



EMIA

MODEL CLAUSES FOR TRANSPARENCY COVENANTS

July 2025

EMERGING MARKETS INVESTORS ALLIANCE

EMIA's Model Clauses for Transparency Covenants in EM Sovereign Bonds

Introduction:

As more investors recognize the role that governance and transparency reforms can play in protecting their investments, the Emerging Markets Investors Alliance (EMIA) organized a working group of Emerging Markets fund managers to develop and operationalize a set of enhanced transparency covenants for EM sovereign bonds. With the help of Arnold & Porter, EMIA drafted a set of Model Clauses for Transparency Covenants (attached) that can readily be included in debt issued as part of EM sovereign debt restructurings. The clauses are meant to be a starting point for conversations among members of creditor committees interested in incentivizing greater transparency in sovereign lending. It is expected that creditor committees would tailor EMIA's model clauses to fit particular country contexts and could pick and choose among the clauses and related remedies to best incentivize good governance and improved outcomes for restructured sovereign debt.

Objective:

EMIA believes that sovereign debt restructurings provide a concrete opportunity for creditors to incentivize reforms that might otherwise be hard to implement. The EM Investors in our working group identified the establishment of a regular, consistent communication channel with borrowers, and the sharing of a regular, consistent information base regarding the borrower's existing debt obligations, as foundational requirements for responsible lending to EM sovereigns. As such, EMIA's working group developed a set of covenants that require better investor relations practices and debt transparency disclosures from sovereign issuers. The primary purpose of this initiative is to achieve meaningful transparency, thereby strengthening integrity, fairness, and trust in the sovereign debt restructuring process.

Scope:

The first phase of the initiative has focused on three broad areas of governance: investor relations, debt transparency, and confidentiality in debt contracts. EMIA believes that improvement in these areas should be realistic for issuers in a relatively short time horizon, as the enhancements set forth in the clauses require disclosure only of information already in issuers' possession.

Participants:

Together with a representative group of EM bond investors who regularly participate in EM sovereign debt restructurings, senior members of EMIA's sovereign debt restructuring team considered a wide range of potential good governance and transparency ideas for inclusion. The EM bond investors included EM dedicated fund managers from large institutional asset management firms in both the U.S. and the E.U., fund managers with an ESG orientation, and portfolio managers from Hedge Funds.

Applications:

The model clauses may be useful in a variety of contexts, including during restructurings, in newly issued debt, in certain debt exchange transactions and as the building blocks for KPIs in labeled debt.

Future Work:

EMIA and its working group are assessing expansion of the model clause work to include additional governance/transparency clauses, and possibly to develop a set of model environmental clauses as well.

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Definitions.

“**Best Practices for Investor Relations**” shall mean the IIF’s publication of its *Best Practices for Investor Relations*, as such may be amended or updated from time to time and as of the date hereof available at: <https://www.iif.com/Publications/ID/4973/IIF-Best-Practices-for-Investor-Relations-2022-Update>.

“**Closing Date**” shall mean the date in which all conditions precedent to the closing of the Transaction are met and the Debt Securities are initially issued.

“**Confidentiality Provision**” shall mean any provision, covenant, agreement or arrangement by the Issuer with a lender of any of its Statistical Indebtedness, which requires the Issuer not to disclose, communicate or otherwise disseminate information regarding any of the Issuer’s contracted for Statistical Indebtedness, including High-Level Debt Information.

“**Controlled**” shall mean the power, directly or indirectly, through ownership of voting securities or other ownership interests, by contract or otherwise, to direct the management of or elect or appoint a majority of the board of directors or other persons performing similar functions in lieu of, or in addition to, the board of directors of that entity.

“**Debt Distress**”¹, with respect to the Issuer, shall mean (a) the Issuer shall be receiving financial support from the IMF pursuant to an upper tranche arrangement or facility (a “**Financial Support Program**”) or shall be subject to a Financial Support Program, [(b) the IMF shall have publicly stated the Issuer risk of sovereign stress is classified as “high” or “unsustainable”] pursuant to the MAC SRDSF;² [(b) the IMF shall have publicly stated that the Issuer is under “debt distress” or at “high risk of debt distress” pursuant to the DSF;³ and [(c) [•]⁴]; *provided that* [if at any time the IMF discontinues [MAC SRDSF][DSF], the definition of Debt Distress shall no longer include clause [b]].

“**Debt Security**” or “**Debt Securities**” shall mean the [•]% [Bonds]/[Notes]/[other name of instrument] due [•].

“**DRS**” shall have the meaning set forth in Section [8].

“**DSF**” shall mean the IMF’s *Debt Sustainability Framework* for low-income countries as then in effect, or its successors thereto.

“**EITI**” shall have the meaning set forth in Section [6].

“**Financial Support Program**” shall have meaning set forth in the definition of Debt Distress.

¹ Note to Reader: The base model clause as drafted relies on triggers linked to publicly verifiable metrics or programs so as to make it possible to more easily verify compliance and to take away the need for collective action by holders.

² Note to Reader: if a market access country and the IMF’s MAC SRDSF is applicable.

³ Note to Reader: If a low-income country and the IMF’s DSF is applicable.

⁴ Note to Reader: Parties can agree on other metrics as triggers or in addition to the ones above. One alternative could be to include specific statistical metrics, such as debt-to-GDP ratio, fiscal deficit, foreign exchange reserves, etc. If those are pursued, these could also be included in a compliance certificate by the sovereign in Section 9(e) so that the SPO provider may verify compliance based on the information provided by the sovereign. The clause may also be adjusted by the parties to fit Issuers that may be at a transition period between a country where MAC SRDSF/DSF becomes relevant.

“Full Debt Information” shall mean information about the Statistical Indebtedness [in conformity with the Issuer’s standards for publication and dissemination of public statistics for debt] with such information being available in English and translated into United States dollars, where applicable. Such information is to include, but is not limited to, (i) the name of the lender or counterparty to any derivative contract; (ii) the currency in which the Statistical Indebtedness is undertaken; (iii) the amount of the commitment of the loan or nominal value or principal aggregate amount of an issuance of any debt security or the amount of any guarantee or notional amount of a derivative contract; (iv) the date of commitment or issue of any debt security, guarantee, or the date of entering into a derivative contract; (v) the type of interest (e.g., variable, fixed, linked to any variable, etc.) and relevant rate or formula; (vi) the interest payment dates, (vii) the principal repayment terms (e.g., amortized, payment schedule, lump sum, maturity linked to any variable, etc.); (viii) description of (a) any property that serves as collateral security, (b) any priority arrangement, or (c) any other feature having a similar effect, in each case, including by contract, by law, or otherwise, that provides any creditor preferred access to any assets of the Issuer or State-Owned Enterprise, or any asserted payment or other priority; and (ix) the relevant terms of any derivative contract (e.g., relevant underlying asset, cash flows, margin, formula, strike price, settlement date, alternative settlement dates, settlement type, etc.).⁵

“High-Level Debt Information” shall mean items (iii) through (ix) of the Full Debt Information and shall be available in English with currency translation to United States dollars, where applicable.

“IIF” shall mean the Institute of International Finance.

“IIF Report” shall mean the “Principles for Stable Capital Flows and Fair Debt Restructuring – [year] Investor Relations and Debt Transparency Report”, published annually by the IIF, or, if applicable, any successor report thereto.

“IMF” shall mean the International Monetary Fund, an international organization established by Articles of Agreement among its member countries.

“IMF Reports” shall have the meaning set forth in [Section 4(a)].

“IR List” shall mean a list of contact information of investors, analysts, rating agencies, and other market participants who have invested in, tracked, or otherwise had key relationships with the Issuer, including those that register through the investor relations website.

“IR Official” shall have the meaning set forth in Section [1].

“IR Website Requirements” shall mean that at a minimum, the investor relations website will have (i) a search function, (ii) registration for investors to receive updates, including the quarterly calls, (iii) a frequently asked questions section of the website; (iv) contact information for the IR Official; (v) archives of the quarterly calls and/or all other investor teleconferences or videoconferences.

“Issuer” shall mean [•].

“Investor Relations and Debt Transparency Report” shall mean the Investor Relations and Debt Transparency report issued by the IIF, or any successor report published by the IIF.

“MAC SRDSF” shall mean the IMF’s *Debt Sustainability Framework for Market Access Countries* as then in effect, or its successors thereto.

⁵ Note to Reader: Parties to discuss what should be included here. The list is a smaller subset of the reporting commitments from DRS.

“Public Private Partnerships” shall mean any obligations for money borrowed or raised by the Issuer and guarantees given by the Issuer with respect to investor-owned entities that are operated pursuant to public private partnership arrangements.

“Required Holders” shall mean the holder or holders (acting individually or together) representing not less than [•]% of the outstanding principal amount of the Debt Securities.

“State-Owned Enterprises” shall mean any corporation, trust or legal entity that is Controlled by the Issuer.

“Statistical Indebtedness” shall mean any and all [long-term (more than a year),] [secured and unsecured,] [external] obligations of the Issuer in respect of money borrowed or raised and guarantees given by the Issuer in respect of money borrowed or raised by others. [At any time the Issuer is under Debt Distress,] Statistical Indebtedness shall also expressly include (i) any and all obligations in respect of money borrowed or raised by others and guarantees given by State-Owned Enterprises (including for any project finance transactions); (ii) any secured obligations of the Issuer or any State-Owned Enterprises in respect of money borrowed or raised and guarantees given by the Issuer or State-Owned Enterprises in respect of money borrowed or raised by others; (iii) any amounts owed or guaranteed by the Issuer or State-Owned Enterprises in respect of any Public Private Partnerships; (iv) any amounts owed or conditionally owed or guaranteed by the Issuer or State-Owned Enterprises in respect of a structured financial instrument based on the assets or cashflow streams of the Issuer or State-Owned Enterprise, including, without limitation, obligations under collateralized debt obligations or similar obligations; (v) any amounts owed or conditionally owed by the Issuer or State-Owned Enterprises in respect of any derivative contract, where the Issuer or State-Owned Enterprise is a party to such derivative contract or guarantees of any owed amounts thereto in such derivative contract, including, without limitation, obligations in respect of foreign exchange swaps, total return swaps, total rate of return swaps, cash settled equity swaps, or similar obligations; and (vi) any amounts in respect of money borrowed, raised by others or guarantees given that is at such time in arrears by the Issuer or State-Owned Enterprises. For avoidance of doubt and for purpose of this definition of “Statistical Indebtedness”, the term Issuer shall include any ministry, department, secretary, agency or similar policy making entity of the Issuer.⁶

“SDDS” shall mean the Special Data Dissemination Standard of the IMF.

“SDDS Plus” shall mean the Special Data Dissemination Standard Plus of the IMF.

“SPO” shall have the meaning set forth in Section [9].

“SPO Provider” shall have the meaning set forth in Section [9].

“Transaction” shall mean [•].⁷

“Transparency Clause Breach” shall have the meaning set forth in Section [10].

⁶ Note to Reader: This is a broad definition, parties to discuss whether it should be limited in any way. The second sentence expressly adds State-Owned Enterprise debt and derivative obligations as well as clarifying some debt that should already be included in the broader definition. The model clauses define a term other than just indebtedness, since any indenture document will likely have a different definition of indebtedness in relation to the debt being restructured that should be more restrictive. It is expected that investors and issuers will discuss precisely which categories of debt would be subject to disclosure, during Debt Distress and beforehand and this definition is merely a starting point for discussion.

⁷ Note to Reader: To reflect the restructuring transaction being undertaken.

“World Bank” shall mean the International Bank for Reconstruction and Development, an international organization established by Articles of Agreement among its member countries.

***Drafting Note:** Clauses 1-8 are meant to be a menu that investors and issuers can choose from to suit an issuer's specific context and the goals of a restructuring process. The clauses are drafted here as if all are present in the document, but can easily be adapted to select a single clause or a variation of several clauses, if the parties so agree.*

*1. Investor Relations official, list, and website.*⁸

(a) Within [24 months] of the Closing Date, and thereafter for the period of time that any of the Debt Securities remain outstanding, the Issuer shall have designated an official or officials ("**IR Official**") to be in charge of regular communication with investors in the Issuer's debt securities and who shall perform functions consistent with the functions of an investor relations officer as pursuant to the recommendations contained in element I of the Best Practices for Investor Relations, regarding investor relations office staff. For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section [1(a)], if it scores at least [•] on the combined "Presence of Formal IRP" and "IR Staff Identifiable and reachable through website(s)" criteria as reported in the IIF Report in respect of each subsequent year after the Issuer has appointed an IR Official, or if any such criteria is not published individually, it scores at least [•] on the overall "Investor Relations Practices Criteria."

(b) Within [24 months] of the Closing Date, and thereafter for the period of time that any of the Debt Securities remain outstanding, the IR Official shall maintain and regularly update an IR List. For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section 1(b), if it scores at least [•] on the combined "Active Investor Contact List" criteria as reported in the IIF Report in respect of each subsequent year after the Issuer has implemented an IR List, or if such criteria is not published individually, it scores at least [•] on the overall "Investor Relations Practices Criteria."

(c) Within [12 months] of the Closing Date, and thereafter for the period of time that any of the Debt Securities remain outstanding, the Issuer shall maintain an investor relations website, available globally and without paywall or registration requirement, in [local language] and English, setting forth and linking to information on the Statistical Indebtedness of the Issuer, any filings with any exchange under which the Debt Securities are listed or any filings with the [U.S. Securities and Exchange Commission][Other applicable regulator or system that maintains public filings made by an issuer such as the Electronic Data Gathering System, Analysis and Retrieval System], and at all times meeting the IR Website Requirements. For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section [1(c)], if it scores at least [•] on the "Dedicated IR Website Available in Both the Local Language and English" criteria, at least [•] on the "Central Bank, Ministry of Finance and/or Economy or Treasury, and Statistics Offices Websites available in English" criteria, at least [•] on the "Reciprocal Links to the IRO, Debt Management Office, Central Bank, and Ministry of Finance, and/or Economy Website", and at least [•] on the "Investors Able to Register for Website Subscriptions" criteria, each as reported in the IIF Report in respect of each subsequent year after the Issuer has implemented an investor relations website, or if any such a criteria is not published individually, it scores at least [•] on the overall "Investor Relations Practices Criteria."

2. Quarterly Investor Calls. Within the first quarterly period after the Closing Date and within [60 days] of each quarter ending on [March 30, June 31, September 30 and December 30] of each year, the

⁸ Note to Reader: This document operates by cross-reference to the IIF's IR elements and rankings. Alternatively, the parties could consider drafting covenants that track some or all of the IIF elements, and exclude any reference to the IIF's elements and rankings.

Issuer shall hold an investor call to discuss material developments of the Issuer including with regard to the issuer's political developments, economy, budgetary process, financial system, balance of payments, public finance and public debt that occurred during the quarter. For so long as any Debt Security is outstanding, the Issuer shall hold such quarterly investor calls and shall ensure participation in such calls by (i) senior decision makers from the Issuer's ministry of finance, central bank, or debt management office and (ii) an IR Official. The Issuer shall provide a method by which participants may provide questions or feedback to such officials during the call and provide ample notice to investors of the meeting and procedures to listen to and participate in the quarterly investor calls. The Issuer shall also maintain on the investor relations website an archive of the presentations and the teleconference/videoconferences of the quarterly investor calls. For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section [2], if it scores at least [•] on "Investor Conference Calls," at least [•] on "Senior Policymaker Accessible to Investors" and at least [•] on "Archives of Investor Presentations and/or Conference Calls Related Materials Available to Investors" criteria, each as reported in the IIF Report in respect of each subsequent year after the Issuer has implemented quarterly investor calls, or if any such a criteria is not published individually, it scores at least [•] on the overall "Investor Relations Practices Criteria."

3. *Other IIF Best Practices for Investor Relations.* Within [24 months] of the Closing Date, the Issuer shall implement [*relevant practice*] consistent with [element [•]]⁹ of the IIF's *Best Practices for Investor Relations*. For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section [3], if it scores at least at least [•] in [*insert relevant investor relations practices criteria*] criteria as reported in the IIF Report in respect of each subsequent year after the Issuer has implemented [*insert adoption of the applicable element*], or if [any] such criteria is not published individually, it scores at least [•] on the overall "Investor Relations Practices Criteria."

4. *IMF Reports and underlying data.*

(a) Within [30 days] of the Closing Date, the Issuer shall provide any documentation, notification, indemnification or consent that the IMF requires in connection with the Issuer making available on its investor relations website (or on the IMF's website, with a connecting link on the investor relations website), the IMF's Article IV staff reports and staff reports in connection with an IMF financing or non-financing instruments, including the General Resources Account, the Poverty Reduction and the Growth Facility staff reports, as applicable, and in each case, that are dated later than the date that is [two years] before the Closing Date (collectively, such reports, "**IMF Reports**"), and

(b) The Issuer shall make available on its investor relations website (or on the IMF website, with a connecting link on the investor relations website), all IMF Reports dated on or after the Closing Date.

5. *IMF Data Dissemination Standards.*

(a) To the extent that the Issuer at the Closing Date is not already a subscriber to the IMF's SDDS to provide its economic and financial information publicly in connection with the SDDS, the Issuer shall within [24 months] of the Closing Date subscribe to the SDDS and provide its economic and financial information publicly in full compliance with such initiative.

(b) Within [24/36/48 months] of having subscribed to the IMF's SDDS to provide its economic and financial information publicly in connection with the SDDS, the Issuer shall subscribe to the SDDS Plus and provide its economic and financial information publicly in full compliance with such initiative.

⁹ Note to Reader: Parties to discuss which other IIF IR Elements to include here.

[(c) For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section [5] for so long as the Issuer who is not able to comply with the timeframes in this Section [5], if the Issuer makes a representation pursuant to the certificate provided under Section [9(e)] that it is in good faith currently engaging to cure any deficiency in its ability to compile or provide its economic and financial information publicly in compliance with the applicable IMF initiative; *provided that* such period to cure any deficiency does not exceed [XX] months [for any deficiency or [XX] months in the aggregate].]

6. Extractive Industries Transparency Initiative.

(a) To the extent that the Issuer at the Closing Date is not already an “EITI implementing country” as declared by the board of the Extractive Industries Transparency Initiative (“**EITI**”) or pursuant to such other procedures determined by EITI at the time, the Issuer shall within [XX months] of the Closing Date engage with EITI to (i) undertake the sign-up steps required prior to applying to become an EITI implementing country, (ii) establish a time frame with EITI to be compliant with the EITI standard, and (iii) apply to EITI to become an EITI implementing country.

(b) (i) Within [three] months of having made an application to be an EITI implementing country, the Issuer shall have been declared by the board of the EITI to be EITI implementing country and (ii) the Issuer shall remain compliant with the EITI standard continuously for so long as the Debt Securities are outstanding.

[(c) For purposes of an SPO and Section [9] hereof, the Issuer shall be deemed to be in compliance with this Section [6] for so long as[, up to maximum period of [one year],] the Issuer who has been suspended by the EITI board is then currently engaging with the EITI on the lifting of such suspension.]

7. Debt Disclosure and Disclosure of Debt Subject to Confidentiality Provisions.

(a) The Issuer agrees that within [60] calendar days of the first quarter end after the Closing Date and thereafter within [six months]¹⁰ of each [March 31, June 30, September 30 and December 31], the Issuer shall disclose all Statistical Indebtedness, including the Full Debt Information on its investor relations website.

(b) Notwithstanding the generality of the foregoing, if any Statistical Indebtedness is subject to a Confidentiality Provision, the Issuer shall use its best efforts to obtain the consent of such lender to disclose at least the High-Level Debt Information related to such Statistical Indebtedness.¹¹ If such lender does not provide consent for the disclosure of at least the High-Level Debt Information, the Issuer shall use its best efforts to require disclosure by means of [*Applicable Public Record Law*]¹² or any other public record laws or any other similar constitutional, statutory, or regulatory requirement that might result in the

¹⁰ Note to Reader: Parties to discuss what is an appropriate period given the context of the issuer. Many sovereign issuers can run up to 6 months behind on some statistical data series, some longer.

¹¹ Note to Reader: We defined High-Level Debt Information so as to remove the identity of the lender, but provide the enumerated debt information in Full Debt Information. Many of those enumerated items are part of the DRS standard. The High-Level Debt Information standard is used where there is a confidentiality provision.

¹² [Note to Reader: E.g., Freedom of Information Act (US), Ley de Acceso a la Información Pública and Article 8 of the Constitution (Chile), Article 5, XXXIII of the Brazilian Constitution and Article 22 to Federal law no. 8.158/1991, Colombian Constitution and law under consideration “Ley de Transparencias y del Derecho de Acceso a la Información Pública Nacional”, Act on the Protection of Personal Data and Public Access to Data of Public Interest of 1992 (Hungary), etc...]

disclosure of confidential information in an applicable jurisdiction, and to disclose the High-Level Debt Information in compliance therewith. Whether High-Level Debt Information is provided upon lender consent or otherwise, it shall be permissible for the Issuer to make such disclosure so that such High-Level Debt Information is aggregated with High-Level Debt Information in respect of other Statistical Indebtedness that is subject to a Confidentiality Provision, in a way that diminishes the reader's ability to identify any given obligation that is the subject of all such High-Level Debt Information.

(c) From the Closing Date, the Issuer agrees that it will enter into a Confidentiality Provision with respect to any future Statistical Indebtedness only if such provision expressly allows the public dissemination of High-Level Debt Information without prior consent of the lender party to such Confidentiality Provision, together with disclosure of other High-Level Debt Information subject to the last sentence of Section [7(b)] hereof.

8. *Submission to DRS.* The Issuer shall submit relevant information about its Statistical Indebtedness to the World Bank's Debtor Reporting System ("**DRS**") in compliance with any of the applicable requirements of the DRS as established by the World Bank and on the frequency recommended by the World Bank [*provided that such requirement is also subject to [Sections 7(b) and 7(c)] above with regard to Statistical Indebtedness subject to Confidentiality Provisions.*]]¹³

9. *Second Party Opinion and IIF Cooperation.*

(a) As a condition precedent to the Transaction and so long as the Debt Securities remain outstanding, the Issuer shall (i) engage [Name of SPO Firm] ("**SPO Provider**") to provide a second party opinion ("**SPO**") with regard to [the Issuer's compliance with [Sections 1-8 above] on a frequency of not less than once a year, as of the first anniversary of the Closing Date and as of each anniversary thereof, in each case within 60 days of such date, (ii) timely provide to the SPO Provider information it reasonably requests for the purpose of preparation of the SPO, including, but not limited to, the certificate specified in Section [9(e)], (iii) pay the fees and charges of the SPO Provider for the entire period the Debt Securities remain outstanding, with such fees and charges being paid in advance for [three] year periods; and (iv) make the SPO available on its investor relations website within 10 days of delivery by the SPO Provider, and allow the SPO Provider to provide the SPO to any requesting Holder.

(b) The Issuer hereby consents to the SPO Provider's publication of the SPO (including the certificate received under Section [9(e)] as an annex to such SPO), or the inability to prepare an SPO, by any means deemed appropriate by the SPO, including via (i) relevant news outlets such as Bloomberg, Dow Jones, Reuters, and the Financial Times, and in any event to include appearance on Bloomberg's [relevant page reference] and (ii) the method for dissemination of such information to holders pursuant to the rules of the [*applicable stock exchange where the securities are listed*] then in effect.

[(c) Should the SPO Provider at any time give notice of its intent to resign its role as SPO Provider, the Issuer shall within 45 days procure a new provider to take over the duties of the SPO Provider; *provided that* if the Required Holders notify the Issuer that the new SPO Provider selected by the Issuer is unacceptable to them, the Issuer shall be required to procure another SPO Provider in cooperation with the Required Holders. For purposes of this section [9(c)], each of the following providers shall be deemed to be an acceptable SPO Provider, and not subject to the proviso in the preceding sentence: [*list to be inserted*].]

¹³ Note to Reader: DRS requests information that would be in violation of confidentiality provisions. Note that DRS also includes information with regard to private sector debt, so not only the debt of the Issuer.

(d) After the Closing Date and so long as any Debt Securities remain outstanding, the Issuer agrees that it will provide any information requested by the IIF in connection with inclusion of the Issuer in IIF Reports and will provide any consent required for the Issuer's inclusion in such report. [Should the IIF cease publication of the IIF Report, [the last sentence of each of Sections [1(a), 1(b), 1(c), 2, and 3 hereof] will no longer apply.]

(e) On or about the date of each SPO, the Issuer shall deliver to the SPO Provider, a certificate by an official of the Issuer¹⁴ that certifies on behalf of the Issuer that the Issuer is in compliance with [Sections 1-9] above as of [the date of the SPO or the date that the SPO Provider requests in connection with the provision of the SPO][, and that such official either has actual knowledge of the events that are being certified or has confirmed compliance with other relevant and responsible officials of the Issuer].

[(f) Notwithstanding anything else in [this Indenture][the Debt Securities], the parties agree and acknowledge that the sole remedy available for purposes of a breach of Section[s] [1-9] is the provision of the SPO.]¹⁵

***Drafting Note:** Section 10 and Section 11 is not intended to be used in every case these clauses are implemented, but rather in the context of negotiating with a sovereign that has experienced prior defaults or renegotiations of its debt and the relevant investors believe that stronger measures must be considered. The default remedy of the clauses is to provide disclosure of noncompliance under Section 9 via an SPO, rather than traditional remedies for breach, so that market participants are on notice of a breach of the model clauses. As actual remedies are typically heavily negotiated between the parties, we have mostly provided below a basis for drafting instead of complete set of remedies.*

[10. Remedies.

(a) If the Required Holders deliver a notice to the Trustee (with a copy to the Issuer) that the Issuer has failed to observe or perform any of Sections [1-9] as provided in the SPO (a "**Transparency Clause Breach**"), then the following remedies shall apply to the Debt Securities]]:

(i) *Change in Financial Terms.* With respect to a Transparency Clause Breach under Sections [1, 2, 3, 5, 6 or 8] hereof, the following terms of the Debt Securities shall be modified on the following schedule:

(x) if in any SPO, the Issuer is reported to be not compliant with any such Sections for two consecutive published SPOs, then the Debt Securities shall be modified such that (i) [Insert modified terms of the Debt Securities], (ii) [Insert modified terms of the Debt Securities], (iii) [Additional modification as required], as reflected on the amended Debt Securities on Annex [B];

(y) if in any SPO, the Issuer is reported to be not compliant with any such Sections for three consecutive SPOs, then the Debt Securities shall be modified such that (i) [Insert modified terms of the Debt Securities], (ii) [Insert modified terms of the Debt Securities], (iii) [Additional modification as required], as reflected on the amended Debt Securities on Annex [C]; and

¹⁴ Note to Reader: This official could be the IR Official, or any other official the parties agree.

¹⁵ Note to Reader: Include only if not including Sections 10 and/or 11.

(z) if in any SPO, the Issuer is reported to be not compliant with any such Sections for four consecutive SPOs, then the Debt Securities shall be modified such that (i) *[Insert modified terms of the Debt Securities]*, (ii) *[Insert modified terms of the Debt Securities]*, (iii) *[Additional modification as required]*, as reflected on the amended Debt Securities on Annex [D].

(ii) *Clawback*. With respect to a Transparency Clause Breach under Sections [4], [7] or [9] hereof, then the following terms of Debt Securities shall revert to those of the *[Originally Issued Bond]* (“**Original Bond**”), (i) the principal amount due under Section [•] of the Original Bond, (ii) the maturity date under Section [•] of the Original Bond, *[insert additional claw-back items such as the payment of additional interest]*, as reflected on the amended Debt Securities on Annex [E].

(b) Upon notification by the Required Holders to the Issuer, with a copy to the Trustee, of a remedy under this Section [10] being undertaken, the Issuer shall direct the Trustee to make any required changes or take any actions to ensure that such terms are properly reflected, including if necessary by the Issuer (re)issuing replacement Debt Securities with such terms as are required under this Indenture. The Trustee shall provide any such amendments or replacement Debt Securities to the Required Holders for approval prior to taking any action pursuant to this Section [10(b)]. Action undertaken pursuant to this Section [10(b)] by the Issuer and the Trustee shall occur as soon as practicable, but in no event later than [30] days [from receiving notice of any remedies requested by the Required Holders].

(c) Notwithstanding anything else in this Section [10], nothing in this Section [10] will relieve the Issuer of any liability for any breach hereof under the Debt Securities, and the holders of Debt Securities will be entitled to any available remedies at law or in equity to recover losses, liabilities, or damages arising from any such breach and as pursuant to the terms of Debt Securities.]

[[11]. *Event of Default*¹⁶:....

([•]) the Issuer fails to observe or perform any remedies [requested by the Required Holders to a Transparency Clause Breach] pursuant to Section [11] and such failure shall continue unremedied for a period of [30] days after [notice thereof from the Required Holders to the Trustee].]

¹⁶ Note to Reader: For Inclusion in the Event of Default provision.