

## **GROUP OF TEN**

### **Report of the G-10 Working Group on Contractual Clauses**

**26 September 2002**

Over the past few decades capital markets have become the principal source of external finance for emerging market economies. Procedures need to be developed that promote expeditious and orderly restructurings when crises occur. One practical means to develop workout procedures for sovereign debtors is to incorporate suitable provisions into sovereign debt contracts. There is now broad agreement in the international community that having effective procedures to resolve sovereign debt crises expeditiously is in the interest of debtors and creditors. The vast majority of foreign sovereign debt is governed by a handful of jurisdictions. If agreement can be reached on a set of provisions suitable for sovereign debt governed by the laws of these jurisdictions, an important step will have been taken to promote quicker and more orderly crisis resolution procedures.

Critical to the effort is the desire to create a structure that will build on existing market practices, promote a consistent framework across jurisdictions and benefit the interests of both debtors and creditors. The following three key objectives have been identified:

- (i) to foster early dialogue, coordination, and communication among creditors and a sovereign caught up in a sovereign debt problem;
- (ii) to ensure that there are effective means for creditors and debtors to re-contract, without a minority of debt-holders obstructing the process; and
- (iii) to ensure that disruptive legal action by individual creditors does not hamper a workout that is underway, while protecting the interests of the creditor group.

In order to promote the development of suitable contractual provisions, the G-10 Working Group on Contractual Clauses (the Working Group) was formed in June 2002 at the behest of Ministers and Governors. The mandate of the Working Group is to consider how sovereign debt contracts could be modified in order to make the resolution of debt crises more orderly. The Working Group has met several times and has operated in an open fashion, consulting informally, but widely, in carrying out its work. In particular, it has consulted closely with a group of eminent lawyers from the key jurisdictions under whose

laws sovereigns issue bonds<sup>1</sup> (England, Germany, Japan and New York) in pursuing its objective of putting forth a package of contractual provisions for sovereign debt that could facilitate workouts. In this consultation, the private sector lawyers took into account their perception of the market acceptability of such provisions.

The Working Group has chosen for a number of reasons to focus on documentation for sovereign bonds with an expectation that practices developed with respect to sovereign bonds could be implemented with appropriate modifications in other types of debt over time. In addition, its recommended provisions pertain to bonds issued by a sovereign and governed by the laws of a jurisdiction other than that of the sovereign.

The following are the recommendations of the Working Group as to a set of bond provisions that could address usefully the objectives noted above. The recommendations of the Working Group take into account concerns expressed by both sovereign debtors and creditors and aim to be perceived as beneficial to both constituencies. Since the provisions recommended herein are intended to interact with one another, the Working Group recommends that they be regarded as a package.

### **Early Dialogue, Coordination and Communication**

One of the key objectives of the initiative is to promote communication between the sovereign and its creditors and to jumpstart the restructuring process when a sovereign faces acute financial difficulties. The Working Group considered several aspects of this complex issue, including whether the terms of the bond should provide for the appointment of a bondholder representative over the life of the bond and whether provision should be made specifically for the election of a bondholder representative that could represent bondholders in connection with any restructuring.

The Working Group believes that there should be a **bondholder representative in place for the life of the bond** in order to act as an interlocutor with the sovereign during this time. Such a representative could be of benefit to both debtors and creditors, since a debtor has an interest in being able to communicate effectively with its creditors. In common law jurisdictions (e.g., England and New York), this role might be performed within a trust structure (as opposed to the more common fiscal agency structure currently used<sup>2</sup>), while the laws of civil law jurisdictions (e.g., Germany and Japan) recognise structures other than trust structures which are able to provide similar benefits. The use of such trust or other structures would automatically provide bondholders with a means of facilitating communication with the sovereign debtor and vice versa. Use of such structures would also confer the right of legal enforcement of the bonds on a single entity (as described below) and provide for the pro rata distribution of any recovery proceeds.

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<sup>1</sup> As well as France as another example of a civil law jurisdiction.

<sup>2</sup> The fiscal agent is typically the agent of the issuer, while the trustee or another type of representative represents and has duties towards the bondholders.

The Working Group also considered the need to promote a collaborative sovereign restructuring process by providing a mechanism for the **election of a special bondholder representative**, empowered to engage in restructuring discussions with the debtor without undue delay. The Working Group believes that explicit provision for the appointment of a special bondholder representative would provide sufficient flexibility. The Working Group considers that the threshold for the appointment of such a representative should not be higher than 66 2/3% of the outstanding principal amount so as to facilitate agreement upon a representative and foster negotiations. Any modification of the bonds would be done by the bondholders themselves.

In order to facilitate the election of a representative, the Working Group recommends that the provisions of the bond provide for a meeting of the bondholders. This would be called at the request of the issuer, the bondholder representative, or holders of not less than a qualified minority of the bonds (e.g., 10%).

The Working Group also recommends that a covenant be added to sovereign bonds that would **require the sovereign to provide certain types of information to its bondholders** over the life of the bond and additional information following an event of default. This covenant would encourage the public dissemination of key financial information in a timely manner. Further consideration will need to be given as to the type of information that should be provided pursuant to this covenant, particularly as to the type of non-public information that could be provided that would not require confidentiality agreements.

#### **Collective Action to Help Ensure Agreement**

The Working Group recommends the inclusion of a **majority amendment clause permitting amendments of payment terms with the approval of a supermajority of bondholders**.

The view of the Working Group is that this clause is perhaps the most critical component of the package that is being proposed, because it provides flexibility in reaching agreement on the terms of a restructuring that debtors and creditors find to be in their collective interest. At the same time, use of this clause could ensure that the rights of the supermajority are respected and prevent a small minority of dissident creditors from pursuing disruptive litigation.

A robust version of the majority amendment clause mentioned above is a common feature of bonds issued under the laws of a number of jurisdictions. Under English law bonds, a qualified majority (typically 75%) of bondholders present at a duly convened meeting can amend payment terms that will become binding on all bondholders. A duly convened meeting typically requires a quorum of bondholders representing 75% of the outstanding principal. If this quorum requirement is not met, a reconvened meeting allows for a lower

quorum, typically 25%. Other jurisdictions (such as Japan, France and Germany<sup>3</sup>) provide for similar quorum structures, albeit with different thresholds. Majority amendment provisions for payment terms would, however, be a new feature in sovereign bonds governed by New York law or German law.

The advantage of the quorum approach as described above is that it avoids a situation where a restructuring agreement is frustrated solely because a critical mass of bondholders fail to cast a vote, which may be particularly problematic in circumstances where the bonds are largely held by retail investors.

U.S. private sector representatives, however, expressed strong reservations about the quorum approach (particularly the low level of a second quorum). A perceived risk was that it could enable a minority of bondholders to agree upon a restructuring in the event that only a small percentage choose to attend the meeting. In addition, they were of the opinion that this structure did not reflect actual market practice in which the restructuring is achieved through exchange offers in which there have been historically high participation rates, as opposed to an actual meeting. An alternative approach would therefore be to build on the existing structure for the amendment of non-payment provisions under New York law, i.e., a percentage based on the outstanding principal amount without requiring the holding of any physical meeting.

If the outstanding principal approach were chosen by the parties, the Working Group considers that 75% would be a reasonable threshold<sup>4</sup> from the standpoint of promoting the interests of both debtors and creditors. It is the opinion of the Working Group that, given this structure, going above this level could jeopardize the ability to achieve workouts and increase the risk that an organized minority, such as a vulture fund, could hold up a process that a reasonable majority supported. There would also be an increased risk of facing a deadlock in negotiations. In particular, this might be the case where the bonds are held largely by retail investors, where the quorum structure would have advantages.

The Working Group is not proposing that existing practice with respect to majority amendment provisions should be changed in jurisdictions where such provisions are already used in practice in sovereign bonds. However, in jurisdictions where this is not the case, the

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<sup>3</sup> In Japan, a supermajority resolution can be adopted by two-thirds of the voting rights present or represented at a bondholders' meeting the quorum for which is a majority of the outstanding principal amount of the bonds, which will not be reduced even in the case of an adjourned meeting. Acceptance of a restructuring or an exchange offer by such a resolution is permitted only if the resolution is not contrary to Japanese law relating to the abuse of rights by the majority. As far as Germany is concerned, statutory rules exist for domestic issuance. However, some market participants are of the view that legislative clarification would be necessary to support the validity of such clauses in sovereign bonds governed by German Law. While the German government has confirmed in public the validity of such clauses in sovereign bond issues, further legal clarification is now underway in order to encourage and promote the use of collective action clauses in foreign bonds issued in Germany.

<sup>4</sup> The Working Group understands that market practice in certain jurisdictions could accommodate lower thresholds.

Working Group believes that a 75% threshold combined either with or without an underlying quorum structure is acceptable and that the use of one or the other of these approaches should depend largely on market acceptability and practice in each of the key jurisdictions. It cautions, however, against the use of a threshold above 75%, particularly where the measurement is done on the basis of outstanding principal.

There should also be a **mechanism for disenfranchising bonds directly or indirectly owned or controlled by the sovereign issuer**, and its public sector instrumentalities (the definition of which could be negotiated on a case-by-case basis). The inclusion of public sector instrumentalities goes beyond traditional disenfranchisement provisions in trying to address creditor concerns about manipulation of votes by a sovereign.<sup>5</sup> In addition, consideration could be given to the establishment of a registration process for voting under bond provisions where the vote is measured by the outstanding principal amount. However, the Working Group has not done research on this issue and is not taking a position on its desirability or feasibility at this time.

In addition, the Working Group proposes that a provision be included to **allow a supermajority of bondholders to accept an exchange of the bonds for new debt instruments**, as an alternative to an amendment of the existing bonds. This provision would allow the supermajority of bondholders to make such an exchange mandatory for all holders, thus facilitating an exchange - the most common method of completing sovereign debt restructurings - and would have the same effect as an amendment.

The Working Group also recommends that the threshold for amendments to terms not covered by the above majority amendment provision for payment terms be a majority or a supermajority with a maximum of 66 2/3%, which could be measured by outstanding aggregate principal amount or based upon a quorum structure.<sup>6</sup> This recommendation is made based upon the totality of this package of provisions. The Working Group notes that these types of provisions have been used to effect exit consents and that an increase from the 50% threshold often used in New York law-governed bonds could be acceptable in order to protect the interests of creditors. The Working Group does not recommend an increase in the scope of the matters covered by the majority amendment provision relating to payment terms at the present time.

The Working Group believes that “aggregation” across a range of different types of creditors for voting purposes under the majority amendment clause, while desirable, is not practicable within a contractually based mechanism. However, it would appear to be legally and contractually possible to have debt instruments issued pursuant to a single master agreement such as a medium-term note programme providing for blended voting under certain

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<sup>5</sup> There is debate about whether or not a more precise definition of the term “control” might be required in certain jurisdictions where the concept of “control” has not yet been well established in practice.

<sup>6</sup> The Working Group understands that market practice could accommodate lower thresholds.

circumstances. This approach has a great deal of potential, especially within the context of bonds issued under the laws of a single jurisdiction, and merits further exploration, as medium-term note programmes are increasingly used by emerging market borrowers. It is noted, however, that the Working Group has not focused on the technicalities of this approach in any detail.

### **Disruptive Legal Action**

The Working Group discussed the proposal that provision be made for a stay of legal action, in order to provide a sovereign with breathing room from disruptive litigation during the period in which it is organising its affairs after a default, and in anticipation of a restructuring. The Working Group notes that disruptive legal action against sovereigns has historically not been a major barrier to restructurings although some are of the view that it may be more of a concern in the future. In addition, market acceptability of a contractual stay would be difficult to achieve. The Working Group further notes that majority amendment clauses for payment terms would also make it possible for a majority of creditors to vote to effect a stay of legal action that would be binding on a minority.

Instead, the Working Group would recommend the use of two types of provisions: majority enforcement provisions, which build upon existing market practice, and provisions that effectively concentrate the power to initiate litigation in a single entity. Making the power to accelerate a bond upon a default mandatory upon a collective vote of the creditors and providing for the ability to reverse an acceleration are critically important to deterring litigation, since the ability to declare principal and interest due and payable is an effective prerequisite for legal action. A provision, therefore, requiring a bondholder representative to exercise its power to accelerate upon a **25% bondholder vote for acceleration** and a clause requiring a **majority or a supermajority with a maximum of a 66 2/3% vote for rescission of acceleration** would prove useful. In particular, the ability to rescind an acceleration through the collective action of bondholders may be of tactical importance to a sovereign in a restructuring. Both provisions are consistent with current market practice in England and the U.S.

The Working Group is of the view that an arrangement that **concentrates the power to initiate litigation within a bondholder representative** upon instruction of 25% of the bondholders (or at the representative's own initiative), subject to certain limited exceptions, such as when the bondholder representative fails to act upon instruction by the requisite number of bondholders, and a provision **explicitly prohibiting individual enforcement action** could effectively place a brake on disruptive creditor litigation. The limiting of the power to initiate litigation to one single entity reflects market practice for sovereign bonds issued under trust deeds under English law, but would be a new feature of sovereign bonds governed by New York law or Japanese law. In addition, **the pro rata distribution of recovery proceeds** that is present where a trust structure is used (as described above) should also act to discourage disruptive litigation. Where the law of the jurisdiction does not permit

such structures, it is important that the structure put in place allow for the pro rata distribution of recovery proceeds.

### **Jurisdictional Issues**

The above provisions can be incorporated in sovereign bonds governed by English, French and New York law immediately. Bonds issued in these jurisdictions have historically represented a significant majority of the aggregate principal amount of international sovereign bonds. The above provisions can be incorporated in sovereign bonds governed by Japanese law with some modifications. In the case of Germany, the Working Group understands that market participants are willing to implement a structure reflecting the above provisions under certain conditions.<sup>7</sup> The Working Group recommends that further analysis be undertaken with respect to the implementation of the above provisions in jurisdictions not covered by this report.

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<sup>7</sup> See footnote #3.

**G-10 Working Group on Contractual Clauses**

**Chairman:** Randal Quarles US Treasury

**Members:**

Joan Willemen	Belgian Ministry of Finance
Marc Jewett	Bank of Canada
Niall Lenihan	European Central Bank
Delphine d'Amarzit	French Ministry of Finance
Christoph Keller	Deutsche Bundesbank
Marino Perassi	Banca d'Italia
Masao Shimazaki	Japanese Ministry of Finance
Frank Elderson	De Nederlandsche Bank
Per Håkansson	Sveriges Riksbank
Hans Kuhn	Swiss National Bank
Anne Salladin	US Treasury
David Wall	Bank of England

**Observer:**

Sean Hagan IMF



### **Model New York Law Collective Action Clauses**

The model clauses annexed to this report were prepared at the direction of the Working Group on Contractual Clauses in the autumn of 2002 by a group of lawyers experienced in representing sovereign debtors and their creditors from the key issuing jurisdictions for sovereigns. The clauses, which are being published for illustrative purposes, were drafted for use in sovereign bonds governed by the laws of a U.S. jurisdiction and can be used as the basis for the development of clauses in specific issuances in the U.S. and in other jurisdictions in accordance with the laws of those jurisdictions. The clauses attempt to take into account existing market practice (particularly with respect to sovereign bonds issued under English law) and market acceptability at the time of their drafting. Use of the clauses in any particular jurisdiction will require consideration of the views of sovereign issuers and their creditors as to their acceptability in that jurisdiction, their compatibility with applicable law, and other important matters, such as the characteristics of a sovereign's investor base.

25 October 2002

**Proposed Insert to Terms and Conditions Governing the Bonds**

## \_\_\_\_. Meetings of Holders; Modifications and Amendments

(a) Modifications and Amendments. Modifications, amendments and supplements to the Trust Indenture or the terms and conditions of the Bonds may be made pursuant to a written action of the Holders without the need for a meeting of Holders, or, in the circumstances described below, by vote of the Holders taken at a meeting of Holders, in each case in accordance with the terms of this Section \_\_\_\_ and the related provisions of the Trust Indenture.

(b) Meetings. The Issuer or the Trustee at any time may, and upon a request in writing made by Holders holding not less than 10% in aggregate principal amount of the Bonds at the time Outstanding the Trustee<sup>1</sup> shall, convene a meeting of Holders of the Bonds. Any such request in writing by the Holders shall be delivered to the Trustee. Further provisions concerning meetings of the Holders are set forth in Section \_\_\_\_ of the Trust Indenture.

(c) Non-Reserve Matters. Any modifications, amendment, supplement or waiver of the Trust Indenture or the terms and conditions of the Bonds requiring the consent of Holders, other than a modification or amendment constituting a Reserve Matter (as defined below), may be made, and future compliance therewith may be waived, with the consent of the Issuer and the Holders of more than 66-<sup>2</sup>/<sub>3</sub>% in aggregate principal amount of the Bonds at the time Outstanding pursuant to a written action of the Holders[, or with the consent of the Issuer and more than 66-<sup>2</sup>/<sub>3</sub>% in aggregate principal amount of the Bonds at the time Outstanding entitled to vote at a meeting of Holders convened and conducted in accordance with this Section \_\_\_\_].

(d) Reserve Matters. Any modification, amendment, supplement or waiver of the Trust Indenture or the terms and conditions of the Bonds that would:

- (i) change the date for payment of principal of, or any instalment of interest on, the Bonds;
- (ii) reduce the principal amount or redemption price or premium, if any, payable under the Bonds;
- (iii) reduce the portion of the principal amount which is payable in the event of an acceleration of the maturity of the Bonds;
- (iv) reduce the interest rate on the Bonds;

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<sup>1</sup> This model clause has been prepared with a view toward its use in bonds issued under a Trust Indenture governed by the laws of a US jurisdiction. In other jurisdictions that do not recognize trust structures in the US or UK sense, the clause must be adapted to refer to the appropriate bondholders' representative.

(v) change the currency or place of payment of any amount payable under the Bonds;

(vi) change the obligation of the Issuer to pay Additional Amounts in accordance with the Trust Indenture,

(vii) change the definition of Outstanding or reduce the quorum requirements or the percentage of votes required for the taking of any action pursuant to this Section \_\_\_;

(viii) authorize the Trustee, on behalf of all Holders, to exchange or substitute the Bonds for, or convert the Bonds into, other obligations or securities of the Issuer or any other person;

(ix) instruct the Trustee, on behalf of all Holders, to settle or compromise any proceeding or claim asserted by the Trustee pursuant to Section \_\_\_;

(x) give to any person or group of persons, other than the Trustee, the exclusive right to enforce any provision of the Trust Indenture or the Bonds on behalf of all Holders; or

(xi) appoint any person or group of persons to represent the interests of the Holders in any discussions with the Issuer or any other creditors of the Issuer in connection with any proposed restructuring of the Bonds or other indebtedness of the Issuer.

may be made with the consent of the Holders of more than 75% (or in the case of paragraph (x) or (xi),  $66\frac{2}{3}\%$ ) in aggregate principal amount of the Bonds at the time Outstanding pursuant to a written action of the Holders; provided that modifications, amendments, supplements or waivers pursuant to paragraph (xi) of this subsection may also be made with the consent of the Holders of more than  $66\frac{2}{3}\%$  in aggregate principal amount of the Bonds at the time Outstanding entitled to vote at a meeting of Holders convened and conducted in accordance with Section \_\_\_; provided further that modifications, amendments, supplements or waivers pursuant to paragraphs (i) through (vii) of this subsection also shall require the consent of the Issuer.

(e) **Binding Effect.** Any modification, amendment, supplement or waiver consented to or approved pursuant to this Section \_\_\_ will be conclusive and binding on all Holders of Bonds, whether or not they have given such consent or were present at a meeting of Holders at which such action was taken, and on all future Holders of Bonds whether or not notation of such modification, amendment, supplement or waiver is made upon the Bonds. Any instrument given by or on behalf of any Holder of a Bond in connection with any consent to or approval of any such modification, amendment, supplement or waiver will be irrevocable once given and will be conclusive and binding on all subsequent Holders of such Bond.

(f) **Quorum.** At a meeting (or at any reconvening of a meeting) of the Holders of the Bonds called for any purpose in accordance with Section \_\_\_ of the Trust Indenture, persons

entitled to vote a majority in aggregate principal amount of the Bonds at that time Outstanding shall constitute a quorum.

(g) Non-Material Amendments. The Trust Indenture and the terms and conditions of the Bonds may be modified, amended, supplemented or waived by the Issuer and the Trustee, without the consent of the Holder of any Bond, for the purpose of adding to the covenants of the Issuer for the benefit of the Holders, surrendering any right or power conferred upon the Issuer, securing the Bonds, curing any ambiguity, correcting or supplementing any defective provision therein, or in any other manner which the Issuer and the Trustee may mutually deem necessary or desirable and which shall not adversely affect the interests of the Holders of the Bonds in any material respect, to all of which each Holder of any Bond shall, by acceptance thereof, consent.

(h) Supplemental Indenture. The Trustee, on behalf of the Holders, and the Issuer may execute a Supplemental Indenture to reflect any modification, amendment, supplement or waiver consented to or approved in accordance with this Section \_\_\_\_.

**Proposed Insert to the Events of Default Section**

\_\_\_\_. Acceleration. If an Event of Default occurs and is continuing, then, and in every such case, the Trustee may, or shall upon the instruction of the Holders of not less than 25% in aggregate principal amount of the Bonds Outstanding at that time, declare the principal of, and any interest accrued on, all the Bonds to be due and payable immediately by a notice in writing to the Issuer, and upon any such declaration such principal and interest shall become immediately due and payable.

\_\_\_\_. Rescission of Acceleration. If any and all existing Events of Default hereunder, other than the non-payment of the principal of the Bonds which shall have become due solely by acceleration, shall have been cured, waived or otherwise remedied as provided herein, then, and in every such case, the Holders of  $66\frac{2}{3}\%$  in aggregate principal amount of the Bonds Outstanding at that time, by written notice to the Issuer and to the Trustee as set forth in the Trust Indenture, may, on behalf of all the Holders, rescind and annul any prior declaration of the acceleration of the principal of and interest accrued on the Bonds and its consequences, but no such rescission and annulment shall extend to or affect any subsequent default, or shall impair any right consequent thereon. Actions by Holders pursuant to this Section \_\_\_\_ may be taken by written action of the Holders.

**Proposed Insert to the Remedies Section**

## \_\_\_\_. Limitations on Suits

## (a) Collection of Indebtedness and Suits for Enforcement by Trustee

The Trustee, in its own name and as a trustee of an express trust, may institute a judicial proceeding for the collection of the sums due and unpaid under this Trust Indenture or the Bonds, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Issuer or any other obligor and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer or any other obligor upon the Bonds, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

All rights of action and claims under this Indenture or the Bonds or coupons may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the rateable benefit of the Holders of the Bonds and coupons in respect of which such judgment has been recovered.

## (b) Control by Holders

The Holders of a majority in principal amount of the Outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that

(i) such direction shall not be in conflict with any rule of law or this Indenture;

(ii) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders not taking part in such direction, and

(iii) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

## (c) Limitation on Suits

No Holder of any Bond or coupon shall have any right to institute any proceeding, judicial or otherwise, with respect to the Bonds or this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(i) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(ii) the Holders of not less than 25% in aggregate principal amount of the Bonds Outstanding at that time shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(iii) such Holder or Holders shall have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(iv) the Trustee for 90 days after its receipt of such notice, request and offer of indemnity shall have failed to institute such a proceeding; and

(v) no direction inconsistent with such written request has been given to the Trustee during such 90 day period by the Holders of a majority in principal amount of the Bonds Outstanding at that time;

it being understood and intended that no one or more Holders of Bonds or coupons shall have any right in any manner whatever by virtue of, or by availing of, any provisions of this Indenture to affect, disturb or prejudice the rights of any other Holders of Bonds or coupons, or to obtain or seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and rateable benefit of all the Holders of Bonds and coupons.

**Proposed Insert to Covenants of the Issuer**

\_\_\_\_. Provision of Information. Following occurrence of any Event of Default of the kind referred to in subsection [payment default] or [declaration of moratorium], the Issuer shall provide to the Trustee (for onward dissemination to each Holder) on a regular basis information in reasonable detail concerning the Issuer's economic and financial position. Under these circumstances, the Issuer shall also in a similar manner provide information concerning (i) the Issuer's proposed treatment of its other material creditor groups, including, where appropriate, bilateral (Paris Club) creditors, (ii) information concerning any standby or similar program negotiated with the International Monetary Fund (including a copy of the related Technical Memorandum) and (iii) such other information as the Trustee (on its own or at the instruction of the Holders of not less than 10% in aggregate principal amount of the Bonds Outstanding at that time) may from time to time reasonably request. [Issuers and underwriters to discuss in the context of particular transactions whether additional periodic information should be provided prior to default, and if so, what the scope and frequency of such reporting should be.]



**Proposed Insert to the Modifications and Amendments Section**

\_\_\_\_. “Outstanding” Defined. For purposes of the provisions of this Trust Indenture and the Bonds, any Bond authenticated and delivered pursuant to this Trust Indenture shall, as of any date of determination, be deemed to be “Outstanding”, except:

- (i) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation or held by the Trustee for reissuance but not reissued by the Trustee;
- (ii) Bonds that have been called for redemption in accordance with their terms or which have become due and payable at maturity or otherwise and with respect to which monies sufficient to pay the principal thereof (and premium, if any) and any interest thereon shall have been made available to the Trustee; or
- (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to this Trust Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds are present at a meeting of Holders of Bonds for quorum purposes or have consented to or voted in favour of any request, demand, authorisation, direction, notice, consent, waiver, amendment, modification or supplement hereunder, Bonds owned or controlled, directly or indirectly, by the Issuer or by any public sector instrumentality of the Issuer shall be disregarded and deemed not to be Outstanding, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver, amendment, modification or supplement, only Bonds which the Trustee knows to be so owned or controlled shall be so disregarded.

### G10 Working Group on Contractual Clauses - Summary of Recommendations

- This table summarises the set of clauses recommended by the working group under the structure whereby voting thresholds are based on "outstanding principal amount"
- In the alternative quorum structure, voting procedures would all be enacted through meetings with adequate quorum provisions
- Where thresholds are specified, the percentage should be viewed as a suggested upper limit

Clause/feature	Activation	Role/purpose
<b>Permanent representative</b> (trustee or other permanent representative)	Embedded in the original terms and conditions of bonds	<ul style="list-style-type: none"> <li>- represents the bondholders for purposes other than actual negotiation (eg conduit for routine information flow)</li> <li>- responsible for any litigation (either on own initiative or instruction of 25% of bondholders (see below))</li> </ul>
<b>Negotiating representative(s)</b>	Elected by bondholders (presumption being soon after default) <ul style="list-style-type: none"> <li>- 66 2/3 % voting threshold (either in writing or in a meeting)</li> </ul>	<ul style="list-style-type: none"> <li>- represents the bondholders in the process of negotiation</li> </ul>
<b>Meeting of the bondholders</b>	At any time, upon request of <ul style="list-style-type: none"> <li>- the issuer</li> <li>- the permanent representative of the creditors</li> <li>- bondholders holding at least 10% of the outstanding amount</li> </ul>	<ul style="list-style-type: none"> <li>- enables creditors' coordination</li> <li>- especially useful to elect the special representative</li> </ul>
Majority action clause <b>(1) reserve matters</b> (ie payment terms)	Upon a vote representing <ul style="list-style-type: none"> <li>- 75% of bondholders</li> <li>- through a written procedure</li> </ul>	<ul style="list-style-type: none"> <li>- allows for change in reserve matters either through amendment or an exchange offer</li> <li>- cram-down upon all holders, including any minority holders</li> <li>- reserve matters are understood as (i) payments terms, including any change in payments dates, reduction in principal or interest, change in currency; (ii) any instruction to the representative so as to exchange or convert the bonds</li> </ul>
<b>(2) non reserve matters</b>	Upon a vote representing <ul style="list-style-type: none"> <li>- 66 2/3 %</li> <li>- either in writing or in a meeting</li> </ul>	<ul style="list-style-type: none"> <li>- allows for changes in non reserve matters (e.g., any other matters than reserve matters, including change in provisions relating to negative pledge or pari passu clauses, governing law, submission to jurisdiction and non-waiver of sovereign immunities)</li> <li>- non material amendments may be made without the bondholders' consent</li> <li>- cram-down on the minority</li> </ul>
<b>Majority enforcement</b> <b>(1) acceleration</b>	<p><b>Acceleration :</b></p> <ul style="list-style-type: none"> <li>- in event of default</li> <li>- upon decision of the permanent representative or holders representing not less than 25% <b>of bondholders</b></li> </ul> <p><b>Rescission of the acceleration :</b></p> <ul style="list-style-type: none"> <li>- provided the event of default is cured, waived or remedied</li> <li>- upon decision of holders representing not less than 66 2/3% of bonds</li> </ul>	<ul style="list-style-type: none"> <li>- makes acceleration, which is possible only in a continuing event of default, a collective decision</li> <li>- a supermajority can then decide to "de-accelerate", as long as all events of default are cured, waived or remedied (other than those solely due to the acceleration itself).</li> </ul>

<b>(2) litigation</b>	<p><b>Litigation</b> is to be instituted <b>solely by the permanent representative</b></p> <ul style="list-style-type: none"> <li>(i) at its own discretion</li> <li>(ii) <i>or</i> upon instruction of at least 25% of bondholders</li> <li>(iii) <i>and</i> provided that the representative has been offered reasonable indemnification</li> <li>(iv) <i>unless</i> it fails to do so within 90 days (after which individual holders would be able to litigate)</li> </ul> <p><b>Continuation and outcome</b> of the litigation :</p> <ul style="list-style-type: none"> <li>- majority (i.e., over 50%) of outstanding bondholders may direct conduct of legal proceedings</li> <li>- recovery proceeds are distributed pro rata to all holders</li> </ul>	<ul style="list-style-type: none"> <li>- prohibits individual action, unless the permanent representative fails to honour the appropriate instructions of the bondholders, and replaces individual legal initiatives with the collective decision of a minimum percentage of bondholders;</li> <li>- provides (through the trustee or trustee-like structure) for a pro-rata distribution of the proceeds, thus limiting the appetite for disruptive litigation;</li> </ul>
<b>Information provision</b>	<p>The issuer shall <b>provide such appropriate information to the holders</b></p> <ul style="list-style-type: none"> <li>- as indicated in the contract, over the life of the bond</li> <li>- as requested by the representative at its discretion or upon instruction of not less than 10% of bondholders</li> <li>- as long as information requests are deemed reasonable</li> </ul>	<ul style="list-style-type: none"> <li>- details to be negotiated on a case by case basis</li> </ul>
<b>Disenfranchisement provision</b>	<p>Bonds that are to be <b>excluded from</b> the "outstanding amount" used as a reference for <b>voting provisions</b> are those :</p> <ul style="list-style-type: none"> <li>- owned or controlled directly or indirectly by the issuer or its public instrumentalities</li> </ul>	<ul style="list-style-type: none"> <li>- aims at limiting the ability of the issuer to control the vote</li> </ul>