

Resolution ICC-ASP/11/Res.3

Adopted at the 8th plenary meeting, on 21 November 2012, by consensus

ICC-ASP/11/Res.3 Permanent premises

The Assembly of States Parties,

Recalling its resolutions adopted with regard to the permanent premises, including ICC-ASP/6/Res.1,¹ ICC-ASP/7/Res.1,² ICC-ASP/8/Res.5,³ ICC-ASP/8/Res.8,⁴ ICC-ASP/9/Res.1,⁵ and ICC-ASP/10/Res.6,⁶ and *reiterating* the importance of the permanent premises to the future of the Court,

Noting the report of the Oversight Committee on the permanent premises,⁷

Noting the recommendations of the External Auditor,⁸ as well as the reports of the Committee on Budget and Finance on the work of its eighteenth and nineteenth sessions and the recommendations contained therein,⁹

Reiterating its firm intention that the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, and *emphasizing* the role of the Oversight Committee in implementing under its delegated authority any actions which might be needed to ensure that the project proceeds safely within budget as well as that the ownership costs of the permanent premises be as low as possible,

Stressing that the permanent premises shall be delivered at a good quality standard within the approved budget, while avoiding elements that might not be essential to the proper performance of the core functions of the Court or that would otherwise negatively affect the total cost of ownership,

Emphasizing the importance of strict control of design, scope and requirements changes during the project's construction phase in order to ensure that the project is delivered to cost, quality and on time,

Reiterating the important role of the Court and the host State throughout the process and *noting with appreciation* their full cooperation with the project,

Reiterating the role of the Project Director in providing leadership and overall management of the project, and *recalling* his responsibility for meeting the project's goals, timeliness and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1 and the revised governance arrangements approved by the Assembly at its tenth session,

Recalling that the total cost of ownership, currently estimated at between €13.3 to 14.8 million per year as from the year 2016, includes: financial costs for those States not having opted for one-time payments, operating costs of the premises, and funding costs for capital replacements,

Noting the recommendation of the Committee on Budget and Finance at its eighteenth session that the Oversight Committee develop, in cooperation with the Project Director, qualitative and quantitative assumptions, options and scenarios, including risk assessments and illustration concerning the total cost of ownership,¹⁰ and that such review should include the full range of possible approaches,

¹ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.

² *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III.

³ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.

⁴ *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II.

⁵ *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part II.

⁶ *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II.

⁷ ICC-ASP/11/35.

⁸ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part C.1.

⁹ *Ibid.*, parts B.1 and B.2.

¹⁰ *Ibid.*, part B.1.

Recalling that States Parties had been requested to inform the Registrar of their final decision to select the option of a one-time payment of their assessed share in the project by 15 October 2009, and that this deadline was extended to 15 October 2012 by resolution ICC-ASP/8/Res.8,

Welcoming the fact that 33 States Parties have committed to making a one-time payment as at 1 November 2012, in an amount of €36,370,811 million, of which €34,470,490 million have already been received,

Noting that additional States Parties have expressed an interest in selecting the option of a one-time payment of their assessed share,

Noting that some States Parties have expressed an interest in selecting a combination of a one-time payment and participation in the host State loan,

Noting the advantages for all States Parties in extending the deadline to opt for one-time payments due to the lesser need to draw funds from the host State loan, the immediate discount for those States opting for a one-time payment, and the lower capital and interest to be repaid by those States not opting for a one-time payment,

Recalling the criteria applicable to the agreement on the host State loan, and the principles for one-time payments of the assessed share, contained in annexes II and III to resolution ICC-ASP/7/Res.1, respectively,

Noting that the conditions of the host State loan provide that payment of interests begins as of the time of the first utilization of the loan,¹¹ and that repayment of capital and interests will commence after expiration of the existing or future leases of the interim premises,¹²

Recalling that the trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established and that voluntary contributions can also be provided through earmarked funds for special features, or in kind contributions, upon consultation with the Oversight Committee,

A. Management of the project: budget, quality and timeliness

1. *Welcomes* the report of the Oversight Committee and *expresses its appreciation* to the Oversight Committee, the Project Director, the Court and the host State for the progress made on the permanent premises project since the tenth session of the Assembly;
2. *Approves* the revised cash-flow scheme contained in annex I;
3. *Welcomes* the completion of the award stage and the beginning, on 1 October 2012, of the construction stage of the project;
4. *Also welcomes* that the project continues to remain within the approved budget of €190 million at 2014 prices, and, in this regard, *notes with satisfaction* that the integrated elements (“3gv”) have been entirely absorbed within the overall budget and that, at the present stage, the projected construction costs are estimated at €183.7 million, i.e. €6.3 million below the maximum amount allocated to the project;
5. *Approves* that the revised financial strategy of the Oversight Committee include a continued prudent management of risks and resources, and provide that any positive financial results achieved at any stage of the project should be kept as an additional reserve for unforeseen circumstances and policy decisions up to the completion of the project;
6. *Further approves* the cost-review strategy put in place by the Oversight Committee to ensure that the project continues to allow for good quality premises while avoiding elements that might not meet the necessary standard of coherence with the core functions of the Court or that would otherwise negatively affect the total cost of ownership;
7. *Requests* the Oversight Committee to ensure that any changes during the construction stage and until completion of the project be only approved on a cost neutral basis and, to this end, *requests* the Project Director to make every effort so that any new

¹¹ *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III, ICC-ASP/7/Res.1, annex II, (e).

¹² *Ibid.*, (f).

change to the project that might be needed is offset by a corresponding capital or operational saving and can be implemented, wherever possible, with due regard to the minimization of additional costs related to delays and other factors;

8. *Endorses* the decision of the Oversight Committee to set up a working group chaired by the Project Director, which could include an external consultant and representatives of the Oversight Committee and the Court in order to further examine how the total cost of ownership of the permanent premises is met, by reviewing the range of possible approaches, as well as any options for future States Parties to contribute to the project costs, and *requests* the Committee to report thereon at the twelfth session of the Assembly;

9. *Welcomes* that the completion date for the permanent premises continues to be September 2015, and *stresses* the need for the project to comply with that deadline in order to prevent future cost overruns and to allow the Court to progressively move into the premises up to December 2015;

10. *Requests* the Court, working in conjunction with the Project Director, to take all preparatory measures needed to ensure its readiness to take occupation of the permanent premises by not later than December 2015 in order to avoid any additional expenditures for the States Parties, and to report thereon in detail to the Bureau and to the twentieth session of the Committee on Budget and Finance;

11. *Also requests* the Court to, in consultation with the Project Director and the Oversight Committee, elaborate new options for reducing the 2gv elements, including the suitability and extended use of existing equipment as well as the option of joint procurement with other institutions, and to report thereon in detail to the twelfth session of the Assembly of States Parties through the Oversight Committee;

12. *Welcomes* the delegation of authority made by the Registrar to the Project Director with respect to engaging funds for the permanent premises project, and *encourages* the Registrar to continue delegating authority and tasks to the Project Director, where necessary and at an appropriate level, in accordance with the Financial Regulations and Rules, in order to keep improving the management and efficiency of the project and related sub-projects;

13. *Requests* the Project Director, together with the Court, to continue working on recommendations, in accordance with resolution ICC-ASP/7/Res.1, annex V, paragraph 5, on ways to improve the current guidelines on contracts and expenditures for the purpose of expediting the execution of the project, and to submit them to the Oversight Committee for approval;

B. One-time payments

14. *Decides* to extend the deadline for States Parties to inform the Registrar and the Project Director's Office of their decision to select the option of a one-time payment until 31 December 2014;¹³

15. *Decides further* that States that deposit their instrument of ratification or accession to the Rome Statute before 31 December 2014 will be entitled to select the one-time payment option provided that they inform the Registrar of their decision to do so by 31 December 2014, notwithstanding the date upon which the Rome Statute shall enter into force for those States;

16. *Decides further* that States Parties may either opt between a full one-time payment or a partial one-time payment in combination with participation in the loan;

17. *Requests* States Parties availing themselves of the extended deadline for one-time payments to consult with the Registrar so as to determine the scheduling thereof, taking into

¹³ The principles for one-time payments of the assessed share, contained in *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III, ICC-ASP/7/Res.1, annex III, shall continue to apply, *mutatis mutandis*, to States opting for one-time payments after 15 October 2012.

account, as further clarified by the explanatory note¹⁴ included as annex II to this resolution, that said one-time payments:

- (a) May be made in one or more annual instalments;
- (b) Are to be received in full by no later than 15 June 2015; and
- (c) Shall be subject to an adjustment once the final cost of the project and the full amount of the host State subsidy are known in order to ensure that all States Parties receive a fair and equal treatment;

18. *Requests* the Registrar, in coordination with the Project Director's Office, to continue to submit to the Oversight Committee, as requested, updated information on the agreed schedules for one-time payments;

19. *Decides* that the assessed contributions by States Parties towards the payment of interest and capital on the host State loan, and any accrued interest thereof, shall be held in a special account and utilized only to fulfill the obligations under the host State loan agreement;

C. Financial reporting

20. *Requests* the Project Director, in consultation with the Oversight Committee, in accordance with resolution ICC-ASP/6/Res.1, to continue to submit annually, for consideration by the Assembly at its regular session, a detailed cost estimate for the project on the basis of the most recent information, and incorporating the schedule for the use of funds deriving from one-time payments;

21. *Further requests* the Project Director to continue to report annually to the Assembly, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure;

D. Audit strategy

22. *Welcomes* the adoption by the Oversight Committee of an audit strategy for the project, and *requests* the Court's Internal Audit Section to manage its implementation on behalf of the Oversight Committee, taking into account the recommendation of the Committee on Budget and Finance concerning the expertise for the internal audit of the project;¹⁵

E. Voluntary contributions

23. *Reiterates* the invitation to States Parties and members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;

F. Future reporting by the Oversight Committee

24. *Requests* the Oversight Committee to continue to provide regular progress reports to the Bureau and to report back to the Assembly at its next session.

¹⁴ The explanatory note clarifies the principles for one-time payments in connexion with the criteria applicable to the agreement on the loan, including as regards those States Parties that would select the one-time payment option, or make their payments, after the host State loan has been accessed and payment of interest has commenced.

¹⁵ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 82.

Annex I

Cash-flow scheme

Budget ICC permanent premises (in million EU)

Items	Total costs	Overall total	2009	2010	2011	2012		2013	2014	2015		2016	Total		
			PD	FD	FD+ and tendering	Construction			Moving						
1. Construction Costs		147.04						2.8	46.5	85.3		12.2	0.1	0.1	147.1
1a. Construction costs	140.64							1.6	43.3	84.1		11.4	0.1	0.1	140.7
1b. Fees design team (after tendering)	6.40							1.2	3.2	1.2		0.8	-	-	6.4
2. Risks		12.89						-1.5	1.7	10.7		0.8	0.5	0.8	12.9
2a. Project risk (all issues incl. design or third parties)	3.79							0.0	0.4	1.4		0.7	0.5	0.8	3.8
2b. Client risk (outside project e.g. municipality)	9.10							-1.5	1.3	9.2		0.1	-	-	9.1
3. Permit and dues		2.60						2.5	0.1						2.6
Permits and dues	2.60									-		-	-	-	-
4. Fees		19.60	1.3	3.6	6.9	2.8	0.9	1.6	1.6	0.8	0.1	0.1	0.1	0.1	19.6
4a. Design related	10.55			2.7	5.1	2.0	0.5	0.2	-	-	-	-	-	-	10.5
4b. Projectmanagement	7.40		0.9	0.7	1.3	0.5	0.3	1.3	1.3	0.7	0.0	0.1	0.1	0.1	7.4
4c. Other consultants	1.62		0.4	0.2	0.4	0.2	0.1	0.1	0.2	0.1	-	-	-	-	1.6
4d. Operational fees (e.g bank fees)	0.03		0.0	0.0	0.0	0.0	0.0	-	0.0	-	0.0	-	-	-	0.0
5. Other costs	1.50	1.50		1.5											1.5
6. Residue (projected underspend/additional reserve)	6.37	6.37							5.6	0.7		-			6.4
Total	190.0	190.0	1.3	5.1	6.9	2.8	4.8	49.9	103.1	14.5	0.6	1.0	1.0	1.0	190.0
Total	-	-	1.3	5.1	6.9		7.5	49.9	103.1		15.14	1.0	1.0	1.0	190.0
cumulative			1.28	6.41	13.29		20.79	70.71	173.85		188.99	190.0			

Annex II

Explanatory note on one-time payments¹

A. Introduction

1. This explanatory note provides States Parties with further clarifications on the principles for one-time payments, in connexion with the criteria applicable to the agreement on the loan, in view of the proposed extension for States Parties to opt for one-time payments until 31 December 2014. It includes some indicative figures, comparing one-time payments to the participation in the loan repayment over a 30-year period at an interest rate of 2.5 per cent, through annual payments. This is illustrated for each State Party individually in the table included as an annex in the report of the Oversight Committee.²

B. One-time payments: modalities

2. Annex III to resolution ICC-ASP/7/Res.1 provides the criteria applicable to the agreement on the loan and the principles for one-time payments of the assessed share (extract included as appendix I to this note). The following points are aimed at operationalizing these provisions:

(a) The amount of a one-time payment for State Party A can be calculated according to the following formula:

$$\text{One-time payment A} = (\text{building cost})^3 \times (\text{share of assessed contributions of State Party A}) - (\text{Discount 1}) - (\text{Discount 2})$$

Where:

$$(\text{Discount 1})^4 = (\text{share of assessed contributions of State Party A}) \times 17.5\% \times (\text{building cost})$$

$$(\text{Discount 2})^5 = (\text{share of assessed contributions of State Party A}) \times (\text{amount of the 17.5\% host State subsidy on the difference between maximum loan amount (€200 million) and the building cost.})$$

Explanation: as indicated in resolution ICC-ASP/6/Res.1, the overall construction costs of the project, are to be no more than €190 million. The host State agreed in its original offer to deduct a subsidy of 17.5 per cent of the amount not utilized under the maximum ceiling of the loan facility (€200 million) from the total amount borrowed, i.e. the difference between 200 million and the final drawn amount of the loan. Since one-time payments will directly lower the need to make use of the host State loan, it is reasonable to deduct this percentage from the beginning to the benefit of the contributing States Party. Otherwise, this would have to be done at the time of the adjustment on completion of the project.⁶

(b) One-time payments shall be subject to a final adjustment once the final cost of the project⁷ and the amount drawn on the host State subsidy are known at completion of the project.

¹ This is an update of the explanatory note contained in document ICC-ASP/8/34, annex II, which referred to the Court's original letter, dated 9 April 2009, requesting States Parties to indicate their interest in making one-time payments by 30 June 2009.

² ICC-ASP/11/35, annex I, appendix VIII.

³ Although the current building construction cost estimate is €183.7 million, all calculations, subject to the final adjustment, will continue to be made on the basis of the €190 million approved maximum budget in order to keep consistency with States Parties having selected the one-time payment option at an earlier stage.

⁴ Discount 1 is only applicable to States Parties having opted for one-time payments.

⁵ Discount 2 is applicable to all States Parties, whether or not they make a one-time payment. The only difference is that those making a one-time payment would obtain this discount in advance based on the €190 million estimate (subject to the final adjustment), while others would obtain a reduction in the loan according to their share of assessed contributions at the time of the final adjustment on completion of the project.

⁶ See point (b).

⁷ The final cost of the project is expected to be available by the end of 2015.

Final adjustment of Discounts 1 and 2 on completion of the project:

Should the entire loan of €200 million need to be utilised,⁸ both Discount 1 and Discount 2 would be reduced to zero;

Should the building costs exceed the maximum loan of €200 million,⁹ then Discount 1 would be apply only to the part of the one-time payment that actually reduces the loan below €200 million. Discount 2 would be reduced to zero; and

Should the building costs come under the current €190 million estimate, Discount 2 would be increased for all States Parties to reflect the increased host State subsidy as the result of the increased amount on the unused portion of the loan facility. Discount 1 would remain unchanged in order not to apply the same discount twice to States Parties having opted for one-time payments.

Explanation: a final correction is required to ensure that all States Parties will pay the correct amount. States Parties having already opted for one-time payments or contemplating a one-time payment should be cautioned that, at the completion of the project, additional funds might be required, although all efforts are being undertaken to complete the building on time and within budget, and, in this regard, the current project estimate is €183.7 million. For the purpose of the final adjustment, the scale of assessments at the time the final cost envelope of the project is determined, i.e. the completion of the project (December 2015), will be utilized to make the corrections. The scale of assessment will differ from the original 2009 scale of assessment calculation used for one-time payments,¹⁰ for example, due to changes in the number of States Parties having occurred or occurring between 2009 and the time of the final adjustment. Changes in the scale of assessments after the completion of the project (December 2015) will not be applicable to the calculation of States Parties' assessed contributions to the project.

(c) With the new extension of the deadline, States Parties may opt for the one-time payment option from 1 December 2012 until 31 December 2014 and one-time payments may be made in one or more yearly instalments, between December 2012 and 15 June 2015.

One-time payments should be made in accordance with regulation 5.6 of the Financial Regulations and Rules of the Court. In case of a one-time payment in two or more yearly instalments, all instalments should be made accordingly.

According to the conditions of the host State loan, payment of interests begins as of the time of the first utilization of the loan,¹¹ while repayment of capital and interests will commence after expiration of the existing or future leases of the interim premises.¹²

Accordingly, should any of the instalments of the one-time payment by a State Party be received by the Court after the commencing of the draw down of the host State loan (currently estimated at the end of the second quarter of 2013), that State Party would be liable for the apportioned share of the interest on the host State loan, applicable up to the end of the month in which the one-time payment (instalment) is received.

The calculation mechanism is further detailed in appendix II to this note, which illustrates the different scenarios for States Parties opting for one-time payments or repayment of the loan, in accordance with the recommendation of the Committee on Finance and Budget at its nineteenth session.¹³

⁸ This is highly unlikely in view of the current state of the project.

⁹ This is unlikely since the current project cost estimate is €183.7 million.

¹⁰ Used as the basis of the original calculation for one-time payments (ICC-ASP/8/Res.8) and still used for new one-time payments, for the sake of consistency, subject to the final adjustment.

¹¹ *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III, ICC-ASP/7/Res.1, annex II, (e).

¹² *Ibid.*, (f).

¹³ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 167.

Estimated interest to be paid during the construction phase (2013-2015)

The total annual interest costs related to the draw down of the host State loan during the construction phase of the project are currently estimated as follows: ¹⁴

2013: € 204,568

2014: € 1,659,706

2015: € 3,627,525

These amounts are only payable by States Parties that have not opted to make a one-time payment or, having done so, have not disbursed all their instalments before the commencing of the draw down on the host State loan (currently estimated at the end of the second quarter of 2013).

States Parties liable for the payment of interest during the construction phase shall be assessed in accordance with the same scale of assessment applying to the Court's regular budget applicable at the time of the assessment, with the necessary corrections in order to exclude States Parties having made their full one-time payments before the draw down on the loan.

Appendix I

Criteria applicable to the agreement on the loan, and principles for one-time payments of the assessed share (extract), as contained in resolution ICC-ASP/7/Res.1

The Assembly of States Parties,

[...]

Annex II

Criteria applicable to the agreement on the loan

The agreement with the host State regarding its offer to provide a loan for the permanent premises project will stipulate that:

(a) A loan of up to a maximum of €200 million will be provided to the Court by the host State, to be repaid over a period of 30 years at an interest rate of 2.5 per cent.

(b) The agreement does not create for the Court any legal obligation to borrow the full amount (i.e. €200 million) from the host State or in any way restrict the Court's discretion in deciding on the amount that is to be borrowed.

(c) The agreement does not in any way restrict the authority and discretion of the Court to seek funds for the same purposes from any other source if the Court chooses to do so.

(d) In the event of the €200 million not being fully utilized at the end of the project, the host State will reduce the amount of the loan to be repaid by an amount that corresponds to 17.5 per cent of the non-utilized part of the loan.

(e) Interest is to be paid annually, as of the first utilization of the host State loan.

(f) Repayment of the loan, through regular annual instalments, will commence after expiration of the existing or future leases of the interim premises.

¹⁴ These amounts may differ depending on further one-time payments being received as well as any changes in the cash flow of the project.

Annex III

Principles for one-time payments of the assessed share

[...]

3. States Parties not opting for a one-time payment shall be assessed annually for the payment of interest and for the repayment of the host State loan, according to the scale of assessments to the Court's regular budget applicable at the time of the assessment.

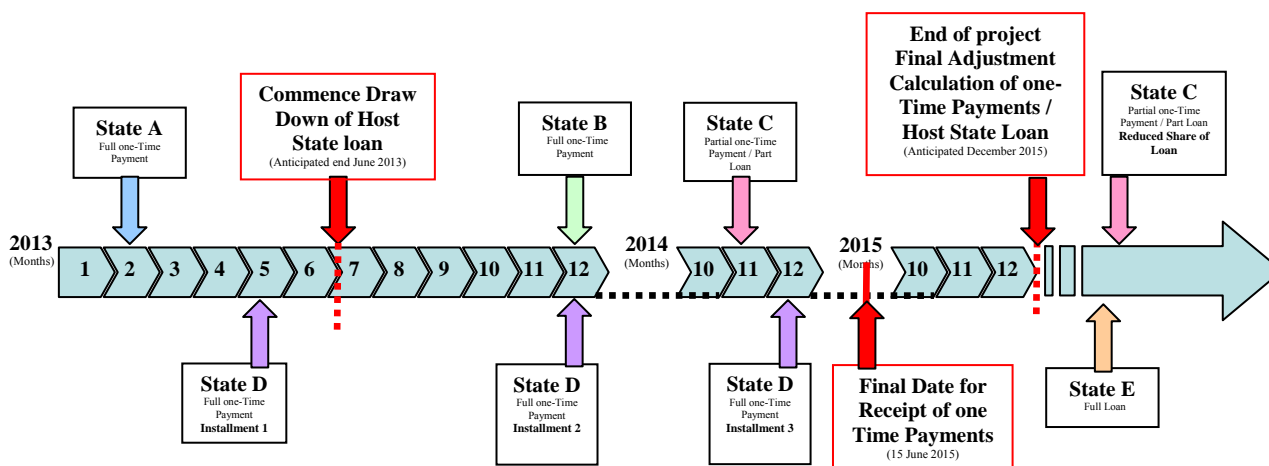
4. The Registrar will inform States Parties wishing to make a one-time payment, as soon as possible, of their assessed share, based on the most recent estimates of the final cost envelope referred to in paragraph 13 of the resolution.

5. One-time payments shall be subject to an adjustment once the final cost of the project and the amount of the host State subsidy are known.

[...]

Appendix II

Examples: States Parties one Time Payment / Project Financing Calculation Scenarios



Assumptions

The anticipated date for drawing down of the loan is end of June 2013.

Final adjustment in all cases in December 2015 based on final cost of the project, one-time payments received and scale of assessment at completion of the project.

Repayment of capital and interest on host State loan from January 2016 to December 2045.

Examples

State A – Full one time payment prior to commencing draw down of host State loan

One –time payment disbursed in February 2013:

- (a) no interest due for period 2012 – 2015; and
- (b) no interest and capital repayment due for period 2016 – 2045.

State B – Full one time payment after commencement of draw down of host State loan

One-time payment disbursed in December 2013:

- (a) proportional share of interest on host State loan, up to the end of year and month of receipt of payment, i.e., months 7 through to 12 in 2013 only (i.e. 6 months); and
- (b) no interest due for period 2016 – 2045.

State C – Partial one-time payment / Part loan

Partial one-time payment disbursed in November 2014:

(a) Proportional share of interest on host State loan applicable up to the end of the year and month of receipt of payment: no interest paid until first draw down of the loan, proportional share of interest for 2013 (months 7 through to 12), and 2014 (months 1 through to 11) taking account of the one-time payment made + interest on the remaining assessed contribution until finalization of the construction project; and

(b) Outstanding balance of assessed contribution financed via the loan option i.e. 30 years capital and interest repayments from January 2016 onwards.

State D – Full one-time payment in 3 installments; 1 installment prior to draw down of host State loan, and 2 installments following draw down of the loan

(a) Installment 1 paid in May 2013: no interest to be paid on this amount;

(b) Installment 2 paid in December 2013: proportion of interest on host State loan applicable up to the end of the month of receipt of installment 2, i.e. proportional share of interest for 2013 (months 7 through to 12);

(c) Installment 3 paid in December 2014: proportion of interest on host State loan applicable up to the end of the month of receipt of installment 3, i.e. proportional share of interest for 2013 (months 7 through to 12), and 2014 (months 1 through to 12); and

(d) No interest or capital repayment due for period 2016 – 2045.

State E – Full host State loan

(a) Proportional share of interest applicable from July 2013 to December 2015 over assessed contribution; and

(b) Assessed contribution financed via the loan option i.e. 30 years capital and interest repayments from January 2016 onwards.

Annex III

Members of the Oversight Committee

African States

1. Kenya

Asian and Pacific States

2. Japan
3. Republic of Korea

Eastern European States

4. Romania

Group of Latin American and Caribbean States

5. Argentina
6. Venezuela (Bolivarian Republic of)

Western European and Other States

7. Germany
8. Ireland
9. Italy
10. United Kingdom