

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

The Governments of the United Republic of Tanzania (Tanzania) and the Kingdom of Spain (Spain) have signed a debt swap for public investments program (the Program), in Madrid, on January 12<sup>th</sup> 2011 and in Dar es Salaam on January 28<sup>th</sup> 2011. This Program amounts to US\$11.041.521,67.

The Debt Swap Mechanism implies that 40% of the service of the debt due by Tanzania to Spain and included in the Program will be deposited in a Trust Fund (the Fund) created for that purpose. Particularly, the Tanzanian Government will deposit in the Fund, in local currency (the Tanzanian shilling) the exchange value of US\$6.387.292,20, 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 to achieve the goals included in the Program. This set of rules aims to describe the practical functioning of the Program.

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

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

This Bi-national Committee will be integrated by four representatives, two from the Tanzanian Government and two from the Spanish Government. In particular, from the Tanzanian side, it will be integrated by the Assistant Commissioner-Policy Analysis Department, the Senior Economist-Policy Analysis Department and the Legal Advisor for the Ministry of 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 for Tanzania.

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

The Program is managed by the Bi-national Committee which is in charge of taking all the decisions related to the funds stemming 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. In case that any of the members shall not be able to attend, the Party concerned may designate another representative and communicate in writing to the other Party the name and position of the aforementioned representative.

II.3. The Bi-national Committee meetings will be held alternatively in Tanzania and in Spain. The host country will act as chair and secretariat of the Bi-national Committee.

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

II.5 All meetings of the Bi-national Committee will be registered in Agreed Minutes by the secretariat, which will compile all the decisions taken during the meeting. These Minutes will be signed by the Chair and the Co-chair of the Committee meeting.

II.6 In case that one decision must be taken before the celebration of a Committee, this decision should be validated by the circulation of an explanatory document (in the form of Minutes) to be signed by the Chair and the Co-chair of the Committee meeting. 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 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. It will also decide on the financial management of the Fund, following up all the disbursement to the Fund and approving the payments made by the Fund.
- The constitution of the Technical Committee according to these rules.
- 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.
- Any other function assigned to the Bi-national Committee in these 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 opinion 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 specified;
- Assisting the Bi-national Committee in the follow up and the monitoring of the Program, particularly with respect to the accomplishment of the projects;
- Presenting to the Bi-national Committee: an annual report on its yearly activities and the financial situation of the Fund, a final report on the social and economic impact of the debt swap program once it is finished and whatever reports are needed to inform the Bi-national Committee about the situation of the projects.

III.2. The Technical Committee will be formed as follows: on the Tanzanian side, the representatives in this committee will be the Commissioner for Budget and the Assistant Commissioner for External Finance; on the Spanish side, the representatives in this committee will be the Economic and Commercial Counsellor of the Spanish Embassy for Tanzania, the representative of a Spanish Non Governmental Organization established in Tanzania and a representative of the Spanish Embassy.

According to the agenda, the appropriate representatives of other ministries will be invited to give their technical support.

III.3. The Technical Committee will meet 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 can have time enough to study them.

The meetings of the Technical Committee will be chaired alternatively by Spain and Tanzania. The first meeting of this Committee will be chaired by Tanzania. On the Tanzanian side, the Chair of the Technical Committee will be the Commissioner for Budget. On the Spanish side, the Chair of the Technical Committee will be the Economic and Commercial Counsellor of the Spanish Embassy for Tanzania. The secretariat of the Technical Committee will be held by Tanzania. The meetings will be summarized in Minutes.

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

IV.1. According to the Program article 1.3, a Tanzania-Spain Debt for Development Swap Fund (the Fund) will be created to contribute to Tanzania debt relief by transforming Tanzania's debt obligations towards Spain in investment projects with impact in its economic and human development.

IV.2. Tanzania will deposit in the Fund, in local currency (the Tanzanian shilling) the exchange value of US\$6.387.292,20, according to the schedule specified in the Annex 2 of the Program.

The exchange rate used will be the one registered by the Bank of Tanzania on the day of the transaction.

IV.3. The resources that form the Tanzania-Spain Fund will be deposited in a special account at the Bank of Tanzania.

IV.4. All payments charged to the Fund must have been authorized by the Bi-national Committee. The payments to the executing entities will be done after having certified the correctness to this payment, according to the contract's terms.

The payments made from this account will need the signature of two members of the Bi-national Committee (one Tanzanian and the other Spanish). On the Tanzanian side, the member will be the Accountant General. On the Spanish side, the member will be the Economic and Commercial Counsellor of the Spanish Embassy for Tanzania, who will give the pertinent authorization to make any disbursement from the Fund (after confirmation with the Spanish Ministry of Economy and Finance). In his absence, the Ministry of Economy and Finance of Spain will issue the authorization.

IV.5. The Tanzanian Ministry of Finance will timely inform the members of the Bilingual 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 1) properly signed by the Accountant General of the Tanzanian Government. The Bilingual Committee members and the ICO will also be timely informed about each payment charged to the Fund.

IV.6. Once the projects financed by the Fund are properly carried out, the Economic and Commercial Counsellor of the Spanish Embassy for Tanzania will inform of that fact to the ICO and the Deputy Director General for the International Financial System of Spain. Furthermore, this Counsellor will be certified that the final audit of the program complies with the established procedure.

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

V.1. According to article 1.1 of the Program, the resources of the Fund will be used to finance investment projects with impact in the economic and human development of Tanzania. The ownership of the projects will fall on a public Tanzanian entity.

V.2. The projects to be financed with the Fund resources will have to be socially, economically and technically feasible.

#### **ARTICLE VI EXECUTING ENTITIES**

VI.1. The projects will have to be executed by Tanzanian and/or Spanish firms or non government organizations for development (therein after called the executing entities).

VI.2. The executing 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 be committed with the fight against corruption, in particular:
  - the executing entity can not be included in the debarred lists published by the International Financial Institutions;
  - the executing entity has not been penalized for corruption by the Court in the last five years;
  - the executing entity has the commitment to give all the information that a trial could ask for, under requirement, in an eventual judgement against corruption.

#### **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 through the relevant sectors to the Technical Committee for its analysis.

The Technical Committee will analyse the projects according to the principles set in the Program or 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 it will decide which projects are going to be financed.

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

After the Bi-national Committee has approved a project, the Technical Committee will establish the schedule of disbursements (in local currency) for its financing. This schedule will establish a set of payments that will refer to phases of the project which scope (that must be demonstrated through certification) will result in payment. Each schedule will take into account the specific characteristics of the particular project.

## 2. Second stage: public tender

Once a project is approved, the executing entity 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 following the Tanzanian Government procurement rules.

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

The competent Administrative Unit shall be responsible for making an assessment of the tenders that have been submitted and an award proposal to be raised to the Bi-national Committee in order to give, in its case, its approval. In order to make a correct approval, the Bi-national Committee will receive in advance all the documents presented by the bidders and related to the public tender. All the information sent to the Bi-national Committee will be submitted at least fifteen (15) days in advance of its decision.

## 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 executing entities will be done after having certified the correctness to this payment, according to the contract's terms.

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 sign board showing that they were carried out with funds stemming from the Spanish debt swap mechanism. This sign board will follow these criteria:

- For investment projects, the firm that carries out them 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 STEMMING FROM THE TANZANIA-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 commemorative plaque, generally placed at the principal public access area.
- For training projects, the firm that carries out them will put the promotional sentence above-mentioned in the documents and will place the Spanish flag in the training rooms.

#### 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 human 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 the projects to be financed by the Fund begin) the Debt Swap Mechanism will be financially audited by the Controller and Auditor General for the Government of Tanzania.

The Debt Swap Mechanism will keep a remaining amount that will be devoted to hire an external and complete evaluation of the whole Debt Swap Mechanism just after the end of the Program or at any other time, in the case the Bi-national Committee deems it necessary.

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 general audit of the use of the Fund;
- An assessment the projects, from an economic and social point of view;
- An analysis of the effects of the whole Program on the development of the United Republic of Tanzania.



**ARTICLE VIII: TERMINATION OF THE FUND**

The present program will stand until the Fund will have been fully provided and its resources will have been completely used.

**ARTICLE IX  
COMING INTO FORCE, APPROVAL AND MODIFICATION**

IX.1 This set of rules will come into force on the date of its signature.

IX.2 In all cases not covered by these Rules, it shall primarily apply the provisions of the Program and the Tanzanian law as applicable.

IX.3 The Bi-national Committee may propose the amendment of these rules, either in whole or in part, to be approved by both the Ministry of Finance of Tanzania and the Ministry of Economy and Finance of Spain.

Signed in Dar es Salaam, on February 1<sup>st</sup> 2011, in two original documents

**On behalf of the Ministry of  
Finance of the United  
Republic of Tanzania**

**Mr. Ramadhani M. Khijjah**



**On behalf of the Ministry of Economy  
and Finance of Spain**

**Ms. Ana de la Cueva Fernández**



