

## **RULES FOR THE DEBT SWAP FOR DEVELOPMENT PROGRAM BETWEEN THE REPUBLIC OF SENEGAL AND THE KINGDOM OF SPAIN**

The Governments of the Republic of Senegal (Senegal) and the Kingdom of Spain (Spain) have signed a debt swap for public investments program (Program), in Madrid, on January 18<sup>th</sup> 2008 and in Senegal on February 21<sup>st</sup> 2008. This program amounts to **US\$29.809.351,90** and **€46.170.500,36**.

The Debt Swap Mechanism implies that the service of the debt due by Senegal to Spain and affected by the program will be deposited in a Trust Fund (the Fund) created for that purpose. Particularly, the Senegalese Government will deposit in the Fund in local currency US\$15,022,167.81 and €24,613,627.43, according to the schedule specified in the annex 2 of the Program.

The debt relief agreed in the framework of the Debt Swap Program is aimed at achieving the goals included in the Program and is regulated by the agreed procedures.

This set of rules aims at describing the practical functioning of the Program.

### **ARTICLE I BI-NATIONAL COMMITTEE**

In application of the debt swap program article 4.1. Senegal and Spain (The Parties) commit to create a joint committee (the Bi-national Committee) that will be in charge of defining the policy that will lead the manage of the resources deposited in the Fund.

This Bi-national Committee will be integrated by four representatives, two from the Senegalese Government and two from the Spanish Government. In particular, from the Senegalese side, it will be integrated by the Director for Debt and Investment and the Director for Economic and Financial Cooperation from the Senegalese Ministry of Economy and Finance. On the Spanish side it will be integrated by the Deputy Director General for the International Financial System of the Spanish Ministry of Economy and Finance and the Economic and Commercial Counsellor of the Spanish Embassy in Senegal.

### **ARTICLE II THE BI-NATIONAL COMMITTEE FUNCTIONING AND ATTRIBUTIONS**

The management of the program is the done by the Bi-national Committee which is in charge of taking all the managing decisions related to the funds stemmed from the program.

The functioning of the Bi-national Committee will follow these guidelines:

II.1 The Bi-national Committee will take all its decisions by consensus

II.2 The Bi-national Committee will meet in the presence of all its members. Should one of its four members not be able to attend, another representative from the same institution will be designated as a delegate by the concerned member. This change must be communicated to the other Party by mail, indicating the name and charge of the new representative.



II.3. The Bi-national Committee meetings will be held in Senegal, in Spain or in any other third country considered appropriate by the Bi-national Committee. The host country will act as chair and secretariat of the Bi-national Committee.

II.4 The Bi-national Committee will meet, at least, twice a year and whenever it is necessary for the correct development of its functions.

II.5 Every meeting of the Bi-national Committee will be registered in a minute drafted by the secretariat, which will compile all the decisions taken during the meeting. These minutes will be signed by each Committee member attending the meeting.

II.6 Any decision needing an immediate adoption, could be validated by the circulation of an explanatory document (in the form of Minutes) to be signed by each member of the Bi-national Committee. This decision will have the same legal validity as any other measure adopted during a formal meeting of the Bi-national Committee.

II.7 The Bi-national Committee will be also in charge of the following attributions:

- The follow up of the disbursements to the Fund and the payments made by the Fund.
- The definition of the priorities and the appropriate policy for the use of the Fund resources and the adoption of whatever agreements need to be reached in order to achieve an efficient performance of the program. I will also decide on the financial management of the Fund.
- The study of the reports and proposals sent by the Technical Committee.
- The approval, rejection or modification of the proposals of projects to be financed with the Fund resources.
- The approval of the assessment reports and the independent audits to be held.
- The approval of the bidding information documents prepared for the public tenders.
- The approval of the resolution of public tenders for the execution of the projects.
- The general monitoring of the programme and the adoption of whatever relevant decision to be taken.
- The appointment of the Technical Committee members
- Any other function to be addressed to the Bi-national Committee by its rules.

### **ARTICLE III THE TECHNICAL COMMITTEE**

III.1. According to article 5.1. of the program, the Bi-national Committee will appoint a Technical Assistance Unit or Technical Committee. Its main task will be giving technical support to the Bi-national Committee in its decision taking process.

Particularly, the Technical Committee will be in charge of:

- Analysing, from an economic and social point of view, the projects to be financed by the program resources, in order to give its advise to the Bi-national Committee;
- Raising to the Bi-national Committee the projects previously considered to be financed, together with a summary of each project where the main characteristics of the project are pointed out;
- Assisting the Bi-national Committee in the follow up and the monitoring of the program, particularly with respect to the carrying out of the projects;



- Presenting to the Bi-national Committee an annual report on its yearly activities, whatever reports are needed to inform the Bi-national Committee about the situation of the projects and a report on the social and economic impact of the debt swap program once it is finished.

III.2. The Technical Committee will be formed by the following members. Among them, there will be, on the Senegalese side the Director for Debt and Investment, the Director for Economic and Financial Cooperation and, according to the agenda the corresponding representatives of the technical ministries. On the Spanish side, the Economic and Commercial Counsellor of the Spanish Embassy in Senegal, the representative of the Spanish Agency for Cooperation and a Non Governmental Organization (NGO). The Senegalese side may decide to invite a local NGO.

III.3. The selection of the NGO members participating in the Technical Committee will be carried out by the Bi-national Committee, on the basis of the following principles: publicity, transparency and objectivity. The NGO participating in the Technical Committee will not be able to present projects to be financed by the Fund.

III.4. The Technical Committee will meet at whenever it is necessary for the correct follow up of the Program. Furthermore, the Technical Committee will meet before each Bi-national Committee meeting. The Technical Committee will be in charge of distributing all the relevant documents for the Bi-national Committee meetings, with at least 15 days in advance, so as all the members of the Bi-national Committee members can have time enough to study them.

The meetings of the Technical Committee will be chaired alternatively by Spain and Senegal. The Technical Committee Chair will be appointed by the Bi-national Committee. The secretariat of the Technical Committee will be held by Senegal. The meetings will be summarized in a minute.

#### **ARTICLE IV THE FUNCTIONING OF THE SENEGAL-SPAIN FUND**

IV.1. According to the Program articles 1.1 and 2.1., a Senegal-Spain Debt for Development Swap Fund (the Fund) will be created to contribute to Senegal debt relief by transforming Senegal's debt obligations towards Spain in investment projects with impact in its social and economic development.

IV.2. Senegal will keep servicing the debt obligations specified in Annex 1 of the Program in the local currency (the CFA FRANC –XOF-) until the cumulative amount disbursed reaches **US\$15,022,167.81** and **€24,613,627.43** following the schedule specified in annex 2 of the Program. This amount corresponds to maturities related to the following ODA loans: 01009005.0; 01009006.0; 01009007.0; 01009008.0; 01009009.0; 01009010.0 and 01009011.0, contracted on June 6<sup>th</sup> 2000, January 22<sup>nd</sup> 2001, February 16<sup>th</sup> 2001, July 31<sup>st</sup> 2002 and November 26<sup>th</sup> 2006.

The exchange rate used will be the one registered by the Senegalese Central Bank. The reference exchange rate will be that registered two working days before the date of disbursement.

IV.3. The resources that form the Senegal-Spain Fund will be deposited in a current account decided by the Bi-national Committee. This current account has to be remunerated at least to cover the operational expenditures. The payments made from

this account will need the signature of two members of the Bi-national Committee (one Senegalese and the other Spanish).

IV.4. The debt service of those credits that have not been totally amortized and those credits that have not been affected by the Program will continue to be honoured by Senegal

IV.5. The Senegalese Ministry of Economy and Finance will punctually inform the members of the Bi-national Committee and the Spanish Official Credit Institute (ICO) about the disbursements already made to the Fund. Particularly, each time a disbursement to the Fund is made, a certificate will be issued (following the template included in ANNEX I) properly signed by the person responsible in the Senegalese Ministry of Economy and Finance. The Bi-national Committee members and the ICO will also be punctually informed about each payment charged to the Fund.

IV.6. All payments charged to the Fund must have been authorized by the Bi-national Committee.

The charges to the Fund will only be made when the concept of the payment is formally documented. Once it is confirmed that the formal procedure is fulfilled, the Economic and Commercial Counsellor of the Spanish Embassy in Senegal will give the authorization to make the correspondent payment.

## **ARTICLE V PROJECTS FINANCED WITH THE DEBT SWAP PROGRAM**

V.1. According to articles 1.1 and 3.1 of the program, the resources of the Fund will be used to finance investment projects with impact in the economic and human development of Senegal.

V.2. These projects will be investment projects, and only exceptionally will they include current spending.

V.3. The projects to be financed with the Fund resources will have to be socially, economically and technically feasible

## **ARTICLE VI EXECUTOR ENTITIES**

VI.1 The projects will have to be executed by Senegalese and/or Spanish firms or non government organizations for development (thereafter the executor entities).

VI.2. The executor entities must comply with the following criteria:

- they must be technically qualified and financially solvent
- they must be up to date with fiscal payments
- they must comply with several criteria against bribery, in particular:
  - That the executor entity is not included in the debarment lists published by the International Financial Institutions;
  - That the executor entity has not being penalized for bribery by the Court in the last five years;

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- That the executor entity must be ready to contribute—under requirement—in a trial against bribery the name of the people acting on its behalf and the amount paid as a bribe.

## **ARTICLE VII PROCESS OF PROJECT SELECTION, EXECUTION, MONITORING AND EVALUATION**

### **1. First stage: presentation and selection of the projects**

The projects to be financed by the program must be sent to the Technical Committee for its analysis. Both Senegal and Spain can submit projects to the Technical Committee.

The Technical Committee will analyse the projects according to the principles set in the program, in these rules and according to the priorities and guidelines set by the Bi-national Committee.

The Technical Committee will raise to the Bi-national Committee the evaluation that it has made of the project proposed. The Bi-national Committee will then analyse the proposals and, on the basis of this study, it will decide which projects are going to be financed.

In order to support the Bi-national Committee with the study, the Technical Committee will provide the Bi-national Committee with all the documents required to assess each proposal, including a summary of each project proposal (this summary must include the main characteristics of the project).

After the Bi-national Committee has approved a project, it is necessary to establish the schedule of disbursements (in local currency) for its financing. Each schedule will take into account the specific characteristics of the particular project.

The time table above mentioned must correspond with the schedule of payments made to the Fund by the Senegalese Government according to Annex 2 of the program.

### **2. Second stage: public tender**

Once one project has been approved, the firm or entity which will execute it will be selected through a public tendering process.

This selection will be ruled by the principles of publicity, transparency and concurrence and will be conducted by the competent Administrative Unit in Senegal.

The Bi-national Committee must give its approval to the bidding information documents.

The awarding of the public tender will be submitted to the Bi-national Committee for its approval. In order to do so, the Bi-national Committee will receive in advance all the documents related to the public tender presented by the bidders. All the information sent to the Bi-national Committee will be submitted at least 15 days in advance of its decision.

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### 3. Third stage: execution and monitoring the projects.

During this phase, the Technical Committee will monitor the correct execution of the projects and will keep the Bi-national Committee informed.

The payments to the awarded companies will be done according to the order established by the representative of the Ministry of Economy and Finance of Senegal together with the Economic and Commercial Counsellor of the Spanish Embassy. These payments must be done once the origin of the payment is justified.

For the supervision of these projects, the Bi-national Committee will receive reports half-yearly from the Technical Committee. In the case that there exists external support, these reports could be based on the work carried out by that external support.

The projects to be financed with the Fund have to include a public signal showing, firstly that they were carried out with funds stemmed from the Spanish debt swap mechanism, and in particular:

- For those projects of works and repairs, the firm that will carry them out will install a notice-board in place, in the appropriate size according to the importance of the works and during all the duration of the project. The notice-board message will go as follows: "PROJECT FINANCED WITH RESOURCES STEMMED FROM THE SENEGAL-SPAIN DEBT SWAP PROGRAM". The notice-board will be removed two months after the end of the project and it will be replaced with a commemoration plaque, generally placed at the principal public access area.
- For those training projects, the firm that will carry them out will put the promotional sentence above-mentioned in the documents and will place the Spanish flag in the training rooms.
- For any other project, the promotion will be similar and will specify the objective of the project.

### 4. Fourth stage: evaluation of the projects

Once each project is carried out, the Technical Committee will present to the Bi-national Committee reports over its management and its results.

Each report on the assessment of a particular project must include at least the following terms:

- A summary of the characteristics of the project
- A summary of the payments charged to the Fund to finance the project
- An impact analysis -from the economic and social point of view- to evaluate the project effects on the development of the area affected by it.

The Bi-national Committee will be allowed to hire external assistance to help the Technical Committee in preparing these reports.

### 5. Evaluation of the Debt Swap Mechanism.

Each year (at least from the moment there are projects being financed, on) the Debt Swap Mechanism will be financially audited.

Together with the latter, the Debt Swap Mechanism will keep a remaining amount that will be devoted to hire an external audit and evaluation on the whole Debt Swap Mechanism just after the end of the Program.

The report made by this external agent will be presented to the Bi-national Committee for its analysis, and it must include at least:

- A global audit of the use of the Fund;
- An assessment of each project, from an economic and social point of view;
- An impact analysis of the effects of the whole Program on the development of the beneficiary country;
- A set of recommendations –if necessary- to improve the management of debt swap programs.

**ARTICLE VIII  
COMING INTO FORCE**

This set of rules will only come into force once the main Program is completely entered into force.

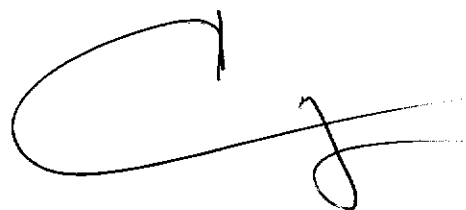
According to article 10.2. of the Program, the present Rules and the Program will stand until the Fund will have been fully provided and its resources will have been completely used as authorized by the Bi-national Committee.

**ARTICLE IX  
CANCELLATION**

The current Rules and the Program could be considered as cancelled in the event of the following situations in the event that Senegal or Spain breaks either totally or partially the commitments taken in the Debt Swap Program, unless both Parties specifically concur to modify the obligations and /or the destination of the resources agreed.

Signed In Senegal, on 8 July 2008, in two original documents

**In Representation of THE REPUBLIC OF  
SENEGAL**



*Mamadou Faye*  
Directeur de la Dette et de l'Investissement

**In Representation of THE KINGDOM OF  
SPAIN**



*Mario Delgado Alfaro*  
Deputy Director International Finance



**ANNEX 1**

**Certificate of the disbursements made to the Senegal-Spain Fund**

Mister \_\_\_\_\_ (name) \_\_\_\_\_ (Charge)  
\_\_\_\_\_ of the (Official Institution) \_\_\_\_\_ of the  
Republic of Senegal, according to the Debt Swap Agreement signed in Madrid, on  
January 18<sup>th</sup> 2008 and in Senegal on February 21<sup>st</sup> 2008 between Spain and Senegal,  
certifies that up to (date)XXXX the following disbursements to the Senegal-Spain Fund  
account have being made:

| ODA loan affected | Disbursement date | Amount in US\$ |
|-------------------|-------------------|----------------|
|                   |                   |                |
|                   |                   |                |
|                   |                   |                |
|                   |                   |                |
|                   |                   |                |
| Total in US\$     |                   |                |

*In Senegal, on XXXX 200X*

*Signature*

