

## ICMA SOVEREIGN BOND CONSULTATION PAPER

### For members of ICMA

#### INTRODUCTION

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, through contract reform and practical improvements to standard form market documentation.
2. The last time that ICMA consulted its members on matters related to sovereign bonds was in November 2010, when ICMA published a Sovereign Bond Consultation Paper with a view to enhancing the transparency, availability and clarity of the terms and conditions of sovereign bond issues.
3. Since that time a sovereign debt crisis has affected a number of euro area countries including Greece, which has restructured a large proportion of its debt through Private Sector Involvement (PSI) and a subsequent public debt buy back initiative. This occurred in the context of substantial amounts of official sector funding from the IMF and from euro area member states and the acceptance of a stringent economic adjustment programme by the country itself and required private creditors to absorb significant losses.
4. Elsewhere, the case of *NML Capital v Argentina* being litigated through the United States' Courts in New York has attracted a great deal of attention. The litigation has focussed both sovereign debtors and investors on the *pari passu* provision so often included in the terms and conditions of sovereign notes. Aside from a debate as to the interpretation of the provision, many different forms of which are used in capital markets documentation, and the scope of remedies that may flow from one or other interpretation, the discussion has centred around the need in future to minimise or indeed, completely eradicate, the potential for holdout creditors to block or frustrate a more universal approach to sovereign debt restructuring. One question which this Consultation Paper addresses is whether there is sufficient support for a standardisation of the *pari passu* provisions included in sovereign notes and, if so, what form these provisions should take.
5. Experience since the onset of the financial crisis and the euro area crisis has arguably brought to light certain limitations in market documentation and increased scrutiny of the sovereign bond markets. There are a number of main reasons why. The Greek experience, and the sovereign debt crisis in the euro area more generally, have demonstrated the risks of cross-border contagion and the potential threat to global financial stability. There is therefore an increased focus on more prescriptive and pre-emptive sovereign debt restructuring mechanisms, especially when official sector lenders are called upon to provide an earlier and more comprehensive solution where debt sustainability is at risk. This may include a number of elements, such as official sector financial assistance and the implementation of an economic adjustment

programme by the country concerned. There is also a desire that the current techniques used for restructuring sovereign debt should be developed in order to facilitate restructurings (before and after default) with a view to such processes taking less time, being as comprehensive as circumstances require and minimising holdout creditor risk. One of the areas of focus has been the development and wider implementation of a new enhanced generation of collective action clauses including an aggregation feature (although Argentina, the Dominican Republic, Uruguay and Greece in its Government Bonds issued as part of its PSI have already included such clauses).<sup>1</sup>

6. Within the euro area, a new model euro area collective action clause was published in February 2012<sup>2</sup> and the Treaty Establishing the European Stability Mechanism implemented the decision by the European Council to make collective action clauses mandatory as of 1 January 2013 in all new euro area government securities with a maturity greater than one year (with certain exemptions in respect of tapped bond issues).
7. In addition, in October 2012 the Institute of International Finance ("IIF") published an Addendum to its Principles for Stable Capital Flows and Fair Debt Restructuring to reflect on its experiences on the Greek PSI. The IIF concluded that the use of aggregated collective action clauses should be explored further.
8. The official sector has become increasingly concerned that a minority of holdout creditors should not be able to prevent a comprehensive orderly restructuring of sovereign debt from proceeding and that this should be the case whether a restructuring occurs with or without a sovereign default. A growing focus has been on avoiding sovereign defaults and enabling debt relief even in circumstances where debt sustainability cannot be determined with reasonable certainty. In particular, where investors conclude that the official sector will seek to avoid a default but holdout creditors could build blocking positions that could keep one or more series of affected bonds out of a restructuring, investors more generally may be discouraged or deterred from participating in any rescheduling or restructuring proposed.
9. In April 2013, the IMF published a paper entitled "Sovereign Debt Restructuring – Recent Developments and Implications for the Fund's Legal and Policy Framework" (the "**IMF Paper**") for consideration by the Fund's Executive Board. This raised a number of issues but one area of focus in the IMF Paper was the extent to which effective aggregated voting can be achieved through a contractual framework. The IMF Paper states that: "There is merit in considering whether a more robust form of aggregation clause could be designed and successfully introduced into international sovereign bonds".

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<sup>1</sup> As part of its PSI, Greece also passed the Greek Bondholder Act 4050/12 on 23 February 2012 which allowed its Greek law governed sovereign bonds to be restructured through the imposition of a collective action mechanism applicable on the basis of a quorum of votes representing 50 per cent. of face value and a consent threshold of two-thirds of the face value of those exercising their voting rights on an aggregate basis across different issues of debt securities. This mechanism was seen by some to illustrate the importance of being able to aggregate bonds in a restructuring scenario.

<sup>2</sup> Pursuant to the conclusions of the European Council of 24/25 March 2011, a standardized and identical collective action clause (CAC), including supplemental provisions, was developed and agreed by the Economic and Financial Committee (EFC) on 18 November 2011.

10. As ICMA stated in its Sovereign Bond Consultation Paper of 2010, in response to the sovereign debt crisis, investors have paid increasing attention to the fact that sovereign bonds are not risk-free and that the credit quality of sovereign issuers varies. Consequently, there is a greater focus in understanding, and for there being greater clarity in the contractual terms and conditions of individual sovereign issues.
11. In view of these developments, ICMA believes it is appropriate at this time to propose new standard form aggregated collective action clauses for inclusion in all government securities (that are not otherwise subject to the mandatory euro area model collective action clause), and to replace the existing form of Collective Action Clause for Sovereign Notes published in October 2004 currently found in the ICMA Handbook (under ICMA Standard Documentation VIII).
12. The proposals in the Consultation Paper are set out as a basis for discussion with ICMA's members. These proposals are designed to facilitate more effective and orderly restructurings of sovereign debt. Taking account of comments received, ICMA also plans to publish for the first time a standard *pari passu* provision for inclusion in sovereign debt securities.

#### **Is this in the interests of both issuers and investors?**

13. It is clearly in both issuers' and investors' interests to have clear drafting where parties' contractual rights are understood and easily ascertainable. Where a country is facing liquidity or solvency problems it will also be advantageous to have a mechanism whereby a country can approach its creditors to seek some debt relief in an efficient and orderly process.

#### **Invitation to respond to the Consultation Paper**

14. ICMA is therefore considering publishing new standard provisions:
  - Part A of this Consultation Paper sets out the proposed new Standard Aggregated CACs.
  - Part B sets out a new *pari passu* provision for insertion in the terms and conditions of sovereign notes.
15. ICMA invites views from its members on the proposals in this Consultation Paper. Comments should be sent by email to [sovereignbondconsultation@icmagroup.org](mailto: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 of a point of contact. Taking account of the comments received, ICMA plans to publish recommendations in respect of a new *pari passu* clause and a new form of Standard Aggregated CACs for inclusion into the terms and conditions of sovereign notes.

## PART A – STANDARD AGGREGATED CACS

### 1. Consultation on Standard Aggregated CACs of Sovereign Notes

#### *Description of the main changes*

We set out below a summary of the main changes made in the proposed new Standard Aggregated CACs for Sovereign Notes to the existing form of Standard CACs for Sovereign Notes included in the current version of the ICMA Handbook.

- (a) The new Standard Aggregated Collective Action Clauses permit the modification of a single series of sovereign notes or the modification of several series of sovereign notes (the Multiple Series Aggregation provision). In practice, the Issuer will be able to choose which mechanism to initiate.
- (b) The voting thresholds for the single series modification remain the same in the case of an Extraordinary Resolution and a Written Resolution relating to a Reserved Matter amendment but ICMA proposes to reduce the voting threshold relating to non-Reserved Matters applicable to Written Resolutions so that it does not represent a higher voting threshold than is currently required in respect of the passing of an Extraordinary Resolution relating to a non-Reserved Matter. The quorum applicable to a single series noteholder meeting remains the same.
- (c) The concept of Multiple Series Aggregation does not appear in the existing form and reflects developments in the euro area. The voting mechanism for the passing of a Multiple Series Extraordinary Resolution has two elements.
  - (i) The first element requires a voting threshold of more than 66 $\frac{2}{3}$ % of the aggregate principal amount of the outstanding debt securities of all affected series of debt securities (taken in aggregate).
  - (ii) The second element requires a voting threshold of more than 50% of the aggregate principal amount of all the outstanding debt securities in each affected series (taken individually).

These voting thresholds are being proposed to ensure that the historical concept of supermajorities is respected and to ensure the fair interaction between the lower voting threshold (set by reference to those voting in respect of each series individually) and the higher threshold (set by reference to all affected series taken in aggregate). ICMA hopes in this way to achieve a balanced treatment of debtor and creditor rights, on the one hand facilitating a restructuring by including the aggregation element and lowering voting thresholds, and on the other maintaining a single series majority approval voting safeguard.

- (d) The thresholds which are applicable to Written Resolutions in the context of an aggregated procedure reflect the same approach taken to the setting of the thresholds where voting is by way of a noteholder meeting.
- (e) In view of the complexities involved with amending bond terms through the use of an aggregated procedure, the ICMA Standard Aggregated CACs do not include the

ability to amend bond terms in respect of non-Reserved Matters through the use of an aggregated voting procedure.

- (f) Many sovereigns issue debt under domestic as well as foreign law, in domestic as well as foreign currencies, on a syndicated as well as on an auctioned basis, and in each case to both international and domestic investors. The development of local as well as deeper international capital markets is desirable and encouraging. With increased cross-border capital flows, the boundaries between domestic and external indebtedness is increasingly blurred. The new Standard Aggregated CACs recognise that many sovereigns will likely continue to issue such a diverse range of debt. To the extent therefore, that Standard Aggregated CACs are to form the basis of a sovereign debt restructuring approach which enables a broader spectrum of sovereign debt to be restructured in as efficient, timely, and orderly manner as possible with the objective of restoring its debt sustainability, the adoption of Standard Aggregated CACs into domestic law governed instruments should be considered. The new Standard Aggregated CACs are therefore no longer intended only to apply to English law governed sovereign notes issued under a fiscal agency documentation structure but may be utilised in bond documentation governed by other laws and with differing constituting documentation (including a trustee or other bondholder representative).

It is accepted, however, that this may lead to the need, at a time when the mechanism is actually to be utilised, for the Issuer to supplement the procedures relating to the passing of Extraordinary and Written Resolutions. Moreover, as a result of the possibility that the new standard provisions may be included in debt securities which may not fully reflect the scope of standard form Eurobond documentation some additional boilerplate provisions have been included in the new Standard Aggregated CACs. Whilst not all the terms which will need to be defined are included, new definitions of "debt securities" and "record date" have been incorporated. The former is particularly important as it describes the instruments which may be incorporated to form part of the series of debt securities which may be included in an aggregated voting procedure.

Some commentators are of the view that in order for aggregated collective action clauses to facilitate the restructuring of all of a country's affected indebtedness, the series by series voting requirement should not be included. For example in its IMF Paper the IMF states: "Further work could be conducted to determine whether aggregated voting in collective action clauses could be made standard practice in new bond issuances, and consideration could be given to the feasibility of replacing the standard two-tier voting thresholds in the existing aggregation clauses with one voting threshold, so that blocking minorities in single bond series cannot derail an otherwise successful restructuring."

Collective action clauses have been included in English and New York law contracts for many years. To date this has been in a series by series context and with important minority protection safeguards. The limits of these safeguards continue to be considered by the courts.

The introduction of collective action clauses with an aggregation feature could be an important further enhancement to the contractual architecture for sovereign debt restructurings as long as such provisions are introduced in a manner which continues to provide safeguards in respect of minority rights. In essence, CACs take away

contract rights through a majority action without any court supervision and outside the protective boundaries of a statute.

In relation to a voting procedure, therefore, it is worth considering that there is a broader issue about the legitimacy of any vote that binds a dissenting minority (which in some cases could be the entire or the majority of bonds in respect of multiple series of bonds) which goes to basic concepts of fairness. Courts are outcome focused and litigation will more easily arise if the outcome is a restructuring effected pursuant to a voting procedure which is not clearly fair. Any vote that binds bondholders should be seen as legitimate. If it is not, as well as causing legal difficulties, it could affect negatively the sovereign's ability to re-establish market access in a timely manner after a restructuring and with potential adverse cost of funding effects.

- (g) It is these concerns that have led ICMA to include a two stage voting procedure (aggregate voting and single series voting) in the ICMA Standard Aggregated CACs, as is also the case in the new euro area model CAC. The ICMA Standard Aggregated CACs also include a mechanism to exclude any series of debt securities which does not approve any proposed modifications if the aggregate approval would be granted but for the series of debt securities voting against. However, this mechanism will only apply if its potential use is notified to noteholders at the time the rescheduling or restructuring proposal is made. Therefore, whilst the terms of that excluded series will not be amended and the series will therefore not form part of the restructured stock of debt of the sovereign concerned, it is hoped in this manner that the blocking series will not prevent a restructuring of a sovereign debt succeeding where broader acceptance has been obtained.
- (h) A different quorum for the constituting of meetings to consider Extraordinary Resolutions in the context of an aggregated vote has been included with a view to constituting such meetings in a market customary way and ensuring that, combined with the related voting threshold, more than 50% of the outstanding bonds have to be voted in favour of the restructuring proposition.
- (i) Reserved Matters have been expanded.
- (j) The disenfranchisement provision has been expanded slightly to ensure that if the underlying documentation does not include Eurobond market standard definitions of "outstanding" that these are included in the Standard Aggregated CACs.
- (k) A new set of provisions related to the role of an Aggregation Agent has been included.
- (l) Noteholders' Committee and Acceleration procedures have been included under a separate Supplementary Provision heading to illustrate that these provisions are additional to, and not an integral part of, the Standard Aggregated CACs. The voting thresholds related to the appointment of a Noteholders' Committee have been lowered to facilitate the formation of such committees.
- (m) The responses received from Members on ICMA's 2010 Sovereign Bond Consultation Paper suggested that the Noteholders' Committee provision was not utilised extensively and could be dropped. Since 2010, however, developments have suggested that, on the official sector side at least, there is a renewed interest in mechanisms which may facilitate timely and efficient engagement (whether via a

noteholders' committee or otherwise) with the private sector, especially in situations where a sovereign debt restructuring occurs without a payment default. On the private sector side there is also interest that sovereign debtors should recognise a committee of creditors and engage in a transparent and inclusive manner with a view to facilitating voluntary orderly debt restructuring processes. With this in mind, we have retained the Noteholders' Committee provision but amended it in a number of respects. We have deleted the provision enabling bondholders to object to the appointment of a committee on the basis this creates additional uncertainty and the majority requirements to establish the committee initially should suffice. In view of the concern that there is benefit from restructurings being effected pre-emptively (pre-default) we have inserted a new event which will trigger the ability to form a committee earlier. We have deleted the conflict determination powers as the ability of the committee to adopt such rules as it considers appropriate regarding its proceedings should suffice.

## 2. **Points for consultation**

ICMA would welcome input from members on the draft Standard Aggregated CACs. Points for consideration include:

- (a) **Scope of application of Standard Aggregated CACs in relation to governing law.**
- (i) Do Members agree that the Standard Aggregated CACs shall apply to debt securities of any governing law if introduced in such instruments or should they be stated to apply only to English or New York law or, as an alternative, to foreign law governed debt securities?
  - (ii) Should ICMA indicate that the new Standard Aggregated CACs may be used in domestic law governed instruments? If not, this could impact on the comprehensive nature of a restructuring which would be undertaken in respect of sovereigns which issue substantive amounts of debt under domestic law. This was relevant for euro area member states and may be relevant for sovereigns with developing local capital markets. Civil law based legal systems may not be as accommodating as New York and English law to the proposed mechanism and some analysis locally as to the enforceability of the proposed Standard Aggregated CACs should be recommended. It is worth noting also that sovereigns may issue foreign law instruments governed by other laws e.g. Swiss or Japanese law which may also approach minority rights differently.
  - (iii) If ICMA were to recommend that the Standard Aggregated CACs be introduced in domestic law debt securities, should such adoption be conditional on the provision of an enforceability opinion from an appropriate government law officer in the relevant country?
  - (iv) Should there be a condition that debt securities governed by the same governing law only will be aggregated into one voting procedure?
- (b) **Discretion as to aggregation.** Currently it is intended that it will be in the discretion of the sovereign debtor as to whether to include the Standard Aggregated CACs in its debt securities and there is no obligation, where debt securities do include the

Standard Aggregated CACs, to utilise the aggregation mechanism in respect of all such debt securities on an aggregate basis. The sovereign would be able to choose which series of debt securities to aggregate.

- (i) It may well be unrealistic and too complex to have this otherwise but do Members agree that disclosure as to this discretion will suffice to sensitise investors to the broad discretions left to sovereign debtors? Such disclosure could also form part of a risk factor in any Prospectus that was prepared in respect of any affected series of debt securities if it became market practice for the Issuer and its lead arrangers to agree to its inclusion. However, such disclosure may not always be assured.
  - (ii) Should the aggregation of debt securities be framed into particular groupings? (see 2(a) (iv) above). Hence, should the aggregate pool comprise of debt securities issued pursuant to the same contractual framework (e.g. an MTN Programme) or having substantially similar terms. If so, would separating the debt securities into a number of different aggregation groupings, obviate any benefits from having Standard Aggregated CACs.
- (c) **Quorum and voting thresholds.** Are the quorum and voting thresholds set at levels which constitute a balanced approach to debtor/creditor rights?
- (i) To date for a single series, stand alone (non-aggregated) modification the voting threshold has, outside the euro area, been set at 85% of total principal amount outstanding<sup>3</sup>. The euro area voting threshold is set at 75% of aggregate principal amount outstanding represented at the meetings (with a quorum of 66⅔% of outstanding principal). The new Standard Aggregated CACs in the case of a multiple series modification for a Reserved Matter include a voting threshold of 66⅔% of the aggregate principal amount of the outstanding debt securities taken in aggregate. This is lower than the aggregate voting threshold previously used in aggregated CACs outside the euro area but similar to the euro area voting threshold.
  - (ii) In addition, there is an approval requirement at the individual series level set at the level of more than 50 per cent. of the outstanding debt securities of that series.
- (d) **Partial Multiple Series Aggregation.** The inclusion and operation of a mechanism without a series by series vote could result in a situation whereby a series can be dragged along whilst other series may then be paid by the sovereign debtor (to avoid a default). This may incentivise some to vote against a restructuring. Should this feature therefore be included?
- (e) **Aggregate vote only.** Do Members agree that retaining the individual series voting requirement is an important safeguard (i) from a legal perspective and (ii) from a market acceptability perspective?
- (f) **Noteholders' Committee.**

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<sup>3</sup> Argentina; Dominican Republic; Uruguay; Greece.



- (i) Should the Noteholders' Committee provision be retained?
  - (ii) Should it be dropped in relation to single series only but adopted in an aggregated context?
  - (iii) Are the voting thresholds indicated set at an appropriate level?
  - (iv) In the event that the matters referred to in paragraph (c) of the provision are not done by the Issuer, should this result in an event of default, or should there be no such remedy?
  - (v) Should the Issuer be required to recognise the Committee as being representative or simply to recognise the Committee?
  - (vi) Should the requirement to pay the fees and costs of the Committee, if any, be required to be paid by the Issuer or is it preferable to leave this to be determined between the parties at the relevant time?
- (g) **Notification of meetings.**
- (i) Do Members consider that the 30 to 60 days' prior notification of a meeting is too long a period, in particular in the context of a pre-emptive restructuring?
  - (ii) Would a period of 15 to 30 days be workable, in particular, from a procedural perspective?

### 3. **Proposal on Standard Aggregated CACs**

The proposed new ICMA Standard Aggregated Collective Action Clauses for sovereign notes are set out in the Schedule attached hereto.

## PART B - RANKING

### 1. Consultation on Ranking

#### *Background to the consultation documentation*

*Pari passu* is a Latin phrase meaning in equal step or side by side. A *pari passu* clause in a contract provides, in broad terms, that one debt will be treated in the same way as another. In a corporate context, this has a clear meaning. A corporation can enter insolvency proceedings, which will require all its assets to be realised and the proceeds distributed to its creditors. If particular creditors share rateably in the same assets, they are, as between each other, *pari passu*; if another creditor is entitled to be paid first, that creditor is preferred; if a further creditor only gets paid after others have been paid in full, that creditor is subordinated. Once all a corporate debtor's assets have been sold and the proceeds distributed to its creditors, the corporation will be dissolved.

What *pari passu* means in a sovereign context is complicated by the lack of any applicable insolvency regime. The assets of a sovereign borrower cannot all be sold and the proceeds distributed to its creditors. A sovereign cannot be dissolved.

There are many different formulations of the *pari passu* provision in sovereign issuers' documentation. Indeed, some issuers may be using different formulations in a variety of financing documents. The proper interpretation of any particular *pari passu* clause depends upon its drafting. However, arguments over the meaning of *pari passu* clauses have, for the last fifteen years or so, generally focussed upon whether the "ranking interpretation" is the correct interpretation or whether the clause also encompasses the "payment interpretation". The ranking interpretation is that the relevant sovereign debt must rank equally with all other relevant debt, i.e. the sovereign must not subordinate the debt below other relevant debt. The payment interpretation takes the position one step further and says that any payments made by the sovereign issuer on other relevant debt may only be made if rateable payments are also made on the sovereign debt in which the ranking provision is contained. These interpretations are not necessarily inconsistent with each other. On its proper interpretation, a *pari passu* clause could encompass the ranking interpretation or the payment interpretation or both.

(a) **The practical implications of this debate are highlighted by *NML Capital v Argentina*:**

- (i) Bonds issued by Argentina subject to New York governing law on which Argentina defaulted in 2001, contained a *pari passu* clause in the following form:

"[1] The Securities will constitute... direct, unconditional, unsecured and unsubordinated obligations of the Republic and shall at all times rank *pari passu* without any preference amongst themselves. [2] The payment obligations of the Republic under the Securities shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External indebtedness." (Numbering added)

- (ii) After Argentina defaulted on the bonds, it sought to restructure them by way of an exchange offer. However, some of the holders of the defaulted bonds ("Holdouts") chose not to exchange their bonds. The Holdouts have recently tried to prevent Argentina from making payments on the new bonds which had been issued under the exchange offer (the "Exchanged Bonds"). The Holdouts argued in court that while the ranking interpretation was the proper interpretation of sentence [1] in the *pari passu* clause, the proper interpretation of sentence [2] was the payment interpretation. Based on this, the Holdouts argued that they were entitled to be paid rateable amounts at the same time as the holders of the Exchanged Bonds received any payments and, more significantly, that Argentina should be restrained from paying the holders of the Exchanged Bonds unless Argentina also paid the Holdouts at the same time.
- (iii) After lengthy litigation, the United States District Court for the Southern District of New York agreed with the Holdouts' interpretation of sentence [2]. The court issued an injunction forbidding Argentina from paying any amounts under the Exchanged Bonds without at the same time making rateable payments to the Holdouts. Adopting the payment interpretation, the judge said that if Argentina paid all the interest then due under the Exchanged Bonds, the Holdouts were entitled to be paid all sums then due to them, namely the entire principal plus interest on the defaulted bonds. The judge stated that if any third parties assisted Argentina in making payments on the Exchanged Bonds (such as intermediary banks, trustees and clearing systems) without also paying the Holdouts, they would be in contempt of court.
- (iv) The court also decided that even if Argentina's *pari passu* clause was confined to the ranking interpretation, Argentina's particular conduct in, for example, passing legislation prohibiting payment of any sums due on the Exchanged Bonds (the so-called "Lock Law") still constituted a breach of the clause.
- (v) As of the time of this Consultation Paper, the case is still continuing and the present decision is subject to further review. Of particular interest and concern will be further decisions on the effect on third parties of the injunction granted against Argentina. This interim decision nonetheless highlights the need for greater clarity in relation to the standard wording for ranking provisions.

If the conclusion of the US court proceedings is that the correct interpretation of a *pari passu* clause includes the payment interpretation, this could create considerable uncertainty for sovereign debt restructurings, especially if coupled with the remedies so far granted by the United States' courts. It could, for example, enable hold out creditors not only to refuse to take part in an exchange offer but also make it difficult to implement an exchange offer approved by a majority of creditors unless the hold out creditors are paid in full. As mentioned above, the threat of this occurrence could also discourage other creditors from taking part in an exchange offer even if they were otherwise willing to do so.

#### *Description of the changes made to the pari passu provision*

- (b) As a consequence of the market uncertainty regarding the interpretation of existing *pari passu* provisions, ICMA propose wording for a revised provision, set out in

paragraph 3, which is limited to ranking. The main addition in the draft provision as compared to many formulations of this clause in the market is that it states that any payments made by the Issuer do not need to be made rateably with payments on other external debt.

## 2. **Points for Consultation**

ICMA would welcome input from Members on the draft *pari passu* provision set out in paragraph 3. Points for consideration could include:

- (a) Do Members consider that sovereign issuers should be encouraged not to include a *pari passu* provision at all in the relevant documents as the meaning and benefit of *pari passu* is more limited and obscure in the context of sovereign debt because a sovereign cannot technically become insolvent in the way in which a corporate can?
- (b) If Members consider that a *pari passu* clause is of value in sovereign bond documentation, do Members believe it would be helpful to have a standard *pari passu* provision, which would form part of the ICMA Handbook and which clarifies that the payment interpretation would not apply?
- (c) Do Members think that, given the different considerations to be borne in mind when drafting a *pari passu* provision, and the fact that some investors may consider it commercially beneficial to have a *pari passu* provision which requires a sovereign to make payments rateably, ICMA should not be proposing a standard form provision and should instead suggest that this provision be negotiated commercially by the relevant parties in the context of the specific country case?

## 3. **Proposal on Ranking**

### "[•] **Status**

The Notes are the direct, unconditional and unsecured obligations of the Issuer and rank and will rank *pari passu*, without preference among themselves, with all other unsecured External Indebtedness of the Issuer, from time to time outstanding. *Provided, however*, that the Issuer shall have no obligation to effect equal or rateable payment(s) at any time with respect to any such other External Indebtedness and, in particular, shall have no obligation to pay other External Indebtedness at the same time or as a condition of paying sums due on the Notes and vice versa."

## SCHEDULE

*Consultation Draft  
December 2013*

### DRAFT ICMA MODEL STANDARD AGGREGATED CACS

#### STANDARD AGGREGATED COLLECTIVE ACTION CLAUSES (CACS) FOR THE TERMS AND CONDITIONS OF SOVEREIGN NOTES

##### [•] MEETINGS OF NOTEHOLDERS; WRITTEN RESOLUTIONS

###### (a) Convening Meetings of Noteholders; Conduct of Meetings of Noteholders

- (i) The Issuer may convene a meeting of the Noteholders at any time in respect of the Notes in accordance with the Bond Documentation. The Issuer will determine the time and place of the meeting. The Issuer will notify the Noteholders of the time, place and purpose of the meeting not less than 30 and not more than 60 days before the meeting.
- (ii) The Issuer or the [Fiscal Agent/Trustee/other bondholder representative] will convene a meeting of Noteholders if the holders of at least 10 per cent. in principal amount of the outstanding Notes (as defined in the Bond Documentation and described in paragraph (h) (*Notes controlled by the Issuer*)) have delivered a written request to the Issuer or the [Fiscal Agent/Trustee/other bondholder representative (with a copy to the Issuer)] setting out the purpose of the meeting. The [Fiscal Agent/Trustee/other bondholder representative] will agree the time and place of the meeting with the Issuer promptly. The Issuer or the [Fiscal Agent/Trustee/other bondholder representative], as the case may be, will notify the Noteholders within 10 days of receipt of such written request of the time and place of the meeting, which shall take place not less than 30 and not more than 60 days after the date on which such notification is given.
- (iii) The Issuer (with the agreement of the [Fiscal Agent/Trustee/other bondholder representative]) will set the procedures governing the conduct of any meeting in accordance with the Bond Documentation. If the Bond Documentation does not include such procedures, or additional procedures are required, the Issuer and the [Fiscal Agent/Trustee/other bondholder representative] will agree such procedures as are customary in the market and in such a manner as to facilitate the processing of any multiple series aggregation, if in relation to a Reserved Matter the Issuer proposes any modification to the terms and conditions of, or action with respect to, two or more series of debt securities issued by it.

- (iv) The notice convening any meeting will specify, *inter alia*;
  - (A) the date, time and location of the meeting;
  - (B) the agenda and the text of any Extraordinary Resolution or Multiple Series Extraordinary Resolution to be proposed for adoption at the meeting;
  - (C) the record date for the meeting, which shall be no more than five business days before the date of the meeting;
  - (D) the documentation required to be produced by a Noteholder in order to be entitled to participate at the meeting or to appoint a proxy to act on the Noteholder's behalf at the meeting;
  - (E) any time deadline and procedures required by any relevant international and/or domestic clearing systems or similar through which the Notes are traded and/or held by Noteholders;
  - (F) the identity of the Aggregation Agent for any proposed modification or action to be voted on at the meeting; and
  - (G) any additional procedures which may be necessary and, if applicable, the conditions under which a multiple series modification or action will be deemed to have been satisfied if it is approved as to some but not all of the affected series of debt securities.
- (v) A "record date" in relation to any proposed modification or action means the date fixed by the Issuer for determining the Noteholders and, in the case of a multiple series aggregation, the holders of debt securities of each other affected series that are entitled to vote on a Multiple Series Extraordinary Resolution or to sign a Multiple Series Written Resolution.

(b) **Modification of this Series of Notes only**

- (i) Any modification of any provision of, or any action in respect of, these Conditions or the Bond Documentation may be made or taken if approved by an Extraordinary Resolution or a Written Resolution as set out below.
- (ii) An "Extraordinary Resolution" means a resolution passed at a meeting of Noteholders duly convened and held in accordance with the procedures prescribed by the Issuer and the [Fiscal Agent/Trustee/other bondholder representative] pursuant to paragraph (a) (*Convening Meetings of Noteholders; Conduct of Meetings of Noteholders*) by a majority of:
  - (A) in the case of a Reserved Matter, at least 75 per cent. of the aggregate principal amount of the outstanding Notes; or
  - (B) in the case of a matter other than a Reserved Matter, at least 66<sup>2</sup>/<sub>3</sub> per cent. of the aggregate principal amount of the outstanding Notes which are represented at that meeting.

- (iii) A "Written Resolution" means a resolution in writing signed by or on behalf of the holders of:
  - (A) in the case of a Reserved Matter, at least 75 per cent. of the aggregate principal amount of the outstanding Notes; or
  - (B) in the case of a matter other than a Reserved Matter more than 50 per cent. of the aggregate principal amount of the outstanding Notes.

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.

- (iv) Any Extraordinary Resolution or Written Resolution duly passed shall be binding on all Noteholders, whether or not they attended any meeting, whether or not they voted in favour thereof and whether or not they signed a Written Resolution, as the case may be, and on all Couponholders.

(c) **Multiple Series Aggregation**

- (i) If in relation to a Reserved Matter the Issuer proposes any modification to the terms and conditions of, or any action with respect to, two or more series of debt securities issued by it and any related agreement governing the issuance of such debt securities, including the Notes, all of which contain a multiple series aggregation provision analogous to and consistent with this Condition [•] (*Meetings of Noteholders; Written Resolutions*) and Condition [•] (*Aggregation Agent*), any modification of any provision of, or any action with respect to, the Notes may be made or taken if approved by a Multiple Series Extraordinary Resolution or by a Multiple Series Written Resolution as set out below.
- (ii) A "Multiple Series Extraordinary Resolution" means a resolution passed at separate meetings of the holders of each affected series of debt securities, including the Notes, duly convened and held in accordance with the procedures prescribed by the Issuer and the [Fiscal Agent/Trustee/other bondholder representative] pursuant to paragraph (a) (*Convening Meetings of Noteholders; Conduct of Meetings of Noteholders*), as supplemented if necessary, by a majority of:
  - (A) at least  $66\frac{2}{3}$  per cent. of the aggregate principal amount of the outstanding debt securities of all affected series of debt securities (taken in aggregate); and
  - (B) more than 50 per cent. of the aggregate principal amount of the outstanding debt securities in each affected series of debt securities (taken individually).
- (iii) A "Multiple Series Written Resolution" means a resolution in writing signed by or on behalf of the holders of:

- (A) at least  $66\frac{2}{3}$  per cent. of the aggregate principal amount of the outstanding debt securities of all the affected series of debt securities (taken in aggregate); and
- (B) more than 50 per cent. of the aggregate principal amount of the outstanding debt securities in each affected series of debt securities (taken individually).

Any Multiple Series Written Resolution may be contained in one document or several documents in substantially the same form, each signed by or on behalf of one or more Noteholders or one or more holders of each affected series of debt securities.

- (iv) Any Multiple Series Extraordinary Resolution or Multiple Series Written Resolution duly passed shall be binding on all Noteholders and holders of each other affected series of debt securities, whether or not they attended any meeting, whether or not they voted in favour thereof and whether or not they signed a Multiple Series Written Resolution, as the case may be, and on all Couponholders.
- (v) Separate meetings will be convened and held, or a separate Multiple Series Written Resolution signed, in relation to the proposed modification of any provision of, or any action in respect of, the Notes and the proposed modification of any provision of, or any action in respect of, each other series of affected debt securities at the same time or as soon as practicable after each other meeting or signing, as the case may be, in accordance with the Bond Documentation relevant to the Notes and each such other series of affected debt securities.
- (vi) In this Condition [•] (*Meetings of Noteholders; Written Resolutions*) "debt securities" means any notes (including the Notes), bonds, debentures or other debt securities issued by the Issuer in one or more series with an original stated maturity of more than one year which includes or incorporates by reference this Condition [•] (*Meetings of Noteholders; Written Resolutions*) and Condition [•] (*Aggregation Agent*) or a provision substantially in these terms which provides for the instruments which include such a provision to be capable of being aggregated voting with other instruments.

(d) **Partial Multiple Series Aggregation**

- (i) Subject to (ii) below, if:
  - (A) a proposed modification or action in respect of two or more affected series of debt securities (including the Notes) is not approved in relation to a Reserved Matter in accordance with this Condition [•] (*Meetings of Noteholders; Written Resolutions*); but
  - (B) any such proposed modification or action would have been approved if the proposed modification or action had involved only the Notes and one or more, but less than all, of the other affected series of debt securities included in the proposed modification or action,



that modification or action shall be deemed to have been approved, notwithstanding this Condition [•] (*Meetings of Noteholders; Written Resolutions*), in relation to the Notes and the debt securities of those other series affected by the proposed modification or action which approved the said modification or action as required pursuant to these terms and conditions.

(ii) Paragraph (i) above only applies if:

- (A) the Issuer notifies the Noteholders and the holders of each other affected series of debt securities at the time the modification or action is proposed whether and, if so, under what conditions, such modification or action will be deemed to have been approved if it is approved as set out above in relation to the Notes and some, but not all, of the other series of debt securities; and
- (B) those conditions are satisfied in connection with the proposed modification or action.

(e) **Quorum**

(i) *Single Series Extraordinary Resolution Quorum Requirement*

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

- (A) one or more persons present and holding or representing at least 50 per cent. of the aggregate principal amount of the outstanding Notes; or
- (B) where a meeting is adjourned and rescheduled owing to the lack of a 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.

(ii) *Multiple Series Extraordinary Resolution Quorum Requirement*

The quorum at any meeting of Noteholders convened to vote on a Multiple Series Extraordinary Resolution will be one or more persons present and holding or representing at least  $66\frac{2}{3}$  per cent. of the aggregate principal amount of the outstanding Notes.

(f) **Reserved Matters**

In these Conditions, "**Reserved Matter**" means 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, a Multiple Series Extraordinary Resolution, a Written Resolution, a Multiple Series 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, or the definition of "Extraordinary Resolution", "Multiple Series Extraordinary Resolution", "Written Resolution" or "Multiple Series Written Resolution";
- (v) to change the definition of "outstanding" or paragraph (h) (*Notes controlled by the Issuer*);
- (vi) to change the legal ranking of the Notes [or other specified substantive covenants as appropriate, to be determined on a case-by-case basis];
- (vii) 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*) [if any];
- (viii) to change the law governing the Notes, the courts to the jurisdiction of which the Issuer has submitted in the Notes, any of the arrangements specified in the Notes to enable proceedings to be taken 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*);
- (ix) to modify the provisions of this paragraph (f) (*Reserved Matters*);
- (x) to impose any condition on or otherwise change the Issuer's obligation to make payments of principal, interest or any other amount in respect of the Notes;
- (xi) except as permitted by any related guarantee or security agreement, to release any agreement guaranteeing or securing payments under the Notes or to change the terms of any such guarantee or security; or

(xii) 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.

(g) **Manifest error, etc.**

The Notes, these Conditions and the provisions of the Bond Documentation may be amended without the consent of the Noteholders or the Couponholders to correct a manifest error. In addition, the parties to the Bond Documentation 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) determining the right to attend and vote at any meeting of Noteholders, whether a quorum is present at any meeting of Noteholders, or the right to sign, or authorise the signature of, any Written Resolution or Multiple Series Written Resolution [and] (ii) this Condition [•] (*Meetings of Noteholders; Written Resolutions*) [and (iii) 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*] or any of the foregoing; and
- (ii) "**control**" means the power, directly or indirectly, through the ownership of voting securities or other ownership interests or through contractual control 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.

A Note will also be deemed to be not outstanding if the Note has previously been cancelled or delivered for cancellation or held for reissuance but not reissued, or, where relevant, the Note has previously been called for redemption in accordance with its terms or previously become due and payable at maturity or otherwise and the Issuer has previously satisfied its obligations to make all payments due in respect of the Note in accordance with its terms.

In advance of any meeting of Noteholders, or Written Resolution or Multiple Series Written Resolution, the Issuer shall provide to the [Fiscal Agent/Trustee/other bondholder representative] a copy of the certificate prepared pursuant to paragraph (e) (*Certificate*) of Condition [•] (*Aggregation Agent*), which includes information on 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 and, as such, such Notes shall be disregarded and deemed not to remain outstanding for the purposes of 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 or Multiple Series Written Resolution in respect of any such meeting. The [Fiscal Agent/Trustee/other bondholder representative] 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.

(i) **Publication**

The Issuer shall publish all Extraordinary Resolutions, Multiple Series Extraordinary Resolutions, Written Resolutions, and Multiple Series Written Resolutions which have been determined by the Aggregation Agent to have been duly passed in accordance with paragraph (h) (*Manner of Publication*) of Condition [•] (*Aggregation Agent*).

(j) **Exchange and Conversion**

Any Extraordinary Resolutions, Multiple Series Extraordinary Resolutions, Written Resolutions or Multiple Series Written Resolutions which have been duly passed and which modify any provision of, or action in respect of, the Conditions may be implemented at the Issuer's option by way of a mandatory exchange or conversion of the Notes and debt securities in each affected series of debt securities, as the case may be, into new debt securities containing the modified terms and conditions if the proposed mandatory exchange or conversion of the Notes is notified to Noteholders at the time notification is given to the Noteholders as to the proposed modification or action. Any such exchange or conversion shall be binding on all Noteholders and Couponholders.

**[•] AGGREGATION AGENT**

(a) **Appointment**

The Issuer will appoint an Aggregation Agent to calculate whether a proposed modification or action has been approved by the required principal amount outstanding of Notes, and, in

the case of a multiple series aggregation, by the required principal amount of outstanding debt securities of each affected series of debt securities. In the case of a multiple series aggregation, the same person will be appointed as the Aggregation Agent for the proposed modification of any provision, or any action in respect of these Conditions or the Bond Documentation and each other affected series of debt securities or any related agreement governing the issuance of such debt securities.

**(b) Quorate Meetings**

If any meeting of Noteholders has been duly convened under these Conditions for Noteholders to vote on an Extraordinary Resolution or a Multiple Series Extraordinary Resolution, the Aggregation Agent will, as soon as reasonably practicable following the commencement of the meeting, calculate whether holders of a sufficient portion of the outstanding Notes are present or represented at each relevant meeting such that it is quorate.

**(c) Extraordinary Resolution and Multiple Series Extraordinary Resolution**

If an Extraordinary Resolution or Multiple Series Extraordinary Resolution has been proposed at a duly convened and quorate meeting of Noteholders to modify any provision of, or action in respect of, these Conditions and other affected series of debt securities, as the case may be, the Aggregation Agent will, as soon as practicable after the time the vote is cast, calculate whether holders of a sufficient portion of the aggregate principal amount of the outstanding Notes and, where relevant, each other affected series of debt securities, have voted in favour of the Extraordinary Resolution or the Multiple Series Extraordinary Resolution, as the case may be, such that the Extraordinary Resolution or the Multiple Series Extraordinary Resolution, as the case may be, is passed. If so, the Aggregation Agent will determine that the Extraordinary Resolution or the Multiple Series Extraordinary Resolution, as the case may be, has been duly passed.

**(d) Written Resolution and Multiple Series Written Resolution**

If a Written Resolution or a Multiple Series Written Resolution has been proposed under the terms of these Conditions to modify any provision of, or action in respect of, these Conditions and other affected series of debt securities, as the case may be, the Aggregation Agent will, as soon as reasonably practicable after the relevant Written Resolution or Multiple Series Written Resolution has been signed, calculate whether holders of a sufficient portion of the aggregate principal amount of the outstanding Notes and, where relevant, each other affected series of debt securities, have signed in favour of the Written Resolution or Multiple Series Written Resolution, as the case may be, such that the Written Resolution or Multiple Series Written Resolution, as the case may be, is passed. If so, the Aggregation Agent will determine that the Written Resolution or the Multiple Series Written Resolution, as the case may be, has been duly passed.

**(e) Certificate**

For the purposes of paragraph (b) (*Quorate Meetings*), paragraph (c) (*Extraordinary Resolution and Multiple Series Extraordinary Resolution*) and paragraph (d) (*Written Resolution and Multiple Series Written Resolution*) of this Condition [•] (*Aggregation Agent*), the Issuer will provide a certificate to the Aggregation Agent up to three days prior to and in any case no later than, in the case of an Extraordinary Resolution or a Multiple Series Extraordinary Resolution, as the case may be, the date of the meeting referred to in paragraph

(b) (*Modification of this Series of Notes only*) of Condition [•] (*Meetings of Noteholders; Written Resolutions*) and paragraph (c) (*Multiple Series Aggregation*) of Condition [•] (*Meetings of Noteholders; Written Resolutions*), and, in the case of a Written Resolution, or a Multiple Series Written Resolution, as the case may be, on the date arranged for the signing of the Written Resolution or the Multiple Series Written Resolution.

The certificate shall:

- (i) list the total principal amount of Notes and, in the case of a multiple series modification or action, debt securities of each other affected series of debt securities outstanding on the record date; and
- (ii) clearly indicate the Notes and, in the case of a multiple series modification or action, debt securities of each other affected series of debt securities which shall be disregarded and deemed not to remain outstanding as a consequence of paragraph (h) (*Notes controlled by the Issuer*) of Condition [•] (*Meetings of Noteholders; Written Resolutions*) on the record date identifying the holders of the Notes and, in the case of a multiple series aggregation, debt securities of each other affected series of debt securities.

The Aggregation Agent may rely upon the terms of any certificate, notice, communication or other document believed by it to be genuine.

**(f) Notification**

The Aggregation Agent will cause each determination made by it for the purposes of this Condition [•] (*Aggregation Agent*) to be notified to the [Fiscal Agent/Trustee/other bondholder representative] and the Issuer as soon as practicable after such determination. Notice thereof shall also promptly be given to the Noteholders.

**(g) Binding nature of determinations; no liability**

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition by the Aggregation Agent will (in the absence of manifest error) be binding on the Issuer, the [Fiscal Agent/Trustee/other bondholder representative], the Noteholders and the Couponholders and (subject as aforesaid) no liability to any such person will attach to the Aggregation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

**(h) Manner of publication**

The Issuer will publish all notices and other matters required to be published pursuant to the Bond Documentation including any matters required to be published pursuant to Condition [•] (*Meetings of Noteholders; Written Resolutions*), this Condition [•] (*Aggregation Agent*), Condition [•] (*Noteholders' Committee*) and Condition [•] (*Events of Default*):

- (i) on [*the Issuer's website*];
- (ii) through [*insert international and domestic (if relevant) clearing system*];

- (iii) in such other places and in such other manner as may be required by applicable law or regulation; and
- (iv) in such other places and in such other manner as may be customary.

## SUPPLEMENTARY PROVISIONS

### NOTEHOLDERS' COMMITTEE

#### (a) Appointment

Noteholders of at least 33 $\frac{1}{3}$  per cent. in aggregate principal amount of the outstanding Notes or the Issuer may at any time instruct the [Fiscal Agent/Trustee/other bondholder representative] to convene a meeting of the Noteholders for the purpose of appointing any person or persons as a committee to represent the interests of the Noteholders in accordance with paragraph (a) (*Convening Meetings of Noteholders; Conduct of Meetings of Noteholders*) of Condition [•] (*Meetings of Noteholders; Written Resolutions*) above and the Bond Documentation.

The Noteholders may, by a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Bond Documentation, by a majority of at least 25 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/Trustee/other bondholder representative]) signed by or on behalf of the holders of at least 25 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 under Condition [•] (*Events 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;
- (iii) any public announcement by the Issuer, to the effect that the Issuer is seeking or intends to seek a rescheduling or restructuring of the Notes (whether by amendment, exchange offer or otherwise); or
- (iv) with the agreement of the Issuer, at a time when the Issuer has reasonably reached the conclusion that its debt may no longer be sustainable whilst the Notes are outstanding.

Such committee shall, if appointed by notice in writing to the Issuer, give notice of its appointment to all Noteholders in accordance with paragraph (h) (*Manner of publication*) of Condition [•] (*Aggregation Agent*) as soon as practicable after the notice is delivered to the Issuer; and if appointed by a resolution passed at a meeting of Noteholders, give notice of its appointment to the Issuer and the [Fiscal Agent/Trustee/other bondholder representative] in accordance with paragraph (h) (*Manner of publication*) of Condition [•] (*Aggregation Agent*) as soon as practicable after the resolution is passed.

#### (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; and
- (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. 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.

**(c) Engagement with the committee and provision of information**

The Issuer shall:

- (i) recognise any such committee as being fully representative;
- (ii) negotiate with the committee in good faith;
- (iii) promptly provide the committee with all information, including any debt sustainability analysis and details as to the Issuer's economic and financial circumstances, reasonably requested by the committee;
- (iv) promptly provide the committee with a description of the Issuer's proposed treatment of its other major creditor groups (including, where appropriate, but not limited to, Paris Club creditors, other bilateral creditors and domestic holders of internal and other external debt securities);
- (v) promptly provide details of any proposed financial assistance from the International Monetary Fund, other multilateral lenders or official lenders and any conditionality related to such financial assistance and
- (vi) pay any reasonable fees and expenses of any such committee (including without limitation, the reasonable and documented fees and expenses of the committee's legal and financial advisers, if any).

**(d) Certification**

Upon the appointment of a committee, the person or persons constituting such a committee (the "**Members**") will provide a certificate to the Issuer and to the [Fiscal Agent/Trustee/bondholder representative] signed by the authorised representatives of the Members, upon which the Issuer and the [Fiscal Agent/Trustee/bondholder representative] may rely upon the terms of such certificate.

The certificate shall certify:

- (i) that the committee has been appointed;
- (ii) the identity of the Members; and
- (iii) that such appointment complies with the terms and conditions of the Bond Documentation.

Promptly after any change in the identity of the Members, a new certificate which each of the Issuer and the [Fiscal Agent/Trustee/bondholder representative] may rely on conclusively,

will be delivered to the Issuer and the [Fiscal Agent/Trustee/bondholder representative] identifying the new Members. Each of the Issuer and the [Fiscal Agent/Trustee/bondholder representative] will assume that the membership of the committee has not changed unless and until it has received a new certificate.

In appointing a person or persons as a committee to represent the interests of the Noteholders, the Noteholders may instruct a representative or representatives of the committee to form a committee with any person or persons appointed for similar purposes by other affected series of debt securities.

## **[•] 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/Trustee/other bondholder representative]), 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/Trustee/other bondholder representative]), 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.