectus Directive. As a result, the contractual terms and conditions of individual sovereign issues are not always published; or may not be published in English (ie the language of the international capital markets); or many of the important rights of investors may be incorporated in the national law of the issuing sovereign concerned, which may not be readily available nor easily understood by international investors. Although some sovereign issuers make information widely available in English (eg on their websites), this is not so in all cases.

What improvements can be made?

9 First, all sovereign issuers should consistently be fully transparent about the contractual terms and conditions which apply to their bonds by publishing them in full in English in electronic form on a public website until final repayment. Some benchmark sovereign issuers do this already. But all sovereign issuers should consistently do so. Quick progress should be possible in this area.

10 Second, the contractual terms and conditions of sovereign bond issues should as far as possible comply with standards of best market practice. Model "concepts" for these standards are set out in the Consultation Paper, as a basis for discussion. The model concepts cover: disclosure of whether the concepts are followed in the case of a particular issue or not; gross-up for withholding tax; *pari passu* status; negative pledge; events of default and acceleration; purchase of bonds and consequences of ownership; and Collective Action Clauses which can facilitate an orderly process for the amendment of their terms and conditions.

11 The Consultation Paper recognises that, where sovereign issuers currently issue bonds governed by their own national law, as is for example the case with many sovereign issuers of auctioned bonds in the euro area, they may wish to continue to do so. But the Consultation Paper recommends that issuers should ensure that their contractual terms and conditions should comply with model concepts of best market practice, many of which are already used for sovereign issuance under foreign law. When they issue bonds in future, it is also proposed in the Consultation Paper that sovereign issuers should be invited to disclose whether they comply with these principles of best market practice or not.

Is this in the interests of issuers as well as investors?

12 It is clearly in investors' interests to have, in readily accessible form, full information about the contractual terms and conditions of the sovereign bonds in which they invest, and to be clear whether these bonds incorporate terms and conditions that comply with best market practice.

13 But it is also in the interests of sovereign issuers consistently to be fully transparent and comply with best market practice in respect of the terms and conditions of their

issues. For all sovereign issuers, this would optimise their ability to fund their borrowing requirements in the international capital markets. Sovereign issuers are more likely to maximise demand and minimise price if they take into account the concerns of investors, particularly at a time when sovereign issuers' own borrowing needs have increased, and investors have become more risk-averse.

14 It is also in the interests of sovereigns to adopt the proposals in this Consultation Paper because adoption would improve the position of their domestic banks and other investors whose business leads them to accumulate material exposure to other sovereign issuers.

15 In addition, retail investors able to invest in bonds issued by sovereigns as part of their pension savings plans can also accumulate material exposure to sovereigns.

16 Finally, in the event that the existing terms and conditions of a sovereign bond require amendment, any consequential process requiring bondholder consent or participation will benefit from the parties having a clear understanding of their respective rights and obligations and from the inclusion in the existing terms and conditions of provisions facilitating their amendment through an orderly process.

Invitation to respond to the Consultation Paper

17 ICMA is considering what may be done to achieve a greater degree of transparency in respect of sovereign bonds in the international capital markets and to improve disclosure and standards of protection by agreeing benchmark concepts that are considered to be important for sovereign issues:

- Part A of this Consultation Paper sets out a suggested approach to the transparency question.
- Part B sets out some ideas of what the benchmarks for improving protection standards might be (which we have called the "Concepts").
- The Explanatory Note in Annex 1 sets out some important background information. In particular, it explains in brief outline some of the contractual terms that are of special significance for sovereign bonds, such as the governing law and waiver of immunity from jurisdiction and execution of judgement; and tax gross-up provisions.

18 ICMA invites initial views from its members on the proposals in this Consultation Paper by 17 December 2010. Comments should be sent by email to sovereignbondconsultation@icmagroup.org , identifying the organisation on whose behalf the comments have been sent, indicating if the organisation wishes to keep its name confidential, and giving an email address and phone number as a point of contact. Feedback will be given on the comments received. Taking account of the comments received, ICMA plans to develop rules and recommendations in consultation with its members in order to set standards of best practice in the sovereign bond markets.

ICMA
November 2010

PART A – ACHIEVING GREATER TRANSPARENCY

Proposal on transparency

Transparency of terms and conditions

Investors in the international capital markets must have easy access to the full terms and conditions of the bonds that are issued and traded in the markets, to ensure that sellers and buyers trade in full knowledge of the rights that are being traded. Accordingly, the full terms and conditions (including any terms incorporated by reference from any other source, such as a statute) of any issue by a sovereign should be:

(a) sent by the Lead Manager to each of the managers not later than two full business days prior to the signing, where the issue is lead managed by one or more ICMA members with cross-border distribution;

(b) published in electronic form on a public website and remain published in that manner until the final repayment of all amounts that may be due in respect of the issue, where the issue is initially distributed on an auction basis or lead managed with cross-border distribution; and

(c) published in English, where the issue is [lead managed with cross-border distribution] OR [where the issue is initially distributed on an auction basis or lead managed with cross-border distribution].

Provision of Information

The Issuer should undertake to provide information in accordance with ICMA Guidance Note 16 dated October 2004[1].

Investor relations

The Issuer should undertake to provide all information relating to itself and the bonds which is necessary to enable investors to make informed investment decisions in respect of the bonds in English, in electronic form on a public website.

In addition, the Issuer should undertake to establish or continue running an investor relations programme. The manner, scope and frequency of communication under such a programme should be chosen by the Issuer.

Consultation on transparency

Transparency of terms and conditions

19 It is difficult, in many cases, to discover what the contractual terms and conditions for sovereign bonds are, either because they are not published (unlike the terms for, say, a corporate bond which will usually be set out in detail in a published prospectus); or because they are in a language that is not well understood in the international markets; or because many of the important rights of the investors are set out in the Issuer's laws,

[1] Attached as Annex 2

which are not readily available and may not be easily understandable to international investors.

20 Many sovereign issuers are exempt from the requirement to publish a prospectus (for example, EEA sovereigns do not have to do so under the EU's Prospectus Directive). However, it is important that investors should be able to obtain easy access to the detailed contractual terms and conditions of bonds issued by sovereigns. Even in a domestic market, where the domestic investor will be subject to the laws of the sovereign issuer and therefore (at least in theory) within the power of the Issuer to change (or even cancel) the obligations under the bond by changing its law, it is important to know what rights are given by the bond. This becomes even more important, however, to the international investor who is not subject to the laws of the Issuer and for whom the rights granted by the bond can provide real and (provided they are governed by a legal system which permits waiver of sovereign immunity) enforceable protection. We would welcome views on this proposal.

21 Issuers may wish to draw a distinction, so far as language of the terms of bonds is concerned, between bonds they issue in their domestic markets and those issued elsewhere. Arguments for such a distinction include the fact that domestic investors will understand their own language better than English; and the fact that domestic investors may be more comfortable with bonds governed by their domestic law.

22 Arguments against such a distinction include the difficulty, in some instances, of making it. When a currency such as the euro is also the currency of a number of other sovereign states, then arguably every issue is potentially international rather than domestic, because (however it is initially sold) it may well be attractive to investors in other jurisdictions.

23 We would welcome views on whether all sovereign issues should use English, or only issues lead managed with cross-border distribution.

Provision of information

24 The proposal on the provision of information requires the Issuer to undertake to provide information in accordance with ICMA Guidance Note 16 dated October 2004.[2] We would welcome views on whether this undertaking should be included in this form.

Investor relations

25 The proposal concerning investor relations seeks to ensure that the Issuer discloses all information relating to itself and the bonds which is necessary to enable investors to make investment decisions in respect of their bonds and also that such information is published in a language that is customary in the international finance markets, in electronic form on a public website. It also seeks to procure a continuing dialogue with investors through an investor relations programme, but leaves the manner, scope and frequency of communication under such a programme to be chosen by the Issuer. We would welcome views on whether this undertaking is workable or not; and whether the manner of disclosure and the manner, scope and frequency of communication under an

[2] Attached as Annex 2.

investor relations programme should be left to the Issuer or should be in electronic form on a public website.

PART B – IMPROVING CONTRACTUAL TERMS: THE CONCEPTS

Proposal on the Concepts

Disclosure

Sovereign issuers of debt issues or their Lead Managers should state clearly whether the contractual terms will provide for the matters set out below and, where they do so provide, whether there are any important differences between those contractual provisions and those set out in those Concepts.

For this purpose 'sovereign' includes Central Banks, but does not include 'sub-sovereign' issuers, such as regional and local authorities and municipalities, or sovereign-guaranteed issuers.

Tax

The Issuer should be required to gross up any payment made under the bond that is subject to any withholding or deduction for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed under laws enacted within its jurisdiction, except where:

- *the recipient of the payment (or the person on whose behalf the recipient receives the payment) is liable to such deduction by reason of some connection it has with the Issuer's jurisdiction other than the mere holding of the bond;*
- *that recipient or person fails to request payment for a given period from its due date and would have been entitled to the gross up if it had requested payment within that period;*
- *such deduction is made pursuant to any European law; or*
- *the deduction would not have been suffered if payment had been requested from another paying agent for the issue.*

The Issuer should be required to maintain a paying agent in a European jurisdiction that will not be obliged to withhold or deduct tax pursuant to the European Savings Tax directive or any similar EU measure.

Part IV of Section 7 of the ICMA Handbook contains standard language for the third and fourth exceptions described above, and for the requirement mentioned in the previous paragraph, by way of example. Examples of the first two exceptions are set out below:

"*The gross up language will not apply in respect of any Bond or Coupon…:*

> *Other connection: by or on behalf of a holder who is liable to such taxes, duties, assessments or governmental charges in respect of such Bond or Coupon by reason of its having some connection with [sovereign's jurisdiction] other than the mere holding of the Bond or Coupon or*
>
> *Presentation more than 30 days after the Relevant Date: more than 30 days after the Relevant Date except to the extent that the holder of it would have been entitled*

to such additional amounts on presenting such Bond or Coupon for payment on the last day of such period of 30 days.

"Relevant Date" means whichever is the later of (i) the date on which such payment first becomes due and (ii) if the full amount payable has not been received in place of payment by the Fiscal Agent on or prior to such due date, the date on which, the full amount having been so received, notice to that effect shall have been given to the Bondholders."

Where there is a gross-up provision in accordance with this Concept, the Issuer should not be entitled to call the issue for early redemption if the gross-up is triggered.

Status

The Issuer should undertake that the bonds constitute unsecured and unsubordinated obligations of the Issuer ranking pari passu among themselves and with all other present and future unsecured and unsubordinated financial obligations of the Issuer in the form of bonds that are traded in the international markets as well as obligations arising from derivative financial instruments.

Negative Pledge

The Issuer should undertake not to issue or guarantee any bonds or similar securities that benefit from any security, without at the same time extending the same or equivalent security to the bonds containing the undertaking.

Events of default and acceleration

The bonds should entitle the bondholders to demand immediate repayment, prior to the contractual maturity date, if:

- *the Issuer fails to pay any amount due under the bonds within 30 days of the due date for such payment; or*
- *the Issuer defaults in the performance of any of its other obligations under the bonds and (if the default is capable of remedy) fails to remedy the default within 30 days of being notified of it by any bondholder.*

Acceleration of payment should be permitted provided holders of at least 25 per cent. of the outstanding principal amount of the bonds vote in favour or such action.

Purchase of bonds and consequences of ownership

The Issuer, the Central Bank or any Governmental Agency should be prohibited from purchasing, or procuring anyone else to purchase, directly or indirectly the bonds in the open market or otherwise at any price at any time when a default in the payment of principal or of interest on the bonds has occurred and is continuing.

The bonds should provide that neither the Issuer nor anyone else on its instructions will be able to vote on any proposals put to meetings of bondholders and that any

bonds held by it, or by anyone else on its behalf, shall not be counted towards any quorum or voting percentage requirement.

"Governmental Agency" shall be construed as a reference to any political sub-division, regional or municipal government, ministry, department, authority or statutory corporation (whether autonomous or not) of or any corporation or other entity which is controlled or (as to fifty per cent. or more of its issued share capital or the equivalent thereof) owned, directly or indirectly, by such state or its government and/or one or more such agencies.

Collective action

The bonds should include the ICMA Collective Action provisions, set out in Part VIII of Section 7 of the ICMA Handbook[3].

Governing law and jurisdiction

The bonds should be governed by laws that provide an effective submission to the jurisdiction of the courts of the jurisdiction whose laws govern the bonds, and to execution of any judgement of those courts against the assets of the Issuer, subject to any qualifications that may be set out in the legal opinions that will be provided to the Managers prior to the signing of the Subscription Agreement. Where those laws are those of the issuer, the Invitation to Managers should clearly state that fact.

Consultation on the Concepts

Disclosure

26 The Concepts are limited in application to sovereigns as currently defined in the ICMA Handbook for the purposes of collective action clauses. The definition includes central banks, but not sub-sovereign issuers, such as regional and local authorities and municipalities or sovereign-guaranteed issuers. We would welcome views on this definition of sovereign for these purposes.

27 The Concepts apply equally to all methods of sovereign bond issuance, including issues which are auctioned or lead managed and syndicated internationally. But they have no mandatory application. Rather disclosure would be required on whether the Concepts will be followed for a particular issue and, if not, what the important differences are. We would welcome views on the appropriate timing of the disclosure, both for auctioned and for lead managed sovereign issues; and on who should be responsible for determining whether the Concepts have been complied with or not.

Tax

28 The Concept relating to tax provides for gross-up for the relevant sovereign's own taxes, subject to a number of exemptions. The Concept includes specimen language for two of these exemptions (which are already included elsewhere in the ICMA Handbook). The Concept also provides that, if the gross-up is included and is triggered, the Issuer should not be entitled to call the issue for early redemption (on the basis that such an

[3] Attached as Annex 3.

entitlement would effectively give the Issuer a free call option because the power to tax, and trigger the gross-up, is within its own hands.) We would welcome views on whether there should be no tax call on gross-up.

Status

29 The Concept relating to status requires *pari passu* treatment for each issue with all other similar issues. For this purpose, the description of what counts as a similar issue includes bonds traded in the international market. We would welcome views on what else should be included in the Concept and, if so, why.

Negative pledge

30 The Concept relating to the negative pledge catches both direct issues and those that are guaranteed. It also catches similar securities. We would welcome views on whether the negative pledge should catch guarantees of issues by others.

Events of default and acceleration

31 The Concepts relating to events of default and acceleration only contemplate non-payment and breach of other obligations as trigger events. They provide for 30 days grace (in the case of breach of other obligations, only if the breach is capable of remedy). On the occurrence of an event of default, the Concepts contemplate that the bonds will be accelerated, but only if 25 per cent of the outstanding principal amount of the issue vote in favour of acceleration. We would welcome views on: whether the Concepts should include grace periods and, if so, how long they should be; on whether acceleration should only be permitted if a given percentage of bondholders vote in favour of such action; and, if so, on whether 25 is the percentage that should be included in the Concepts.

Purchase of bonds and consequences of ownership

32 The Concept relating to purchase by the Issuer of its own bonds prohibits such purchase by the Issuer, the Central Bank or Governmental Agency at any time when a default in the payment of principal or of interest on the bonds has occurred and is continuing. The Concept also contemplates that any bonds bought by, or on behalf of, the Issuer will be disenfranchised, to prevent the Issuer voting in its own favour in any proposal, for example, to extend the maturity of the bonds or to reverse an acceleration of the issue. We would welcome views on whether sovereign issuers should be prevented from repurchasing their bonds in the circumstances described in the Concept; on whether this restriction should bite earlier: for example, when a non-payment is already in the contemplation of the Issuer; and on whether bonds bought by, or on behalf of, the Issuer should be disenfranchised in the circumstances set out in the Concept.[4]

Collective Action

33 Aggregated voting can contribute to more orderly and expeditious debt restructuring because it reduces the risk that a group of hold-out investors can take control of an individual bond issue and vote against a restructuring of that bond, even though the

[4] ICMA is due shortly to publish *Guidance on Buybacks by Government, Government Agency and Supranational Issuers.*

restructuring may be acceptable to a qualified majority of holders of all other bonds. It is contemplated that such a bond amendment could be made with an 85 per cent majority. We would welcome views on: whether creditors should be willing to accept the idea of aggregation of their voting rights with the holders of other bonds that are also subject to a vote; and whether 85 per cent is the appropriate percentage majority for bond amendments of this kind. In addition, we would welcome views on whether aggregation should also be used to accelerate payment or reverse an existing acceleration.

Governing law and jurisdiction

34 The Concept relating to governing law contemplates that the chosen legal system must provide effectively for the submission of the sovereign issuer to its courts (that is, the ability to waive immunity from jurisdiction) and for the enforcement of any judgement that may be awarded by such courts against the assets of the Issuer. As these matters are usually qualified, even in jurisdictions whose law provides the most liberal waiver provisions, the Concept does not require absolute waiver of jurisdiction and agreement to execution, but permits qualifications, provided these are set out in legal opinions that will be provided to the Managers prior to the signing of the Subscription Agreement. The Concept also provides for disclosure, where the chosen legal system is that of the Issuer itself. We would welcome views on: how this proposal would be received by governments that currently enjoy the highest credit status; and whether an alternative would be to say that the governing law should be one customarily chosen to govern bonds issued in the international capital markets.

Explanatory note

35 The Explanatory Note in Annex 1 explains why the Concepts will have a continuing purpose in helping investors in sovereign bonds to understand some of the important legal issues that the Concepts are intended to address. We would welcome views on whether there are any other points that should be covered by the Explanatory Note to ensure that investors in sovereign bonds fully understand the importance of the legal terms of issues they buy; and on whether there are any other considerations that should be included in any of the Concepts.

ANNEX 1: EXPLANATORY NOTE

Two things are fundamental to any investor. The first is to be able to discover the precise nature of the investment he is buying (that is, the actual legal rights that are comprised in the securities); and the second is what those rights actually are, and what protections they give (or omit to give) to him.

Part A

Part A of the attached paper addresses the first of these issues. Many sovereign issuers do not, typically, have to produce a disclosure document, such as a prospectus, containing the detailed terms and conditions of the securities being offered – EEA sovereigns are, for example, exempted from the requirements of the EU's Prospectus Directive. In the absence of any mandatory disclosure of this sort, it is often very difficult for investors to discover what it is that they are trading. The proposal in Part A of the attached paper is designed to resolve this issue by recommending that sovereign issuers disclose the full contractual terms of their issues (including any that are set out in their law and incorporated by reference into their bonds) on their websites in English (ie the language of international finance), and to continue to disclose them in this way until the final payment of all moneys due on the bonds.

Part B

Part B of the attached paper addresses the second issue. It sets out Concepts for the protective terms that investors look for when investing in debt securities. Such terms will include protection against unforeseen future events that may affect the value of the investment – including events of default and the terms on which a demand for early repayment following the occurrence of an event of default can be made (for example, whether each individual investor can demand early repayment independently of other investors or whether the decision to accelerate the repayment date requires the approval of specified percentage by value of investors).

For sovereign issuers, there are other specific protective terms that have a special significance. These are provisions relating to the governing law and jurisdiction and those relating to tax.

It is very important for an investor in a bond to know which governing law applies to any sovereign bonds it may hold. If a bond is governed by the sovereign issuer's own law, the investor will be subject to the risk that any of the terms of the bond could be changed by the Issuer without the consent of the investor, even though most states understand that, if they amend the terms of bonds governed by their domestic law by passing domestic legislative measures, this will have significant consequences in terms of future accessibility to the capital markets, apart from domestic consequences, and it is therefore not something that many are likely to undertake lightly. On the other hand, if laws other than those of the sovereign issuer govern the issue, the Issuer's ability to change the terms of the issue unilaterally will generally be constrained. Whether, and to what extent, any such constraints might apply will depend on the governing law of the issue and its interpretation by any competent court or tribunal. For example, in the case of bonds governed by English law it would, in many circumstances, not matter if a sovereign issuer

of bonds denominated in a particular currency changed its law to provide that payment was to be made on its bonds in a different currency or at a later date than that specified in the bond. Assuming the currency in which the bonds were first issued continued to exist, an English court (provided it has jurisdiction, as to which see the next paragraph) may well disregard such a change in the Issuer's law and order payment in the original currency.

However, even if a bond is governed by laws other than those of the sovereign issuer, international (and most national) law gives sovereigns immunity from legal proceedings being brought against them. That immunity can, in many cases, be waived by a sovereign, but even if it is, the sovereign will frequently still have immunity against any proceedings to enforce a judgment against it (for example, by the seizure of its assets to satisfy the judgment debt). Some legal regimes provide expressly for execution of judgement against certain of the sovereign's assets, provided the sovereign waives its immunity for such purposes.

Another significant difference between sovereign and other bonds is the fact that the Issuer, having sovereign and therefore legislative powers, has within its own hands the power to impose withholding taxes. For example, if the issue provides that payments are to be made net of withholding tax imposed in the Issuer's jurisdiction, then it would be possible for the Issuer to impose a withholding tax on payments made by it, in order to reduce its debt burden. Investors who are outside the Issuer's tax jurisdiction will perhaps still be able to recover any withheld tax under applicable double tax treaties; but even if they could, they would still suffer delays and expense in obtaining such recovery. Such tax provisions, if incorporated into the terms of a bond, would be enforceable even if the bond were governed by laws other than those of the Issuer.

Similarly, it would be wrong to permit the Issuer to call the issue for early redemption if it has to gross-up for tax, because it could itself trigger that right. In other words, such a provision would effectively be a free tax call for a sovereign issuer, rather than (as for any other Issuer) a protection against the future cost of a gross-up caused by the actions of its government (over which, a non-sovereign issuer has no control).

Despite the importance of these matters, they are not always taken into account in the documentation for issues by sovereigns. In an attempt to rectify this, the Concepts set out in Part B of the attached paper provide a list of concepts that investors would expect to find included in those detailed contractual terms. Not all of these concepts will be appropriate to all issuers and this is taken into account by providing that, where some of the Concepts will be disregarded for a particular issue, the banks who form the syndicate of managers for the issue should be notified of that fact. This will enable them to give investors accurate information when they are selling the issue.

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IPMA GUIDANCE NOTES / PRESS STATEMENTS
GUIDANCE NOTE 16

INFORMATION CLAUSES IN SOVEREIGN DEBT ISSUES

If debt issues of sovereign issuers are to include financial and other information covenants, the following clause may be considered as a model which can be included in the terms and conditions.

For the purpose of this Guidance Note, 'sovereign' includes Central Banks, but does not include 'sub-sovereign' issuers, such as regional and local authorities and municipalities, or sovereign-guaranteed issuers.

MODEL CLAUSE ON FINANCIAL AND OTHER INFORMATION

(a) SDDS Reporting

So long as any of the Notes remains outstanding, the Issuer shall maintain its subscription to and fully comply with the SDDS[; provided, however, that, if the Issuer does not, at the date of issuance of the Notes, subscribe to the SDDS, then it shall subscribe to and fully comply with the SDDS no later than *[third anniversary of the Issue Date]*].

For these purposes:

(i) "**SDDS**" means the Special Data Dissemination Standard established by the International Monetary Fund as in effect from time to time; and

(ii) any matter which the SDDS specifies as being encouraged (rather than mandatory) shall be regarded as being mandatory.

(b) Rolling 12 Month Forecasts

So long as any of the Notes remains outstanding, the Issuer shall prepare and publish (in the same manner in which data required under the SDDS needs to be published), no later than [10] business days after each Quarter Day in each year, the following:

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(i) a 12 month projection (prepared as from such Quarter Day) in respect of each of those aspects of the central government budget which are required to be produced on an actual basis under the SDDS; and

(ii) a 12 month projection (prepared as from such Quarter Day) in respect of each of the inflation figures which are required to be produced on an actual basis under the SDDS;

provided, however, that, if the Issuer does not, at the date of issuance of the Notes, subscribe to the SDDS, then the above-mentioned projections shall be required as from the earlier of (x) the first Quarter Day to fall after the Issuer does subscribe to the SDDS and (y) the first Quarter Day to fall after *[third anniversary of the Issue Date]*.

For these purposes "**Quarter Day**" means, in relation to a year, 31 March, 30 June, 30 September and 31 December of that year.

(c) Other Information

So long as any of the Notes remains outstanding, the Issuer shall provide the following information in reasonable detail no later than [10] business days after agreement on the applicable arrangements (or in the case of paragraph (v) below, no later than [10] business days after the request from the Fiscal Agent), namely:

(i) the terms of any agreed minute, procés verbal or other similar record of agreed Paris Club arrangements relating to any indebtedness (whether by way of guarantee or otherwise) of the Issuer or any of its agencies (and shall ensure that the stock of affected debt and applicable rescheduling terms are described);

(ii) the terms of any bilateral agreement entered into pursuant to a Paris Club arrangement relating to any indebtedness (whether by way of guarantee or otherwise) of the Issuer or any of its agencies (and shall ensure that the stock of affected debt, interest terms and other applicable rescheduling terms are described);

(iii) corresponding information to that described in (i) or (ii) above in relation to restructuring arrangements (whether by amendment, exchange offer or otherwise) relating to any indebtedness (whether by way of guarantee or otherwise) of the Issuer or any of its

agencies with any other creditor or creditors not participating in Paris Club arrangements where the aggregate amount of affected indebtedness exceeds US$[ ] (or its equivalent in any other currency or currencies);

(iv) the terms of any standby, extended funds or similar facility settled between the Issuer, its government or any ministry of the Issuer and the International Monetary Fund (including a copy of any related technical memorandum); and

(v) such other information as the Fiscal Agent (acting at the instruction of holders of not less than 5 per cent of the aggregate principal amount of the outstanding Notes) may from time to time reasonably request.

All such information shall be provided to each of the Relevant Industry Bodies for publication on their respective websites. For these purposes, "**Relevant Industry Bodies**" means, the Emerging Markets Traders Association (EMTA), the Emerging Markets Creditors Association (EMCA) and the Institute of International Finance (IIF) and in each case includes any successor thereto.

(Additional language for Notices provision)

In addition, notices and other information required to be given to the Noteholders shall be given to the Relevant Industry Bodies for publication on their respective websites.

STANDARD COLLECTIVE ACTION CLAUSES (CACs) FOR THE TERMS AND CONDITIONS OF SOVEREIGN NOTES

ENGLISH LAW, FISCAL AGENT STRUCTURE

[•] MEETINGS OF NOTEHOLDERS; WRITTEN RESOLUTIONS

(a) Convening Meetings of Noteholders

The Fiscal Agency Agreement contains provisions for convening meetings of Noteholders to consider matters relating to the Notes, including the modification of any provision of these Conditions or the provisions of the Fiscal Agency Agreement. Such a meeting may be convened by the Issuer or the Fiscal Agent and shall be convened by the Issuer or the Fiscal Agent at any time upon the request in writing of holders of at least 10 per cent of the aggregate principal amount of the outstanding Notes.

(b) Quorum

The quorum at any meeting of Noteholders convened to vote on an Extraordinary Resolution will be:

(i) one or more persons present and holding or representing at least 50 per cent of the aggregate principal amount of the outstanding Notes; or

(ii) where a meeting is adjourned and rescheduled owing to a lack of quorum, at any rescheduled meeting of Noteholders, one or more persons present and holding or representing at least 25 per cent of the aggregate principal amount of the outstanding Notes;

provided, however, that any proposals relating to a Reserved Matter may only be approved by an Extraordinary Resolution passed at a meeting of Noteholders at which one or more persons present and holding or representing at least 75 per cent of the aggregate principal amount of the outstanding Notes form a quorum.

(c) Reserved Matters

In these Conditions, "**Reserved Matter**" means, subject as provided in paragraph (d) *(Matters requiring unanimity)*, any proposal:

(i) to change the date, or the method of determining the date, for payment of principal, interest or any other amount in respect of the Notes, to reduce or cancel the amount of principal, interest or any other amount payable on any date in respect of the Notes or to change the method of calculating the amount of principal, interest or any other amount payable in respect of the Notes on any date;

(ii) to change the currency in which any amount due in respect of the Notes is payable or the place in which any payment is to be made;

(iii) to change the quorum required at any meeting of Noteholders or the majority required to pass an Extraordinary Resolution, Written Resolution or any other resolution of Noteholders or the number or percentage of votes required to be cast, or the number or percentage of Notes required to be held, in connection with the taking of any decision or action by or on behalf of the Noteholders or any of them;

(iv) to change this definition, the definition of "Extraordinary Resolution", the definition of "outstanding" or the definition of "Written Resolution";

(v) to change or waive the provisions of the Notes set out in Condition [•] *(Status)* [or other specified substantive covenants as appropriate, to be determined on a case-by-case basis]; or

(vi) to change any provision of the Notes describing circumstances in which Notes may be declared due and payable prior to their scheduled maturity date, set out in Condition [•] *(Events of Default)*.

(d) Matters requiring unanimity: Any proposal:

(i) to change the law governing the Notes, the courts to the jurisdiction of which the Issuer has submitted in the Notes, the

Issuer's obligation to maintain an agent for service of process in England or the Issuer's waiver of immunity, in respect of actions or proceedings brought by any Noteholder, set out in Condition [•] *(Governing Law and Jurisdiction)*;

(ii) to modify any provision of these Conditions in connection with any exchange or substitution of the Notes for, or the conversion of the Notes into, any other obligations or securities of the Issuer or any other person, which would result in the Conditions as so modified being less favourable to the holders of Notes which are subject to the Conditions as so modified than:

(A) the provisions of the other obligations or securities of the Issuer or any other person resulting from the relevant exchange or substitution or conversion; or

(B) if more than one series of other obligations or securities results from the relevant exchange or substitution or conversion, the provisions of the resulting series having the largest aggregate principal amount; or

(iii) to modify the provisions of this paragraph (d) *(Matters requiring unanimity)*,

may only be given effect with the consent of the holders of all of the outstanding Notes.

(e) Modifications

Subject as provided in paragraph (d) *(Matters requiring unanimity),* any modification of any provision of these Conditions may be made if approved by an Extraordinary Resolution or a Written Resolution. In these Conditions, "**Extraordinary Resolution**" means a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Fiscal Agency Agreement by a majority of at least:

(i) in the case of a Reserved Matter, 75 per cent of the aggregate principal amount of the outstanding Notes; or

(ii) in the case of a matter other than a Reserved Matter, 66 2/3 per cent of the aggregate principal amount of the outstanding Notes which are represented at that meeting.

Any Extraordinary Resolution duly passed at any such meeting shall be binding on all the Noteholders, whether present or not and whether they voted in favour or not, and all Couponholders.

(f) Written resolutions

In addition, the Fiscal Agency Agreement contains provisions relating to Written Resolutions. A "**Written Resolution**" is a resolution in writing signed by or on behalf of the holders of at least 75 per cent of the aggregate principal amount of the outstanding Notes, in the case of a Reserved Matter, or 66 2/3 per cent of the aggregate principal amount of the outstanding Notes, in the case of a matter other than a Reserved Matter. Any Written Resolution may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Noteholders. Any Written Resolution shall be binding on all of the Noteholders, whether or not signed by them, and on all Couponholders.

(g) Manifest error, etc.

The Notes, these Conditions and the provisions of the Fiscal Agency Agreement may be amended without the consent of the Noteholders or the Couponholders to correct a manifest error. In addition, the parties to the Fiscal Agency Agreement may agree to modify any provision thereof, but the Issuer shall not agree, without the consent of the Noteholders, to any such modification unless it is of a formal, minor or technical nature or it is not materially prejudicial to the interests of the Noteholders.

(h) Notes controlled by the Issuer

For the purposes of (i) ascertaining the right to attend and vote at any meeting of Noteholders or the right to sign, or authorise the signature of, any Written Resolution, (ii) this Condition [•] *(Meetings of Noteholders; Written Resolutions)* and Schedule [•] *(Meetings of Noteholders)* to the Fiscal Agency Agreement, (iii) Condition [•] *(Noteholders' Committee)* and (iv) Condition [•] *(Events of Default)*, those Notes (if any) which are held in circumstances where the Issuer has the power to direct the casting of votes in respect of such Notes, whether directly or indirectly, shall (unless and until ceasing to be so held) be disregarded and be deemed not to remain outstanding. Without prejudice to the generality of the previous sentence, the Issuer shall be deemed to have the power to direct the casting of votes in respect of a Note if the Note is held by or on behalf of

the Issuer or by or on behalf of any person which is owned or controlled directly or indirectly by the Issuer or by any public sector instrumentality of the Issuer, where:

(i) "**public sector instrumentality**" means *[insert name of central bank [and any other governmental agency which it is desirable to mention]]*, any [other] department, ministry or agency of the government of *[insert name of country]* or any corporation, trust, financial institution or other entity owned or controlled by the government of *[insert name of country]*; and

(ii) "**control**" means the power, directly or indirectly, through the ownership of voting securities or other ownership interests or otherwise, to direct the management of or elect or appoint a majority of the board of directors or other persons performing similar functions in lieu of, or in addition to, the board of directors of a corporation, trust, financial institution or other entity.

In advance of any meeting of Noteholders or Written Resolution the Issuer shall provide to the Fiscal Agent a certificate of the Issuer setting out the total number of Notes which are held in circumstances where the Issuer has at the date of such certificate the power to direct the casting of votes in respect of such Notes. The Fiscal Agent shall make any such certificate available for inspection during normal business hours at its Specified Office and, upon reasonable request, will allow copies of such certificate to be taken.

[•] NOTEHOLDERS' COMMITTEE

(a) Appointment

The Noteholders may, by a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Fiscal Agency Agreement by a majority of at least 50 per cent in aggregate principal amount of the Notes then outstanding, or by notice in writing to the Issuer (with a copy to the Fiscal Agent) signed by or on behalf of the holders of at least 50 per cent in aggregate principal amount of the Notes then outstanding, appoint any person or persons as a committee to represent the interests of the Noteholders if any of the following events has occurred:

(i) an Event of Default;

(ii) any event or circumstance which could, with the giving of notice, lapse of time, the issuing of a certificate and/or fulfilment of any other requirement provided for in Condition [•] *(Events of Default)* become an Event of Default; or

(iii) any public announcement by the Issuer, to the effect that the Issuer is seeking or intends to seek a restructuring of the Notes (whether by amendment, exchange offer or otherwise),

provided, however, that no such appointment shall be effective if the holders of more than 25 per cent of the aggregate principal amount of the outstanding Notes have either (A) objected to such appointment by notice in writing to the Issuer (with a copy to the Fiscal Agent) during a specified period following notice of the appointment being given (if such notice of appointment is made by notice in writing to the Issuer) where such specified period shall be either 30 days or such other longer or shorter period as the committee may, acting in good faith, determine to be appropriate in the circumstances, or (B) voted against such resolution at a meeting of Noteholders duly convened and held in accordance with the Fiscal Agency Agreement. Such committee shall, if appointed by notice in writing to the Issuer, give notice of its appointment to all Noteholders in accordance with Condition [•] *(Notices)* as soon as practicable after the notice is delivered to the Issuer.

(b) Powers

Such committee in its discretion may, among other things, (i) engage legal advisers and financial advisers to assist it in representing the interests of the Noteholders, (ii) adopt such rules as it considers appropriate regarding its proceedings, (iii) enter into discussions with the Issuer and/or other creditors of the Issuer, (iv) designate one or more members of the committee to act as the main point(s) of contact with the Issuer and provide all relevant contact details to the Issuer, (v) determine whether or not there is an actual or potential conflict of interest between the interests of the holders of the Notes then outstanding and the interests of the holders of debt securities of any one or more other series issued by the Issuer and (vi) upon making a determination of the absence of any actual or potential conflict of interest between the interests of the holders of the Notes then outstanding and the interests of the holders of debt securities of any one or more other series issued by the Issuer, agree to

transact business at a combined meeting of the committee and such other person or persons as may have been duly appointed as representatives of the holders of securities of each such other series. Except to the extent provided in this paragraph (b) (Powers), such committee shall not have the ability to exercise any powers or discretions which the Noteholders could themselves exercise. The Issuer shall pay any fees and expenses which are reasonably incurred by any such committee or any such combined committee (including, without limitation, the costs of giving notices to Noteholders, fees and expenses of the committee's legal advisers and financial advisers, if any) within 30 days of the delivery to the Issuer of a reasonably detailed invoice and supporting documentation.

[•] EVENTS OF DEFAULT

(a) Declaration of Acceleration

If any of the following events (each an "**Event of Default**") occurs and is continuing:

[Insert Events of Default]

then the holders of at least 25 per cent in aggregate principal amount of the outstanding Notes may, by notice in writing to the Issuer (with a copy to the Fiscal Agent), declare all the Notes to be immediately due and payable, whereupon they shall become immediately due and payable at their principal amount together with accrued interest without further action or formality. Notice of any such declaration shall promptly be given to all other Noteholders by the Issuer.

(b) Withdrawal of Declaration of Acceleration

If the Issuer receives notice in writing from holders of at least 50 per cent in aggregate principal amount of the outstanding Notes to the effect that the Event of Default or Events of Default giving rise to any above mentioned declaration of acceleration is or are cured following any such declaration and that such holders wish the relevant declaration to be withdrawn, the Issuer shall, give notice thereof to the Noteholders (with a copy to the Fiscal Agent), whereupon the relevant declaration shall be withdrawn and shall have no further effect but without prejudice to any rights or obligations which may have arisen before the Issuer gives such

notice (whether pursuant to these Conditions or otherwise). No such withdrawal shall affect any other or any subsequent Event of Default or any right of any Noteholder in relation thereto.