



**THE CONSTITUTION OF
THE PRIVATE INFRASTRUCTURE DEVELOPMENT
GROUP
(as amended on 29th June 2018)**

**AMENDED CONSTITUTION OF
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1. **Definitions**

In this Constitution the following words have the following meanings:

"2013 Memorandum of Understanding" means the memorandum of understanding dated 10 October 2013 entered into by each Donor in relation to the constitution of the Private Infrastructure Development Group as may be amended from time to time;

"2018 Reorganisation Agreement" means the agreement dated 29th June 2018 between the Donors, PIDG Ltd, the Trustees, EAIF, GuarantCo, InfraCo Africa, InfraCo Africa Investment, InfraCo Asia and InfraCo Asia Investments relating to the implementation of a new governance framework for PIDG;

"Code of Conduct" means the code of conduct for PIDG Participants as amended from time to time;

"Commitment Period" means the period over which each Donor has committed to make a Contribution to the PIDG Trust for the funding of PIDG activities;

"Contribution" means a contribution made by a Donor to the PIDG Trust or directly to a Facility in accordance with the provisions of a Funding Instrument, but for the avoidance of doubt does not include any financing provided by a Donor to a Facility in another capacity, for example loans provided by KfW as a financial institution to EAIF or ICF Debt Pool;

"Contributions Schedule" has the meaning set out in Clause 6.3;

"DAC List of ODA Recipients" means the list of countries and territories eligible to receive official development assistance prepared by the Development Assistance

Committee of the Organisation for Economic Co-operation and Development prevailing from time to time;

"Declaration of Trust" means the declaration of trust made under Mauritian law executed on 1st December 2001 on behalf of the Trustees to establish the PIDG Trust as amended by an Amended and Restated Declaration of Trust dated 14th March 2003 and a Second Amended and Restated Declaration of Trust dated 4th September 2018 and as otherwise amended from time to time;

"DevCo" means the Infrastructure Development Collaboration Partnership Fund housed within the International Finance Corporation;

"DFAT" means the Commonwealth of Australia as represented by the Department of Foreign Affairs and Trade;

"DFID" means the Secretary of State for International Development of the Government of the United Kingdom and Great Britain and Northern Ireland at the Department for International Development;

"DGIS" means the Netherlands Ministry of Foreign Affairs;

"Donor" means a member of PIDG, being each of DFID, DGIS, Sida, DFAT, KfW, MFA, SECO and the World Bank Group (currently represented by IFC) together with any new members of PIDG having been accepted in accordance with Clause 7 but excluding any Donor who ceases to be a member in accordance with Clause 7 (together the **"Donors"**);

"EAIF" means The Emerging Africa Infrastructure Fund Limited, a private company incorporated and registered in Mauritius with registered number 39536;

"Facility" means each of EAIF, GuarantCo, InfraCo Africa, InfraCo Africa Investment InfraCo Asia, InfraCo Asia Investments, ICF Debt Pool, GAP, TAF and DevCo and any other facilities established by the PIDG Trust or another entity on behalf of the PIDG from time to time to carry out its purposes (but excluding PIDG Ltd) (together the **"Facilities"**);

"Funders' Agreement" means an agreement between a Facility, the PIDG Trust, PIDG Ltd and, where relevant, other investors in the Facility;

"Funding Instrument" means an instrument by which a Donor may provide funding to the PIDG Trust or a Facility as set out in Clause 6;

"GAP" means Green Africa Power LLP, a limited liability partnership registered in England and Wales with registered number OC 383990;

"General Administration Costs" means the costs of the PIDG Trust and PIDG Ltd as described in Clause 6.5 and as approved by the Donors;

"GuarantCo" means GuarantCo Ltd, a private company incorporated and registered in Mauritius with registered number 58185CI/GBL;

"ICF Debt Pool" means ICF Debt Pool LLP, a limited liability partnership registered in England and Wales with registered number OC 348514;

"InfraCo Africa" means InfraCo Africa Limited, a private company incorporated and registered in England and Wales with registered number 5196897;

"InfraCo Africa Investment" means InfraCo Africa Investment Ltd, a private company incorporated and registered in England and Wales with registered number 9152403;

"InfraCo Asia" means InfraCo Asia Development Pte. Ltd, a company incorporated and registered in Singapore with registered number 200901920D;

"InfraCo Asia Investments" means InfraCo Asia Investment Pte. Ltd, a company incorporated and registered in Singapore with registered number 2011350Y5H;

"Investment Policy" means the investment policy or equivalent adopted from time to time by a Facility;

"KfW" means KfW, acting in its own name but for the account of the Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung of the Federal Republic of Germany;

"MFA" means The Norwegian Ministry of Foreign Affairs, through the Department of Economic Relations and Development, Section for Economic and Commercial Affairs;

"Original Donors" means DFID, DGIS, SECO and Sida;

"PIDG" means the Private Infrastructure Development Group;

"PIDG General Administration Budget" means the indicative budget of General Administration Costs for the PIDG Trust and PIDG Ltd approved by the Donors;

"PIDG Ltd" means The Private Infrastructure Development Group Ltd., a private company limited by shares incorporated in England and Wales with company number 11265124 and wholly-owned by the PIDG Trust;

"PIDG Operating Policies and Procedures" means the operating policies and procedures of the PIDG as approved by the Donors and PIDG Ltd and amended from time to time;

"PIDG Participants" means (i) the Directors, employees and any office holder (e.g committee member) of the PIDG Facilities and PIDG Ltd; (ii) the staff of the International Finance Corporation when acting in relation to DevCo; (iii) the Technical Advisor for the TAF; (iv) the Trustees; and (v) any third-party service provider responsible for the core business of a PIDG Facility when acting in relation to that PIDG Facility;

"PIDG Trust" means the Private Infrastructure Development Group Trust;

"PPIAF" means the Public/Private Infrastructure Advisory Facility;

"Proceeds" has the meaning set out in the relevant Funding Instrument or Funders' Agreement;

"SECO" means the Swiss State Secretariat for Economic Affairs of the Government of the Confederation of Switzerland;

"Sida" means the Government of Sweden represented by the Swedish International Development Co-operation Agency;

"SSA" means Sub-Saharan Africa;

"TAF" means the Technical Assistance Facility of the PIDG Trust;

"Trustees" means the trustees of the PIDG Trust, that is, MultiConsult Trustees Ltd (formerly known as MC Trust Ltd), Minimax Trust Ltd and SG Kleinwort Hambros Trust Company (UK) Limited or any other Trustee appointed in accordance with the Declaration of Trust from time to time;

"Trust Funds" means the funds of the PIDG Trust including the Donors' Contributions and any Proceeds of any investments of the PIDG Trust.

Unless provided otherwise, reference to a Clause or a Schedule will be to a clause or a schedule of this Constitution.

2. **Introduction**

2.1 PIDG is a multi-donor arrangement established by the Original Donors in 2002. It aims to facilitate the provision of infrastructure needed to eliminate poverty in developing countries by encouraging private investment. Particular importance is attached to the provision of adequate and affordable services to the poorer sections of society.

2.2 PIDG provides a forum in which interested donors can co-ordinate activities and resolve practical questions of investment. Such a mechanism provides a strategic approach to developing financing for private infrastructure investment which complements work being undertaken by the PPIAF to improve the enabling environment. In doing so, it must have regard for best principles of ethics, social responsibility and environmental concern, and will be poverty-focused.

2.3 The Original Donors established the PIDG Trust as a vehicle for Donors to pool, co-ordinate and administer funds in relation to PIDG activities. The PIDG Trust has established the Facilities and PIDG Ltd in order to implement the objectives set out in Clause 3.

2.4 In 2016 the Donors approved a new governance framework for PIDG, under which they agreed to delegate certain decision-making powers to PIDG Ltd and they required the Facilities to adopt "reserved matters" requiring approval of PIDG Ltd. This is set out in more detail in the 2018 Reorganisation Agreement.

3. **Objectives**

3.1 Key specific objectives of PIDG will be to support private sector involvement in the financing, ownership, operation, rehabilitation, maintenance and/or management of an eligible infrastructure service.

3.2 The infrastructure services eligible for PIDG support include:

- (a) electricity generation, transmission and distribution;
- (b) natural gas transmission, storage and distribution;
- (c) water and sanitation;
- (d) solid waste;
- (e) telecommunications;
- (f) railways;
- (g) ports;
- (h) airports;
- (i) agricultural related infrastructure;
- (j) roads;
- (k) mining infrastructure and associated services; and
- (l) other activities that impact positively on the development of the relevant country's basic infrastructure and promote the objectives of the PIDG.

3.3 Countries eligible for PIDG support are those included in the DAC List of ODA Recipients.

4. **The PIDG Trust**

4.1 The PIDG Trust was established by the Declaration of Trust. The ultimate purpose of the PIDG Trust is the relief of poverty in developing countries through the facilitation of the provision of infrastructure needed to eliminate poverty in developing countries or as otherwise approved by the Donors.

4.2 Through the PIDG Trust, individual Donors or groups of Donors may focus upon areas of special concern or interest in a manner similar to that in which non-core funding is used by members of the council of PPIAF.

4.3 The Trustees apply Trust Funds in accordance with the Declaration of Trust, Funders' Agreements and the Funding Instruments.

5. **Control and Supervision of the PIDG Trust**

5.1 To protect the interests of the Donors who have transferred funds to the PIDG Trust, the Second Amended and Restated Declaration of Trust requires that before taking certain actions, the Trustees must procure the consent of either the Donors or PIDG Ltd.

5.2 Subject to Clause 5.3 below, for any action requiring the prior written approval of the Donors, PIDG Ltd will circulate to the Donors, a proposal summarising the action required.

5.3 Acts requiring the consent of the Donors in respect of a Facility will only require a decision of the Donors contributing to that Facility.

5.4 The abstention of one or more Donors from voting on any proposal will not prejudice a unanimous vote being deemed to have been reached on such proposal.

5.5 Under Mauritius law an Enforcer must be appointed to enforce the provisions of the Second Amended and Restated Declaration of Trust. DFID is the current Enforcer of the PIDG Trust. The Second Amended and Restated Declaration of Trust sets out the process for replacing DFID as the Enforcer of the PIDG Trust.

5.6 Under the Declaration of Trust, it is the duty of the Enforcer to enforce the PIDG Trust in consultation with the Donors.

6. **Funding**

6.1 Donors may provide funding to the PIDG Trust by any of the following Funding Instruments:

(a) conditional loan agreement;

(b) grant arrangement;

(c) guarantee facility; or

- (d) any other instrument approved in writing by the Donors in the standard form agreed from time to time by PIDG Ltd, the relevant Donor and the PIDG Trust or any variation (reflecting the constraints or requirements of individual Donors) approved from time to time by PIDG Ltd, the relevant Donor and the PIDG Trust. Donors may provide funding directly to a Facility by way of grant arrangement or subscription for shares if appropriate and approved by the other Donors.
- 6.2 The PIDG Trust (or the Facility) will apply such funds in accordance with the Funding Instrument, the Declaration of Trust and any Funders' Agreement that applies to such funding.
- 6.3 In order to co-ordinate funding to the PIDG Trust (or the Facility), the Donors will agree an indicative schedule of amounts and timing of their intended contributions of funding in their Funding Instrument. This Contributions Schedule will be amended from time to time as required by the Donors.
- 6.4 In addition to making Contributions, each Donor will contribute funds to the General Administration Costs in accordance with Clause 6.6.
- 6.5 General Administration Costs will include (but will not be limited to) the following:
- (a) Trustees' fees and reimbursable expenses and any fees and expenses properly due to the Enforcer under the Declaration of Trust;
 - (b) auditors' fees for audit of the PIDG Trust and PIDG Ltd;
 - (c) ad hoc legal and technical advice to the PIDG Trust and/or PIDG Ltd;
 - (d) operating and any other costs of the PIDG Trust and/or PIDG Ltd; and
 - (e) any other general administration costs approved by the Donors from time to time.
- 6.6 Each Donor will contribute funds to be applied to the General Administration Costs by granting lump sums to the PIDG Trust for transfer to PIDG Ltd (or to

remain in the PIDG Trust as appropriate) to cover General Administration Costs of amounts determined in the PIDG General Administration Budget.

7. **Membership of PIDG**

- 7.1 All official donors, international financial institutions and other official agencies wishing to co-operate in the pursuit of the PIDG's aims under the terms of this Constitution may apply for membership of the PIDG.
- 7.2 Applications for membership must be in writing to PIDG Ltd. PIDG Ltd will aim to circulate all applications for membership to the Donors for approval within 30 days of receipt of the application. The Donors will aim to approve or reject applications for membership within 10 days of receipt by the Donors of the application.
- 7.3 A Donor's membership of the PIDG will run from the point at which it accedes to the 2013 Memorandum of Understanding.
- 7.4 The minimum commitment by way of a Contribution for each Donor is USD10 million over a period of four years.
- 7.5 Without prejudice to Clause 7.4, the Donors may exceptionally and acting by unanimity accept as a member of PIDG a Donor undertaking to make a contribution with an aggregate value below USD10 million over a period of four years.
- 7.6 Each Donor will appoint a representative to the PIDG. The representative, or alternate, will be an officer, director, employee or official of the Donor appointing him or her. Each Donor may change its representative to the PIDG, or appoint an alternate to the PIDG, upon giving written notice to the other Donors and PIDG Ltd.
- 7.7 A Donor may cease to be a member of the PIDG at the end of a Commitment Period by giving written notice to the other Donors and PIDG Ltd. If such notice is not given at the end of a Commitment Period, the Donor will continue to be a

member of the PIDG, subject to the unanimous consent of the Donors and the Donor continuing to contribute funds to be applied to the General Administration Costs in accordance with Clause 6.6. If a Donor's Commitment Period ends part way through the PIDG Trust's financial year, the Donor will contribute its pro-rata share of General Administration Costs for that financial year up to the date it ceases to be a member of the PIDG.

7.8 Where an organisation has ceased to be a member of the PIDG but the former Donor's Funding Instrument has not been terminated or expired, that former Donor will continue to contribute its share of General Administration Costs until all Funding Instruments entered into by that former Donor have been terminated or expired.

7.9 Each Donor's Contribution to General Administration Costs shall be calculated in accordance with the formula agreed by the Donors (acting by unanimity and noting that the abstention of any one or more Donors will not prejudice unanimity being deemed to have been reached) from time to time.

7.10 PIDG may be dissolved by a unanimous decision of the Donors.

8. **Operation of PIDG**

8.1 The Donors will meet at least once per year, either in person or through such other means as the Donors may unanimously agree.

8.2 The Donors will make the decisions reserved for the Donors set out in the 2018 Reorganisation Agreement at such meetings, or through such other means as the Donors may unanimously agree.

8.3 Meetings

(a) In-person meetings of the Donors will be held at such date, time and place as will be determined by PIDG Ltd. and the Donors.

(b) In-person meetings of the Donors must be quorate. An in-person meeting will be quorate if 75% of Donors are participating (either in person or by such other means as the Donors may agree).

- (c) Any decision to be tabled at a meeting of the Donors may be taken without a meeting if a proposal summarising the action required has been circulated to all Donors and approved on a 10 day “no-objection” basis by all Donors. The abstention of one or more Donors from voting on any matter will not prejudice a unanimous vote being deemed to have been reached on such matter provided that a majority of the Donors do not abstain.

8.4 Participation in meetings

At any meeting of the Donors, including in-person meetings, where no duly authorised representative of a Donor is able to attend in person, a representative of that Donor may participate by means of such telephone or other communications facilities as permit all participants to hear each other.

8.5 Decision making

Each Donor will have one vote at meetings of the Donors. Decisions of the Donors will be made by unanimity, except that a Donor may at any time abstain from voting. The abstention of one or more Donors from voting on any matter will not prejudice a unanimous vote being deemed to have been reached on such matter provided that a majority of the Donors do not abstain.

8.6 Notices

PIDG Ltd will provide each Donor with written notice of a meeting of the Donors not less than thirty (30) days before the date of the meeting unless such notice has been waived by the intended recipient. Such notice will state the date, place, time and agenda of the meeting.

Where a decision is taken at a meeting of the Donors on a matter which was not shown on the agenda provided under this Clause 8.6 and any Donor is absent from that meeting, that decision will be circulated to absent Donors for approval in accordance with Clause 8.3(c).

8.7 Conflicts of Interest

Each Donor will promptly declare any actual, perceived or potential conflict of interest in writing to the other Donors setting out how it intends to address the actual, perceived or potential conflict, or where appropriate, by declaring any actual, perceived or potential conflict of interest at the beginning of the first meeting at which the matter is to be considered. Such declaration will be noted in the minutes of the meeting.

9. **Amendment Procedures**

This Constitution may only be amended with the prior written approval of the Donors (acting by unanimity and noting that the abstention of any one or more PIDG Donors will not prejudice unanimity being deemed to have been reached).

10. **PIDG Code of Conduct Operating Policies and Procedures**

The Donors will procure that PIDG Participants comply with the Code of Conduct and PIDG Operating Policies and Procedures and at all times conduct themselves in a manner that will not damage the reputation of the PIDG.