

INVESTMENT SUPPORT PROGRAMME FOR THE LEAST DEVELOPED COUNTRIES (ISP/LDCs)

PROGRAMME DOCUMENT, 15 November 2017

**INVESTMENT SUPPORT PROGRAMME
FOR THE LEAST DEVELOPED COUNTRIES (ISP/LDCs)**

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Brief description

The Investment Support Programme for the Least Developed Countries (ISP/LDCs) will provide, upon request, timely technical and advisory support for investment-related negotiations and dispute settlement. Such support, endorsed by international commitments, especially geared to meet the particular needs of the LDCs, is not readily available. The support will help LDCs attract and retain foreign direct investment. The support will be multidisciplinary, and aim at ensuring that FDI generates maximum benefits for the LDCs, contributing to national development strategies and the Sustainable Development Goals. Primarily designed as on-demand, targeted, quick response assistance, the advisory support would also reinforce the capacity of national institutions and the private sector in LDCs.

Background

1. Rationale

Foreign direct investment (FDI) is a potentially important form of development finance for the LDCs. FDI is complementary to official development assistance and more dynamic, increasing rapidly in some countries. FDI can also be catalytic, mobilizing capital and technology to spur growth, expand productive capacity, and diversify economies. At present, FDI inflows are small and concentrated in few countries and sectors. Weak infrastructure impedes any wider development impact. Nevertheless, every country receives some amount of FDI, and experience elsewhere suggests that—through capital accumulation in an enabling environment—it is possible to leverage existing FDI to encourage more FDI. Often, successful projects generate sequential FDI and invite new investors.

FDI flows to the LDCs increased significantly in 2015 to US\$44 billion, but declined by 13 per cent in 2016 to US\$38 billion, with FDI flows to LDCs still only accounting for 2 per cent of world FDI and 5 per cent of FDI to developing countries. FDI inflows to the LDCs remain dominated by a few mineral and oil extracting countries, with Angola, Bangladesh, Ethiopia, Mozambique and Myanmar accounting for 64 per cent of the total in 2015. FDI to LDCs remains mainly resource seeking, especially in the extractive sectors, with investment in manufacturing often hampered by small populations, limited access to regional or global markets and modest availability of a skilled workforce.¹ Although small, FDI in the LDCs provides scope to align investor interests with national sustainable development strategies, and shape project designs through domestic policies and mutually beneficial contract negotiations.

Some investment projects may be straightforward, only requiring expeditious processing. A few can be complex, leading to prolonged negotiations. Implementation of agreements reached also requires sustained monitoring and, at times, costly disputes may erupt.

Hence, there is need and benefit for the international community to provide, upon request, technical support to national officials and business entities with resource constraints (in particular, small and

¹ UNCTAD, World Investment Report 2017, p. 79 et seq. UN-OHRLLS, State of the LDCs 2017, p. 40.

medium-sized enterprises (SMEs)) in order to facilitate a beneficial investment negotiations and to avoid or settle possible disputes.

Advisory support for investment may encompass assistance in many areas, including assistance in negotiations of international rules, support for specific contract negotiation, implementation, monitoring, renegotiation, policy revisions and for the handling of disputes.

All these areas involve legal intricacies that might overwhelm national officials and local entrepreneurs, give rise to misunderstandings, and spoil the wider investor community's perception of the business climate.

Thus, there is need for and benefit in providing technical and advisory support for investment-related negotiations and dispute settlement. Ideally, such support should also contribute to building the capacity of host-country officials and institutions, as well as private sector actors to undertake future engagements with investors, routinely and with confidence.

2. Recommendations and objectives of the international community

FDI is a priority of the 'Programme of Action for the Least Developed Countries for the Decade 2011-2020' (IPoA).² The twin goals with respect to FDI are: "(a) Attract and retain increased foreign direct investment in least developed countries, especially with the aim of diversifying the production base and enhancing productive capacity; (b) Enhance initiatives to support investment in least developed countries." (Paragraph 121). Towards those ends, the IPoA calls for action by development partners to, *inter alia*, "Support capacity-building in least developed countries, and at the regional level, as appropriate, aimed at improving their abilities to attract foreign direct investment, including the ability to negotiate mutually beneficial investment agreements." (Paragraph 122.3.b).

At the Third International Conference on Financing for Development, world leaders stated: "We note with concern that many least developed countries continue to be largely sidelined by foreign direct investment that could help to diversify their economies, despite improvements in their investment climates. We resolve to adopt and implement investment promotion regimes for least developed countries."³ They specifically pledged to: "offer financial and technical support for project preparation and contract negotiation, advisory support in investment-related dispute resolution, ... as requested by the least developed countries."⁴ The offer was welcomed by development partners in the Political Declaration adopted at the mid-term review of the IPoA.⁵ More broadly the instrumental role of FDI for the realization of the Sustainable Development Goals (SDGs) is recognized, including specifically in target 10b.⁶ The IPoA also stresses the importance of private sector development to

² United Nations, "Programme of Action for the Least Developed Countries for the Decade 2011-2020", A/CONF.219/3/Rev.1, 23 May 2011.

³ United Nations, "Addis Ababa Action Agenda of the Third International Conference on Financing for Development", A/RES/69/313, 17 August 2015, paragraph 46.

⁴ Ibid.

⁵ United Nations, "Comprehensive High-level Midterm Review of the Implementation of the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020", A/CONF.228/L.1, 23 May 2016, paragraph 67.

⁶ United Nations, "Transforming our world: the 2030 Agenda for Sustainable Development", A/RES/70/1.

increase investment in the LDCs and calls for the provision of enhanced technical support to the private sector (paragraph 55.2(a) and (b)).

The ISP/LDCs aims to contribute to the realization of these objectives, within the framework of Agenda 2030, for the benefit of the LDCs, with a specific focus on assistance to investment-related negotiations and dispute resolution.

3. Distinctive features

Assisting developing countries in attracting and benefiting from FDI has a long history.⁷ In 1974-1993, the United Nations advised developing countries in contract negotiations. The outcomes were welcomed by countries and, usually, also by the companies themselves, which valued concrete proposals and speedy resolution. The distinctive features and lessons learnt from this earlier initiative, which are applicable to the ISP/LDCs, are:

Demand-driven. The assistance was provided upon request, and designed for quick response. Typically, a small team of legal and financial experts was dispatched to the requesting country to explain the contractual provisions to national officials and help them articulate viable development objectives for the pending negotiation.

Capacity-building. Training and assistance on regulatory and institutional frameworks helped many of the recipient countries emerge as major hosts of FDI and also home to outward FDI.

Expertise. The United Nations was able to tap high caliber, multidisciplinary talent within the United Nations system and from development partners, non-governmental organizations, universities, and private sector. Often, this expertise was and is available on a concessional or *pro bono* basis, as even private sector consultants will accept lower fees for non-profit development activities.

Partnership. The successful marshaling of expert teams rests less on large funding and more on leadership presence in professional networks, ability to organize rapidly with minimal bureaucracy, and access to relevant counterparts in the recipient country. In the contemporary context, these intangibles can best be captured through partnerships.

Independence. The essential comparative advantage of multilateral organizations, such as IDLO, is the provision of independent advice. Recipient countries attach premium to advice from an impartial source that is not subject to potential conflict of interest inherent in direct support from the home countries of the foreign investors.

Programme

4. Development Objectives

The ISP/LDCs will support the efforts of LDCs to attract and retain FDI, by providing, upon request, technical and advisory assistance in the negotiation of mutually-beneficial investment agreements and

⁷ For a review of the earlier experience, see Khalil Hamdani and Lorraine Ruffing, *United Nations Centre on Transnational Corporations: Corporate Conduct and the Public Interest*, Routledge, 2015.

for investment-related dispute resolution. The support will not be limited to any specific sector. The primary development objectives are to achieve:

Increased sustainable investment flows. Most LDCs have regulatory frameworks and institutions for handling FDI. Nevertheless, technical support is often helpful (if not required) in order to bring to fruition and derive maximum benefit from existing investment opportunities, especially when negotiations with foreign firms are in sight or underway. Knowledge of international standards of due diligence, compliance requirements, and accounting may be required to evaluate risks embedded in contracts. Well-negotiated and well-crafted contracts can help avoid subsequent disputes and costly litigation with investors. Even after contracts are signed, support may be needed to monitor their implementation and for the settlement of possible disputes.

Greater economic activities in line with national sustainable development objectives. In order to capture the larger benefits of FDI, there is need to relate investment proposals to national sustainable development objectives. While foreign investment may primarily focus on financial returns, the potential benefits to society may involve job-creation, training, increased exports, productive capacity, economic diversification and expanded supplier linkages. These benefits are promising in manufacturing, but also achievable in other sectors. Multinational companies are often receptive to larger value creation within the framework of public-private partnerships (PPPs). To be cost-effective, PPPs need to be properly structured and accompanied with appropriate policies (that incentivize investors without loss of social welfare) and by infrastructure, supported by the public sector or development cooperation. Investment-related negotiations, therefore, may require support in designing innovative, multidisciplinary responses on regulatory and development issues.

Ancillary objectives are:

National ownership. The role of the ISP/LDCs is to support and advise the decision-making of national actors, according to their needs and demands.

Capacity building. Investment best practices may often to be found in the developing world. The ISP/LDCs will seek to strengthen national capacity, through targeted training and by drawing upon experts available in the country and region.

SMEs and private sector development. Quality foreign investors bring new skills, know-how, and technologies to the host economies. Through supplier relationships, subcontracting, and other forms of collaboration, they spur on and enable local firms to upgrade and to gain access to global supply chains and international markets. The ISP/LDCs aims at helping SMEs and under-resourced firms, including women-owned businesses, take advantage of these opportunities.

5. Beneficiaries and coverage of the Programme

Beneficiaries of the ISP/LDCs are all LDCs so designated by the United Nations General Assembly as of 1 January 2018,⁸ and any LDC that has graduated from the LDCs category by decision of the

⁸ These are: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Dem. Rep of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Dem. Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, United Rep. of Tanzania, Vanuatu, Yemen and Zambia.

Assembly for a period of at least five years after the date of graduation (so as to facilitate their smooth transition out of their LDC status), as well as the eligible private sector entities. The eligibility requirements for private sector entities are set out in Appendix 1.

The ISP/LDCs will provide on-demand technical assistance and advice to the Governments of LDCs or eligible private sector entities (hereinafter “the Client”) for:

1. Foreign investment-related negotiations, including negotiations of agreements and contracts⁹ between the Client and a foreign entity; and/or
2. Foreign investment-related dispute settlement between the Client and a foreign entity,¹⁰ including arbitration or any other alternative dispute resolution proceeding.¹¹

A foreign entity means a foreign State, State-owned enterprise, private foreign investor, or a subsidiary of a foreign investor. A subsidiary of a foreign investor means a company owned or controlled by a foreign investor and incorporated in any of the LDCs.

The term “negotiation” may include “renegotiation” of agreements and contracts.

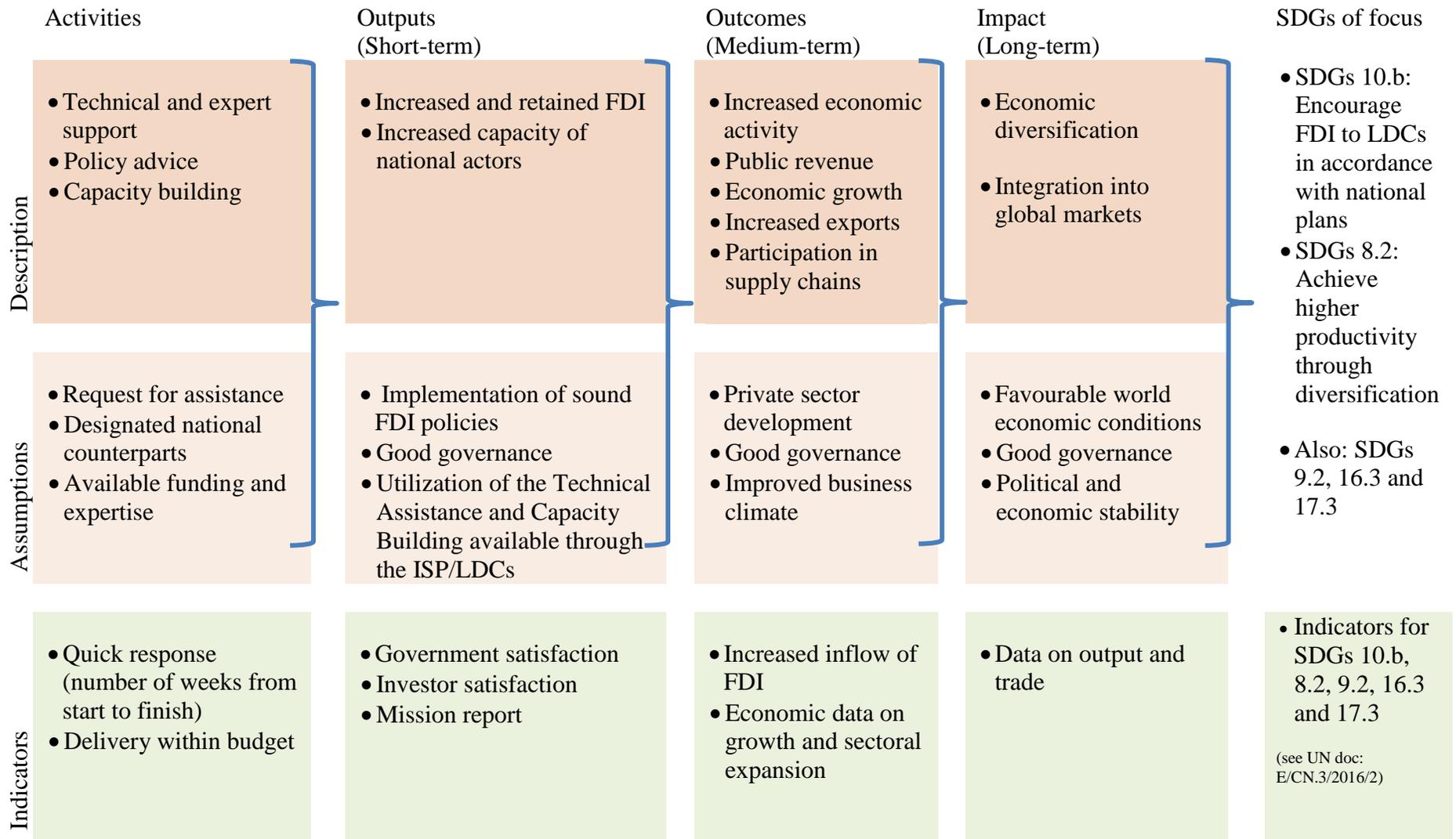
6. Results Framework

The logical progression from activities to outputs (short-term), outcomes (medium-term) and impact (long-term) are mapped in the following results framework. Key assumptions and indicators of progress are noted for each stage of the progression. Overall, the matrix shows how the envisaged support would reach the objectives and contribute to the SDGs.

⁹ Investment-related negotiations include, but are not limited to, the negotiations of contracts such as sub-contracting and supply contracts, joint ventures, strategic alliances, co-production and marketing, co-research and development, contract design and manufacturing, franchising, management contracts, contract farming and licensing.

¹⁰ On demand this may include representation of the Client in dispute settlement proceedings.

¹¹ On demand and if the applicable rules to the dispute allow, the ISP/LDCS may also seek to identify and field the Client’s party-appointed arbitrator.



7. Programme management

The ISP/LDCs will be implemented as a programme of the IDLO, with the collaboration of the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS).

IDLO has technical and operational capability. IDLO has a treaty-based mandate to work in the areas covered by the ISP/LDCs,¹² and has traditionally assisted developing countries improve their business and regulatory environment, including in such fields as contracts, commercial dispute resolution, and legal capacity development. IDLO has a lean infrastructure of about 80 staff (based at its Headquarters in Rome and its branch office in The Hague). IDLO's management plan emphasizes agility, flexibility, and the ability to start-up projects at short notice.

UN-OHRLLS can facilitate interaction with LDC officials, and help mobilise international donors and cooperation within the United Nations system.

A multi-stakeholder Steering Committee will guide the ISP/LDCs by providing overall strategic and operational advice to IDLO with a view to ensuring the realization of its objectives. The terms of reference of the Steering Committee are set out in Appendix 2.

The Programme itself will have a light institutional structure and limited staff.

8. Implementation: Operational arrangements

The support to be provided by the ISP/LDCs will involve fielding an expert or a team of experts to advise the requesting LDC governments or eligible private sector entities. This may be compounded by related capacity-building activities, if requested.

In the case of requests for assistance on contract negotiations, the team could comprise for instance an expert on international investment law working in tandem with a financial analyst. The team might make multiple missions according to the complexity of the exercise, and - on-request - include development specialists to design complementary national actions that would enhance the benefits of the proposed investment. In case of requests to advice on investment disputes, the team could comprise legal expertise on investment and/or commercial arbitration assisted sectoral experts as necessary.

Upon receiving a request, IDLO will make all its best efforts to secure the service of appropriate expert(s), although the ISP/LDCs and IDLO cannot and do not provide assurance that such

¹² See Agreement for the Establishment of the International Development Law Organization, Article II (Purpose and Activities) - 1. "The purposes of the Organization are: A. To encourage and facilitate the improvement and use of legal resources in the development process; ... C. To assist developing countries and countries in economic transition to improve their negotiating capabilities in the fields of development cooperation, foreign investment, international trade and other international business transactions; ...". Available at: http://www.idlo.int/sites/default/files/pdfs/IDLO%20Governance%20Documents_2016.pdf .

expert(s) can in all cases be identified, the requested assistance provided and the results sought obtained.

Operational arrangements are as follows:

1. The ISP/LDC with the support of the Steering Committee members, will develop and progressively expand a “Rosters of Experts” comprised of professionals with high standards of qualification (as set out in Appendix 3), as well as firms or other organizations possessing expertise in legal as well as relevant non-legal fields, willing to provide assistance to LDCs Governments and other eligible private sector entities, upon their requests, on a *pro bono* basis, or on a substantially reduced-fee basis.
2. In carrying out this task, IDLO will establish collaborative arrangements and partnerships (preferably by way of Memoranda of Understanding--MoUs) with relevant national and international partners (*e.g.*, law firms, professional partnerships, consulting firms, professional associations, universities, research centres, non-governmental organizations, and other providers of related technical assistance).
3. Whenever possible, the expertise would be sourced from within IDLO or relevant UN agencies (for instance financial analysts might be available within regional development banks, while expertise relating to industry, business linkages, entrepreneurship, or export development might be available from various UN agencies). Deployments on short mission assignments are common within the United Nations system. For this purpose, IDLO, with the support of UN-OHRLLS, will seek arrangements (by way of MoUs) with relevant agencies to participate in the ISP/LDCs.
4. The ISP/LDC will make every effort to avoid duplication and promote complementarity with existing initiatives that may already provide assistance to the LDCs in areas covered by the Programme. To the extent that a given request can be addressed more effectively by such initiatives, these will in principle be utilized, if the Client agrees.
5. The ISP/LDC will utilize, as much as possible, *pro bono* service providers, who are prepared to give assurances that their *pro bono* services will receive the same level of attention as services provided for a market-rate fee. If *pro bono* assistance is not available and funds allow, reduced-fee support will be utilized, again, with the assurance that such services will receive the same level of attention as services provided for a market-rate fee.
6. In case of need for specialized expertise not available in the Roster of Experts, the ISP/LDC may invite a specific expert, who is not on the Roster of Expert, as long as he or she fulfills all requirements to be included in the Roster of Experts and is prepared to provide services on a *pro bono* or reduced-fee basis (see Appendix 3).
7. Prospective experts to be included in the Roster of Experts and deployed to provide assistance to a Client will need to adhere to a set of provisions and guidelines addressing, among other things, the following issues: independence of experts and their role;

professional standards; bribery; conflict of interests; confidentiality; liability; and relationships with Clients and the IDLO. In particular, experts will recognize that the ultimate decision in any matter related to the services they provide rests with the Client. These provisions and guidelines are set out in the Engagement Agreement (see Appendix 4).

8. Requests for assistance from LDCs Governments will be sent to the ISP/LDCs by the Ministry of Foreign Affairs (or other officially designated focal point), or by a responsible officer of the eligible private sector entity. Requests from private sector entities will preferably be channeled through investment promotion agencies, chambers of commerce or relevant business associations. The modalities for supporting the private sector may vary according to particular national circumstances.
9. Upon receipt of a request, the ISP/LDCs will discuss with the prospective Client its needs in relation to the request and define the “Scope of Work”, which will eventually be formalized in the Engagement Letter, after discussion with the selected Expert. In case of doubt, the advice of the Standing Sub-Committee may be sought.
10. If appropriate, the ISP/LDCs may refer the request to an existing assistance initiative if the latter is better placed to effectively address the requesting entity needs.
11. The ISP/LDCs, and as need be in consultation with the Standing Sub-Committee, shall select an Expert from its Roster of Experts on the basis of expertise, qualification, and/or the experience, to advise and assist the Client by providing the services specified under the Scope of Work.
12. If the Client’s needs cannot be addressed by a sole Expert and a team needs to be fielded, the ISP/LDCs will select a team of Experts, including a “support team leader”, drawing from the Roster of Experts. In order to select the best-suited Expert(s), IDLO can seek the advice of the Standing Sub-Committee.
13. In case the ISP/LDCs is unable to locate the requisite Expert(s) in the Roster, it will resort to hiring consultants following its normal procedures, if funds allow, but seeking reduced fees.
14. The team of Experts can incorporate local experts, and experts with a specific knowledge of the Client legal system, as long as these possess the requisite expertise, qualification, and the experience, including for the purpose of monitoring the implementation of any contract or agreement negotiated.
15. the ISP/LDCs will (according to its procedures) assume the costs of the travel and medical insurance of the Expert(s), as well as other expenses necessary for the conduct of the specific support activities (such as interpretation and translation costs).
16. In parallel to execution of the agreed Scope of Work, Experts may be invited by the Client to perform capacity-building activities.

A flow chart (including time-lines) describing the handling of requests for assistance is included in Appendix 5.

9. Indicative Description of Services

As noted in the field of investment-related negotiation and dispute-settlement, assistance needs can vary significantly. The following list is illustrative of the types of support that a Client may request in the areas of investment-related negotiations and dispute settlement; depending on the particular circumstances, clients may seek assistance for:

Investment-related negotiations

- Reviewing the feasibility of a proposed investment project between the Client and a potential foreign investor, and conducting related evaluations and assessments;
- Preparing contract negotiation positions;
- Preparing tender documents and managing tendering processes (where contracts are to be awarded through a competitive process);
- Preparing financial structures for the operation and management of a proposed project;
- Drafting and negotiating contractual provisions;
- Selection of the dispute settlement method, which may include arbitration of disputes before an institution or *ad hoc*, depending on the nature of the project, as well as the applicable law and place and seat of arbitration;
- Preparing a monitoring system to ensure contract compliance and avoidance of disputes;
- Preparing and conducting negotiations on Bilateral Investment Treaties (BITs) or other investment-related agreements, and strengthening the capacity of beneficiary officials active in this field.

Investment-related dispute settlement

- Advising and/or representing the Client in existing or potential arbitration, mediation or negotiation proceedings between the Client and an investor, and in the enforcement (or challenge) of an award;
- Selecting arbitrators (where the arbitration clause is silent on the method of selection, the Expert will advise the Client on nominating an appropriate arbitrator based on qualifications, expertise, and experience);
- Preparing submissions (drafting and finalizing the various pleadings to be filed before an arbitral tribunal or any other body chosen by the Client and investor for the settlement of disputes);
- Attending arbitration hearings; and
- Preparing and examining evidence.

In all cases, the Expert shall provide his or her professional advice on issues under consideration, as well as information and analysis, to help the Client assess options, decide upon its interests, priorities and strategies, and weigh the trade-offs that may be involved when goals conflict.

10. Funding

The ISP/LDCs will be financed through voluntary contributions to a general, multi-donor trust fund. This permits quick response and efficient delivery of targeted technical and advisory support without need for separate preparation of project documents for individual requests to donors. The trust fund will be established and managed by IDLO.

As noted above, the ISP/LDCs will utilize, as much as possible, pro bono service providers, and when *pro bono* assistance is not available and funds allow, reduced-fee support may be utilized. The remuneration of Experts providing services to the ISP/LDCs on a reduced-fees basis should preferably not exceed 50 percent of the maximum rate for “Level D consultants” to the United Nations (currently USD 750), as set out in the UN Administrative Instruction No. ST/AI/2013/4 of 19 December 2013¹³ (or any subsequent modification thereof). On this basis, the reduced-fee daily rate should, preferably, not exceed USD 375.

11. Monitoring

IDLO will monitor the follow-up to country requests, on the basis of regular reporting on the status of activities underway, on milestones achieved, and any delays or difficulties encountered in implementation, as well as Client feed-back. Although final advisory reports are confidential and primarily for the exclusive use of the recipient country, IDLO will conduct an internal review of the quality of the advice offered, and will provide to UN-OHRLLS for information an overall self-assessment. UN-OHRLLS will also monitor the satisfaction of stakeholders with the support and advice provided under the ISP/LDCs.

IDLO will prepare a twice-yearly report on the operation of the ISP/LDCs, reviewing the status of the general trust fund, the activities financed, and progress on the indicators listed in the results framework as per its internal rules for consideration of the Steering Committee, and will make it available to UN-OHRLLS for information and to contributors to the Programme trust fund.

12. Evaluation

An independent evaluation of the ISP/LDCs will be conducted preferably after the initial two years of operation. The evaluation will assess the relevance of the objectives and activities to actual country demands, the efficiency and effectiveness of the delivery, and the overall impact.

¹³ Level D consultants are defined in the Administrative Instruction as “highly specialized individuals with extensive relevant experience and the highest level of expertise in the corresponding area of work or programme for which they are engaged. The individual’s services, work and recommendations, for example, may form one of several contributions to the accomplishment of a crucial programme or service or functional area of a broad scope, involving high complexity and impact. Some of the expected deliverable outputs would primarily relate to the following: providing functional leadership and expert advice; preparing intricate and complex technical papers to working groups; undertaking the drafting of reports or proposals for projects of a large scale or a broad scope.”

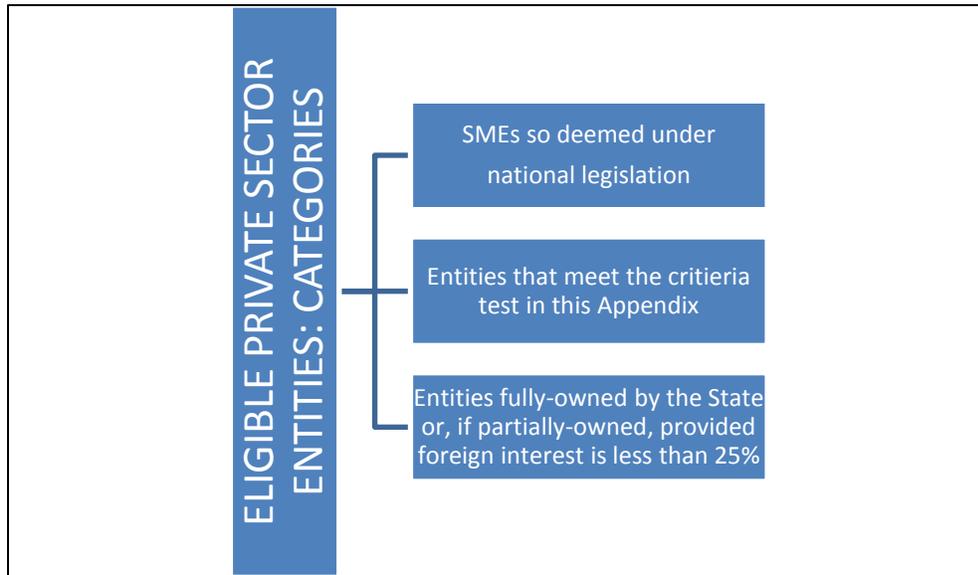
The evaluation will summarize the lessons learned, and present recommendations on the sustainability of the ISP/LDCs with respect to future funding, including whether Clients could assume a share of the costs in light of the benefits. It will address capacity development and the extent to which targeted support on investment-related negotiations and dispute settlement can contribute to a strengthening of national institutions.

The evaluation report will be discussed by the Steering Committee, which may choose to make modification to the Programme design and operational arrangements, as set out in the present document.

Appendix 1: Eligibility requirement for private sector entities

The ISP/LDCs aims at assisting LDCs, including their under-resourced and/or small and medium-sized private sector entities,¹⁴ in foreign-investment related negotiations and international dispute settlement.¹⁵

Three categories of private sector entities are eligible to apply.



CATEGORY 1: Small and medium-sized private sector entities that are so deemed under the national legislation of any of the LDCs will be considered as eligible private sector entities for the purpose of receiving assistance under the ISP/LDCs. Any such private sector entities will be required to furnish the appropriate national legislation (with an applicable translation) and must furnish sufficient information to demonstrate that it meets the criteria under the applicable legislation.

CATEGORY 2: Additionally, and with the aim of assisting under-resourced and/or small and medium-sized private sector entities in need of support, Category 2 provides a multi-factor test to enable certain other private entities that do not meet the criteria in Categories 1 or 3 to apply. IDLO may, in consultation with the Standing Sub-Committee, determine if an entity qualifies based on the Guidelines provided below:

¹⁴ As defined in section 5 above and thus including eligible private sector entities of the LDCs that have graduated from the LDCs category by decision of the General Assembly for a period of at least five years after the date of graduation.

¹⁵ There no internationally agreed definition of SMEs. For a review of country practice, *see* Khrystyna Kushni, “How Do Economies Define Micro, Small and Medium Enterprises (MSMEs)?”, *available at*: <http://www.ifc.org/wps/wcm/connect/624b8f804a17abc5b4acfddd29332b51/MSME-CI-Note.pdf?MOD=AJPERES&CACHEID=624b8f804a17abc5b4acfddd29332b51>.

1. An eligible private sector entity must be an entity engaged in economic activity, irrespective of its legal form. It is the economic activity that is the determining factor, not the legal form. In practice, this means that sole proprietors, family firms, partnerships, associations, corporations, or any other entity that is regularly engaged in an economic activity may be considered as eligible for assistance under the Programme (collectively, “entity” or “private sector entity”). An economic activity is deemed to be the sale of products or services at a given price, in a given market.

2. An eligible private sector entity must meet the following additional criteria: (i) it must be incorporated in the LDCs in accordance with the appropriate domestic legislation (unless incorporation is not necessary pursuant to domestic legislation, as discussed in Clause 3 below (for example for sole proprietors); (ii) a foreign entity does not have a capital stake, either direct or beneficial; and (iii) at least 50% of the assets and employees of the eligible private sector entity must be located within the territory of the LDCs. For criteria (iii), IDLO may, in consultation with the Steering Committee, consider the nature of the local economy and may appropriately relax or modify this criterion.

3. For unincorporated entities, such eligible private sector entity must carry out economic activities and must not be under the direction and control of any foreign (non-LDCs) entity and whose assets and employees are for no less than 50% located within the territories of the LDCs. Further, such entity is responsible to demonstrate that incorporation is not required for such entity. IDLO may, in consultation with the Steering Committee, consider the nature of the local economy and may appropriately relax or modify this criterion.

4. An eligible private sector entity must be an entity that employs fewer than 50 persons and has an annual balance sheet total not exceeding USD 5 million.

The staff headcount covers full-time, part-time, temporary, and seasonal staff (as defined by national law), and includes the following: employees; persons working for the entity who have been seconded to it and are considered to be employees under national law (this can also include temporary or so-called interim employees); owner-managers; consultants; or partners/affiliates engaged in a regular activity in the enterprise and deriving financial advantages from the enterprise.

The annual balance sheet total refers to the value of the entity’s assets. IDLO may, in consultation with the Steering Committee, consider the nature of the local economy and may appropriately relax or modify this criterion.

5. If the prospective Client entity has a holding equal to or greater than 25% of the capital in another (partner) entity and/or another (partner) entity has a holding equal to or greater than 25% in the prospective Client entity, an equivalent proportion of the partner’s/affiliate’s staff headcount and financial data must be added to those of the prospective Client entity when determining the latter’s eligibility. IDLO may, in consultation with the Steering Committee, consider the nature of the local economy and may appropriately relax or modify this criterion.

For example, if prospective Client entity has a 30% stake in another entity, 30% of the partner entity's headcount and balance sheet total are added to the prospective Client's own figures. If there are several partner entities, the same type of calculation must be made for each partner entity situated immediately upstream or downstream from the prospective Client entity.

6. A private sector entity that exceeds the staff headcount and balance sheet thresholds may still request assistance under the Programme if the projected cost of the legal and other expert fees required for the conduct of the foreign investment-related negotiations or the representation in foreign investment-related dispute settlement exceed 5% of its total assets (including those of any partner entity). Requests for assistance to this effect will be reviewed by the Standing Sub-Committee, which will make a final determination within five working days of receiving the application and related documentation.

7. Any prospective private sector entity will make upon application for assistance under the Programme to IDLO a declaration that it fulfils the requirements laid out in the current appendix (Appendix 1) (a sample declaration is annexed hereto as Annex I).

CATEGORY 3: Entities fully-owned by a State or other public authorities are independently eligible to request assistance under the Programme. Entities partly-owned by the State or other public authorities are eligible only if any foreign (non-LDCs) holding is not greater than 25 % of the capital of the entity, and the entity is not under foreign (non-LDCs) supervision, direction or control. A declaration to this effect must be provided to IDLO upon application along with proof that it is fully-owned or appropriately partially-owned by the State.

In case of doubt in relation to any issue connected with the determination of eligibility under the Programme, the IDLO will consult with the Standing Sub-Committee.

ANNEX - I: Declaration upon application for assistance

[Please note the document has highlights in yellow where you enter the information as appropriate, select the appropriate option, or in order to provide guidance in filling out the document. Further, if IDLO has determined that certain rules need to be modified or relaxed, then the Declaration should be adjusted to appropriately reflect such modifications].

I, the undersigned, legal representative of [name of the requesting private sector entity] confirm that I have read the ISP/LDCs programme document and, in particular Appendix 1 and understand the same. I warrant and represent that, at the time of submission of this application, the entity I represent fulfils all requirements set out in Appendix 1. In support of this declaration

I enclose:

- Act of incorporation or any legislation under national law mandating that incorporation is not necessary;
- A certified copy of the approved annual balance sheet;

- [For newly-established entities or entities that do not have an approved annual balance sheet: business plan];
- [In case of existing stakes with other entities: consolidated annual accounts];
- [If applicable: projected cost of the legal and other expert fees];
- [Any other relevant documentation and information]

The foregoing documentation, certification and information are true and correct to my knowledge, except if stated to be made upon information and belief, and as to such documentation, certification, and information, I believe them to be true.

I hereby authorize the International Development Law Organization (“IDLO”), as the administering organization of the Programme, to verify the accuracy of the documentation, certification, and information provided.

I take note of the fact that, in the event the IDLO discovers, during the course of the assistance provided under the Programme to the entity I represent, any averment in the information, documentation or certification I have provided, it may at its discretion take any action including, but not limited to, the immediate termination of the assistance.

I will also notify IDLO of any changes in any of the details in my application as soon as they happen. Failure to do so can result in termination.

Signed _____
Name
Date

Appendix 2: Steering Committee and Standing Sub-Committee terms of reference

A multi-stakeholder Steering Committee will guide the ISP/LDCs. It will meet at least once a year to provide overall strategic and operational advice to IDLO on how to ensure the realization of its objectives. It will be comprised of the Director General of IDLO or her/his representative ex officio and of experts serving in their individual capacity:

- (a) One UN official expert on matters related to FDI in LDCs;
- (b) Up to three experts from the LDCs;
- (c) Up to three experts from development partners of the LDCs; and
- (d) Up to four experts with extensive background in law and legal practice.

The Steering Committee can modify these requirements and add additional members.

The Director-General of IDLO will appoint the members of the Steering Committee in consultation with the UN Under-Secretary-General and High Representative for the LDCs. The Steering Committee members will serve for a renewable period of two years. The Director General of IDLO or her/his representative will chair the Steering Committee.

The Steering Committee members will support the ISP/LDCs by raising awareness of the Programme and mobilizing professionals and experts who can provide assistance to the LDCs under the Programme; facilitating fund-raising; and helping to bring about collaboration and partnerships between the Programme and other relevant initiatives and organizations.

The Steering Committee will consider IDLO's annual report on the operation of the ISP/LDCs, and review the ISP/LDCs programme document, including with respect to subject matter coverage, eligibility requirements and allocation of resources.

The Steering Committee will select among its members three experts to serve as the "Standing Sub-Committee". The Standing Sub-Committee members will be available to provide operational advice including on the Scope of Work in response to requests for assistance; selection of Expert(s); possible complaints by Clients with respect of the execution of the Scope of Work; and facilitation of amicable solutions of possible disputes related to the implementation of Engagement Agreements.

The Steering Committee and its Standing Sub-Committee will not need to meet in person and can act through telephone conferences, internet-based conferences, or email exchanges.

Appendix 3: Quality Control Protocol for Experts

Introduction

The ISP/LDCs will establish rosters of experts who are willing to provide assistance and advice to the Governments of LDCs and eligible private sector entities (“the Clients”) in relation to the subject matter covered by the ISP/LDCs, as set out in Section 5 of the Programme document, above. These rosters provide a database of professionals that the ISP/LDCs is able to draw upon in response to a Client’s request for assistance. The extent and content of such assistance (the “Scope of Work”) will be defined in an Engagement Agreement between the Client, the Expert, and IDLO (see Appendix 4). The rosters may be organized by areas of specialization and type of partner organizations, including those that will have concluded a Memorandum of Understanding (MoU, or similar document) to set out the terms of their partnership with the ISP/LDCs. Special arrangements may be set out in such MOUs, including with regard to the utilization of junior experts under the supervision of senior experts.

The performance of the Scope of Work may require the proficiencies of a multi-disciplinary team, including experts in the following areas of specialization:

- International investment law and policy
- International arbitration
- International trade law
- International commercial law
- Project development
- Tax management
- Tendering and procurement
- Accounting and financial analysis and reporting
- Political risk insurance
- Sector- and industry-specific (*e.g.*, geology, infrastructure, forestry, agribusiness)
- Environment, social impact and human rights
- Occupational health and work safety
- Governance (*e.g.*, anti-corruption, stakeholder engagement)

Guideline criteria for standards of qualification

The following is a guideline for baseline criteria, which the IDLO will ensure all Experts possess with a view to their inclusion in the Experts Roster and eventually for the efficient conduct of the specific Scope of Work, as set out in the Engagement Agreement. These criteria should be duly supported by necessary documentation and certification. The criteria and recommendations set out below may be adapted in MOUs with partner organizations.

A. Language Fluency

Experts will be required to work closely with and thoroughly understand the Client’s needs and position in relation to the matters covered by the Scope of Work (as defined in the Engagement Agreement). They should be able to speak to other experts and relevant parties about it, and be able to produce reports and decisions. It is essential that the Expert be fully proficient in the

language used by the investment contract under negotiation. Experts must thus possess command of English and/or French, which are the most wide-spread languages in the LDCs. Command of Spanish and/or Portuguese are also desirable. Further, IDLO can determine any other language which might be appropriate to meet the particular needs and circumstances of prospective Clients under the ISP/LDCs.

B. Internationally Recognized Expertise

Internationally recognized expertise can be demonstrated by any one or a combination of the following attributes:

- Professional and/or academic experience at a senior level in global, regional, or national body providing assistance, advice or undertaking work in investment issues relevant to the prospective Clients under the ISP/LDCs;
- Experience at a senior level in designing, advocating, or implementing global, regional, or national policies in an area of specialisation;
- Founding member, leadership position or active participation in a national, regional, or international body, committee, or expert group or advisory body in field of specialisation;
- Significant experience in research, research policy or research programme management at a national, regional, or international level in area of specialisation relevant prospective Clients under the ISP/LDCs;
- Experience at a senior level in major global, regional or national initiatives in any area relevant to the investment needs of the prospective Clients.

C. Knowledge and Experience in Investment Law

The Expert need not be called to the Bar of the Client's state, but must have a strong working knowledge of investment law and policy, including the law governing investment contracts or other areas of international law strongly related to investment negotiations and dispute settlement. The Expert should also possess a thorough understanding of international law and treaties which may impact the functioning of, or create additional rights and obligations pursuant to, investment contracts, such as any bilateral investment treaties (BITs) or international investment agreements.

Recommendations

- **Generally**, knowledge of, or relevant experience in the geographical area where the prospective Clients are located is preferable, but not necessary, if the Expert possesses similar experience or knowledge from working in a different region.
- **Lawyers** should have at least seven (7) years of working experience in the field of investment law, or an area most relevant to the Client, preferably including experience in investment-related negotiations.
- **Counsel in dispute settlement** should have at least seven (7) years working experience and acted as counsel in at least eight (8) arbitration proceedings, preferably including both investor-state arbitration and commercial arbitration.

- **Arbitrators** should have at least seven (7) years working experience, acted as arbitrator in at least five (5) cases, and completed at least two (2) arbitration awards. They should hold a fellowship from the Chartered Institute of Arbitrators, the Singapore Institute of Arbitrators, or a comparable professional arbitration institution.

D. Knowledge and Experience in Investment Matters

Both legal and non-legal Experts will be required to provide advice and assistance in investment-related negotiations and/or dispute settlement. They should therefore be able to demonstrate solid knowledge and strong academic capability, holding diplomas or achieving tertiary education in their area of specialisation. Experts will be required to have a proven track record of a specialised skill, by having undertaken similar projects in previous working environments.

Recommendations

- **Generally**, knowledge of, or relevant experience in the geographical area where the prospective Clients are located is preferable, but not necessary, if the Expert possesses similar experience or knowledge from working in a different region.
- **Economic and investment analysts** should have at least five (5) years of working experience in foreign investment, preferably in LDCs or developing countries. They should demonstrate proficient use of project analysis tools (in particular those commonly related to the specific industry sector, e.g., Questor for oil and gas) including application of quantitative analysis of costs and benefits from multiple perspectives, including the private sector, the public sector, bankers, and the country as a whole.
- **Procurement and tendering professionals** should have at least seven (7) years of working experience in a field related to foreign investment, preferably in LDCs or developing countries. They should demonstrate an ability to recognise the types of contracts and vendors necessary for the implementation of investment projects, devising efficient and fruitful strategies for sourcing materials, and knowledge of sourcing and procurement techniques and a skill in reading market movements.
- **Health, safety, security, and environment (“HSSE”) professionals** should have at least fifteen (15) years working experience, with at least five (5) years being served in a senior capacity. (However, if the investment contract under negotiation is related to a high-risk industry, such as oil and gas, IDLO may wish to recruit more than one (1) HSSE expert and require these experts to have a longer period of working experience. They should have a proven track record of developing thorough, adept, and detailed health and safety strategies and internal policies, and be able to successfully impart the importance of HSSE to the Client, by conducting in-house training on HSSE issues and risks.)
- **Project Developers** should have at least seven (7) years of experience in a field related to foreign investment, preferably in LDCs or developing countries. They should have conducted or shown active involvement in the overall development of at least five (5) major projects. At least three (3) reference letters should be from previous clients for whom they managed a project. Such letters will be used by the IDLO to determine their ability to conduct preliminary analyses to advise

on the feasibility of a project, develop high-level budgets, cash flow projections, and work schedules.

E. Independence and Impartiality

The Client's interests are paramount, and to this end, the Expert must be able to provide independent, impartial advice to fulfill the Client's needs and concerns, regardless of any prior affiliation or position the Expert has taken in previous professional capacities. In order to be included in the Experts Roster, the Expert must warrant that if selected to provide assistance under the ISP/LDCs he or she will comply with the *Guidelines on Independence & Conflict of Interest Matters* (see Engagement Agreement, ANNEX-B), and will guarantee that any provision of advice is given objectively and not according to potential personal interests.

Recommendation

- ***A party-appointed arbitrator*** should ensure absolute neutrality, notwithstanding appointment by the Client, during the arbitration and resolution of a dispute. The arbitrator should demonstrate knowledge and experience in the area relevant to the parties' dispute, such that they are able to evaluate and apply legal, business, and trade principles during the arbitration of the dispute.

F. Professional Licenses & Memberships

Wherever required, an Expert should hold a professional license from a recognized body authorizing the conduct of his/her work (such as admission to a law society or bar association). An Expert should also be able to demonstrate specialisation and active participation in the field of expertise through membership and involvement in internationally-recognized professional groups, such as the CFA Institute, Association of International Petroleum Negotiators, or the International Bar Association.

G. Good Standing

Experts should be currently in good standing, with no pending legal action or disciplinary proceedings against them. This is especially important for legal experts, in whom Clients place much reliance and trust to properly advise them in the conduct of negotiations and dispute settlement vis-à-vis foreign counterparts. The Expert must be able to demonstrate virtues of honesty and uprightness, and should be able to prove fitness and the ability to ethically conduct the Scope of Work.

H. Professional Indemnity Insurance

The Expert will provide advice and assistance to the Client and working with other experts, team members, and instrumentalities or agencies of the Client, in fulfilling the Scope of Work. In all cases Experts are expected to provide high quality advice and assistance to Clients. In the event of any issues associated with the Expert's negligent conduct, or in case any actions or advice given by the Expert are misconstrued or misinterpreted, the IDLO will not be responsible for any costs, nor will it provide independent insurance coverage. It is the responsibility of the Expert to

ensure, if such insurance is mandatory in the jurisdiction of practice, that he/she has professional indemnity insurance coverage in place so as to be fully protected against the full cost of defending against a negligence claim brought by the Client.

I. Health

Experts whose professional tasks require active physical involvement, such as those working in areas relating to infrastructure, geology, or health and safety, are required to demonstrate good health. Experts should therefore be physically fit and mentally alert, with all senses, including vision and hearing to be fully functional.

Documentation

The Expert must support his/her credentials proving fulfilment of the above criteria by providing the following documentation in English or French (if the documents are issued in a different language the Expert must provide a certified translation into English or French):

- A detailed resume summarizing educational background and work experience, including language abilities and a list of publications relevant to the Expert's area of specialisation;
- A copy of any professional license, certified by the issuing authority no earlier than four (4) month prior to submission;
- A copy of an original certificate of admission from all jurisdictions in which a legal Expert has been called to the Bar. Such certificate should be certified by the issuing jurisdiction, no earlier than one (1) month prior to submission;
- An original letter or certificate of good standing from each jurisdiction's bar council/grievance committee, or other body entertaining complaints against lawyers, where available, certifying as to whether charges have ever been filed with such committee or body against the legal Expert, and if so, the substance of the charges and the disposition thereof. The letter or certificate should not be dated more than two (2) month prior to submission;
- A copy of the cover note for professional indemnity insurance policy (if so mandated in the jurisdiction of practice), clearly showing the Expert's coverage, which shall be notarized no earlier than four (4) months prior to submission;
- The names of two (2) references who will be able to attest to the quality and performance of any previous work completed, which may reflect the Expert's ability to provide assistance in areas related to the subject matter covered by the ISP/LDCs. Suggested references are: a current or former member of the judiciary (*for Experts who are lawyers or legal arbitrators*), counsel or a recognized expert in their field, or former employer or client.

Monitoring of Expert's Conduct

In the event the Expert is selected to provide assistance to a Client, the IDLO will monitor the quality of the Expert's conduct of the Scope of Work (with the advice of the Standing Sub-Committee as necessary) through the following means:

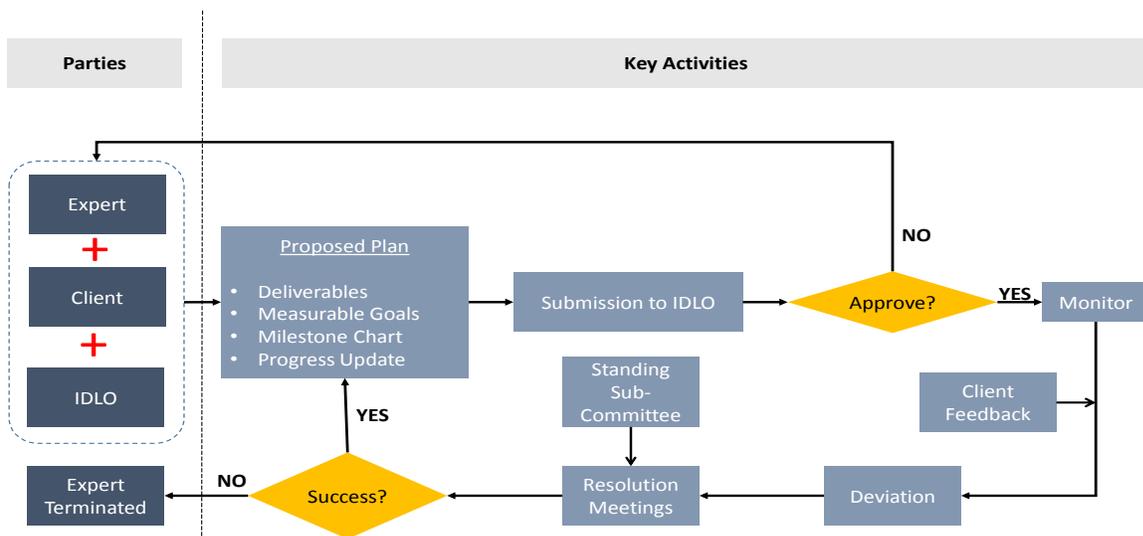
- The Expert will be required to submit a proposed plan to execute the Scope of Work after having discussed and understood the Client's needs and expectations. The Scope of Work Plan shall include:
 - The overall deliverable(s) of the Scope of Work;

- The specific activities to be performed by the Expert (including complementary capacity-building activities, if requested);
- Measurable goals to track the progress of the deliverable(s);
- A milestone chart showing when these goals should be achieved;
- Development of a mode, manner, and frequency of progress updates to IDLO; and
- Timeframe for the Expert’s engagement, *i.e.*, how many work hours/days the Expert will commit to the execution of the Scope of Work.

The Plan shall be formally agreed with the Client and IDLO (through an Engagement Agreement), if need be, with the advice of the Standing Sub-Committee;

- Upon commencement of the Scope of Work, the IDLO will seek progress updates, as stated in the Engagement Agreement. It will also maintain an open channel separately with the Client to receive any feedback on the Expert and his/her performance of the Scope of Work;
- In the event of any complaint from the Client, the IDLO will seek input on the matter from the Expert. Separate meetings, whether physically or over conference call, will be set up to discuss the matter and find an amicable solution. These meetings will be attended by the Expert, a member of the Standing Sub-Committee, and a representative from the Client;
- If the matter cannot be resolved, the IDLO, in consultation with the Client and the Standing Sub-Committee, will issue a notice of termination in accordance with Clause 12.3 of the Engagement Agreement.

Based on the seriousness of the complaint, IDLO may, at its sole discretion, remove the Expert from the Expert Roster.



Appendix 4: Engagement Agreement

ENGAGEMENT AGREEMENT BETWEEN THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION, [•] AND [•]

[Please note the document has highlights in yellow where you enter the information as appropriate, select the appropriate option, or in order to provide guidance in filling out the document]

1. THE ENGAGEMENT AGREEMENT

This Engagement Agreement, which is undertaken within the framework of the Investment Support Programme for Least Developed Countries (“ISP/LDCs”), as set out in its Programme Document dated [•], is made on this [•] day of [•] (“**Agreement**”)

BETWEEN:

PARTIES

- 1.1 The International Development Law Organization as the administering organization of the ISP/LDCs (hereinafter referred to as “**IDLO**”), which expression shall, unless repugnant to the context or meaning thereof, mean and include its administrators and representatives);

AND

- 1.2 Name-[•], Designation-[•] (hereinafter referred to as the “**Expert**,” which expression shall, unless repugnant to the context or meaning thereof mean and include its administrators, representatives, and permitted assigns).

AND

Name-[•], Designation-[•] on behalf of [the Government of •] or [name of eligible private sector entity] (hereinafter referred to as “**Client**” which expression shall, unless repugnant to the context or meaning thereof, mean and include its administrators, representatives, and permitted assigns).

2. DEFINITIONS AND INTERPRETATION

- 2.1 “Client” means the requesting [government] or [eligible private sector entity] that requires advisory services and support for investment-related negotiations and/or dispute settlement.
- 2.2 “Expert” means a person or firm or other organization engaged by the IDLO under this Agreement to provide advice and assistance to the Client with regard to investment-related negotiations and dispute settlement.
- 2.3 “Effective Date” means the date this Agreement comes into force.
- 2.4 “Scope of Work” means the services that the Expert commits to render to the Client as set out in Annex A to this Agreement.

- 2.4 “Parties” mean IDLO, the Client and the Expert.
- 2.5 In this Agreement, unless otherwise specified:
- 2.5a All references to the Annex(es) are to the Annex(es) of this Agreement which form part an integral part of this Agreement;
- 2.5b The headings are inserted for convenience only and shall not affect the construction of this Engagement Agreement;
- 2.5c References to the singular shall include the plural and vice versa;
- 2.5d References to the words “include” and “including” are illustrative and do not limit the sense of the words preceding them, and shall be deemed to include the expression “without limitation”.

3 SCOPE OF WORK

- 3.1 The IDLO, having received a request for assistance from the Client and discussed and understood the Client’s needs, has selected the Expert [to perform the function of support team leader ... *[or, as the case may be]* ... to be part of the support team directed by]
- 3.2 The Expert will provide assistance to the Client by rendering the services in accordance with “the Scope of Work Plan” annexed hereto as Annex A.
- 3.3 The Client accepts the provision of assistance by the Expert by means of the services to be rendered in accordance with “the Scope of Work Plan” annexed hereto as Annex A.

4. WAIVER OF PROFESSIONAL FEES

- 4.1 The Expert hereby agrees to undertake his or her appointment under this Agreement and perform the Scope of Work, as set out in Annex A, on a *pro bono* basis, *i.e.*, the Expert will not charge professional fees regardless of the regular billing rate of the Expert, except for any expenses specified in Clause 5 below.
- 4.2 Waiver of professional fees shall not, in any manner, affect the Expert’s willingness and dedication to perform his duties under the Engagement Agreement. The Expert shall fulfill his obligations with the same level of diligence and competence, and adhere to time lines, in the same manner as if this were an Agreement for which he or she were being paid ordinary professional fees.
- 4.3 The Expert shall provide a monthly summary of time and expenses associated with the advisory services, which shall sent electronically to the IDLO. All summaries shall be itemized in sufficient detail for verification purposes.
- 4.4 The Expert’s appointment and the equivalent of fees that would have been charged for providing services, may serve as his or her contribution to *[Corporate Social Responsibility (CSR)] or as the case may be [pro bono requirements]* in its individual capacity or *[CSR] or as the case may be [pro bono]* commitments of his/her organization.

[Recommendation

Waiver of Professional Fees would be particularly appropriate in the following circumstances: (i) when the Scope of Work is of a temporary or a limited/short-term nature; or (ii) the person is affiliated with a larger institution that may cover the costs as a part of the pro bono programme (e.g., law firms); or (iii) the nature

of the work does not require extensive time commitment and/or extensive use of resources (including travel time).]

OR [please select as appropriate]

4. REDUCED PROFESSIONAL FEES

- 4.1 The Expert hereby agrees to undertake his or her appointment under this Agreement and perform the Scope of Work, as set out in Annex A, on a reduced basis, wherein the Expert shall charge reduced professional fees not exceeding a daily rate of USD [375], instead of the regular billing rate of the Expert, except for any expenses specified in Clause 5 below.
- 4.2 The reduction in professional fees shall not, in any manner, affect the Expert's willingness and dedication to perform his or her obligations under the Engagement Agreement. The Expert shall fulfill his obligations with the same level of diligence and competence, and adhere to time lines, in the same manner as if this were an Agreement under which he or she was being paid ordinary professional fees.
- 4.3 The maximum fee cap set out in Clause 4.1 above shall apply until the Expert disburses the final services or support. The Expert shall provide a monthly summary of time and expenses associated with the advisory services, which shall be submitted electronically to the IDLO. All summaries shall be itemized in sufficient detail for verification purposes.

[Recommendation

Reduced Professional Fees would be appropriate in the following circumstances: (i) the nature of the work is an ongoing commitment and is long-term in nature; or (ii) the Scope of Work requires the Expert to operate as a "Team Leader" or (iii) is asked by the Client to provide extensive guidance and direction for negotiations or dispute settlement; or (iv) the nature of the work requires extensive time commitment and/or extensive use of resources (including travel time).]

5. TRAVEL AND OTHER EXPENSES

- 5.1 The Expert, when traveling to assist and represent the Client with the purpose of executing the Scope of Work, shall be entitled to reimbursement of such expenses from the IDLO, in accordance with the rules and procedures that the IDLO applies to consultants. Where appropriate, he or she may be paid travel expenses, including a daily subsistence allowance, in accordance with Clause 5.3 below.
- 5.2 Where such travel is authorized for by the IDLO, the standard of accommodation for air travel in all cases shall be economy class, irrespective of the duration of the journey, unless determined otherwise by the IDLO, taking into account the circumstances of the traveler (such as for health reasons).
- 5.3 The Expert authorized to travel shall receive a daily subsistence allowance that shall comprise the total contribution of the IDLO towards such expenses as meals, lodging, gratuities and other such payments made for services rendered. The Expert authorized to travel shall be covered by the medical insurance that the IDLO extends to its consultants.

5.4 The Expert may be authorized by IDLO to engage translation and interpretation services or incur other expenses when these are required for the effective execution of the Scope of Work.

6. ROLE OF THE EXPERT

6.1 The Expert recognizes that the ultimate decision in any service provided by the Expert rests with the Client or with the IDLO with respect to administrative and logistical matters, such as travel and expense authorizations. The Expert shall provide his or her professional opinion on issues under consideration, as well as information and analysis, to help the Client decide upon its interests, priorities, and strategies, to assist the Client in understanding options, and to weigh the trade-offs that may be involved when goals conflict.

6.2 The Expert shall not seek to impose solutions, but shall help Clients evaluate the available options.

6.3. The Expert shall provide no assurance or guarantee to any specific outcome resulting from the execution of the Scope of Work.

6.4 The Expert shall not act as a public advocate for the Client and shall refrain from making any statements to the public or media unless he or she has obtained prior written authorization from the Client, as provided for in Clause 13.4 below.

Quality of Advice

6.5 The Expert is not expected to provide “generic” advice; rather his or her advice shall be tailored to the specific needs of the Client. The advice shall be aligned with international rules and standards, including those laid down in human rights, labour, and environmental agreements and internationally accepted principles and goals, including the UN principles for responsible contracts. The Expert shall give special attention to the economic, social, environmental, and cultural implications that may arise in the execution of the Scope of Work.

Evaluation of an Expert’s Services

6.6 The IDLO’s evaluation of the quality of advice provided by an Expert shall be based primarily on evaluations obtained from the Client and mandatory reports submitted by the Expert. The Expert hereby agrees that the quality of the advice provided may be subject to independent and external evaluation.

Client’s Interests

6.7 The Expert shall treat the Client’s interests as paramount, subject to the Expert’s duty to observe the law and to maintain ethical standards of his or her profession.

6.8 In order to avoid any confusion in the discernment of Client interests, the Client designates [•] as the [Government official/s] [company representatives], from whom the Expert is to take instruction as to the interests and objectives of the Client. *[In case of need to include additional circumstances and procedures whereby the Expert may be entitled to rely upon instructions from anyone other than such designated [Government official] or [company representatives]]*

6.9 Notwithstanding the foregoing, the Expert recognizes that its role may extend to the mediation of different views within the Client. In such cases, the Expert must remain sensitive and impartial to the interests and political issues involved.

6.10 The Expert should, in spirit, be willing to help or appropriately assist the Client if the Project continues for a longer period of time beyond any funding that might be available.

7. ROLE OF THE STEERING COMMITTEE

7.1 The Parties may seek the advice of the Steering Committee of the ISP/LDCs in any matter related to the execution of this Agreement.

7.2 The Parties should seek the guidance of the Standing Sub-Committee on any operational matter, including with respect to the definition and execution of the Scope of Work.

8. ROLE OF THE IDLO

8.1 The IDLO will provide administrative support to the Expert aimed at facilitating the execution of the Scope of Work, but will not participate in the rendering of the services set out in the Scope of Work, unless otherwise agreed in writing with the other Parties.

8.2 The IDLO will be responsible for monitoring the execution of the Scope of Work and receive progress reports from the Expert, as set out in Annex A. It will also seek and receive communications from the Client related to the Expert's execution of the Scope of Work. In the event of any complaint from the Client, the IDLO will seek an amicable solution, also with the support of the members of the Standing Sub-Committee. If the matter cannot be resolved, or if it continues to persist, the IDLO, in consultation with the Client and the Standing Sub-Committee, will issue a notice of termination in accordance with Clause 12.3.

8.3 The IDLO is in no way responsible for the conduct or actions of the Expert, and will bear no liability for such conduct or actions.

9. MUTUAL REPRESENTATIONS OF THE PARTIES

9.1 The Parties hereby *inter se* warrant and represent as follows: The representations and warranties in this Clause 9 shall remain in full force and effect notwithstanding completion of the respective obligations as agreed by the Parties to this Agreement.

9.2 *Legal Validity* – This Agreement constitutes valid and legally binding obligations of the Parties, enforceable in accordance with its respective terms.

9.3 *Non-conflict* – The execution, delivery, and performance of this Agreement will not (a) contravene any existing applicable law to which the Parties hereto are subject, (b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the Parties hereto are a party or are subject or (c) contravene or conflict with any provision of the constitutional documents of the Parties.

10. INDEPENDENCE, CONFLICT OF INTEREST AND PROFESSIONAL STANDARDS

10.1 The Expert's obligations in respect of any conflict of interest matters arising in connection with his or her appointment as an Expert under this Agreement shall be carried out in accordance with the '*Guidelines on Independence & Conflict of Interest*

Matters’ annexed hereto as ANNEX – B. [At the time of signing this Agreement, the Expert shall initial every page on Annex B and shall sign the final page on Annex B.]

- 10.2 The Expert’s obligations under this Agreement shall be carried out in accordance with the ‘*Guidelines on Professional Standards*’ annexed hereto as ANNEX – C.
- 10.3 The Expert undertakes to adhere to the *IDLO Code of Conduct* and the *IDLO Anti-corruption and Anti-bribery policy* annexed hereto respectively as ANNEX – D and ANNEX - E.
- 10.3 Any suspected violations of the provisions set out in Annexes B, C, D and E and in Clause 13 on Confidentiality, must be brought to the immediate attention of the IDLO, which after consulting the Standing Sub-Committee may terminate this Agreement with immediate effect, and report the averment to any relevant supervising bodies, authorities, professional institutions for further investigation.

11. TERM

Term and Termination

- 11.1 The term of this Agreement will commence on the Effective Date and will continue in effect for a period of [●] unless earlier terminated pursuant to the terms of this Agreement.

Termination for Convenience

- 11.2 Each Party may terminate this Agreement upon sixty (60) calendar days’ written notice.

Termination for Cause

- 11.3 Each Party may terminate this Agreement upon written notice if the other Party has materially breached any provision of this Agreement and has not cured such breach within thirty (30) calendar days after receiving written notice from the non-breaching Party describing such breach in reasonable detail and stating the non-breaching party’s intent to terminate this Agreement.
- 11.4 Upon any expiration or termination of this Agreement, each Party will return promptly or, if so requested by any other party, destroy all documents and other tangible objects containing or representing Confidential Information of another Party except to the extent that such documents must be retained to satisfy auditing or regulatory requirements. If requested by another Party, each Party will provide the requesting party with written certification of compliance with the foregoing obligations.

12. CONFIDENTIALITY AND NON-DISCLOSURE

- 12.1 The Parties shall treat all the information shared/provided by any Party or by an affiliate of the Client, which is not in the public domain as confidential (“Confidential Information”) and without the prior written consent of the IDLO and Client as the case maybe, the Expert shall not distribute or disclose to any other person the Confidential Information, otherwise than to persons who need to know such confidential information for the sole purpose of providing services to the Client. Confidential Information shall not be used for any purpose other than providing services as contemplated herein.
- 12.2 The Parties agree that they will keep confidential, and will not disclose, disseminate, and/or publicize, or cause or permit to be disclosed, disseminated, and/or publicized, any

of the terms of this Agreement or the fact of its existence to any individual and/or entity not a party to this Agreement except:

- (a) Where the prior written consent of the other Party is obtained;
- (b) For the purpose of carrying out and enforcing the terms of this Agreement;
- (c) To officers and employees reasonably required to have the same in order for any Party to perform its obligations under this Agreement; and
- (d) To a Party's solicitors, accountants, surveyors, insurers, or other professional advisors.

12.3 Any disclosure to any person, agent, or sub-consultant for the purpose of an activity related to the Scope of Work shall be in strict confidence and shall be on a "need-to-know" basis and extend only so far as may be necessary for the purpose of that activity. The Expert shall take all necessary measures (including by way of a code of conduct or contractual provisions, where appropriate) to ensure that confidential information is not divulged by any such person, agent, or sub-consultant.

12.4 The Expert shall treat all communications respectively with the IDLO and the Client as confidential and privileged, and shall not disclose such communications except as required by law or as permitted respectively by the Client or the IDLO in writing. The Expert shall advise the IDLO and the Client, prior to the disclosure of any communication requested or permitted respectively by the IDLO or Client, that any disclosure of the Expert's communications with the IDLO or the Client may result in the waiver of a privilege.

13. VARIATION

13.1 All terms, conditions and obligations under this Agreement shall remain in force and effective at all times during the term of this Agreement, except where otherwise amended or modified by the Parties by mutual written agreement.

13.2 No amendment or other variation to this Agreement shall be effective unless it is in writing and is executed by the duly authorized representatives of the Parties.

14. DISPUTE RESOLUTION

14.1 The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach, or termination thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL Rules"), or according to such other procedure as may be agreed between the parties in writing. The Parties agree that the Standing Sub-Committee members will appointment a sole conciliator, who may be one of the Sub-Committee members.

14.2 Any dispute, controversy, or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach, or termination thereof, between the IDLO and another Party, unless settled amicably, as provided above, shall be referred the Standing Sub-Committee members, who will render a final decision *ex aequo et bono*.

14.3 Any dispute, controversy, or claim arising out of or in relation to this Agreement, including the validity, invalidity, breach, or termination thereof, between the Client and

the Expert shall be resolved by arbitration in accordance with the UNCITRAL Rules. The number of arbitrators shall be one to be decided mutually between the Parties, failing which, to be determined by the Principal Legal Counsel of the Permanent Court of Arbitration. The seat of the arbitration shall be [Rome, Italy]. The arbitral proceedings shall be conducted in English, and the dispute shall be decided on the basis of documentary evidence only.

15. PRIVILEGES AND IMMUNITIES

Nothing in this Agreement shall be construed as a waiver of IDLO’s privileges and immunities as an international organization, and nothing in this Agreement shall confer IDLO’s privileges and immunities to other Parties.

IN WITNESS WHEREOF,

the Parties have caused this Agreement to be executed by and through their fully authorized representatives as of the date first above written.

Drawn up and signed in duplicate.

IDLO

EXPERT

CLIENT

By:

By:

By:

Name:

Name:

Name:

Title:

Title:

Title:

Date:

Date:

Date:

ANNEX - A:

Scope of Work Plan

To be filled out after discussions between the Parties and with the possible advice of the Standing Sub-Committee.

The Plan should include:

- The overall deliverable(s) of the Scope of Work;
- The specific activities to be performed by the Expert (including complementary capacity building activities, if requested);
- An indicative budget based on the Scope of Work, including expected expenses;
- Measurable goals to track the progress of the deliverable(s);
- A milestone chart showing when these goals should be achieved;
- A mode, manner and frequency of update of progress to IDLO; and
- Timeframe for the Expert's engagement, i.e., how many work hours/days the Expert will commit to the execution of the Scope of Work.

As it is often impossible to determine in advance the amount of hours needed to complete the Scope of Work, any additional time commitment, whether *pro bono* or on a reduced-fee basis from the Expert will be agreed in writing by the Parties, taking into account the funds available to the ISP/LDCs.

ANNEX – B

Guidelines on Conflicts of Interests Matters

[Initial every page and sign and date last page]

1. DISCLOSURES GENERALLY

- 1.1 The Expert shall remain independent and impartial at all times during the term of the Agreement. The Expert shall decline to accept an appointment under this Agreement if he or she has any doubt as to his or her ability to remain impartial or independent.
- 1.2 The same principle applies if facts or circumstances exist, or have arisen since the appointment, which, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts as to the Expert's impartiality or independence, unless the Client expressly consents to such appointment or the continuation of the execution of the Scope of Work.

2. DUTY TO DISCLOSE

- 2.1 Before accepting any assignment, the Expert is under an obligation to disclose any and all facts that might call into question their independence or impartiality, both monetary or otherwise, as discussed in Clause 3 of this Annex, below.
- 2.2 An advance declaration or waiver in relation to possible conflicts of interest arising from facts and circumstances that may arise in the future shall not discharge the Expert's ongoing duty of disclosure under this Agreement.
- 2.3 If the Expert who has made a disclosure considers himself or herself to be impartial and independent of the Parties, despite the disclosed facts, he or she shall be deemed to be capable of performing his or her duties as an Expert under this Agreement if the Client consents to such Declaration.
- 2.4 The Client may seek the assistance of the Standing Sub-Committee Committee to resolve any conflict related question.
- 2.5 Any doubt as to whether the Expert should disclose certain facts or circumstances should be resolved in favour of disclosure.

3. NATURE OF DISCLOSURES

- 3.1 The Expert shall disclose any financial, business, or personal interests that may be in actual or apparent conflict with their obligations under this Agreement. This includes, but is not limited to, disclosing his/her own investments, management positions and directorships, as well as representational or consulting arrangements, if any, in the company involved in negotiations with or in dispute with the Client, or affiliates of such company, or competitors of such company, or with other clients for similar activities, currently or in the past.

- 3.2 Where disclosure of any such relationships is prohibited by law or contract, the Expert must disclose the existence of such a relationship and the reason(s) it cannot be disclosed.
- 3.3 Disclosure should include all of the above types of activities undertaken by an Expert, his/her spouse, dependent children, and others living in the same household. The Expert must also report possible conflicts of interest involving family members, business associates, or individuals in significant personal relationships, whether or not those individuals are members of the same household.
- 3.4 Disclosure must also include activities by an Associated Entity. Associated Entity in this case refers to trusts, organizations, businesses, and the like, in which the Expert alone or with members of his or her household or extended family are employed or exercise a controlling interest. A controlling interest in this context is defined as an interest of 10 percent or more of the equity in the Associated Entity.
- 3.5 Whether any of the above activities disqualify the Expert is to be determined by the IDLO, where relevant, and the Client, with Client determinations that the Expert should be disqualified being determinative. In the event that such conflict or potential conflict is disclosed in a declaration and neither the Client nor the IDLO determines that disqualification of the Expert is required, the Expert shall nevertheless forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

4. AVOIDANCE OF CONFLICTS OF INTEREST

- 4.1 The Expert shall avoid situations and actions that compromise, or could appear to compromise, his or her ability to carrying out, in a conscientious and personally disinterested way, his or her responsibility to provide the best professional advice to his or her Client.
- 4.2 The Expert shall not misuse his/her position to pursue any private interest, which includes both financial or personal interests and those of his/her own family members, relatives, business associates, and friends.
- 4.3 The Expert shall not assume a position in which a Client's interest conflicts with that of the Expert or a person or entity affiliated with the Expert, or another client of the Expert in a substantially related matter, unless permitted by the Client's written authorization.

5. WAIVER BY THE PARTIES

- 5.1 If, within 30 days after receipt of any disclosure by the Expert, or after the IDLO and/or Client otherwise learns of facts or circumstances that could constitute a potential conflict of interest for the Expert, the IDLO and/or Client do not raise an express objection with regard to that Expert, the IDLO and/or Client are deemed to have waived any potential conflict of interest in respect of the Expert based on such facts or circumstances, and may not raise any objection based on such facts or circumstances at a later stage.

Signed and Dated:

Expert

ANNEX – C

Guidelines on Professional Standards

[Initial every page and sign and date last page]

1. GENERAL

- 1.1 The Expert's obligations under this Agreement shall be carried out in a competent, professional, and timely manner which includes the obligation to provide mandatory progress reports to the IDLO.
- 1.2 The Expert shall not assume work that he or she does not reasonably believe can be carried out in the manner provided under the Agreement for reasons of competence, personal conflicts, professional conflicts, workload, physical or mental illness, or other personal or professional reasons.
- 1.3 The Expert shall act only within his or her level of competence, and shall clarify any limitations to the IDLO when asked to act beyond it.

2. CONDUCT VIS-À-VIS OTHER MEMBERS

- 2.1 If the Expert is working in collaboration with other Experts on a Support Team, he or she shall respect the other members and the views and perspectives contributed by any of the Experts on the Support Team.
- 2.2 Recognizing that there may be differences of opinion within the Support Team, the Expert shall endeavour to work with other team members to provide advice to the Client, drawing on the various skills of the team members.
- 2.3 Where the IDLO appoints a designated 'Support Team Leader', the Expert shall follow the directions of the Team Leader, subject always to the Expert's duty to observe the law and to maintain ethical standards. The Team Leader shall respect the dignity, professionalism, and different viewpoints of each team member.
- 2.3 To the extent practical, it may be beneficial for the Experts on a Support Team to seek an understanding at the outset of the execution of the Scope of Work as to the areas of competence and responsibility of each member of such team to facilitate efficient coordination of advice. Each Expert shall act in accordance with the spirit of any such understanding that may be reached. Nothing in this paragraph shall be interpreted as requiring that each Expert subscribe to advice with which he or she strongly disagrees, but differing advice must be presented in a way that respects the positions of other members of Support Team.

3. CONDUCT VIS-À-VIS CLIENT

- 3.1 The Expert shall not communicate independently of the Client with the Client's counterpart or its advisors, unless explicitly asked to do so by the Client. For any direct substantive communication with the Client's counterpart, the Expert shall ensure that the

Client is copied on the correspondence and shall report to the Client in detail on any conversations.

- 3.2 The Expert shall not reveal information relating to the representation of a Client. Unless the Client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure permitted by Paragraph 3.3 below.
- 3.3 The Expert may reveal information relating to the representation of a Client to the extent he or she reasonably believes necessary:
- a) to prevent reasonably certain death or substantial bodily harm;
 - b) to prevent the Client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another Party and in furtherance of which the Client has used or is using the Expert's services;
 - c) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the Client's commission of a crime or fraud in furtherance of which the Client has used the Expert's services;
 - d) to secure legal advice about the Expert's compliance with the provisions of this Agreement;
 - e) to establish a claim or defense on his or her own behalf in a controversy between the Expert and the Client, to establish a defense to a criminal charge or civil claim against the Expert based upon conduct in which the Client was involved, or to respond to allegations in any proceeding concerning the Expert's representation of the Client;
 - f) to comply with other law or a court order; or
 - g) to detect and resolve conflicts of interest arising from the Expert's change of employment or from changes in the composition or ownership of the organization to which the Expert belongs, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the Client.
- 3.3 The Expert shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the Client.

Signed and Dated:

Expert

ANNEX – D

IDLO Anti-Corruption and Anti-Fraud Policy

Introduction

With its mission to strengthen the rule of law and promote good governance around the world, the International Development Law Organization (“IDLO” or the “Organization”) is committed to fighting corruption and fraud, which are antithetical to the Organization’s core values of integrity, independence, transparency, and accountability. This commitment is internal as well as external, as corrupt and fraudulent conduct by IDLO Employees can impair the effective functioning of the Organization, deplete its resources, diminish donor trust, and damage IDLO’s image and reputation.

The IDLO Anti-Corruption and Anti-Fraud Policy (“Policy”) aims to raise awareness of corruption and fraud risks, set out IDLO’s corporate position and standards expected of all employees, give concrete and practical advice to IDLO Employees on detecting and preventing corruption and fraud, and provide a framework for combatting such activities. IDLO management is committed to ensuring that this Policy is followed and fully implemented, including through training and periodic evaluations of the effectiveness of the Policy.

Scope and Application

All IDLO Employees must comply with the terms of this Policy with respect to any and all activities and operations involving the Organization. The Policy is not, however, intended to describe the full range of fraudulent, corrupt or otherwise prohibited employee conduct, and should be read in conjunction with IDLO’s Code of Conduct as well as other applicable policies, such as the Procurement Policies and Procedures (PPP) and the Whistleblower and Anti-Retaliation Policy. Any Employee who suspects or becomes aware of corruption or fraud involving IDLO, its Employees, or individuals or entities with which IDLO has contracted or otherwise does business must report it promptly to IDLO Management (*e.g.*, his supervisor, Director, Country Director, Office of the General Counsel, and/or Internal Auditor/Compliance Officer) and it will be investigated. The Organization will take disciplinary action against any Employee found to have acted in violation of this Policy or to otherwise have engaged in fraudulent or corrupt activity, up to and including termination, recovery of any financial loss, and reporting to law enforcement. The Organization will similarly take appropriate action with respect to any corruption or fraud involving individuals or entities with which IDLO does business, including termination of the relationship, recovery of any financial losses, and reporting to law enforcement.

Please contact IDLO’s Office of the General Counsel (OGC), the Internal Auditor/Compliance Officer, or the Country Director for additional guidance in interpreting or applying this Policy, or to suggest improvements. The Policy will be reviewed annually by OGC. Any amendments to the Policy must be authorized by the Director-General.

Domestic and International Law Relating to Fraud and Corruption

Almost all countries have laws prohibiting bribery of their public officials and criminalizing corrupt activity. While the privileges and immunities accorded to IDLO and its Employees in certain countries where IDLO operates may not make such laws applicable to IDLO and its Employees as a legal matter, it is the policy of IDLO to adhere to all such laws or to the provisions of this policy and other IDLO policies where they are more demanding. Employees found to have violated local law relating to fraud or corruption can expect IDLO to waive any applicable privileges and immunities if requested by local law enforcement authorities. Additionally, a number of IDLO donor countries have laws applicable to corrupt activity abroad, such as the Foreign Corrupt Practices Act of the United States, and include specific anti-corruption undertakings in their grant agreements with IDLO. IDLO is committed to fully implementing all such undertakings and this Policy is not intended to derogate from or limit those undertakings in any manner.

The international community has supported anti-fraud and corruption efforts through various international conventions which commit member parties to cooperate in combatting such activity, including through the enactment of comprehensive anti-corruption laws. Such conventions include but are not limited to: the United Nations Convention Against Corruption, the United Nations Convention Against Transnational Organized Crime, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the African Union Convention on Preventing and Combatting Corruption, the OAS Inter-American Convention Against Corruption, the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, and the EU Convention Against Corruption Involving Officials. IDLO is committed to supporting these conventions and their member parties in implementing and adhering to their provisions.

1. Definitions

“Anything of value” means any benefit, consideration or item of pecuniary value, including but not limited to: money; gifts; “loans,” whether or not repaid; use of credit cards; sexual favors; overpaying for purchases; fees and commissions; hidden interest in business transactions; investment opportunity at below market value; contracts; medical, educational or living expenses; travel, meals, lodging, shopping or entertainment expenses.

“Appearance of Impropriety” refers to conduct which even if not unethical, immoral, or inappropriate as a matter of fact, could reasonably be construed as such by an objective observer.

“Bribe” means giving or receiving money or Anything of Value to corruptly influence the actions of a decision-maker.

“Collusion” means an agreement by two or more persons or entities to defraud another or to do or obtain something forbidden by law, *i.e.*, bid rigging.

“Corruption” means the offering, giving, receiving, or soliciting of Anything of Value to improperly influence the actions of another party either directly or indirectly.

“Donor” means any public or private entity that makes a monetary or in-kind donation to IDLO of any value or type.

“Employee” means anyone operating under an IDLO employment contract including, but not limited to, the Director-General as well as IDLO directors, staff members, consultants, secondees, interns, special service contractors, and volunteers.

“Family Member” means a parent, spouse, spousal equivalent, child, sibling, uncle, aunt, first cousin, or grandparent.

“Fraud” or **“Fraudulent Conduct”** means the use of deception with the intention of pursuing personal or private interests at the expense of the Organization or others, or to avoid an obligation. Examples of Fraud or Fraudulent Conduct include, but are not limited to: misappropriation of assets; embezzlement and theft; receiving a private gain in return for favoring a candidate in a recruitment process; participation in sham transactions; making false or deceptive statements; forgery or alteration of accounting records or vouchers; falsely claiming overtime, medical expenses, travel/subsistence allowance, or sick leave; and Collusion.

“Governmental Authority” means any foreign or domestic governmental body at any level, including executive, legislative, and judicial bodies, and any department, agency, or instrumentality thereof.

“Service Provider” means any individual, company, or entity not controlled by a Governmental Authority (*i.e.*, is privately-owned and operated) that is engaged to provide goods or services to or on behalf of the IDLO, such as attorneys, accountants, lobbyists, agents, brokers, vendors, contractors, and other persons whom IDLO has used or is using to conduct its operations.

“Project Partner” means any entity, governmental or private, with which IDLO, through an agreement, grant, contract, or other financial arrangement, works to implement a programme or project and which makes a contribution to the end product or beneficiary population.

“Public Official” means: (a) an officer or employee of a Governmental Authority or international organization, or any person acting in an official capacity or exercising a public function for or on behalf of any Governmental Authority or international organization; or (b) any political party, party official, or candidate for political office.

2. Prohibited vs. Permissible Payments to Public Officials and Service Providers

When interacting with Public Officials, Project Partners, and Service Providers, IDLO Employees should take special care to ensure that they do not engage in conduct that reflects negatively upon the Organization or is incompatible with the proper discharge of their duties. Any actions to undertaken with the intent to improperly influence the conduct of another party or to receive a bribe or other prohibited payment will constitute a breach of this Policy. A general list of “do’s and don’ts” is attached at Annex 1. Unauthorized payments are an area of particular concern and are discussed in depth here.

2.1 Prohibited Payments

As a general rule, IDLO Employees shall not offer, pay, promise, or authorize the payment of Anything of Value to a Public Official or Service Provider in order to influence any act or decision of that official or party. (Restrictions on media engagement with regard to making payments to media representatives for the purpose of providing coverage of IDLO activities or impact can be found in Administrative Notice No. 02/2013 (March 15, 2013).) Offering a Bribe in exchange for some business advantage is prohibited regardless of whether it is made directly or indirectly through another party. IDLO Employees should take extra care when interacting

with Public Officials or Service Providers and their Family Members to avoid even an appearance of impropriety.

Likewise, IDLO Employees shall not solicit or receive the payment of Anything of Value from any third party made in order to influence or reward any act or decision on behalf of IDLO. Soliciting or receiving a Bribe in exchange for providing a benefit to a third party is prohibited regardless of whether it is solicited or received directly or indirectly through another party. IDLO Employees should take extra care when interacting with Public Officials or Service Providers and their Family Members to avoid even an appearance of impropriety.

2.2 Permissible Payments for Legitimate Business Purposes

Payments made to or for the benefit of Public Officials or Service Providers may, however, be permissible if they are for a *legitimate business purpose and consistent with local law*. For example, payments for the delivery of training or to reimburse meals, travel, or accommodation costs incurred by a Public Official/Service Provider are acceptable as long as they are directly related to IDLO's programmes or projects or other *bona fide* business matters, are permissible under local laws, and do not pose a conflict of interest. On the same basis, it is also permissible to compensate Public Officials for their attendance at IDLO-sponsored workshops/trainings and to provide reasonable honoraria to speakers and presenters.

2.3 Gifts

Gifts, hospitality and other benefits may not be given on behalf of IDLO or received by IDLO Employees to or from Service Providers, Project Partners, or Public Officials unless they are: 1) acts of courtesy and are of modest value; 2) do not compromise the integrity and/or the reputation of any of the parties; and 3) do not create the Appearance of Impropriety.

Permissible gifts and hospitality should also have all the following characteristics:

- not be a cash payment;
- be provided in connection with a *bona fide* and legitimate business purposes;
- not be motivated by the desire to exercise improper influence or the expectation of reciprocity;
- be reasonable according to the circumstances;
- be commensurate with generally accepted standards of professional courtesy; and
- comply with local laws and regulations applicable to the Public Officials or Service Providers.

Monetary or in-kind contributions made by an IDLO Employee in his or her personal capacity to support Public Officials are not prohibited by this Policy to the extent permissible under national law, if such payments are an exercise of an individual's political right guaranteed by the constitution or laws of the host country, are made by a national of that country, are made without reference to IDLO, and the intention is not to exert undue influence or receive a benefit for or on behalf of IDLO.

3. Falsification of Records

Misleading or false entries that conceal the source or nature of expenditures or receipts are included under the definition of Fraud. Forging documents, preparing false entries, falsifying

record logs and expense claims, and creating fictitious invoices are all strictly prohibited under this and other IDLO policies.

4. IDLO Measures to Prevent Fraud and Corruption

Corruption or Fraudulent Conduct by Project Partners and Service Providers acting on behalf of the Organization has the same detrimental effect on IDLO as similar conduct engaged in by IDLO Employees. As a result, IDLO strives to vet Project Partners and Service Providers to avoid working with any that are disreputable and engage in corrupt or fraudulent conduct. The early detection of possible compliance and integrity concerns allows IDLO to avoid associating with individuals or entities that could expose the Organization to serious financial and reputational risks while contributing to the overall integrity and transparency of IDLO's operations.

While there is no foolproof approach to screening potential Project Partners and Service Providers, IDLO Employees can minimize risk to the Organization by conducting, where appropriate, anti-Corruption and anti-Fraud due diligence (see sub-section 4.1 below and Annex 2) on potential Project Partners and through proper procurement practices for the engagement of Service Providers and, in all cases, by including certain contractual provisions in its agreements with such entities.

Any procurement of goods or services on behalf of IDLO must be made in accordance with IDLO's Procurement Policy and Procedures (PPP) or, where contractual obligations dictate otherwise, with procurement rules of another party so long as they are regarded as reflecting international best practices. Selecting potential Service Providers through a competitive procurement process conducted in accordance with the PPP significantly reduces the risk of fraud and corruption.

Please note that the requirements of a particular donor agreement will prevail over IDLO's own due diligence standards to the extent they are stricter.

4.1 Due Diligence

Conducting appropriate anti-Corruption and anti-Fraud due diligence on prospective Service Providers and Project Partners is essential to prevent the Organization from retaining or partnering with disreputable entities. Carrying out due diligence is also necessary to demonstrate to auditors and donors that IDLO has made sufficient efforts to vet entities with which it works and use its resources wisely. Accordingly, before retaining a Service Provider or engaging on a project with a Project Partner, IDLO shall conduct due diligence appropriate under the circumstances that is documented and maintained in IDLO's records. The extent of due diligence required should correspond to the level of the perceived risk. For example, if the relationship being contemplated is financial in nature (*e.g.*, a sub-grant to a partner organization), a greater degree of scrutiny is required than, for example, in the case of a non-binding memorandum of understanding. Furthermore, there are some potential partners that, by their very nature, present greater risk. Thus, an unfamiliar or newly-established NGO or contractor will require a more extensive inquiry than a better known and respected entity. Additional guidance on procedures

and good practices relating to implementing partners is provided in Working with Implementing Partners – A Users’ Guide and the Sub-Project Toolkit.

While the nature and extent of due diligence will vary depending on the attendant risks presented by the location and type of services to be provided by the Service Provider or the location and type of project to be co-sponsored with the Project Partner, due diligence should be conducted in an appropriate manner to determine whether the Private Provider or Project Partner:

- is qualified and appropriately licensed to perform the service or undertake the business venture (*e.g.*, by confirming with the licensing body that the Service Provider or Project Partner is authorized to operate under local law);
- has a successful track record with IDLO or another reputable IGO/NGO;
- has the requisite reputation in the field;
- has any conflicts of interest;
- is willing to and capable of complying with accounting best practices, including retention of original receipts and adequate bookkeeping;
- is or employs a Public Official or Family Member of a Public Official;
- has adopted appropriate policies to prevent corruption and fraud; *and*
- has not engaged in activities that are against IDLO’s mission and values (including, but not limited to, terrorism, drug trafficking, human trafficking, or sex crimes).

Due diligence of prospective Service Providers and Project Partners can include such illustrative activities as the following:

- obtaining from the prospective Service Provider or Project Partner a completed due diligence questionnaire;
- ascertaining the reputation and past dealings of the prospective Service Provider or Project Partner with their current and past stakeholders. Appropriate methods might include references from past or present clients, financial references, searches of publicly available sources, background checks, etc.; and
- Visiting the offices of the prospective Service Provider or Project Partner in the location where the services are to be performed to ensure that it is a legitimate entity.

IDLO shall update its due diligence on Service Providers and Project Partners at appropriate regular intervals. Annex 2 to this Policy contains a list of “Due Diligence Background Checks,” which was produced by the International Anti-Corruption Resource Center. This can be used as a resource on the types of information needed to conduct due diligence and what methods can be used to obtain it.

4.2 Written Agreements

Including anti-Corruption and anti-Fraud provisions in IDLO's agreements is an important way to protect the Organization and prevent corrupt or fraudulent activities involving a Service Provider or Project Partner. Contracts and agreements with Service Providers or Project Partners on behalf of IDLO must be in writing, and unless based on pre-approved contract templates, be approved in advance by OGC. In addition, contracts and agreements with Service Providers and Project Partners valued at 2,500 euros or more, unless otherwise authorized by OGC, shall incorporate some or all of the following provisions as follows:

Required:

a representation and warranty that the Service Provider or Project Partner is aware of the requirements of, is in compliance with, and will abide by the terms of this Policy and applicable law;

a right to call for the removal of staff of a Service Provider or Project Partner that have been found to have engaged in such activities;

a requirement that the Service Provider or Project Partner submit originals (not copies) of any required financial receipts; and

a right to terminate the contract, without penalty, in the event the Service Provider or Project Partner violates such representations and warranties.

Recommended:

a right to audit the Service Provider or Project Partner's books and records in the event that IDLO has a good faith reason to believe that the Service Provider or Project Partner has acted in violation of this Policy or applicable law.

Contracts and agreements below the 2,500 euro threshold should also include such provisions where appropriate under the circumstances. Additionally, all contracts and agreements should include additional anti-fraud and anti-corruption provisions as appropriate including, for example, special anti-money laundering or anti-terrorism financing provisions to comply with applicable Donor agreement requirements.

4.3 Accurate Record-Keeping and Payment Processing Procedures

IDLO shall make and keep books, records, and accounts which, in reasonable detail, accurately reflect any transactions involving expenditures on behalf of the Organization, including all expenditures related to Service Providers and Project Partners, and the reasons or justifications for such expenditures, and all contracts, invoices, and receipts relating to the purchase of goods and services. No payment or receipt on behalf of IDLO may be approved or made with the intention or understanding that any part of that payment or receipt is to be used for a purpose other than that described in the relevant books and records. IDLO also shall devise and maintain a system of internal accounting controls sufficient to provide assurances that transactions are properly authorized and recorded.

5 Reporting, Investigation, and Disciplinary Action

IDLO employees have an obligation to promptly report all known or suspected incidents of Corruption or Fraud, as well as any other illegal, improper, or unethical conduct, which will be reviewed and investigated. All information received and the identity of the person providing the information shall be treated by the Organization confidentially to the extent possible within the legitimate needs of an investigation. When reporting known or suspected fraud or corruption, IDLO Employees are encouraged to provide as much detail and documentation as possible.

IDLO will view any violation of this Policy or failure to report a violation as a serious matter that warrants disciplinary action, up to and including termination of employment.

If you have any questions about this Policy, its interpretation, or its application to potential activity, or if you would like to report a known or suspected violation of this Policy, please contact OGC, the Internal Auditor/Compliance Officer, or relevant Country Director, or submit your report through the procedures described in IDLO's Whistleblower and Anti-Retaliation Policy.

April 2016

Annex 1: General Do's and Don'ts

- **DO** report any interactions or relationships that you suspect violate this Policy to OGC, the Internal Auditor/Compliance Officer, and/or the relevant Country Director.
- **DO** be sensitive to and avoid interactions that may create even an Appearance of Impropriety.
- **DO** report any potential conflicts of interest to OGC and the relevant Country Director prior to IDLO beginning work with a Project Partner or Service Provider.
- **DO** seek guidance from OGC, the Internal Auditor/Compliance Officer, and/or relevant Country Director as needed to determine whether a contemplated interaction with a Public Official or Service Provider is appropriate and in compliance with this Policy and other applicable IDLO policies.
- **DO** conduct due diligence of all Project Partners and Service Providers before entering into an agreement with such entities.
- **DO** enter into written agreements with all Project Partners and Service Providers that contain anti-Corruption and anti-Fraud provisions, as well as any other provisions required by Donors.
- **DO** ensure that agreements for services are specific and detailed and that compensation is reasonable and in accordance with prevailing market rates.
- **DO** follow contract payment provisions when paying a Service Provider or Project

Partner, and always ensure that IDLO receives a detailed invoice that fully and accurately describes the services provided and expenses incurred.

- **DO** ensure that any benefits that are provided to Public Officials or Service Providers, such as meals, travel, and attendance payments, are for a legitimate business purpose, permissible under local law, and conform to the requirements of this policy.
- **DO** keep receipts and invoices for any expenses paid on behalf of a Public Official or Service Provider.
- **DO** exercise appropriate care in managing funds, resources, and/or assets of IDLO and follow appropriate financial, procurement, and other applicable procedures and mechanisms to mitigate the risk of Corruption or Fraudulent Conduct. **DON'T** turn a 'blind eye' to evidence that gives rise to a suspicion of Fraud or Corruption involving IDLO on the part of a Public Official, Project Partner, Service Provider, or other IDLO Employee regardless of your views as to whether such conduct is endemic locally.
- **DON'T** hide or fail to disclose a potential conflict of interest or material fact in any hiring, contract, procurement or other decision that involves yourself or others, for example, if you have a close relationship with the head of a potential partner organization or a particular candidate or a potential provider. Recuse yourself from your role in any such decision if your participation would give rise to an Appearance of Impropriety.
- **DON'T** enter into relationships with Project Partners or Service Providers that raise "red flags" during the due diligence process without authorization from OGC.
- **DON'T** sign off on any documents which are in languages you cannot understand; in such circumstances seek a translation first.
- **DON'T** abuse your position and any attendant privileges and immunities for personal profit or at the expense of the Organization.
- **DON'T** provide or receive anything of value (including cash, gifts, travel, entertainment, charitable or political contributions, or other things of value) to or from a Public Official or Service Provider in exchange for a business or other advantage for IDLO or you.
- **DON'T** provide anything of value to Family Members of any Public Officials or Service Providers.
- **DON'T** make Facilitation Payments (*i.e.*, modest payments to prompt a Public Official to perform or expedite a routine, non-discretionary act that he is otherwise required to perform as part of his duties) unless in exigent circumstances or with the prior authorization of OGC. (Additional guidance on Facilitation Payments can be found in OGC Advisory 02/2014).

Annex 2: Due Diligence Background Checks

This guide is based on advice provided by the International Anti-Corruption Resource Center.

Background Check Number One:

IS THE COMPANY A LEGITIMATE BUSINESS, WITH THE CREDENTIALS AND EXPERIENCE IT CLAIMS IN ITS BID OR PROPOSAL?

Many companies involved in corrupt or fraudulent practices are shell companies, organized solely for the purpose of obtaining fraudulent contracts, without any staff or permanent business premises. The following checks will help identify them:

- Does the firm have a website or appear on the Internet, in a manner consistent with its purported size and experience, and the firm's representations in its bid or proposal?
- Is the firm listed in on-line or hard copy telephone, business or Chamber of Commerce directories, appropriate to its claims?
- Are the company's listed address and telephone numbers correct? Do reverse address and telephone searches to identify the real persons or companies listed at the address or telephone number.
- Use map and satellite photo sites where available to view the purported premises.

Primary sources of information:

Call and visit purported business location; check local telephone, business and corporate directories.

Background Check Number Two

HAS THE FIRM OR INDIVIDUAL BEEN THE SUBJECT OF DEBARMENT, SUSPENSION, INVESTIGATION, LEGAL ACTION OR NEGATIVE PUBLICITY?

Primary sources of information:

Internet searches; On-site background checks for smaller or local firms not listed on the Internet; Check with prior clients, employers and donors, local NGO's and trade associations and local media sources.

Background Check Number Three

DOES THE FIRM HAVE THE CAPACITY (EXPERIENCE, PERSONNEL AND RESOURCES) TO DO THE PROPOSED WORK?

Primary sources of information:

- Check if a bidder, contractor or consultant has the necessary experience and resources to perform the proposed contract;
- On-site background checks for smaller or local firms not listed on the Internet;
- Check references with prior employers and donors, local business directories and trade associations.

ANNEX – E

CODE OF CONDUCT OF THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION

This Code of Conduct applies to all employees, consultants, interns, volunteers and any other person in a similar relationship with the International Development Law Organization (“IDLO”) hereinafter referred to as “IDLO Affiliates”.

All IDLO Affiliates are expected to maintain ongoing compliance with all administrative notices, statements of policy, staff rules and regulations, the personnel handbook, this code of conduct, as well as lawful and ethical work practices in any jurisdiction in which they perform their duties.

Any perceived lack of clarity with respect to these rules or their specific application should be brought to the attention of the Head of Human Resources and the General Counsel, who will consult with the Director General, if necessary.

To emphasize the consistency of the items specified in this Code of Conduct, the IDLO Vision, Mission, and Values Statements are set forth below.

IDLO VISION STATEMENT

We believe in a world free of poverty, in which justice and respect for each human being are ensured, and which is built on the rule of law.

IDLO MISSION STATEMENT

IDLO seeks to strengthen the rule of law and good governance in developing countries and countries in transition in order to provide security for the individual and to reduce poverty by protecting individual rights and economic activity and by strengthening judicial and local institutions to promote a viable legal framework for commerce, trade and investment.

IDLO VALUES

We are committed to improving the lives of the peoples of the developing world.

We encourage multi-cultural understanding and harmony.

We perform our work with political neutrality and independence.

We operate transparently and are accountable.

We are cooperative partners in all tasks undertaken.

GENERAL PRINCIPLES and VALUES

(a) IDLO works to serve the public interest in the countries in which it operates. IDLO Affiliates must be committed to the following values, principles and standards. They shall conduct themselves at all times in a manner befitting their status as international civil servants and in accordance with the highest standards of integrity, competence, discretion, impartiality, independence, transparency, efficiency, and professionalism. Furthermore, their behavior should be inspired by ideals of peace, respect for fundamental human rights, dignity, tolerance and social justice, economic and social progress, and international cooperation.

(b) The concept of integrity is a guiding principle governing the behavior of IDLO Affiliates and includes qualities such as honesty, impartiality, and incorruptibility.

(c) The impartiality of IDLO Affiliates means they should remain independent from any authorities outside the Organization and not seek or accept instructions from any Government, person, or entity outside the Organization, on the understanding that IDLO Affiliates are not representatives of their respective governments. While their personal views remain inviolate, they should be expressed with tact and discretion. IDLO Affiliates should take special care when publicly expressing their views on controversial issues and in instances where they reflect a personal position rather than an institutional position, they should make this clear.

(d) IDLO Affiliates shall not engage in conduct that adversely reflects on the Organization or is incompatible with the proper discharge of their duties with IDLO. They shall avoid any action, including any public pronouncement that may adversely and/or unfavorably reflect on their status as an IDLO Affiliate or on the integrity, independence, and impartiality required by that status.

(e) In carrying out their respective duties, all IDLO Affiliates shall be respectful of colleagues, participants and other beneficiaries, external visitors, visiting instructors, and donors.

(f) IDLO Affiliates should respect the rights of others to hold different opinions and follow diverse cultural beliefs. A willingness to work alongside persons of various nationalities, religions and cultures is essential; continuous sensitivity to the way in which events and statements may affect others is required together with avoidance of expressions that could be interpreted as biased or intolerant. IDLO Affiliates should not be limited by the attitudes, working routines, and way of life unique to their individual countries or regions. (See also item I)

(g) Freedom from discrimination is a fundamental human right and IDLO Affiliates are expected to respect the dignity, importance and equality of each individual. Assumptions and statements based on stereotypes should be avoided.

(h) IDLO encourages IDLO Affiliates to convey any matters to management concerning adherence to these standards. The Personnel Handbook contains details on the procedure for reporting suspected violations of this Code or other organizational rules. Persons raising reasonably founded concerns in good faith shall be protected from any form of retaliation or discrimination.

SPECIFIC ITEMS

I. WORKING RELATIONS

- (a) IDLO Affiliates should work to enhance harmony and a team spirit.
- (b) Relations between IDLO Affiliates, and Supervisors should be based on mutual respect and courtesy.
- (c) IDLO Affiliates should be supportive of colleagues, capitalizing on their strengths, taking into account their weaknesses and adapting accordingly. IDLO Affiliates should also recognize that mistakes are a part of life and be willing to work together with colleagues to find the best ways to address them.
- (d) Interpersonal conflicts should be handled with an open attitude through respectful dialogue.
- (e) Supervisors are in positions of leadership and it is their duty to ensure a harmonious workplace based on mutual respect. They should be open to all views and opinions and ensure that the merits of IDLO Affiliates are properly recognized. Supervisors must, as far as possible provide support, guidance and motivation in an effort to promote the development of their staff.
- (f) It is natural for Supervisors to be seen as role models and therefore they have a special obligation to uphold the highest standards of conduct. They must act impartially, without engaging in intimidation or favoritism.
- (g) It is incumbent on Supervisors to communicate effectively with their staff and to share information with them. IDLO Affiliates have a reciprocal responsibility to provide all pertinent facts and information to their Supervisors.
- (h) In order for IDLO to carry out its work effectively, IDLO Affiliates are expected to share information relevant to IDLO's work.
- (i) Communications among colleagues and with external visitors, including participants and visiting instructors, should respect cultural differences.
- (j) IDLO Affiliates will comply promptly with, and in good faith implement, all instructions given by their Supervisors and the management of the Organization.
- (k) All IDLO Affiliates will behave in a flexible manner in carrying out their duties and in their relationships with colleagues and visitors.

II. CULTURAL SENSITIVITY and RESPECT FOR DIFFERENT CUSTOMS

- (a) IDLO is home to a myriad of different peoples, languages, cultures, customs, and traditions. It is self-evident that genuine respect for all persons is fundamental for IDLO Affiliates. Without hampering free discussion, any behavior or statement that is considered offensive by persons with a particular cultural background should be avoided. Special care should be taken to respect

the cultural background and sensitivity of colleagues, visitors, participants and visiting instructors.

(b) IDLO Affiliates will dress professionally and in a manner that will not offend the cultural sensitivity of any colleagues, visitors, participants or visiting instructors.

III. PERSONAL CONDUCT

(a) Consistent with the principles and values set forth in this Code of Conduct, IDLO Affiliates must maintain dignified conduct befitting their status as international civil servants.

(b) As a general principle, the personal lives of IDLO Affiliates should be respected by the Organization. Notwithstanding the foregoing, given the high standards of integrity to which IDLO is committed, IDLO Affiliates shall observe high moral standards in their personal lives as well as in the workplace.

(c) The privileges and immunities that international civil servants enjoy are conferred solely to enable them to carry out their work for the Organization. Privileges and immunities do not exempt international civil servants from observing local laws, nor do they provide an excuse for ignoring private legal or financial obligations.

IV. EMPLOYMENT

The staff of the Organization is its greatest resource. It is accordingly IDLO's policy that all employment practices, including recruiting, hiring, transfers, promotions, compensation, and benefits be conducted in a transparent manner and without regard to race, creed, color, religion, national origin, gender, sexuality, age, or disability. As an international organization, IDLO's policy of seeking to achieve a balanced representation of nationalities within its staff shall not be considered a discriminatory practice.

V. NON-DISCRIMINATION and HARASSMENT POLICY

(a) Discrimination means any distinction, restriction, preference, or exclusion based on race, national or ethnic origin, color, religion, age, gender, sexuality, marital status, family status, or disability.

(b) Harassment means any unwelcome advance, request for favour, or other verbal or physical conduct of a sexual or non-sexual nature directed towards another IDLO Affiliate, participant or visitor, when it (i) is made a condition of employment, promotion, or participation in IDLO's activities, (ii) interferes in any way with the work or study environment, or (iii) creates an intimidating, hostile or offensive environment. It is distinguished from other acceptable social behaviour and forms of mutual contact by its unwelcome, unreciprocated, or coercive nature.

(c) Discrimination and harassment may occur regardless of whether the actor considers the behaviour to be offensive or not.

(d) IDLO is committed to ensuring that every IDLO Affiliate, or potential IDLO Affiliate, has the right to be treated fairly, free from discrimination and harassment. Any allegation of discrimination and/or harassment will be fully, fairly and promptly investigated in accordance with the procedures set forth in the Personnel Handbook.

VI. CONFLICTS OF INTEREST

(a) Any IDLO Affiliate, who has a present or prospective, direct or indirect private interest in any matter in which IDLO has or may have an interest shall immediately declare this fact to the Director General who shall advise the IDLO Affiliate as to whether a potential or actual conflict of interest exists. The IDLO Affiliate may also be required to disclose relevant personal data and assets necessary to determine the existence of a relevant conflict of interest. The Director General shall issue guidance to the IDLO Affiliate on such matter, which the IDLO Affiliate shall immediately adopt.

(b) There must be no conflict, or appearance of conflict, between the self-interest of any IDLO Affiliate and the Organization or its Member States.

(c) An IDLO Affiliate must never use his/her position with IDLO for personal or private gain, or for that of the IDLO Affiliate's family or any other person.

(d) IDLO Affiliates must promptly report to the Director General and the General Counsel if he/she becomes aware that a family member, another IDLO Affiliate or a family member of another IDLO Affiliate has assumed an executive officer, director, or similar position, or taken an ownership stake, with any customer, supplier, donor, or competitor of IDLO. Any staff member who has an interest described above may not act on behalf of the Organization in connection with any business or potential business with such entity.

(e) An IDLO Affiliate may not engage in any outside activity that could reasonably be expected to conflict with the interests of the Organization. Director General approval must be secured in writing prior to acceptance of any outside employment, representation, consultancy, board membership, fiduciary relationship, or any other activity for which the IDLO Affiliate receives remuneration (other than the reimbursement for reasonable and normal expenses by civic, charitable, and religious organizations).

VII. USE AND PROTECTION OF INFORMATION

The disclosure of confidential information may seriously jeopardize the efficiency and credibility of the Organization. IDLO Affiliates are responsible for exercising discretion involving all matters of official business. They must not divulge confidential information without authorization from an IDLO Director. Nor should IDLO Affiliates use information, which has not been made public and is known to them by virtue of their official position, for private gain or advantage. These obligations do not cease upon separation from service.

VIII. ANTI-BRIBERY POLICY

(a) IDLO Affiliates are prohibited from accepting any offers, gifts [In this context, see rule 2.6.2 of the S.R.R. regarding the acceptance of gifts], or bribes in any form, including kickbacks from contract payments or the use of other channels to provide unlawful benefits to any government officials, customers, agents, contractors, or suppliers.

(b) IDLO Affiliates are prohibited from arranging or accepting a bribe or kickback from government officials, customers, agents, contractors, or suppliers for the IDLO Affiliate's benefit or the benefit of their family, friends, associates or acquaintances.

(c) IDLO Affiliates should take reasonable measures within their power to ensure: (i) that any payment made to agents or consultants represents no more than an appropriate remuneration for legitimate services rendered by them; and (ii) that no part of any such payment is passed on by the agent or the consultant as a bribe or otherwise in contravention of this code or the Staff Rules and Regulations.

IX. LOBBYING, POLITICAL CONTRIBUTIONS AND OTHER POLITICAL ACTIVITIES

(a) IDLO Affiliates carry out their duties in a politically neutral manner. Contributions, in the name of the Organization, to political parties or committees or to individual politicians in any jurisdiction are strictly prohibited.

(b) IDLO Affiliates may, in their personal capacity, exercise the right to vote and join political parties, but they may not participate in political activities that, in the judgment of the Director General, are incompatible with or detrimental to the independence and impartiality required by their status as IDLO Affiliates. Contributions to a political party or to particular candidate(s) shall not be considered as prohibited activities. If the intention of the contributor is to exert undue influence on a political party or candidate, in the absence of specific laws regarding such contributions, such conduct may be considered bribery for the purposes of this code.

X. MISAPPROPRIATION of GOODS

(a) Misappropriation is defined as the unauthorized taking of IDLO assets for one's own benefit or the benefit of someone else.

(b) Misappropriation of goods, merchandise, services (including but not limited to telephone and other communication facilities), resources, money, papers, or property belonging to the Organization, or to other IDLO Affiliates, is strictly forbidden.

XI. PROCUREMENT POLICIES

Procurement of needed supplies and services shall be conducted in a manner that fosters the highest ethical standards, transparency and a quality level of service, while maintaining the continued confidence of IDLO's clients and Member States. IDLO's procurement policy is designed to ensure that procurement is carried out on the basis of (i) fair and impartial selection of capable and responsible sources of supply, (ii) maximum use of competition, (iii) selection of

suitable types of contracts, (iv) conformity with all applicable laws, regulations and contractual obligations, and (v) an effective system for monitoring procurement procedures and management controls to prevent fraud or misconduct.

XII. QUALITY ASSURANCE

In providing services, the Organization and IDLO Affiliates should observe the highest standards of quality. Each functional area should maintain a wide programme to ensure that work is carried out in a professional and high-quality manner. Every activity shall provide a means for the detection and prevention of lapses in quality.

XIII. SECURITY AND SAFETY

It is the Organization's responsibility to ensure that the health, well-being and lives of IDLO Affiliates and dependents will not be subject to undue risk. The Organization should take adequate measures to protect the safety of all IDLO Affiliates and their dependents in connection with official duties. However, it is incumbent on IDLO Affiliates to comply with all the necessary instructions to protect their safety [A specific security policy is under development].

XIV. PRIVACY

(a) IDLO Affiliates should always use discretion with respect to the privacy of colleagues. Personal correspondence, including email messages, voicemail, telephone and Internet use, should always be respected and under no circumstances should management or other colleagues access them, unless prior consent of the interested person is given.

(b) Appropriate consideration should be given to the fact that IDLO Affiliates have their own private lives outside of IDLO. Therefore personal privacy and time must be respected.

XV. USE of E-MAIL and INTERNET

(a) Electronic mail facilities of IDLO should be used with high levels of courtesy and discretion in both formal and informal communications, in accordance with the standards contained in this Code. IDLO Affiliates should respect as much as possible "Netiquette" rules when using e-mail (<http://www.albion.com/netiquette/corerules.html>).

(b) E-mail and e-mail attachments should not be used to transmit official correspondence, including documents of a legal, financial, personal or contractual nature, requiring holographic signature or which are subject to specific formalities [A specific e-mail policy will be developed at a later stage].

(c) Private communications over the Internet or via e-mail are permissible but should be limited in quantity and must adhere to the high standards of conduct applicable to IDLO Affiliates as set forth in this Code.

(d) Inappropriate or excessive use of the Internet for private purposes is forbidden.

XVI. CONCLUSION

When applied to a staff member, this Code of Conduct will be enforced in accordance with the provisions of the Staff Rules and Regulations and Personnel Handbook.

Appendix 5: Flow chart and indicative timeline

