

## MAJORITY VOTING FOR PAYMENT TERM AMENDMENTS IN SOVEREIGN LOANS – LATEST ADDITION TO THE INTERNATIONAL FINANCIAL ARCHITECTURE

On 1 November 2022, various industry bodies (including the APLMA, ICMA, IIF and the LMA) published a Guidance and Explanatory Note and a suite of specimen clauses for inclusion on a voluntary and forward-looking basis in sovereign loan agreements. Both the Guidance and Explanatory Note and specimen clauses are attached to this client briefing, and may also be accessed [here](#).

The essential element of the policy initiative behind these specimen clauses, which are designed as 'slot in' clauses for sovereign loan agreements, is to move away from lender unanimity for payment term amendments by including majority voting provisions ('MVPs') for these purposes. These MVPs operate at a recommended majority voting threshold of 75% (i.e. below the previously typical unanimous creditor consent level but above the typical majority lender voting threshold for non-unanimity matters).

In the absence of an overarching international legal framework or treaty governing the restructuring of sovereign debt or insolvency or bankruptcy regimes which apply to sovereigns, MVPs are designed to facilitate, where necessary, the process of revisiting payment terms under sovereign loan agreements in certain situations, such as financial distress. The aim is to minimise undue delays and holdout creditor risk and to improve further the international financial architecture for resolving sovereign debt cases.

### Background

The development of the specimen clauses complements the extensive work carried out in the field of international sovereign bonds over the last two decades to incorporate majority voting concepts into bond documentation. The most recent initiative involving sovereign bonds was carried out under the aegis of the US Treasury. The resulting [aggregated collective action clauses](#) (so-called 'Enhanced CACs'), together with pari passu provisions which disavow any payment parity interpretation, were published by ICMA in 2014/2015 following the extensive input of an expert group (on which Clifford Chance LLP served).

However, that work was confined to sovereign bonds and was not carried through into sovereign debt contracts in the form of loans. An IMF [Staff Paper](#) published in September 2020 noted that the lack of majority voting concepts in sovereign loan agreements was a gap in the international architecture for resolving sovereign debt cases involving private creditors.

## **HM Treasury and Loan Expert Sub-Group**

The United Kingdom, during its time as chair of the G7, took the lead through HM Treasury for the purpose of the re-examination of contractual provisions in sovereign loan agreements. The process of identifying the areas to be addressed and the development of the specimen clauses was assisted over a period of between 18 months and two years by a UK-convened Private Sector Working Group (PSWG): sub-group on MVPs which included engagement with the IMF, the Paris Club Secretariat, the APLMA, ICMA, the LMA, the LSTA, a number of sovereigns, financial institutions, rating agencies, sovereign debt advisory firms, legal counsel and other market participants with an interest in this area.

## **Guidance and Explanatory Note and Specimen Clauses**

Following these discussions, the attached Guidance and Explanatory Note and annexed specimen clauses have been drafted by Clifford Chance LLP.

- The Guidance and Explanatory Note gives the background to the work, as well as a brief description of key considerations giving rise to each provision.
- The specimen clauses are annexed to the Guidance and Explanatory Note.
- The specimen clauses contained in Annex 1 to Annex 8 are written for English law governed LMA based documentation, and the corresponding specimen clauses for New York law governed LSTA based documentation are contained in Annex 9 to Annex 16.

The key deliverable is the inclusion of MVPs in sovereign loan agreements, at a recommended majority voting threshold of 75%, thereby moving away from the position where lenders with small exposures can prevent a revision to payment terms supported by a majority, and so removing disincentives to pre-emptive restructurings or reprofiling where these are necessary.

It is envisaged that the information covenant in the suite of specimen clauses be included in each loan where MVPs are included to ensure that appropriate information is made available to lenders.

The remaining provisions are complementary to the MVPs, and include:

- pari passu provisions which reflect those published by ICMA with the Enhanced CACs;
- unitised voting, which is a mechanism to facilitate the use of the MVPs where economic risk has been passed to others without changing the lender of record;
- 'snooze you lose', which is a provision which allows a lender who has not cast its vote within a reasonable period to be disregarded for voting purposes;
- 'yank the bank', as seen in the leveraged market, allowing a lender to be removed at par in very limited circumstances;
- provisions to neutralise any 'hair trigger' event of default which could be triggered in circumstances where the sovereign takes the sensible route of engaging with its official sector creditors at an early stage to discuss feasible ways forward and before actual problems materialise;
- additional exclusions to confidentiality provisions; and
- provisions on sovereign exchange offers, which are currently the favoured mechanism used by sovereign debtors seeking to address the payment terms of their debts.

Whilst each suggested provision brings its own advantages, the parties to a sovereign loan may determine which of the 'remaining provisions' are relevant in the context of their specific loan.

## Transparency and Confidentiality

There have been various recent initiatives which seek to improve transparency of sovereign debt information. Fuller information is valuable both for creditors and also for domestic accountability purposes. The additional carve-outs for inclusion in the confidentiality clause are intended to remove any confidentiality based impediment to adherence with these initiatives, by facilitating: (a) participation in the private sector initiative embodied by the IIF's [Voluntary Principles for Debt Transparency](#) and the complementary OECD [Debt Transparency Initiative](#); and (b) the reporting of the relevant transaction to the OECD [repository](#) in accordance with the reporting template agreed as part of these private sector transparency initiatives. Generally, as information concerning internationally placed sovereign bonds is public through the disclosure requirements, there is no parallel in this context with Enhanced CACs and the OECD repository therefore aims to plug that gap.

## Provisions relating to sovereign exchange offers

In the context of exchange offers conducted with sovereign bonds containing Enhanced CACs, where the applicable voting threshold is reached, a non-consenting bondholder would typically receive new instruments. However this was not felt to be entirely appropriate for non-consenting lenders in the sovereign loan context, not least because some creditors are only able to invest in loans. As a consequence, in the specimen clauses, where there is an exchange offer which is the subject of consents above the 75% threshold, the payment terms for non-consenting lenders are amended so that they match those of the new instruments. Where more than one new instrument is available, broadly, the payment terms of the most popular instrument are used as the reference point for determining the amended payment terms for the non-consenting lenders.

Given the considerable diversity in the drafting of sovereign loan agreements, it is envisaged that the specimen clauses will be used as a guide and adapted appropriately to the specific circumstances of any particular new sovereign loan agreement.

It should be noted that sovereign bonds with Enhanced CACs have for many years now had no concept of unanimity for voting purposes and permit aggregation for voting purposes across specified other categories of bond issuances with Enhanced CACs. By contrast the concept of unanimity for certain amendments in sovereign loans is retained through the specimen clauses (e.g. the governing law) and the specimen clauses do not attempt to use aggregation across different sovereign loan agreements for voting purposes.

## Take Up

The use of Enhanced CACs has been [monitored by the IMF](#) and the level of use has been and remains high. The sense is that the mutual benefits for both sovereign issuers and the overwhelming majority of their bondholders are self-evident. It is clear that the widespread adoption of MVPs in new sovereign loan agreements would result in an environment in which analogous mutual benefits could be realised by sovereign debtors and the overwhelming majority of their lenders.

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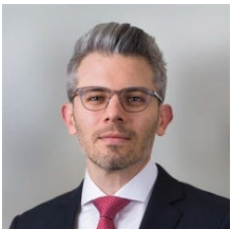
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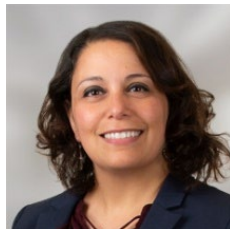
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**This Guidance and Explanatory Note has been prepared in connection with the specimen clauses for use in sovereign loan agreements which are contained within it. Whilst every care has been taken in the preparation of this Guidance and Explanatory Note and the associated specimen clauses, no representation or warranty is given by any entity, any group (whether or not having separate legal personality) or any member of any entity or group referred to in this Guidance and Explanatory Note (referred to collectively as 'Relevant Persons'):**

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**For the avoidance of doubt, this Guidance and Explanatory Note and the specimen clauses are in a non-binding, specimen form. The intention is for the specimen clauses to be used as a starting point for negotiation. Individual parties are free to depart from their terms and should always satisfy themselves of the regulatory implications of their use.**

# Guidance and Explanatory Note relating to new specimen clauses for inclusion in Commercial Loan Agreements for Sovereign Borrowers

1 November 2022

## Executive Summary

- A suite of specimen clauses has been developed for inclusion in sovereign loan agreements. **The essential element of the policy initiative behind the development of these specimen clauses is to move away from lender unanimity for payment term amendments through inclusion of the majority voting provisions ('MVPs')**, which operate at a threshold above the typical majority lender voting threshold. In the absence of an overarching international legal framework or treaty governing the restructuring of sovereign debt by all creditors or insolvency or bankruptcy regimes which apply to sovereigns, this is to facilitate, where necessary, the rescheduling of payments under sovereign loan agreements in certain situations, such as financial distress, with a view to minimising undue delays and holdout creditor risk. The MVPs are set out in Annex 1 and Annex 9. The remaining provisions are complementary. For example, unitised voting is a mechanism which facilitates the use of the majority voting provisions where economic risk has been passed to others without changing the lender of record in the sovereign loan agreement itself.
- This Guidance and Explanatory Note is split into two parts. First, guidance and explanation, including background and a brief description of the commercial considerations giving rise to each such provision, is given in sections 1 to 12.
- Secondly, the specimen clauses are set out in Annex 1 to Annex 16 of this Guidance and Explanatory Note, the Annexes include the following (in respect of loans closely aligned to LMA and LSTA (in each case defined below) forms of loan agreement respectively). Where the LSTA did not include an equivalent provision the specimen provision tracks closely the LMA approach with New York law matters in mind:<sup>1</sup>
  - Amendments to a typical Amendments and Waivers clause to include the majority voting provision (Annex 1 and Annex 9), which also includes provisions on sovereign exchange offers which are the currently favoured market mechanism used by sovereign debtors seeking to address the payment terms of their debts
  - Amendments to Pari Passu clauses disavowing 'payment parity' interpretation (Annex 2 and Annex 10)
  - 'Snooze you lose' (Annex 3 and Annex 11) and 'Yank the bank' provisions (Annex 4 and Annex 12)
  - A unitised voting provision (Annex 5 and Annex 13)
  - Amendments to Creditor Engagement Event of Default permitting certain debt relief discussions (Annex 6 and Annex 14)
  - Amendments to Confidential Information clause (Annex 7 and Annex 15)

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<sup>1</sup> The LSTA does not have a published form of credit agreement covering sovereign debt, therefore certain concepts that are common to the sovereign debt documents have been drafted with New York law matters in mind.



- Exchange Offer definition and associated technical provision (Annex 8 and Annex 16)
- The specimen clauses are designed to be included in both syndicated sovereign loan agreements and bilateral sovereign loan agreements (where credit risk is syndicated in some form), on a voluntary and future-looking basis.

## 1. ***Introduction and Background***

1.1 In 2013, an exercise in respect of international sovereign bonds was initiated through an expert group formed under the aegis of the US Treasury and resulted in new:

- aggregated majority voting provisions (enhanced collective action clauses), under which the specified majority could bind all applicable holders across multiple series of bonds, for many matters, including payment terms modifications; and
- pari passu provisions to disavow any associated payment parity interpretation.

The overriding purpose was to facilitate the restructuring of the underlying sovereign bond instruments in circumstances where that was necessary and to minimize holdout creditor risk. The work of that expert group was published by the International Capital Market Association ('ICMA') and may be accessed here: <https://www.icmagroup.org/resources-2/Sovereign-Debt-Information/>.

1.2 As noted in an IMF Staff Paper dated September 23, 2020 entitled 'The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors – Recent Developments, Challenges, and Reform Options' (the '**September 23, 2020 IMF Staff Paper**'), the take up of the new provisions dealing with these matters in sovereign bond issuances has been and continues to be very high. The September 23, 2020 IMF Staff Paper is available here: <https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/09/30/The-International-Architecture-for-Resolving-Sovereign-Debt-Involving-Private-Sector-49796>

1.3 In connection with the market for sovereign loans, the September 23, 2020 IMF Staff Paper identified that certain features of loan agreements for sovereign borrowers governed by foreign law could usefully be re-examined in a continued effort to improve the international architecture for resolving sovereign debt cases.

## 2. ***G7, HM Treasury and Working Group***

2.1 The United Kingdom, during its time as chair of the G7, took the lead through HM Treasury for the purposes of the initiative, examining contractual provisions in sovereign loan agreements with a mandate from G7 countries. In a manner similar to the work of the sovereign bond expert group formed under the aegis of the US Treasury, a public-private sector working group (the '**Loan Expert Group**') was established to elicit private sector input in respect of certain contractual provisions for inclusion in sovereign loan agreements on a voluntary and forward-looking basis with a view to facilitating, where necessary, any rescheduling of any underlying sovereign loan agreements and minimising undue delays and holdout creditor risk. The private sector members of the Loan Expert Group were drawn from the membership of the Institute of International Finance ('IIF') which, together with HM Treasury, acted in a convening

role. These lenders participated in regular discussions in the Loan Expert Group, also meeting separately to formulate and then convey private sector positions on the use of MVPs in sovereign loan agreements. The participation of the IIF and private sector firms in the Loan Expert Group should not be interpreted as a collective or individual endorsement of this Guidance and Explanatory Note and/or the specimen clauses for use in any specific case. Individual parties should assess the suitability of the specimen clauses on a case by case basis. More generally, please note the Important Notice above.

- 2.2 The process of identifying the areas to be addressed and the associated suggested new provisions was also assisted by engagement with the IMF, the Paris Club Secretariat, the Loan Market Association ('LMA'), the Loan Syndications and Trading Association ('LSTA'), the Asia Pacific Loan Market Association, ICMA, G7 treasuries, rating agencies, sovereign debt advisory firms, legal counsel and other institutions with an interest in this area over a period of between 18 months and two years.
- 2.3 A key deliverable of this work was the formulation of drafting to reflect MVPs in new sovereign loan agreements for take-up by the loan market. This Guidance and Explanatory Note reflects the efforts over this period described above.

### 3. *Specimen Clauses*

- 3.1 Following these workstreams, this Guidance and Explanatory Note together with specimen clauses have been drafted by Clifford Chance LLP (contact [MVPS@cliffordchance.com](mailto:MVPS@cliffordchance.com)) and these are attached as Annexes to this note. Further, a brief description of key considerations giving rise to each such provision is given in sections 4 to 10 which should assist the reader by providing the applicable overall context.
- 3.2 Please note that the specimen clauses attached as Annex 1 to Annex 8 to this note are written for English law governed documentation. The corresponding specimen clauses for New York law governed documentation are attached as Annex 9 to Annex 16.
- 3.3 The key policy change is to move away from lender unanimity for payment term amendments through the inclusion of MVPs (attached in Annex 1 and Annex 9) and so to move away from the position where one or a small number of lenders can prevent a revision to payment terms supported by a majority. The practical difficulties of obtaining unanimous consent result in these being disincentives to pre-emptive restructurings or reprofiling when needed. The remaining provisions are complementary to the MVPs.

### 4. *Applicable Sovereign Loan Agreements*

- 4.1 It is envisaged that the specimen clauses would be included in any medium to long-term loan agreement governed by foreign law from any commercial credit provider (including non-financial firms and others not subject to supervision): (i) with a government or sovereign borrower; (ii) with a borrower which is an agency of a government or sovereign; or (iii) which has the benefit of a guarantee from a government, sovereign or agency of a government (together '**Sovereign Loan Agreements**'). However, this does not include any loan agreement:
- with an original maturity of less than one year;



- which constitutes short term trade finance;
- which is governed by domestic law; or
- which has the benefit of an export credit agency guarantee or insurance.

Any loan agreement with a state-owned enterprise borrower which does not benefit from a sovereign guarantee would not be included.

- 4.2 The specimen clauses have been prepared for use in sovereign debt loan agreements (whether in the form of syndicated loans or bilateral loans where credit risk is syndicated in some form) which are based upon an LMA form loan agreement (English law) or an LSTA form loan agreement (New York law). Whilst there is no LMA recommended form of sovereign loan agreement, in practice the LMA recommended form of Single Currency Term and Revolving Facilities Agreement for use in developing market jurisdictions is often used as a starting point for these purposes. Where an LMA provision does not have an equivalent in the LSTA form, available New York law precedents have been reviewed and drafting prepared to achieve substantially the same purpose as the corresponding LMA provision. Given the considerable diversity in the drafting of Sovereign Loan Agreements, it is envisaged that the specimen clauses will be used as a guide and adapted appropriately to the specific circumstances of any particular new Sovereign Loan Agreement. The specimen clauses should serve both to highlight the underlying concepts to be addressed and provide drafting which can be modified and aligned for the Sovereign Loan Agreement in question.
- 4.3 The inclusion of the specimen clauses in Sovereign Loan Agreements is voluntary and it is envisaged that during the term sheet stage for any new sovereign loan financing, the sovereign borrower and the structuring bank would together discuss the inclusion of these clauses into the subsequently prepared new Sovereign Loan Agreement. Once included in a Sovereign Loan Agreement, it is envisaged that the sovereign borrower would seek to ensure that these clauses are included in subsequent Sovereign Loan Agreements to which it is a party or in respect of which it provides a guarantee, recognising that the inclusion of these clauses is voluntary.
- 4.4 Whilst the exercise referred to in section 1.1 in connection with international sovereign bonds resulted in updated voting provisions (enhanced collective action clauses) which could be operated across different bond issuances through a process referred to as aggregation, in recognition of the core differences between sovereign bonds and sovereign loans, the specimen clauses do not attempt to use aggregation across different Sovereign Loan Agreements for voting purposes.
5. ***Payment Term Amendments – Moving Away From Unanimity***
- 5.1 Generally Sovereign Loan Agreements have historically required the consent of all lenders to amend payment terms, whether written as:
- bilateral loan agreements, with a single lender of record; or
  - syndicated loan agreements, with an agent bank and multiple lenders of record.
- 5.2 The objective is to align Sovereign Loan Agreements in broad terms with the practice in international sovereign bonds governed by English and New York law which provide that, through a qualified majority vote, payment terms can also be amended.

- 5.3 The concept of majority voting is familiar in the sovereign loan markets as it is commonly included in Sovereign Loan Agreements in respect of various matters. Using the LMA documentation as a reference point, the amendments and waivers clause operates on the basis that, subject to certain specified exemptions, which include so called 'all lender matters' (or, in US/LSTA parlance, "sacred rights" matters), any term of the loan agreement may be amended or waived with the consent of the majority lenders and the sovereign borrower. If the majority lenders and the sovereign borrower agree to any such amendment then it becomes binding on all parties so that those that did not vote or voted against are crammed down. However, historically the list of all lender matters included the payment term amendments that would be most relevant in a restructuring. The technical change required to permit the relevant payment terms to be amended by a majority therefore simply involves the removal of payment term amendments from the list of all lender matters for the purposes of the amendments and waivers clause and attaching an agreed majority voting threshold to payment term amendments in the associated definition of majority lenders. The drafting required to make those changes to the LMA based documentation is shown in Annex 1. The corresponding drafting for LSTA based documentation is shown in Annex 9. As will be seen, minor modifications have been made to the two affected payment-related paragraphs which, in the case of the LMA based documentation, now form part of the proviso to the definition of Majority Lenders given the objective described in section 5.2. The LSTA based documentation includes a slightly different drafting approach to achieve substantially the same result.
- 5.4 In circumstances where a sovereign borrower wishes to make use of these new majority lender provisions, it will be noted from the drafting in the applicable Annex that the recommended voting threshold is 75% (by value measured by reference to principal), which is higher than the typical majority lender voting threshold. Further, participations of lenders closely connected to the sovereign borrower are disenfranchised and there is an associated information covenant under which the sovereign borrower is required to provide specified information.
- 5.5 Clearly, where there is a guarantee from a government, sovereign or agency of a government (a '**sovereign guarantee**'), the flexibility to amend payment terms by majority action needs to extend to loans which benefit from a sovereign guarantee and to the payment terms of that sovereign guarantee itself. Accordingly, corresponding changes will need to be made so that MVPs are incorporated into the sovereign guarantee.<sup>2</sup> Where the sovereign guarantee is itself incorporated into the Sovereign Loan Agreement, this may require little, if anything, further by way of drafting but would need to be checked by the parties by reference to their specific circumstances. If the sovereign guarantee is set out in a separate document from the underlying Sovereign Loan Agreement itself, then it is envisaged that both the Sovereign Loan Agreement and the sovereign guarantee will be subject to the majority voting provisions. So far as both the LMA and the LSTA based documentation is concerned, assuming that the guarantee is captured within the definition of 'Finance Documents' with respect to the LMA and 'Loan Documents' with respect to the LSTA, only minor drafting may be required, perhaps by way of cross reference in the separate sovereign guarantee

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<sup>2</sup> Having regard to the last sentence under section 4.1, the draftsman may wish to consider whether, in the unusual circumstances where the sovereign guarantee effectively ceases to apply (e.g. it is unenforceable or expressly released), the parties wish the MVPs to continue to apply to the non-sovereign borrower's payment obligations.

document to clarify that the majority voting concepts apply to all payments which may be made under the sovereign guarantee. It is envisaged that those with drafting responsibility for the specific transaction would consider this issue carefully by reference to their new documentation.

5.6 As described in section 10 (*Contemplating the Use of Exchange Offers*) of this Guidance and Explanatory Note, in sovereign debt markets exchange offers are the currently favoured mechanism used by sovereign debtors seeking to address the payment terms of their debts. There are many instances where loans have been within the scope of sovereign exchange offers. Technical drafting has been added in Annex 1 and Annex 9 to clarify that exchange offers are captured within the amendments and waivers clause and how an exchange would operate, in relation to any lender which has not tendered its participation in the loans into an exchange offer, in circumstances where the Majority Lenders have done so (please see Clause [34.1 (d)] and Clause [34.3] in particular in Annex 1).

## 6. *Pari Passu Provisions*

6.1 Pari passu provisions are common in Sovereign Loan Agreements. They often take the form of both a representation, which is typically repeated on all drawdowns and periodically through the life of the loan, and a covenant. There is considerable diversity in terms of drafting.

6.2 A standard pari passu provision in a contract with a corporate borrower is generally uncontroversial. It means in broad terms that the claims in question rank in a particular location in the winding up hierarchy for claims in an insolvency or bankruptcy process. However, there is no insolvency or bankruptcy regime which is applicable to sovereigns and that is the basic reason why a standard pari passu provision in a contract with a sovereign as borrower is open to interpretation.

6.3 In the broadest of terms there are two competing interpretations of sovereign pari passu clauses as follows:

- the "ranking" interpretation: on this view the clause is merely an assertion of how particular debt will rank. This would effectively preclude the sovereign from creating by legislative or executive means a discriminatory and mandatory order of priorities subordinating the pari passu debt to other unsecured debt. This may seem counterintuitive in the sovereign context but many jurisdictions influenced by the Spanish Civil Code provide a higher ranking of sovereign claims which have been notarised; and
- the "payment parity" interpretation: on this view the clause operates to prevent a debtor from paying one of its creditors ahead of any other when it is not in a position to pay all of its creditors in full.

6.4 There has now been a considerable amount of litigation associated with pari passu clauses. The following main points are worthy of note:

- In a number of cases, starting in 2000, certain New York law governed pari passu clauses have been interpreted by reference to payment parity. In addition, restraining orders and third party injunctions based on the payment parity

interpretation have been granted by the New York Courts and these have interfered with sovereign debt restructurings.

- These proceedings gave rise to concerns amongst policymakers and the IMF that the payment parity interpretation of the pari passu clause could prevent sovereign debt restructurings from closing successfully.
- Similar actions, arguing for the payment parity interpretation and seeking third party injunctions through the English Courts, have not succeeded.
- In the UK the Financial Markets Law Committee ('FMLC'), which in broad terms has a role in identifying areas of potentially unhelpful legal uncertainty, issued a report in 2005 on sovereign pari passu clauses governed by English law. In simple terms it took the view that a standard sovereign pari passu provision would be given the ranking interpretation by the English Courts. FMLC issued a subsequent report in 2015 and effectively reached the same conclusions and described the remedies which an English Court would be likely to make against a sovereign. The clear view was that those remedies would not extend to orders such as the restraining orders and third party injunctions granted in the New York Courts in certain instances.
- In a further case in connection with Argentina brought in the New York Courts after a change of government in Argentina and, most importantly after a material change of approach by Argentina in terms of dealing with the holdout bonds, the same Judge who had presided over the majority of the earlier first instance Argentina litigation in the New York Courts, highlighted that the normal remedy for any breach of the pari passu provision in connection with non-payment, is simply to pursue payment on the bonds and to seek an award for the unpaid amounts. The extraordinary remedy of the third party injunction was only granted because of a combination of extraordinary factors. The Judge made it clear that the injunction was "an extraordinary remedy that is not normally available for breach of contract".
- During the time whilst the payment parity interpretation of New York law sovereign pari passu clauses remained a policy concern because of the perceived risks of third party injunctions, the sovereign bond expert group referred to in section 1.1 above was formed to consider enhanced collective action clauses in sovereign bonds and pari passu provisions. The approach taken in the resulting model pari passu provision published by the International Capital Market Association is to include language which disavows the payment parity interpretation.

6.5 The recommended form of pari passu provision for use in international sovereign bonds has not been carried across into Sovereign Loan Agreements in a systematic manner, notwithstanding that pari passu provisions are capable of causing considerable inconvenience for agent banks in syndicated loans where restraining orders and third party injunctions are obtained or even sought. The drafting changes required to make pari passu provisions in Sovereign Loan Agreements consistent with those in up to date international sovereign bonds are shown in Annex 2 by reference to LMA based documentation. The corresponding drafting for New York law based documentation is shown in Annex 10.

6.6 Where there is a sovereign guarantee which itself contains a pari passu provision, it is important that the Annex 2/Annex 10 drafting changes to any pari passu provision are incorporated into the sovereign guarantee.

## 7. *Features of Voting Arrangements*

7.1 There are existing features of Sovereign Loan Agreements which, at present, often act as an impediment to the efficient and smooth canvassing and communication of voting preferences. The proliferation of hedging arrangements is a contributory factor to the current position where communication flows are often indirect and the delays involved in obtaining voting preferences may, in practice, necessitate a change of approach by the debtor.

7.2 In this context, two issues arise, which have been addressed in the field of leveraged corporate lending (where votes are relatively frequently required). These have not, as yet, routinely been included in Sovereign Loan Agreements. These are provisions referred to as:

- 'snooze you lose' – where a lender is required to vote within a specified period or its vote will be disregarded (from both the numerator and denominator for the purposes of the applicable voting threshold) – a specimen provision for LMA based documentation is set out in Annex 3 and the corresponding drafting for New York law based documentation is shown in Annex 11; and
- 'yank the bank' – where the lender is required by the borrower, in certain circumstances, to sell its loan if it votes against a proposal which requires consent from all (or all affected) lenders and in respect of which a specified majority of the total loans and commitments held by lenders have been voted in favour – a specimen provision for LMA based documentation is set out in Annex 4 and the corresponding drafting for LSTA based documentation is shown in Annex 12.

7.3 In the context of a bilateral Sovereign Loan Agreement, it is common practice for the lender of record to pass economic risk to others through participations, repackagings, insurance or through other hedging or similar arrangements. Reflecting this reality, so called 'unitised voting' has been developed under which a lender of record may vote different portions of the loan in different ways (primarily to reflect the preferences of the providers of this protection (or other economic investors)).<sup>3</sup> The simplest approach is to incorporate unitised majority voting on the basis where each unit of principal (e.g. US\$1) has a separate vote and a lender of record may vote each such unit separately. Whilst not set out in LMA recommended forms, the drafting set out in Annex 5 addresses unitised voting for use in LMA based documentation on this basis. The corresponding drafting for New York law based documentation is shown in Annex 13.

7.4 Where there is a sovereign guarantee, it will be important to ensure that these provisions also apply to majority voting as it applies to that guarantee. Where the sovereign

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<sup>3</sup> Lenders of record should take reasonable care to consider the interrelationship between the majority voting provisions built into a Sovereign Loan Agreement and the approach to voting taken as between a lender and providers of any such protection. In particular, Lenders of record should ensure consistency to the extent possible, to avoid situations in which the preferences of a minority of the providers of any such protection may override the preferences of the majority of the providers of such protection.

guarantee is itself incorporated into the Sovereign Loan Agreement, this may require little, if anything, further by way of drafting but would need to be checked by the parties by reference to their specific circumstances. If the sovereign guarantee is a separate document from the underlying Sovereign Loan Agreement itself, then it is envisaged that both the Sovereign Loan Agreement and the sovereign guarantee will be subject to these voting provisions. So far as both the LMA and the LSTA based documentation is concerned, assuming that the guarantee is captured within the definition of 'Finance Documents' with respect to the LMA and 'Loan Documents' with respect to the LSTA, only minor drafting may be required, perhaps by way of cross reference in the separate sovereign guarantee document, to clarify that these voting concepts apply also to any vote associated with that guarantee. It is envisaged that those with drafting responsibility for the specific transaction would consider this issue carefully by reference to their new documentation.

## 8. *Events of Default*

- 8.1 Many Sovereign Loan Agreements contain events of default which may be triggered at an early stage if the sovereign borrower initiates discussions with its lenders in connection with revising payment terms. Clearly, any such 'hair trigger' provisions may interfere with a consensual process leading up to an amendment to payment terms.
- 8.2 Annex 6 contains a draft of such an event of default which contains carve outs for discussions (i) arising from a request for treatment under the Common Framework ([https://clubdeparis.org/sites/default/files/annex\\_common\\_framework\\_for\\_debt\\_treatments\\_beyond\\_the\\_dssi.pdf](https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf)) or in any way connected with the Debt Service Suspension Initiative (<http://www.g20.utoronto.ca/2020/2020-g20-finance-0415.html>); (ii) with any official creditors in any form; (iii) with any creditors in connection with or arising from discussions for IMF financing; and (iv) that are disclosed prior to the loan agreement. The corresponding drafting for New York law based documentation is shown in Annex 14.<sup>4</sup>
- 8.3 Where there is a sovereign guarantee, it will be important to ensure that these revised event of default provisions also apply to that guarantee. Where the sovereign guarantee is itself incorporated into the Sovereign Loan Agreement, this may require little, if anything, further by way of drafting (in those cases the references to 'the Borrower' in Clause [22.6] may be to the 'Obligor' or other term which captured the sovereign guarantor but the detail would need to be checked by the parties by reference to their specific circumstances). If the sovereign guarantee is a separate document from the underlying Sovereign Loan Agreement itself, then it is envisaged that both the obligors (namely under the Sovereign Loan Agreement and the sovereign guarantee) will be given the additional flexibility contained within these revised events of default. It is envisaged that those with drafting responsibility for the specific transaction would consider this issue carefully by reference to their new documentation.

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<sup>4</sup> Some Sovereign Loan Agreements have provisions on transferability which are broader on the occurrence of an Event of Default. Where any hair trigger Event of Default is removed, this should have the benefit of not broadening any such transferability provisions.



## 9. *Confidentiality*

- 9.1 Sovereign Loan Agreements typically include a confidentiality clause under which the basic duty of a lender to keep arrangements associated with the loan confidential is contractually specified with appropriate exclusions.
- 9.2 Confidentiality provisions in Sovereign Loan Agreements should, where parties are participants in such initiatives, be formulated by reference to the various initiatives associated with improving debt transparency and the recent IIF Voluntary Principles for Debt Transparency (<https://www.iif.com/Publications/ID/3387/Voluntary-Principles-For-Debt-Transparency>); whilst initially targeted at PRGT-Eligible Countries, may be broadened to other countries over time. In this context it is envisaged that MVPs and the associated voting threshold would be the subject of reporting to the OECD as reporting host (please see footnote 20 in Annex 7 and footnote 35 in Annex 15). Please also see the associated Implementation Note ([https://www.iif.com/Portals/0/Files/content/2\\_Implementation%20Note\\_vf.pdf](https://www.iif.com/Portals/0/Files/content/2_Implementation%20Note_vf.pdf)), the related implementing OECD Debt Transparency Initiative and information concerning the OECD Portal (<https://www.oecd.org/finance/debt-transparency/>). Further, confidentiality provisions also need to reflect the IMF Debt Limits Policy (<https://www.imf.org/en/publications/policy-papers/issues/2020/11/11/reform-of-the-policy-on-public-debt-limits-in-imf-supported-programs-49876>) (or its equivalent from time to time). As a consequence, a further exclusion to the basic duty of lender confidentiality to support any reporting under such initiatives has been prepared and this is set out in Annex 7 (by reference to LMA based documentation). The corresponding drafting for LSTA based documentation is shown in Annex 15.
- 9.3 It is important that this confidentiality provision exclusion will also apply to any sovereign guarantee and those with drafting responsibility will need to consider this issue carefully.

## 10. *Contemplating the Use of Exchange Offers*

- 10.1 Exchange offers are currently the favoured mechanism used by sovereign borrowers seeking to address existing terms of their debts. This technique involves exchanging an existing financial asset (e.g. a bond or a loan) for a new financial asset (usually a new bond or bonds) on the basis that the new financial asset provides, in an economic sense, the revised terms. Typically, in an exchange process the creditor transfers or relinquishes all its rights in respect of the original debt instrument.
- 10.2 Currently, Sovereign Loan Agreements are typically silent on the impact of an exchange of loans for new instruments. This has given rise to arrangements through exchange offers under which a sovereign obligor or its nominee takes a transfer of the existing loans and thereby becomes a party to any syndicated loan as a creditor.
- 10.3 There are circumstances in which existing Sovereign Loan Agreements based on LMA documentation may be prepaid (e.g. imposition of tax gross up or increased costs) and the result is that the applicable loan effectively ceases to exist for the purposes of the Sovereign Loan Agreement. One simple mechanism through which potential technical complexities for lenders and agent banks (e.g. voting, impact on agent bank, sharing of proceeds and sharing of confidential information concerning the debtor) could be avoided in the context of exchange offers would be to extend the concept of prepayment

so that where a loan is exchanged pursuant to an exchange offer, that loan is treated as having been prepaid. This is the approach taken for LMA based documentation in Annex 8. The corresponding drafting for New York law based documentation is shown in Annex 16.

- 10.4 Where there is a sovereign guarantee, it will be important to ensure that the guarantee also operates effectively where an exchange offer technique is used. Where the sovereign guarantee is itself incorporated into the Sovereign Loan Agreement, this may require little, if anything, further by way of drafting (in those cases where all or part of the loan is regarded as having been prepaid, the guarantee obligations should fall away but it would generally be advisable to clarify the point and the detail would need to be checked by the parties by reference to their specific circumstances). If the sovereign guarantee is a separate document from the underlying Sovereign Loan Agreement itself then it is envisaged that drafting corresponding to that set out in Annex 8/Annex 16 would be incorporated into the guarantee document by reference to the technical mechanism of a release of the guarantee (rather than the technical mechanism of a prepayment of all or part of the loan). It is envisaged that those with drafting responsibility for the specific transaction would consider this issue carefully by reference to their new documentation.
- 10.5 In connection with exchange offers, it is likely to be helpful to those with drafting responsibility for inclusion of the specimen clauses to provide a more in depth explanation of Clause [34.1(d)] and Clause [34.3] in Annex 1 (the corresponding New York law position is set out in Annex 9). Clause [34.1(d)] starts by clarifying in (i) that any amendment or waiver may be effected through an Exchange Offer (as defined in Annex 8). Clearly any lender would be free to decide whether or not to accept any such Exchange Offer and, if it chose to accept, would be expected to be bound by the terms of the Exchange Offer itself under which it would have agreed to exchange its participations in loans (or portions thereof) for the new instruments issued in the Exchange Offer. Clause [34.1(d)](ii) addresses the position where the Majority Lenders pursuant to the proviso to the definition thereof (in other words at the [75]% level required in respect of payment reductions or extensions of due dates for payments) have chosen to participate in the Exchange Offer and clarifies that, in the specified circumstances, any participations in any Loans (or portions thereof) which were not the subject of consents in respect of that Exchange Offer shall be amended so that their payment terms equate with those available under the Exchange Offer (those new payment terms are described in more detail in Clause [34.3](c)). As any lender which had accepted the Exchange Offer would be bound under the terms of the Exchange Offer to exchange its participations in loans, Clause [34.1(d)](ii) is designed to address the position of any minority participations in loans (or portions thereof) which were not the subject of consents in respect of the Exchange Offer.
- 10.6 The content of Clause [34.3] is reflective of the structure of the Amendments and Waivers provisions used in LMA based and LSTA based documentation. In broad terms that structure provides that, subject to certain exceptions, any term of the Finance Documents may be amended or waived with the consent of the majority lenders and the borrower (and the result is binding on all parties). As explained in section 5 (*Payment Term Amendments - Moving Away From Unanimity*), the specimen clauses provide that payment terms may be amended through the proviso to the Majority Lender definition by a vote at the [75]% level. However, a list of exceptions remains and that is set out in

Clause 34.2 (*Exceptions*) (and built into the proposed changes to Section 9.02(b) of the LSTA based equivalent). Clearly, where a sovereign invites the lenders to exchange loans under the applicable Sovereign Loan Agreement for new sovereign instruments, the lenders are free to accept or reject that Exchange Offer, and the exceptions in Clause [34.2] should not constrain what may be included in the Exchange Offer itself. Accordingly, Clause [34.3](a) clarifies that nothing in Clause [34.2](*Exceptions*) should constrain the terms of the New Sovereign Instruments (as defined in Clause [34.3]). Clause [34.3](b) clarifies that, in broad terms, where the majority lenders pursuant to the proviso to the definition thereof (namely at the [75]% voting level) have chosen to exchange loans under an Exchange Offer (an Approval to Exchange Loans, as defined in clause [34.3](b)), that is sufficient for all purposes under the applicable Sovereign Loan Agreement and nothing in Clause [34.2](*Exceptions*) limits or restricts that exchange of loans.

- 10.7 In circumstances where there is an Approval to Exchange Loans, Clause [34.3](c) (and Section 9.02(c) of the LSTA based equivalent) applies and deals with any participations in any loan (or portions thereof) which were not the subject of consent in favour of the Exchange Offer (the '**Minority Portions**'). It provides that the payment terms of any Minority Portions are amended to match those of the new instruments under the Exchange Offer on the basis described in Clause [34.3](c) (Section 9.02(c)(iii) in the LSTA based equivalent). Where lenders are able to choose from more than one New Sovereign Instrument as part of the Exchange Offer, Clause [34.3](c) (and Section 9.02(c)(iii) of the LSTA based equivalent) goes on to provide that the new payment terms for any Minority Portions will be equal to those payable under those New Sovereign Instruments denominated in the same currency as its participations in the applicable loans (or portions thereof) into which the greatest proportion of the principal amount of the loans are to be exchanged under the Exchange Offer by the non-Minority Portions.

## 11. *Instances In Which New Clauses Are Likely To Be Utilised*

- 11.1 In recent years many sovereign debtors have been exposed to considerable financial distress and the COVID pandemic has affected some such countries severely. For many countries the position has been further exacerbated by recent commodity price rises.
- 11.2 As mentioned, the new specimen clauses are intended for new documentation only. It is envisaged that the flexibility provided by the ability to amend payment terms could be utilised in situations of financial strain. Such situations could include, for example, a pre-emptive/pre-default restructuring when a country's debt is deemed unsustainable by a credible public authority such as the IMF and/or the World Bank and/or it would extend to a comprehensive debt treatment. It may be helpful to draw out the types of amendments which may be requested and in this respect the following may provide useful insight:
- Extension of due dates for payments requested
  - Reduction in amount of payments requested
  - Request for interest deferral and/or interest capitalisation arising as a result of a natural disaster (e.g. a hurricane) or the consequences of a pandemic

- Request for a bullet repayment on a loan to be repayable instead in instalments arising as a result of a natural disaster (e.g. a hurricane or the consequences of a pandemic)

## 12. *Transparency and Inter Creditor Equity*

In any process where a sovereign obligor is seeking amendments to payment terms, the principles of sovereign debtor transparency and disclosure are key, so as to allow appropriate evaluations to be made by lenders. Please see the IMF's Fiscal Transparency Code (<https://www.imf.org/external/np/fad/trans/Code2019.pdf>) as well as the IIF Principles for Stable Capital Flows and Fair Debt Restructuring ([https://www.iif.com/Portals/0/Files/content/2\\_Updated%20Debt%20Principles\\_vf.pdf](https://www.iif.com/Portals/0/Files/content/2_Updated%20Debt%20Principles_vf.pdf)) which also deals with fair burden sharing among similarly placed creditors. It is anticipated that a sovereign debtor will be mindful of these practices when making approaches to its lenders with a view to some debt treatment or debt relief in some form where that is necessary. In this context Annex 1 (and the corresponding Annex 16) contain an information covenant to ensure that appropriate information is made available to lenders.

**Specimen clauses are set out in the Annexes which follow. For the avoidance of doubt, these clauses are drafted in a non-binding, specimen form to be used as a starting point for negotiation. Individual parties are free to depart from the drafting and should always satisfy themselves of the regulatory implications of their use.**

**ANNEX 1**  
**AMENDMENTS AND WAIVERS (LMA BASED DOCUMENTATION)**

*The standard LMA based amendments and waivers provision provides that all lenders need to consent to payment term amendments. Therefore the change required to permit the relevant payment terms to be amended by a majority (rather than all lenders) involves moving payment term amendments from the list of all lender matters to a new proviso to the associated definition of majority lenders. The below text shows in blackline form the suggested amendments to an LMA based form. It will be noted that this extends to Exchange Offers (as defined in Annex 8) in clauses [34.1](d) and [34.3].*

**[34.] AMENDMENTS AND WAIVERS**

**[34.1] Required consents**

- (a) Subject to Clause [34.2] (Exceptions), Clause [34.3] (Replacement of Screen Rate) and paragraph (c) of this Clause [34.1] below, any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower. Any such amendment or waiver will, if so effected, be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.
- (c) The Fee Letter and the Agent Fee Letter may be amended or waived by the parties to the relevant instrument.
- (d) For the avoidance of doubt: (i) any amendment or waiver referred to in this Clause may be effected by way of an exchange, conversion or other substitution of all or part of one or more Loans through an Exchange Offer; and (ii) where the Majority Lenders pursuant to the proviso to the definition thereof have chosen to participate in any such Exchange Offer, any participations in any Loans (or portions thereof) which were not the subject of consents in respect of that Exchange Offer shall be amended so that their payment terms equate with those available under the Exchange Offer on the basis described in Clause [34.3](c).

**[34.2] Exceptions<sup>5</sup>**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of "Majority Lenders" in Clause [1.1] (Definitions);
  - (ii) ~~a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;~~

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<sup>5</sup> As noted in section 5.5, the draftsperson should review these provisions carefully where there is a guarantee.



- (iii) a change in the currency of payment of any amount under the Finance Documents;
- (iv) ~~an extension to the due date for payment of any amount under the Finance Documents;~~
- (v) an increase in, or an extension of the Availability Period for, any Commitment;
- (vi) a change to the Borrower;
- (vii) any provision which expressly requires the consent of all the Lenders; or
- (viii) Clause [2.2] (Finance Parties' rights and obligations), Clause [21] (Changes to the Lenders) (to the extent it relates to paragraphs [1] (Assignments and transfers by the Lenders) to [5] (Procedure for assignment) and [8] (Security over Lenders' rights) of Schedule [6] (Changes to the Lenders)), Clause [25] (Sharing among the Finance Parties), this Clause [34], Clause [36] (Governing Law), Clause [38] (Jurisdiction/Arbitration) or paragraphs [1] (Assignments and transfers by the Lenders) to [5] (Procedure for assignment) and [8] (Security over Lenders' rights) of Schedule [6] (Changes to the Lenders),

shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the Agent or the Mandated Lead Arranger (each in their capacity as such) may not be effected without the consent of the Agent or the Mandated Lead Arranger, as the case may be.
- (c) An amendment or waiver which is of a minor or technical nature may be made with the prior consent of the Majority Lenders and the Borrower (and shall, if so effected, be binding on all Parties).

**N.B. (1) Crossed-through words would be removed from Clause [34.2]. As will be seen, these have with minor modifications only been relocated to the proviso to the definition of Majority Lenders below, (2) Clause 34.3 is new.**

[34.3] Majority Lender Approval of an Exchange Offer

For the avoidance of doubt, where a sovereign invites or offers the Lenders pursuant to an Exchange Offer to exchange, convert or otherwise substitute participations in any Loan or Loans for (or into) other obligations of, or securities issued by, the [Borrower or Guarantor] (such other obligations or securities being "New Sovereign Instruments"):

- (a) nothing in Clause [34.2] (Exceptions) shall be construed so as to limit or restrict the terms of any New Sovereign Instrument;

- (b) where the Majority Lenders consent to any such exchange, conversion or other substitution into New Sovereign Instruments in accordance with the proviso to the definition of Majority Lenders, those consents (an "Approval to Exchange Loans") shall be sufficient for all purposes of this Agreement and so shall be binding on all Parties notwithstanding that the New Sovereign Instruments may contain provisions which differ from the corresponding provisions of this Agreement and nothing in Clause [34.2] shall limit or restrict any such exchange, conversion or other substitution;
- (c) where there is an Approval to Exchange Loans, the payment obligations owed by the Borrower under any participation in any Loan (or portions thereof) which were not the subject of consents for that Approval to Exchange Loans (together the "Minority Portions") shall be amended on and from the closing date of the applicable Exchange Offer so that, in relation to each Minority Portion, the payment obligations of the Borrower are in the same amount as those of the obligor under the applicable Qualifying New Sovereign Instruments which would have arisen if such Minority Portion had been exchanged, converted or otherwise substituted for those Qualifying New Sovereign Instruments under that Exchange Offer. <sup>6</sup> For these purposes "Qualifying New Sovereign Instruments" means:
- (i) New Sovereign Instruments denominated in the same currency as such participations (or portions thereof) which do not require such Lender to make any further lending; and
- (ii) (in circumstances where the Lenders are able to choose more than one type of New Sovereign Instrument as part of the Exchange Offer), those New Sovereign Instruments which meet the requirements of paragraph (i) of this definition into which the greatest proportion of the principal amount of the Loans are selected to be exchanged, converted or otherwise substituted under the Exchange Offer by those Lenders consenting to the Approval to Exchange Loans; and
- (d) the consent of any Lender to an Exchange Offer in respect of all or any portion of its participations in any Loan may be signified by that Lender submitting all or such portions of its participations in such Loan for exchange, conversion or substitution in accordance with the terms of that Exchange Offer and notifying the Agent accordingly.

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<sup>6</sup> The draftsperson would need to ensure that the terms of any sovereign guarantee is amended so that it applies to the Agreement as so amended from the applicable closing date, and not to any participations in Loans (or portions thereof) regarded as having been prepaid pursuant to Clause [7.9], set out in Annex 8. The draftsperson may wish to consider whether any Lender should be required to take any other steps or to provide additional information to the Agent for these purposes (e.g. the payment terms of the Qualifying New Sovereign Instruments).

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than [66⅔]% of the Total Commitments as a whole (or, if the Total Commitments have been reduced to zero, aggregated more than [66⅔]% of the Total Commitments immediately prior to the reduction)<sup>7</sup> **provided that** in relation to any proposed amendment or waiver in respect of:

- (i) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees, commission payable or any other sum payable under any Finance Document; or
- (ii) an extension to the due date for payment of any amount under any Finance Document,

Majority Lenders shall instead mean a Lender or Lenders whose Commitments aggregate more than [75]%<sup>8</sup> of the Total Commitments as a whole (or, if the Total Commitments have been reduced to zero, aggregated more than [75]% of the Total Commitments immediately prior to the reduction). Where this proviso applies, for voting purposes only, any Commitment of a Lender which is an agency or [Affiliate]<sup>9</sup> of the [Borrower/sovereign obligor] or otherwise controlled by the [Borrower/sovereign obligor] or any agency or [Affiliate] thereof shall be deemed to be zero.

\* \* \* \* \*

#### NEW INFORMATION COVENANT

To be included in the General Undertakings (Clause [21])

Where the [Borrower/sovereign obligor] seeks the consent of the Majority Lenders in circumstances where the proviso to the definition thereof applies, or includes the Loans in an Exchange Offer, the [Borrower/sovereign obligor] shall provide relevant information to the Lenders on a timely basis, and this shall include:

- (i) a description of the [Borrower's/sovereign obligor's] economic and financial circumstances which are, in the [Borrower's/sovereign obligor's] opinion, relevant to the request for any potential amendment or waiver or action pursuant to an Exchange Offer, a description of the [Borrower's/sovereign obligor's] existing debts and a

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<sup>7</sup> Where a Sovereign Loan Agreement includes tranches different in nature, parties may consider the enhanced majority lender voting provision operating on a per tranche basis. It is not intended that the enhanced majority lender voting provision operate across Sovereign Loan Agreements as is the case with the ICMA aggregated collective action clauses in sovereign bonds.

<sup>8</sup> Throughout Annex 1, the applicable percentage is shown in brackets according to LMA convention. Please see section 5.4 of the Guidance and Explanatory Note for further information.

<sup>9</sup> The term 'Affiliate' is used in LMA loan agreements but care will need to be taken to ensure that this term is appropriate in the relevant context.

description of its broad policy reform programme and provisional macroeconomic outlook;

(ii) if the [Borrower/sovereign obligor] shall at the time have entered into an arrangement for financial assistance with multilateral and/or other major creditors or creditor groups and/or an agreement with any such creditors regarding debt relief, a description of any such arrangement or agreement. Where permitted under the information disclosure policies of the multilateral or such other creditors, as applicable, copies of the arrangement or agreement shall be provided;

(iii) a description of the proposed treatment of all existing debts; and

(iv) details of any Lender which is a person which is an agency or [Affiliate]<sup>10</sup> of the [Borrower/sovereign obligor] or otherwise controlled by the [Borrower/sovereign obligor] or any agency or [Affiliate] thereof.<sup>11</sup>

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<sup>10</sup> The term 'Affiliate' is used in LMA loan agreements but care will need to be taken to ensure that this term is appropriate in the relevant context.

<sup>11</sup> It will be important to consider whether the confidentiality provisions contained within the Sovereign Loan Agreement are sufficient where information is provided which may constitute material non public information (and so may be price sensitive) in circumstances where the Exchange Offer is made or the consent is sought solely through private communications.

**ANNEX 2**  
**PARI PASSU (LMA BASED DOCUMENTATION)**

*The additions shown in blackline form below to LMA based wording seek to achieve consistency with the recommended form of pari passu provisions used in international sovereign bonds (which expressly disavow the "payment parity" interpretation).*

*Representation*

[17.4] Pari passu ranking

Its payment obligations under the Finance Documents rank at least pari passu in right of payment with all other unsecured External Indebtedness<sup>12</sup> of the Borrower and any Guarantee granted by the Borrower in respect of any External Indebtedness of any other person, from time to time outstanding, **provided that the Borrower shall have no obligation to effect equal or rateable payment(s) at any time with respect to any such other External Indebtedness or Guarantee and, in particular, shall have no obligation to pay other External Indebtedness or Guarantee at the same time or as a condition of paying sums due under the Finance Documents and vice versa.**

*Undertaking/Covenant*

[19.4] Pari Passu

The Borrower shall ensure that its payment obligations under the Finance Documents rank at least pari passu in right of payment with all other unsecured External Indebtedness<sup>13</sup> of the Borrower or any Guarantee granted by the Borrower in respect of any External Indebtedness of any other person, from time to time outstanding, **provided that the Borrower shall have no obligation to effect equal or rateable payment(s) at any time with respect to any such other External Indebtedness or Guarantee granted by the Borrower in respect of any External Indebtedness of any other person and, in particular, shall have no obligation to pay other External Indebtedness or any Guarantee granted by the Borrower in respect of any External Indebtedness of any other person at the same time or as a condition of paying sums due under the Finance Documents and vice versa.**

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<sup>12</sup> In circumstances where the payment obligations under the Finance Documents are denominated in domestic currency (whether as a result of the sovereign obligor being part of a currency union, such as the CFA Franc zone or the Eastern Caribbean Currency Union, or otherwise) the draftsman may wish to consider the appropriate definition of External Indebtedness (or categories of other indebtedness) which should most appropriately be referenced in this pari passu provision.

<sup>13</sup> In circumstances where the payment obligations under the Finance Documents are denominated in domestic currency (whether as a result of the sovereign obligor being part of a currency union, such as the CFA Franc zone or the Eastern Caribbean Currency Union, or otherwise) the draftsman may wish to consider the appropriate definition of External Indebtedness (or categories of other indebtedness) which should most appropriately be referenced in this pari passu provision.

**ANNEX 3**  
**SNOOZE YOU LOSE (LMA BASED DOCUMENTATION)**

*This provision is frequently used in leveraged loan markets and occasionally in sovereign loans. The clause provides that a lender is required to vote on an amendment within a specified period or its vote will be disregarded (from both the numerator and denominator for the purposes of the applicable voting threshold).*

- [(e)] If any Lender fails to respond to a request for an amendment or waiver described in this Clause within [twenty (20)] Business Days (or such longer time period in relation to any request which the Borrower and the Agent may agree) of that request being made:
- (i) its Commitment shall not be included for the purpose of calculating the relevant Total Commitments when ascertaining whether any relevant percentage of the relevant Total Commitments has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.



**ANNEX 4**  
**YANK THE BANK (LMA BASED DOCUMENTATION)**

*This provision is frequently used in leveraged loan markets and occasionally in sovereign loans. The clause provides that the borrower may remove a lender when that lender votes in a manner which diverges from the votes of the majority of the lenders.*

[7.7] Right of replacement of a Non-Consenting Lender

- (a) Subject to paragraph (d) below, if any Lender becomes a Non-Consenting Lender (as defined in paragraph (e) below), then the Borrower may, on [thirty (30)]<sup>14</sup> days' prior notice to the Agent and such Lender (a "Non-Consenting Lender Notice"), replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause [21] (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "Replacement Lender") which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause [21] (Changes to the Lenders) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the Loan, together with (i) accrued interest, (ii) any Break Costs, [(iii) the Make-Whole Payment] and (iv) any other payments due to such Lender under Clause [14] (Other Indemnities).
- (b) The replacement of a Lender pursuant to this Clause [7.7] shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Agent;
  - (ii) neither the Agent nor the Lender shall have any obligation to the Borrower to find a Replacement Lender;
  - (iii) any notice from the Borrower to the Agent required pursuant to paragraph (a) above shall be delivered to the Agent no later than fifteen (15) days after the date on which that Lender is deemed a Non-Consenting Lender;
  - (iv) in no event shall the Lender replaced under this Clause [7.7] be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it (and, if applicable, the Agent) is satisfied that it

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<sup>14</sup> In terms of timing, the LMA approach is to leave the number of days blank. 30 days is seen in sovereign transactions in the market but generally in leveraged corporate transactions the period would be shorter.

has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
- (d) Where a Lender has, in respect of the relevant waiver or amendment, made a notification under [(*insert cross reference to Unitised Voting*)] to vote its Commitments in different ways in respect of such waiver or amendment (the portions of its Commitments that have not consented or agreed to such waiver or amendment being the "Non-Consenting Commitments"), then paragraph (a) above and any Non-Consenting Lender Notice sent to such Lender shall apply only to such Non-Consenting Commitments.
- (e) In the event that:
  - (i) the Borrower or the Agent (at the request of the Borrower) has requested the applicable Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
  - (iii) Lenders whose Commitments aggregate in the case of a consent, waiver or amendment requiring the approval of all the Lenders, more than [ ]<sup>15</sup> per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than [ ]<sup>16</sup> per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "Non-Consenting Lender".

## **New Definition**

**"Eligible Institution"** means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower.

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<sup>15</sup> In the London leveraged market, the norm would be Majority Lenders at the 66⅔% level. For a take and hold relationship lending arrangement (investment grade) in the London market, a threshold above 75% would be more likely.

<sup>16</sup> In the London leveraged market, the norm would be Majority Lenders at the 66⅔% level. For a take and hold relationship lending arrangement (investment grade) in the London market, a threshold above 75% would be more likely.

**ANNEX 5**  
**UNITISED VOTING (LMA BASED DOCUMENTATION)**

*This new provision is useful where a lender of record has passed economic risk to others through participations, repackagings, insurance or through other hedging or similar arrangements. The purpose of unitised voting is to allow a lender of record to vote different portions of the loan in different ways (primarily in order to reflect the potentially differing preferences of the providers of this protection (or other economic investors)).*

[33.1]. Unitised voting<sup>17</sup>

- (a) Subject to paragraph (b) below a Lender may, by giving notice to the Agent as described in (b)(iii) below, give instructions to the Agent on portions of its Commitment or participations in the Loan independently to other portions. The Agent shall treat such instructions as separate for the purposes of determining whether the Majority Lenders or all Lenders have provided instructions to the Agent, given consent or authorised action in respect of the Finance Documents including in circumstances where the relevant Lender is the only person holding any Commitment and/or participation in the Loan under this Agreement.
- (b) For the purpose of any vote or other determination by the Lenders under the Finance Documents which is intended to be unitised in the manner contemplated by paragraph (a) above, each relevant Lender:
  - (i) may notionally divide its Commitment into separate amounts to reflect arrangements to which it is a party, **provided that** no such notional division may result in its Commitment being divided into separate amounts of less than USD 1;
  - (ii) may make a vote or determination on one occasion only in relation to any proposition that is the subject of a vote or determination; and

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<sup>17</sup> In practice, unitised voting is most useful where a lender of record has de-risked part of its exposure or de-risked its exposure to several different entities (common particularly in the context of bilateral Sovereign Loan Agreements). Unitised voting provides the flexibility to the lender of record to split votes to reflect the preferences of those entities with an economic interest in the loan through any such de-risking process. There are many different means through which de-risking may occur including credit insurance, funded or unfunded sub-participations, a credit linked arrangement, repackagings, total return swaps and credit default swaps. The LMA has produced standard documentation to facilitate funded sub participation arrangements including the LMA Master Funded Participation Agreement, which itself contains provisions which may be used to instruct a lender of record on how to vote in certain circumstances. Unitised voting continues to be a useful tool in this context as it permits flexibility as to how a lender may vote whether or not, in any such underlying de-risking documentation, those taking the economic risk instruct the lender of record as to how to vote. Generally, consideration will need to be given to the interrelationship between majority voting provisions built into a Sovereign Loan Agreement and the approach to voting taken as between a Lender and others in the LMA Master Funded Participation Agreement where that is used, or other applicable back to back agreement, in respect of such Sovereign Loan Agreement.

- (iii) shall notify the Agent of:
  - (A) in relation to any vote or determination which is to be made in the positive or negative, the relevant percentage of its Commitment voting for, the relevant percentage of its Commitment voting against and the relevant percentage of its Commitment which is not voting; and
  - (B) in relation to any vote or determination which has a response other than a positive or negative response applicable thereto, the relevant percentage of its Commitment making each relevant vote or determination and the relevant percentage of its Commitment which is not voting or making a determination,

prior to the date and time specified by the Agent.

**ANNEX 6**  
**CREDITOR ENGAGEMENT EVENT OF DEFAULT (LMA BASED DOCUMENTATION)**

*Sovereign Loan Agreements based on LMA documentation sometimes contain events of default which may be triggered at an early stage if the borrower initiates discussions with its lenders in connection with revising payment terms. The addition to this clause shown in blackline form below provides a carve-out for certain discussions (as specified in (a) to (e) of the new definition below) thereby removing the risk of a 'hair-trigger'.*

[22.6] Insolvency/Restructuring

Other than by way of any Permitted Debt Relief Discussions, the Borrower,<sup>18</sup> by reason of actual or anticipated financial difficulties, commences or engages in negotiations with its creditors generally (or with a class of them) (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

**New Definition**

**"Permitted Debt Relief Discussions"** means any negotiations (including any discussions or communications) in any form whatsoever:

- (a) (where the Borrower has participated in the G20/Paris Club debt service suspension initiative ("DSSI") as announced in the communiqué of the G20 Finance Ministers and Central Bank Governors Meetings dated 15 April 2020 (as supplemented and extended in subsequent communiqués))<sup>19</sup> arising in any way in connection with its participation in the DSSI;
- (b) arising as a result of the Borrower's request for a treatment under the Common Framework for Debt Treatments beyond the DSSI as announced in the communiqué of the G20 Finance Ministers and Central Bank Governors Meetings dated 13 November 2020 (as supplemented and extended in subsequent communiqués) including those arising as a result of comparability of treatment requirements;
- (c) with any official creditors with a view to providing debt relief in any form or pursuant to any other initiative;
- (d) with any creditors, in connection with or arising from any discussions with the International Monetary Fund ("IMF") on an IMF-supported program, other IMF

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<sup>18</sup> This specimen clause assumes that the sovereign debtor is the borrower. Where there is a loan with a sovereign guarantee the draftsman will need to consider corresponding changes to ensure the same commercial result as that set out in this specimen clause is achieved.

<sup>19</sup> The DSSI expired at the end of 2021.

financing, IMF policy support instrument, IMF policy coordination instrument or other IMF non-financing instrument; and

- (e) with any creditors which have been disclosed in writing to the Lenders prior to the date of this Agreement.

## ANNEX 7

### CONFIDENTIAL INFORMATION (LMA BASED DOCUMENTATION)

*The following amendments to the LMA based form of confidentiality provision shown in blackline form below are designed to ensure that lenders are able to comply with the various initiatives associated with improving debt transparency, in particular the IIF Voluntary Principles for Debt Transparency.*

#### [35.] CONFIDENTIAL INFORMATION

##### 35.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 35.2 (Disclosure of Confidential Information) [and Clause 35.3 (Disclosure to numbering service providers)] [and] Clause [35.4] (Disclosure pursuant to the Debt Transparency Principles)<sup>20</sup> and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

#### **New Clause 35.4 (with consequential re-numbering of the remainder of Clause [35]):**

##### 35.4 Disclosure pursuant to the Debt Transparency Principles

Any Finance Party may disclose to:

- (i) the Reporting Host for the purposes of the IIF Voluntary Principles for Debt Transparency from time to time; and
- (ii) the International Monetary Fund for the purposes of the IMF Debt Limits Policy (or its equivalent from time to time),

all such information in connection with the Finance Documents contemplated by those principles or that policy (or its equivalent) from time to time.

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<sup>20</sup> The IIF Voluntary Principles for Debt Transparency may be accessed here: <https://www.iif.com/Publications/ID/3387/Voluntary-Principles-For-Debt-Transparency>. Disclosure as to the inclusion of the enhanced majority lender voting provision should also be reported to the OECD Portal, including the voting threshold ([https://data-explorer.oecd.org/?lc=en&fs\[0\]=TopicFinance](https://data-explorer.oecd.org/?lc=en&fs[0]=TopicFinance)) where the lender is participating in that initiative (see section 9 of the Guidance and Explanatory Note).

**ANNEX 8**  
**EXCHANGE OFFER PROVISION (LMA BASED DOCUMENTATION)**

*The inclusion of this new provision aims to remove potential ambiguity in syndicated loans as to how the participations in loans of those lenders who accept an exchange offer should be properly treated. The clause extends the concept of prepayment so that such exiting lenders' participations in loans are treated as having been prepaid.*

*[Addition to Clause 7 of the LMA recommended form as a new Clause 7.9]*

**7.9 Loan Participations tendered into sovereign Exchange Offer**

If a Lender's participation in any Loan (or any portion thereof) has been exchanged, converted or otherwise substituted as part of an Exchange Offer then, on the closing date thereof, that Lender's participation (or such portion) in that Loan shall be regarded as having been prepaid and, as from such closing date: (i) such Lender shall be regarded as enjoying no further rights (including rights to receive interest payments) in respect of the applicable participation (or such portion) in any such Loan and (ii) such Lender's corresponding Commitment shall be cancelled in the amount of that participation (or such portion). Any Lender tendering, offering to exchange, convert or otherwise substitute (or otherwise submitting) any participation (or such portion thereof) in any Loan into an Exchange Offer shall promptly notify the Agent (and provide all applicable details to the Agent) and shall promptly notify the Agent of the associated closing date thereof. For the avoidance of doubt, any such participation in a Loan (or portion thereof) so regarded as having been prepaid and any New Sovereign Instruments issued or arising through the associated Exchange Offer shall not constitute Recovered Amounts for the purposes of Clause [27.1] (*Payments to Finance Parties*).<sup>21</sup>

**New Definition**

"Exchange Offer" means an invitation, offer or other communication from a sovereign (whether acting through its Ministry of Finance or otherwise) to all of the Lenders to exchange, convert or otherwise substitute all or part of one or more Loans for (or into) other obligations or securities of the [Borrower or Guarantor], with a view to providing debt relief in some form.

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<sup>21</sup> In addition to checking the applicable cross reference to the sharing clause, the draftsman should also consider whether any other exclusions are appropriate (e.g. in respect of any mandatory prepayment clause).



**ANNEX 9**  
**AMENDMENTS AND WAIVERS (LSTA BASED DOCUMENTATION)**

*The standard LSTA or otherwise New York law based amendments and waivers model provision provides that consent of the Required Lenders (defined as Lenders representing a simple majority of Total Credit Exposure but excluding Defaulting Lenders) is sufficient to approve modifications to Loan Documents except for certain 'sacred rights' (e.g., payment provisions and other key matters) requiring the consent of all lenders or all Lenders affected by such modification. The below text shows in blackline form the suggested amendments (with removed language ~~stricken~~ through) to an LSTA based form to permit a supermajority of Lenders to modify economic and payment provisions.*

*Further, note the addition of a new section [9.02(c)] on Exchange Offers which are not currently incorporated into the published LSTA model clauses.*

*Revise Section 9.02(b) as follows:*

9.02 (b) Amendments, Etc. Except as otherwise expressly set forth in this Agreement (including Section 2.11(e) and Section 2.24), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing executed by the Borrower and the Required Lenders, and acknowledged by the Administrative Agent, or by the Borrower and the Administrative Agent with the consent of the Required Lenders, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:<sup>22</sup>

(i) extend or increase any Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Article IV or the waiver of any Default shall not constitute an extension or increase of any Commitment of any Lender);

(ii) reduce the principal of, or rate of interest specified herein on, any Loan,<sup>23</sup> or any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of ~~each Lender directly and adversely affected thereby~~ the Specified Required Lenders (provided that only the consent of the Required Lenders shall be necessary (x) to amend the definition of "Default Rate" or to waive the obligation of the Borrower to pay interest at the Default Rate or (y) to amend any financial covenant (or any defined term directly or indirectly used therein), even if the effect of such amendment would be to reduce the rate of interest on any Loan or other Obligation or to reduce any fee payable hereunder);

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment,

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<sup>22</sup> As noted in section 5.5, the draftsperson should review these provisions carefully where there is a guarantee.

<sup>23</sup> If in the context of considering a new sovereign loan agreement there is to be a letter of credit facility built into that agreement, then further changes to those described in this Guidance and Explanatory Note would be necessary to deal with those elements.

without the written consent of ~~each Lender directly and adversely affected thereby~~ the Specified Required Lenders;

(iv) change Section (b) or Section 2.15 in a manner that would alter the pro rata sharing of payments required thereby or change Section 7.02, in each case, without the written consent of each Lender directly and adversely affected thereby;

(v) waive any condition set forth in Section 4.01 without the written consent of each Lender;

(vi) change Section 2.05(d) in a manner that would permit the expiration date of any Letter of Credit to occur after the Commitment Termination Date without the written consent of each Lender; or

(vii) change any provision of this Section or the percentage in the definition of "Required Lenders" or "Specified Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

provided, further, (1) the Loans and Commitments of all Lenders hereunder shall be divisible and unitized for voting purposes in accordance with the final paragraph below entitled "Unitized Voting" and (2) subject to [the last paragraph of Section 9.02(b)]<sup>24</sup> no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Loan Document of the Administrative Agent, unless in writing executed by the Administrative Agent, unless in writing executed by the Borrower and the Lenders required above.

Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent that by its terms requires the consent of all the Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

[In addition, notwithstanding anything in this Section to the contrary, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Administrative Agent within ten Business Days following receipt of notice thereof.]

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<sup>24</sup> Cross reference to 'Snooze You Lose'.

In addition, for the avoidance of doubt and notwithstanding anything in this Section to the contrary, (i) any amendment or waiver referred to in this Section may be effected by way of an exchange, conversion or other substitution of all or part of one or more Loans through an Exchange Offer; and (ii) where the Specified Required Lenders have chosen to participate in any such Exchange Offer, any Loans (or portions thereof) which were not the subject of consents in respect of that Exchange Offer shall be amended so that their payment terms equate with those available under the Exchange Offer on the basis described in Section 9.02 (c)(iii).

(c) **Exchange Offers.** For the avoidance of doubt, where a sovereign obligor invites or offers the Lenders pursuant to an Exchange Offer to exchange, convert or otherwise substitute any Loan or Loans for (or into) other obligations of, or securities issued by, the [Borrower or Guarantor] (such other obligations or securities being "New Sovereign Instruments"):

- (i) nothing in Section 9.02(b) shall be construed so as to limit or restrict the terms of any New Sovereign Instrument;
- (ii) where the Specified Required Lenders consent to any such exchange, conversion or other substitution into New Sovereign Instruments, those consents (an "Approval to Exchange Loans") shall be sufficient for all purposes of this Agreement and under applicable New York law and so shall be binding on all Parties notwithstanding that the New Sovereign Instruments may contain provisions which differ from the corresponding provisions of this Agreement and nothing in Section 9.02(b) shall limit or restrict any such exchange, conversion or other substitution;
- (iii) where there is an Approval to Exchange Loans, the payment obligations owed by the Borrower under any Loan (or portions thereof) which were not the subject of consents for that Approval to Exchange Loans (together the "Minority Portions") shall be amended on and from the closing date of the applicable Exchange Offer so that, in relation to each Minority Portion, the payment obligations of the Borrower are in the same amount as those of the obligor under the applicable Qualifying New Sovereign Instruments which would have arisen if such Minority Portion had been exchanged, converted or otherwise substituted for those Qualifying New Sovereign Instruments under that Exchange Offer.<sup>25</sup> For these purposes "Qualifying New Sovereign Instruments" means:

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<sup>25</sup> The draftsperson would need to ensure that the terms of any sovereign guarantee is amended so that it applies to the Agreement as so amended from the applicable closing date, and not to any Loans (or portions thereof) regarded as having been prepaid pursuant to Section 2.27 (a), set out in Annex 16. The draftsperson may wish to consider whether any Lender should be required to take any other steps or to provide additional information to the Administrative Agent for these purposes (e.g. the payment terms of the Qualifying New Sovereign Instruments).

- (A) New Sovereign Instruments denominated in the same currency as such Loan (or portions thereof) which do not require such Lender to make any further lending; and
  - (B) (in circumstances where the Lenders are able to choose more than one type of New Sovereign Instrument as part of the Exchange Offer), those New Sovereign Instruments which meet the requirements of paragraph (A) of this definition into which the greatest proportion of the principal amount of the Loans are selected to be exchanged, converted or otherwise substituted under the Exchange Offer by those Lenders consenting to the Approval to Exchange Loans; and
- (iv) the consent of any Lender to an Exchange Offer in respect of all or any portion of any Loan may be signified by that Lender submitting all or such portions of such Loan for exchange, conversion or substitution in accordance with the terms of that Exchange Offer and notifying the Administrative Agent accordingly.

*Add the following new definitions and revise existing definitions as shown (with new language in blackline and removed language ~~stricken~~ through):*

"Required Lenders" means, at any time, Lenders having Total Credit Exposures representing more than [50]% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.<sup>26</sup>

"Specified Required Lenders" means, at any time, Lenders having Total Credit Exposures representing more than [75]%<sup>27</sup> of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Specified Required Lenders at any time. For voting purposes only, any Total Credit Exposure of a Lender which is an agency or [Affiliate]<sup>28</sup> of the [Borrower][sovereign obligor] or otherwise controlled by the [Borrower][sovereign obligor] or any agency or [Affiliate] thereof shall be deemed to be zero.

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<sup>26</sup> Where a Sovereign Loan Agreement includes tranches different in nature, parties may consider the enhanced majority lender voting provision operating on a per tranche basis. It is not intended that the enhanced majority lender voting provision operate across Sovereign Loan Agreements as is the case with the ICMA aggregated collective action clauses in sovereign bonds.

<sup>27</sup> Throughout Annex 9, the applicable percentage is shown in brackets according to LSTA convention. Please see section 5.4 of the Guidance and Explanatory Note for further information.

<sup>28</sup> Use of Affiliate may be inappropriate for some sovereign borrowers.

**ANNEX 10**  
**PARI PASSU (NEW YORK LAW BASED DOCUMENTS)**

*Pari passu ranking provisions are not part of the currently published LSTA forms. Where an LSTA styled agreement is used in a sovereign debt transaction, a new representation in Article III (as shown below as new Section 3.19) and a new affirmative covenant in Article IV (as shown below as new Section 5.15) could be added. The additions shown in blackline form below to new section 3.19 and new section 5.15 seek to clarify that pari passu ranking should not be read to require payment parity.<sup>29</sup>*

*New representation:*

3.19 Ranking. The payment obligations of the Borrower under this Agreement and the other Loan Documents constitute direct and unconditional unsecured unsubordinated obligations of the Borrower and will rank at least pari passu in right of payment with all other unsecured unsubordinated External Indebtedness<sup>30</sup> of the Borrower or any Guarantee granted by the Borrower in respect of any External Indebtedness of any other person, from time to time outstanding. Notwithstanding the foregoing, it is understood and agreed that this provision shall not be construed so as to require the Borrower to make payments under the Loan Documents rateably with (or at the same time as, or as a condition of making) payments under any other External Indebtedness (including under any such Guarantee) and vice versa.

*New covenant:*

5.15 Ranking. The Borrower shall take all actions as may be reasonably necessary to ensure that all payment obligations under the Loan Documents will constitute direct and unconditional unsecured unsubordinated obligations of the Borrower and will rank at least pari passu in right of payment with all other unsecured unsubordinated External Indebtedness<sup>31</sup> of the Borrower and any Guarantee granted by the Borrower in respect of any External Indebtedness of any other person, from time to time outstanding. Notwithstanding the foregoing, it is understood and agreed that this provision shall not be construed so as to require the Borrower to make payments under the Loan Documents rateably with (or at the same time

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<sup>29</sup> The drafts person will need to consider the appropriate definition for External Indebtedness and any associated definitions.

<sup>30</sup> In circumstances where the payment obligations under the Finance Documents are denominated in domestic currency (whether as a result of the sovereign obligor being part of a currency union, such as the CFA Franc zone or the Eastern Caribbean Currency Union, or otherwise) the drafts person may wish to consider the appropriate definition of External Indebtedness (or categories of other indebtedness) which should most appropriately be referenced in this pari passu provision.

<sup>31</sup> In circumstances where the payment obligations under the Finance Documents are denominated in domestic currency (whether as a result of the sovereign obligor being part of a currency union, such as the CFA Franc zone or the Eastern Caribbean Currency Union, or otherwise) the drafts person may wish to consider the appropriate definition of External Indebtedness (or categories of other indebtedness) which should most appropriately be referenced in this pari passu provision.

as, or as a condition of making) payments under any other External Indebtedness (including under any such Guarantee) and vice versa.

**ANNEX 11**  
**SNOOZE YOU LOSE (NEW YORK LAW BASED DOCUMENTATION)**

*This provision is not typical in New York law loan documents. However, it appears from time to time, particularly in cross-border financings. The clause provides that a lender is required to vote on an amendment within a specified period or its vote will be disregarded (from both the numerator and denominator) for the purposes of the applicable voting threshold.*

Add new paragraph to Section 9.02(b)

If any Lender does not accept or reject a request for a consent, waiver, amendment of or in relation to any of the terms of any Loan Document or other vote of Lenders under the terms of this Agreement (including a vote of Specified Required Lenders) within [20] Business Days (unless the Borrower and the Administrative Agent agree to a longer time period in relation to any request) of that request being made, its Commitment and/or Loans shall not be included for the purpose of calculating whether any relevant percentage (including, for the avoidance of doubt, unanimity) of requisite Lender consent has been obtained to approve that request.

**ANNEX 12**  
**YANK-A-BANK (LSTA BASED DOCUMENTATION)**

*The standard clause provides that the borrower may remove a lender when, among other potential reasons, that lender votes in a manner which diverges from the votes of the majority of the lenders. The clause is copied below for illustrative purposes and recommended edits are shown in blackline.*

(a) 2.19 (b) Replacement of Lenders. Replacement of Lenders. If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section, or if any Lender is a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.04), all (or, as applicable, such portion, in accordance with Section 9.03) of its interests, rights (other than its existing rights to payments pursuant to Section 2.14, Section 2.15 or Section 2.16) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.04;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.14) (or, as applicable, such portion thereof, in accordance with Section 9.03) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

*Revise the definition of Non-Consenting Lender as follows:*



"Non-Consenting Lender" means any Lender (or, as contemplated by Section 9.03, any respective portion of the Loans or Commitments held by such Lender) that does not approve any consent, waiver or amendment that (a) requires the approval of all or all affected Lenders in accordance with the terms of Section 9.02 and (b) has been approved by the Required Lenders.

**ANNEX 13**  
**UNITIZED VOTING (NEW YORK LAW BASED DOCUMENTATION)**

*This new provision is not part of the LSTA model form; however, it is useful where a lender of record has passed economic risk to others through participations, repackagings, insurance or through other hedging or similar arrangements. The purpose of unitized voting is to allow a lender of record to vote different portions of the loan in different ways (primarily in order to reflect the potentially differing preferences of the providers of this protection (or other economic investors)).*

*Add new Section 9.03:*

9.03 Unitized voting<sup>32</sup>

- (a) Subject to paragraph (b) below a Lender may, by giving notice to the Administrative Agent as described in (b)(iii) below, give instructions to the Administrative Agent on portions of its Commitment or participations in the Loan independently to other portions. The Administrative Agent shall treat such instructions as separate for the purposes of determining whether the Specified Required Lenders, the Required Lenders, or all Lenders have provided instructions to the Administrative Agent, given consent or authorized action in respect of the Loan Documents including in circumstances where the relevant Lender is the only person holding any Commitment and/or participation in the Loan under this Agreement.
- (b) For the purpose of any vote or other determination by the Lenders under the Loan Documents which is intended to be unitized in the manner contemplated by paragraph (a) above, each relevant Lender:
- (i) may notionally divide its Total Credit Exposure into separate amounts to reflect arrangements to which it is a party, **provided that** no such notional division may result in its Total Credit Exposure being divided into separate amounts of less than USD 1;
- (ii) may make a vote or determination on one occasion only in relation to any proposition that is the subject of a vote or determination; and

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<sup>32</sup> In practice, unitized voting is most useful where a lender of record has de-risked part of its exposure or de-risked its exposure to several different entities (common particularly in the context of bilateral Sovereign Loan Agreements). Unitized voting provides the flexibility to the lender of record to split votes to reflect the preferences of those entities with an economic interest in the loan through any such de-risking process. There are many different means through which de-risking may occur including credit insurance, funded or unfunded sub-participations, a credit linked arrangement, repackagings, total return swaps and credit default swaps. The draftsman would also need to consider the interrelationship with the position taken on Section 9.04(d) (in this Annex).

- (iii) shall notify the Administrative Agent of:
- (A) in relation to any vote or determination which is to be made in the positive or negative, the relevant percentage of its Total Credit Exposure voting for, the relevant percentage of its Total Credit Exposure voting against and the relevant percentage of its Total Credit Exposure which is not voting; and
  - (B) in relation to any vote or determination which has a response other than a positive or negative response applicable thereto, the relevant percentage of its Total Credit Exposure making each relevant vote or determination and the relevant percentage of its Total Credit Exposure which is not voting or making a determination,

prior to the date and time specified by the Administrative Agent.

*Edit Section 9.04(d) as follows*

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver ~~[with respect to the following: \_\_\_\_\_]~~~~[described in Section 9.02(b)[ ] through [ ]]~~ that both affects such Participant and requires the written consent of [each Lender]/[the Required Lenders]/[the Specified Required Lenders].

**ANNEX 14**  
**CREDITOR ENGAGEMENT EVENT OF DEFAULT (NEW YORK LAW BASED DOCUMENTATION)**

*Events of Default in LSTA based documentation are triggered by a cross default under other debt documents, voluntary or involuntary insolvency or bankruptcy filing, or admission in writing of its inability to pay debts. They do not however expressly trigger a default by workout discussions (although it could be imputed that it is an admission, albeit not necessarily in writing, of inability to pay debt) between the borrower and other lenders in connection with revising payment terms in their documents. However, in situations where there would otherwise be an Event of Default which may be triggered at an early stage if the borrower initiates discussions with its lenders in connection with revising payment terms, the carve-outs expressed below with respect to Permitted Debt Relief Discussions would be an important addition, thereby removing the risk of a 'hair-trigger'.*

*Add the following carveout where relevant – illustrative Event of Default and carveout below*

[7.01 (•)]      Restructuring

Other than by way of any Permitted Debt Relief Discussions, the Borrower,<sup>33</sup> by reason of actual or anticipated financial difficulties, commences or engages in negotiations with its creditors generally (or with a class of them) (excluding any Lender or the Administrative Agent, each in its capacity as such) with a view to [rescheduling any of its indebtedness].

*Add new definition*

"Permitted Debt Relief Discussions" means any negotiations (including any discussions or communications) in any form whatsoever:

- (a) (where the Borrower has participated in the G20/Paris Club debt service suspension initiative ("DSSI") as announced in the communiqué of the G20 Finance Ministers and Central Bank Governors Meetings dated 15 April 2020 (as supplemented and extended in subsequent communiqués))<sup>34</sup> arising in any way in connection with its participation in the DSSI;
- (b) arising as a result of the Borrower's request for a treatment under the Common Framework for Debt Treatments beyond the DSSI as announced in the communiqué of the G20 Finance Ministers and Central Bank Governors Meetings dated 13 November

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<sup>33</sup> This specimen clause assumes that the sovereign debtor is the borrower. Where there is a loan with a sovereign guarantee the draftsperson will need to consider corresponding changes to ensure the same commercial result as that set out in this specimen clause is achieved.

<sup>34</sup> The DSSI expired at the end of 2021.

2020 (as supplemented and extended in subsequent communiqués) including those arising as a result of comparability of treatment requirements;

- (c) with any official creditors with a view to providing debt relief in any form or pursuant to any other initiative;
- (d) with any creditors, in connection with or arising from any discussions with the International Monetary Fund ("IMF") on an IMF-supported program, other IMF financing, IMF policy support instrument, IMF policy coordination instrument or other IMF non-financing instrument; and
- (e) with any creditors which have been disclosed in writing to the Lenders prior to the date of this Agreement.

**ANNEX 15**  
**CONFIDENTIAL INFORMATION (LSTA BASED DOCUMENTATION)**

*The following addition of subparagraph (i) to Section 9.12 of the LSTA form of confidentiality provision shown in blackline form below are designed to ensure that lenders are able to comply with the various initiatives associated with improving debt transparency, in particular the IIF Voluntary Principles for Debt Transparency.*

**9.12 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed ...; or (i) (including all such information in connection with the Loan Documents) (y) to the Reporting Host for the purposes of the IIF Voluntary Principles for Debt Transparency<sup>35</sup> from time to time; and (z) to the International Monetary Fund for the purposes of the IMF Debt Limits Policy (or its equivalent from time to time).

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<sup>35</sup> The IIF Voluntary Principles for Debt Transparency may be accessed here: <https://www.iif.com/Publications/ID/3387/Voluntary-Principles-For-Debt-Transparency>. Disclosure as to the inclusion of the enhanced majority lender voting provision should also be reported to the OECD Portal, including the voting threshold ([https://data-explorer.oecd.org/?lc=en&fs\[0\]=TopicFinance](https://data-explorer.oecd.org/?lc=en&fs[0]=TopicFinance)) where the lender is participating in that initiative (see section 9 of the Guidance and Explanatory Note).

## ANNEX 16

### EXCHANGE OFFER PROVISION (NEW YORK LAW BASED DOCUMENTATION)

*The inclusion of this new provision and the amendment to Section 2.15 aims to remove potential ambiguity in syndicated loans as to how the Loans of those lenders who accept an exchange offer should be properly treated. The clause extends the concept of prepayment so that such exiting lenders' Loans are treated as having been prepaid.*

*Add new clause 2.27*

#### 2.27 Exchange Offers.

(a) If any Loan of a Lender (or any portion of any such Loan) has been exchanged, converted or otherwise substituted as part of an Exchange Offer then, on the closing date thereof, that Lender's Loan (or portion thereof) shall be regarded as having been prepaid and, as from such closing date: (i) such Lender shall be regarded as enjoying no further rights (including rights to receive interest payments) in respect of any such Loan (or such portion) and (ii) such Lender's corresponding Commitment shall be cancelled in the amount of that Loan (or such portion). Any Lender tendering, offering to exchange, convert or otherwise substitute (or otherwise submitting) any Loan (or such portion thereof) into an Exchange Offer shall promptly notify the Administrative Agent (and provide all applicable details to the Administrative Agent) and shall promptly notify the Administrative Agent of the associated closing date thereof. For the avoidance of doubt, any such Loan (or portion thereof) so regarded as having been prepaid and any New Sovereign Instruments issued or arising through the associated Exchange Offer shall not be subject to sharing of payments under Section 2.15.

(b) Where the [Borrower/sovereign obligor] seeks the consent of the Specified Required Lenders or includes the Loans in an Exchange Offer, the [Borrower/sovereign obligor] shall provide relevant information to the Lenders on a timely basis, and this shall include:

(i) a description of the [Borrower's/sovereign obligor's] economic and financial circumstances which are, in the [Borrower's/sovereign obligor's] opinion, relevant to the request for any potential amendment or waiver or action pursuant to an Exchange Offer, a description of the [Borrower's/sovereign obligor's] existing debts and a description of its broad policy reform programme and provisional macroeconomic outlook;

(ii) if the [Borrower/sovereign obligor] shall at the time have entered into an arrangement for financial assistance with multilateral and/or other major creditors or creditor groups and/or an agreement with any such creditors regarding debt relief, a description of any such arrangement or agreement. Where permitted under the information disclosure policies of the multilateral or such other creditors, as applicable, copies of the arrangement or agreement shall be provided;

- (iii) a description of the proposed treatment of all existing debts; and
- (iv) details of any Lender which is a Person which is an agency or [Affiliate] of the [Borrower/sovereign obligor] or otherwise controlled by the [Borrower/sovereign obligor] or any agency or [Affiliate] thereof.<sup>36</sup>

*Revise Section 2.15 Sharing of Payments as follows:*

- (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender [or a Disqualified Institution]), (y) the application of Cash Collateral provided for in Section 2.22, or to any Loan (or portion thereof) or New Sovereign Instruments described in the last sentence of Section 2.27(a), or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

*Add new definition*

"Exchange Offer" means an invitation, offer or other communication from a sovereign (whether acting through its Ministry of Finance or otherwise) to all of the Lenders to exchange, convert or otherwise substitute all or part of one or more Loans for (or into) other obligations or securities of the [Borrower or Guarantor], with a view to providing debt relief in some form.

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<sup>36</sup> In addition to checking the applicable cross reference to the sharing clause, the draftsman should also consider whether any other exclusions are appropriate (e.g. in respect of any mandatory prepayment clause).