

## HELLENIC REPUBLIC ASSET DEVELOPMENT FUND S.A.

Athens, 6 December 2011

**Responses to further clarification questions submitted by potential candidates regarding the invitation to submit an Expression of Interest for the grant of an exclusive licence to produce, operate, circulate, promote and manage in general the Greek State Lotteries**

**1. Please clarify, specify and / or indicate what is the legal framework applying to the Invitation to Express Interest and generally to the tender procedure.**

The legal framework applying to the Invitation to Express Interest and generally to the tender procedure includes Law 3049/2002, Article 48 of Law 3871/2010, Law 3985/2011, Law 3986/2011, Article 41 of Law 4024/2011, the Greek Civil Code and Commission Interpretative Communication 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives.

**2. In case a candidate company (member of a consortium) borrows the technical, financial and economical requirements from its parent company also because it is a newly incorporated company (incorporated in the current year), please confirm that it is enough that the letter of the bank (as per the provisions of the Invitation) confirming the general good standing is referred to the parent company mentioning thereto the candidate company and the relationship between the parent company and the candidate company and the fact that also the parent company is its client and well known to the bank itself.**

If a Candidate company (or member of a consortium) is a newly incorporated company, it is enough that the bank letter mentioned in paragraph 3.2.2 of the Invitation is referred to the parent company mentioning thereto the candidate company and the relationship between the parent company and the candidate company and the fact that also the parent company is its client and well known to the bank itself.

**3. Kindly clarify the meaning of “annual stock exchange Bulletins” of clause 3.2.3 of the Invitation.**

“Annual stock exchange Bulletins” of clause 3.2.3 of the Invitation means the annual financial reports as those are defined in article 4 of Directive 2004/109/EC. Companies listed in jurisdictions outside the EU should provide an equivalent document.

**4. Taking into account that the legal eligibility qualifications requirements (see. Clause 2.4.) are dealt with within the official declaration (solemn declaration) a sample of which is annexed to the Invitation, kindly clarify the following:**

According to the first paragraph of clause 2.4. of the Invitation the candidate company should prove his compliance to the legal eligibility qualification requirements as set forth in clause 2.4, “..... at the time of the submission of the binding offers....” the deadline of which is at the latest 29.11.2011. On the contrary the first paragraph of clause 3.2.2. of the invitation provides that “...(iii) declaration shall be made only by the Lead Member and shall concern the consortium. This statement should not bear a date of issue earlier than twenty (20) days from the date of submission of the Expression of Interest ....”, please clarify whether the execution of the totality of the sample of the Official declaration (containing declarations as set forth in clause 2.4. of the Invitation) should not bear a date of issue earlier than 20 days from the date of submission of the Expression of Interest and that

**reference contained in clause 2.4 simply means that the candidate company must comply with the eligibility requirements set forth in the section for the entire duration of the procedure.**

The official statement (Appendix I) should not bear a date of issue earlier than twenty (20) days from the date of submission of the Expression of Interest. The candidate company must however comply with the eligibility requirements set forth in the Invitation for the entire duration of the procedure. Candidates will be required to prove their compliance to the legal eligibility qualification requirements at the time of the submission of the binding offers which shall be provided in the Invitation to Bid for the second phase.

**5. Please confirm that there is no need for a BoD resolution of a relevant candidate company to be declared conform to the original by a public Authority of its state of incorporation. In the negative, please confirm that such conformity can be declared by a Greek lawyer or by the President or CEO. Alternatively please confirm that such conformity can be declared even before a Greek authority by the BOD member duly empowered by the BOD to render any sort of deed or declaration.**

If the submitted resolution of the Candidate's competent body or officer is not an original document but a copy, then the authenticity of the copy may be certified by a Greek lawyer or by a competent corporate body or officer.

**6. Kindly note that in the clarifications document provided by the Fund the 23.11.2011, in answer S/A 23 there is a contradiction since at first it is provided that "...the Lead Member may be authorized to sign the letter of expression of interest on behalf of all members of the relevant consortium..." but in the last paragraph it is provided that ".....the letter of expression of interest .....should be provided separately for each member of the consortium". Please clarify.**

In cases of consortia, the letter of Expression of Interest and accompanying documentation should be provided separately for each member of the consortium. The Lead Member may be authorised to sign such separate letters of Expression of Interest on behalf of each member of the relevant consortium.

**7. Please confirm that the letter of expression of interest, provided for in clause 3.1. of the Invitation, and the other documents to be supported as per the requirements of the Invitation (save for the solemn declarations for which question 4 hereof is relative) can bear a signature date even before the date of the deposit of the expression of interest) .**

The letter of Expression of Interest, the bank letter and the resolution of Candidate's competent body or officer mentioned in paragraph 3.2.2 may bear a signature date before the date of submission however not before the date of issue of the Expression of Interest.

The official statement mentioned in paragraph 3.2.2 should not bear a date of issue earlier than twenty (20) days from the date of submission of the .Expression of Interest.

The financial statements mentioned in paragraph 3.2.3 may bear the date on which they were issued.

**8. In case where the parent company of a candidate company affiliated to the first one according to the terms and conditions of the invitation finally provides a binding letter to its affiliate (proving financial and technical capability), please confirm that such letters must simply indicate the kind of relationship existing between the two companies and the fact that the parent company commits to borrow its requirements to the candidate company. Given that the Invitation provides for specific documents and specific order for documents to be deposited, where such a letter should be enclosed in order to be submitted with the candidature file?**

The binding letter of parent company confirming its commitment to financially and/or technically support the subsidiary by borrowing its resources to should be submitted along with the documents of paragraph 3.2.2 of the Invitation.

**9. Please confirm that it is possible for the BoD resolution of a candidate company to indicate two (2) alternatives: (i) a single participation of the candidate company (on a standalone basis) and/or (ii) a participation of the candidate company in a consortium by simply specifying some of the members and the maximum percentage (not the exact one that the candidate company could have in the consortium). Such BoD resolution would give to its representative the power, within the limits of the BOD Resolution, ultimately, on deposition of the candidature file, to specify by himself all of the above as required in the Invitation.**

The resolution of the Candidate's competent body or officer should not indicate alternatives. It should either provide for the single participation of the candidate company (on a standalone basis) or it should provide for the participation of the candidate company in a consortium by specifying all members of such consortium and their respective participation percentages along with the appointment of the Lead Member.

Please also note that, as provided in paragraph 2.5.4 of the Invitation, following the submission of the Expression of Interest and up until the time of submission of the binding offers, members of a consortium may transfer some, but not all, of their membership participation to other members of the consortium after notifying the Fund in writing, provided however that (i) such members remain members of the consortium; (ii) the Lead Member retains a stake of at least 33.34% of the interest in the consortium; and (iii) after the transfer of such membership participation the consortium continues to fulfil the criteria set out in section 2.2. of the Invitation, taking into account the revised participation percentages.

**10. In clarification S/A 23 it is provided that "...the Lead Member may be authorised to sign the letter of Expression of Interest on behalf of all members of the relevant consortium... Furthermore... in cases of consortia the letter of Expression of Interest and accompanying documentation should be provided separately for each member of the consortium."**

**In the event of a participating consortium, could you please clarify whether the letter of Expression of Interest should be signed only by the Lead Member on behalf of all members of a consortium or by each consortium member individually.**

In cases of consortia, the letter of Expression of Interest and accompanying documentation should be provided separately for each member of the consortium. The Lead Member may be authorised to sign such separate letters of Expression of Interest on behalf of each member of the relevant consortium.

**11. In clarification S/A 43, it is confirmed that "...in circumstances where a member of a consortium is a subsidiary that does not have three (3) years of audited financial statements (for example, because it is a new or recently formed entity), it is sufficient to submit three (3) years of audited financial statements of the ultimate parent company of such subsidiary, particularly where a binding letter of the ultimate parent company confirming its commitment to financially support the subsidiary is also submitted".**

**Furthermore, in clarification S/A 47, it is provided that "If the Candidate is a subsidiary and it relies on its parent's financial capacity to meet the financial criteria, both the Candidate's financial statements and consolidated financial statements should be submitted. Both should be audited by international auditing firms."**

**In the event where the Candidate or a member of a participating consortium is a subsidiary company that relies on the financial capacity of its parent, could you please clarify whether it is necessary to**

**submit consolidated financial statements or whether it would suffice to submit audited parent financial statements for the last three (3) years along with a binding letter of the parent company confirming its commitment to financially support the subsidiary.**

If the Candidate is a newly established company and, thus, does not have financial statements of the last three (3) financial years, the financial statements of the parent company should be submitted along with a binding letter of the parent company confirming its commitment to financially support the subsidiary.

**12. In clarification S/A 45 it is provided that “In the case of consortia, the declaration mentioned under point (iii) of paragraph 3.2.2 shall be made only by the Lead Member and shall concern the consortium. More specifically, the Lead Member shall declare: (i) in point 4 of the official statement (Appendix I) that all members of the consortium, mentioning all the respective trading names, meet the criteria of paragraphs 2.1, 2.2 and 2.3 of the Invitation; and (ii)...”**

**In the case of a consortium, could you please clarify if indeed only the Lead Member needs to proceed with the declaration under point (iii) of paragraph 3.2.2 of the Invitation and particularly that the Lead Member shall have to declare that each and every member of the consortium meets the criteria under paragraphs 2.1, 2.2 and 2.3 of the Invitation, taking into account that the Lead Member (and especially its legal representative) will not be in a position to declare, also assuming the liability stipulated under par. 6 of article 22 of Law 1599/1986, that each and every member of the consortium complies with the criteria set out under paragraph 2.1 of the Invitation (see especially the issue with the participation of offshore companies).**

In the case of consortia, the Lead Member shall declare in the official statement (Appendix I) *inter alia* that all members of the consortium, mentioning all the respective trading names, meet the criteria of paragraph 2.1 of the Invitation. The resolution of the competent body or officer of the respective consortium members (provided in section 3.2.2 of the Invitation) may include a specific authorization to the Lead Member empowering it to declare that the respective consortium member meets the criteria of paragraph 2.1 of the Invitation. In such case the respective consortium member (and not the Lead Member) shall be held liable for the validity and accuracy of such declaration.

**13. In clarification S/A 46 it is provided that “This should be a reference letter from a bank confirming the Candidate’s general good-standing.”**

**Taking into account clarification S/A 43 but also our comments further above under question 11, could you please confirm whether, in the event where a Candidate or a member of a participating consortium is a newly-established entity or a recently formed subsidiary relying on the financial capacity of its parent, it would suffice for the bank reference letter mentioned above to address the general good standing of said subsidiary’s parent, given that the audited parent financial statements for the last three (3) years as well as a binding letter of the parent confirming its commitment to financially support the subsidiary.**

If a Candidate is a newly incorporated company, a bank letter referred to the parent company, mentioning thereto the Candidate and the relationship between the two entities, which confirms the general good standing of the parent company, suffices for the requirements of paragraph 3.2.2.

**14. Please clarify the meaning of “...demonstrate....” in section 2.3.2. of the Invitation, as opposed to “...declare....” in section 2.3.1. of the Invitation. Would it be enough for a candidate to declare that it manages a distribution network of at least 3.000 points of sale relating to gaming and betting operations? Please also clarify if such distribution network criteria is calculated on the basis of one country or worldwide.**

Both “...*demonstrate*...” in section 2.3.2. of the Invitation and “...*declare*...” in section 2.3.1. of the Invitation mean the same thing, namely that the Candidate should declare that it meets the criteria. In the Second Phase of the Tender Procedure proof shall be required in a manner to be provided in the Invitation to Bid for the Second Phase. The technical criterion of section 2.3.2 regarding points of sale is to be calculated “*on a group level*”, i.e. worldwide.

**15. In Section 3.1. of the invitation under par. “*Waivers and general declarations*” the candidate should declare by means of the Letter of Expression of Interest, all of what is therein (in section 3.1.) provided for. Is that an indicative or exhaustive list of declarations and waivers? For example in section 4, par. 15, of the Invitation it is provided that the candidate should “...*give to the Fund the right to replicate and disclose the responses to the Invitation for any purposes in connection with the fulfillment of its statutory duties...*”. Should such provision be declared by the Candidate or is it enough to declare in general that “the candidate is fully aware of the Invitation and unconditionally accepts the terms of the Tender Procedure”?**

It is enough to include in the Letter of Expression of Interest only the waivers and declarations expressly provided in section 3.1 of the Invitation under par. “*Waivers and general declarations*”.