

Clarifications List - Invitation to submit an Expression of Interest - DEPA Commercial

HELLENIC REPUBLIC ASSET DEVELOPMENT FUND SA

Athens, 12 March 2020

Responses to clarification requests submitted by Interested Parties in connection with the Invitation to submit an Expression of Interest for the acquisition of shareholding in DEPA Commercial (the “Invitation”). Unless otherwise specified herein, capitalized terms used in the present shall bear the same meaning as in the Invitation.

1	5.3.1	<p>The Interested Party plans to attach the copy of its consolidated financial statements to its response to the Invitation. Shall such copy be notarized and apostilled?</p> <p>a. Is it necessarily required that except of the financial statements and auditors’ report, financial statements need to include also Notes to the financial statements?</p>	<p>Simple copies (without notarization/apostille) of the financial statements suffice.</p> <p>The Notes shall be included in the financial statements.</p>
2	4.4.1, 4.5.1, 5.4	<p>The Interested Party is the headquarter of subsidiaries throughout Europe with activities purely involved in energy industry (natural gas, power and oil, focused on multi-commodity wholesale, trading and sales, as well as energy infrastructure and industrial assets). The Interested Party is a strategic investor in the energy sector with a successful track record in M&A transactions. Considering that the Interested Party is a main holding company of energy</p>	<p>The Interested Party is considered to be compliant with the Technical Requirement if: either (1) itself operates in the oil and/or gas and/or electricity sector, meaning that the Interested Party is itself involved in such business activities, or (2) an Affiliate of the Interested Party (under the meaning ascribed to such term under clause 4.5.1 of the Invitation) operates in such sectors.</p> <p>If the Technical Requirement is met through option (1) above, i.e. the Interested Party itself is active in the above business sectors,</p>

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		<p>companies, is it still necessary to formally rely on a Technical Affiliate Supporter?</p>	<p>then clause 5.4.1 of the Invitation applies, and the Interested Party shall submit as proof of fulfillment of the Technical Requirement a presentation/relevant documentation and/or relevant information of the Interested Party’s business demonstrating that it satisfies the Technical Requirement.</p> <p>If the Technical Requirement is met through option (2) above, i.e. if the business activity in the above sectors is identified in the activity of an Affiliate(s) of the Interested Party, then clauses 4.5.2, 5.4.1 and 5.4.2 of the Invitation are triggered, and the Interested Party shall submit the following as proof of fulfillment of the Technical Requirement: (i) the presentation/relevant documentation and/or relevant information in respect of the Technical Affiliate Supporter’s business demonstrating that such Affiliate Supporter satisfies the Technical Requirement, (ii) the Solemn Declaration of Annex I and the Solemn Declaration of Annex IV both in respect of the Technical Affiliate Supporter, under the form specified in the Invitation, in conjunction with the clarification granted under Q 6 below, as regards the form of Annex I when signed by the Technical Affiliate Supporter.</p>
<p>3</p>		<p>If we rely on a Technical Affiliate Supporter which is 100% owned by the Interested Party and is involved in its financial consolidation.</p> <p>a. Our understanding is that the Technical Affiliate Supporter has to sign a Legal Solemn Declaration (Annex I to the Invitation), a Financial Solemn Declaration (Annex II)</p>	<p>(a) As regards the documents and details, which shall be provided by the Technical Affiliate Supporter, please refer to Q 6 below.</p>

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		<p>and a Technical Solemn Declaration (Annex IV). Please confirm.</p> <p>b. The signatures on the Technical Solemn Declaration shall be notarized and apostilled, but it is not necessary to notarize and apostille the other solemn declarations to be signed by Technical Affiliate Supporter. Please confirm.</p> <p>c. Our understanding is that we do not have to attach the separate financial statements of the Technical Affiliate Supporter - so the Interested Party's consolidated financial statements are enough. Please confirm.</p> <p>d. In the Financial Solemn Declaration, the Technical Affiliate Supporter has to state that it satisfies the Financial Requirements in Section 4.3 of the Invitation. If the consolidated figures of the Interested Party (which includes the figures of the Technical Solemn Declaration) satisfies these requirements, the Technical Affiliate Supporter does not have to satisfy the requirements alone based on its separate financial figures. Please confirm.</p> <p>e. In the Financial Solemn Declaration, there is a "TECHNICAL AFFILIATE SUPPORTER 'S FINANCIAL DATA" table to be filled in. Shall we put here: (i) the Interested Party's consolidated figures, (ii) the Technical Affiliate Supporter's separate figures, (iii) both?</p>	<p>(b) According to the Invitation, signature of the Solemn Declarations of Annex III and Annex IV should be authenticated by any competent judicial or administrative authority or notary public according to the laws of the country of establishment of the Interested Party. Apostille certification is not required upon submission by the Interested Parties of the Expression of Interest. However, notwithstanding the above and as per clause 10.3 of the Invitation, the Fund reserves the right to require at any stage that any documents submitted by any Interested Party shall be authenticated, notarized, and/or be accompanied by apostille certification.</p> <p>(c), (d), (e) To the extent that the Technical Affiliate Supporter does not also act as Financial Affiliate Supporter of the Interested Party, then it is clarified that: (1) the Technical Affiliate Supporter does not need to submit any documents referring to proof of Financial Requirements as per the provisions of the Invitation and (2) the satisfaction of the Financial Requirements is not examined with reference to the Technical Affiliate Supporter, but with reference to the Interested Party or its Financial Affiliate Supporter, as the case may be.</p>
4	5.4.1, 7.2.3	<p>In article 5.4.1. of the Invitation we read "A presentation and/or relevant documentation and/or relevant information of the Interested Party's business demonstrating that it satisfies the Technical Requirement'.</p>	<p>It is confirmed that a copy of business licenses may be submitted, certified by a competent authority/body, or by a lawyer having the statutory right to do so under the laws of the jurisdiction of the country, in which such lawyer properly practices its profession.</p>

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		<p>In accordance with this article, the Interested Party intends to submit documents that include its business licenses. These documents are issued in the Greek language and in one unique original each. You are kindly requested to confirm that certified copies of these original Greek documents can be submitted instead of their originals, in accordance with article 36, clause 2, sub-clause b. of the New Lawyer's Code -Law No. 4194/2013 (Official Government Gazette No.208 / First issue dated 27.09.2013), accompanied by their original official English translation.</p> <p>Following the above and in any case, please note that the original Greek documents (production and/or operation licenses etc.) cannot be submitted.</p>	
5	<p>Clarification requests dated 14.02.2020 (Question 2) and 04.03.2020 (Question 8).</p>	<p>It is generally noticed that the questions regarding the signature of the solemn declarations are numerous and that there is general confusion on the matter.</p> <p>We would like to draw your attention to the fact that answer to question no.8 of responses to clarification requests dated 04.03.2020 is in contradiction with answer to question no.2 of responses to clarification requests dated 14.02.2020. More specifically, in the latter it is mentioned that Annex I can be signed by[.] "(2) or solely by the legal representative of the company (whether it authority arises from the Articles of Association or corporate resolutions of the legal entity)" hence allowing the signatory to be an appointed representative by the Board of Directors. Instead, in question no.8 of the clarifications dated</p>	<p>For the avoidance of any further doubt, it is clarified that a “<i>legal representative</i>” of a legal entity, may draw its representative authority to proceed with the signing of any documents related to the Tender Process, as such is requested by the Invitation, from any of the following corporate documents:</p> <ul style="list-style-type: none"> (i) the Articles of Association; (ii) a resolution of the competent corporate body of the legal entity determining the general representation of the legal entity; (iii) a resolution of the competent corporate body/person granting special authorization to a person to proceed with specific actions referring to the Tender Process.

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		<p>04.03.2020 your answer states [..] "or solely by the legal representative(s) of the legal entity"; hence signifying that only the legal representative(s) of the company should sign the solemn declarations and not the appointed representative.</p> <p>Moreover, this question no.8 to clarifications dated 04.03.2020 also contradicts point (iii) of answer to question no.2 dated 14.02.2020 which clearly states that" The signatory will need to draw its authority from a specific authorization granted in view of the Invitation and the Tender Process'.</p> <p>Please also note that our company and the third parties involved started working on the preparation of the solemn declarations based on your response to question no.2, dated on 14.02.2020. Changing the requirements for signatures at this point of time causes great inconvenience in the timely preparation of our Eol file.</p> <p>In light of all the above, you are kindly requested to confirm that your response to question no.2 of responses to clarification requests dated 14.02.2020 prevails and that the solemn declarations submitted should be signed as provided for through that answer, i.e. signed by the appointed legal representatives for this specific Invitation and Tender Process.</p>	<p>Therefore, according to clause 7.3 of the Invitation, as read in light of the above clarification, the Solemn Declaration of Annex I shall be signed:</p> <p>(a) either (1) by all members of the board of directors <i>and</i> (2) any other person(s) having the power to represent the company (whether such persons' representative authority derives from (i), (ii), or (iii) above),</p> <p>(b) or solely by the legal representative of the company (whether such representative's authority derives from (i), (ii) or (iii) above).</p>
6	4.5.2	<p>Pursuant to para. 4.5.2 of the Invitation (Affiliate Supporter), in connection with its Affiliate Supporter, the Interested Party must deliver to the Fund all supporting documents as would have been applicable to it had such</p>	<p>(l). (a) &(b): As regards the Financial Affiliate Supporter:</p> <ul style="list-style-type: none"> - the Financial Affiliate Supporter will need to complete, sign and submit the documentation of clause 5.3.1 of the

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	<p>Affiliate Supporter been an Interested Party (or member thereof), in the same form and at the same time as applicable to an Interested Party.</p> <p>We therefore understand that:</p> <p>a)The Financial Affiliate Supporter will need to complete and submit Annexes I, II and III as a Financial Affiliate Supporter and not as an Interested Party;</p> <p>b)The Financial Affiliate Supporter will need to submit copies of its financial statements as per para. 4.3.1 of the Invitation;</p> <p>c)The Technical Affiliate Supporter will need to complete and submit Annexes I and IV, as a Technical Affiliate Supporter and not as an Interested Party; and</p> <p>d) The technical capability of the Technical Affiliate Supporter will be only explained in the Interested Party’s Letter of Expression of Interest as per para. 5.1.1(d) of the Invitation.</p> <p>Please confirm that our understanding is correct.</p>	<p>Invitation (or equivalents of such documents, if applicable, as per clauses 5.3.5, 5.3.6 and 5.3.7);</p> <ul style="list-style-type: none"> – the Financial Affiliate Supporter will need to complete, sign and submit the Solemn Declaration of Annex III, as per clause 5.3.3 of the Invitation; – the Financial Affiliate Supporter will need to complete, sign and submit the Solemn Declaration of Annex I, as per clause 4.5.2 and 5.2.1 of the Invitation; It is clarified that any reference made to the “<i>Interested Party</i>” in Annex I should be replaced by “<i>Financial Affiliate Supporter</i>” and paragraph 4 of Annex I should be rephrased as follows: “<i>There are no matters which restrict the Financial Affiliate Supporter from being a Financial Affiliate Supporter to the Interested Party</i>”; – the financial details of the Financial Affiliate Supporter will need to be inserted in the Solemn Declaration of Annex II, which according to clause 5.3.2 shall be provided and signed by the Interested Party. <p>(II). (c) & (d): As regards the Technical Affiliate Supporter:</p> <ul style="list-style-type: none"> – the Technical Affiliate Supporter will need to complete, sign and submit the Solemn Declaration of Annex IV, as per clause 5.4.2 of the Invitation; – the Technical Affiliate Supporter will need to complete, sign and submit the Solemn Declaration of Annex I, as per clause 4.5.2 and 5.2.1 of the Invitation; It is clarified that any reference made to the “<i>Interested Party</i>” in Annex I should be replaced by “<i>Technical Affiliate Supporter</i>” and paragraph 4 of Annex I should be rephrased as follows: “<i>There are no matters which restrict the Technical</i>
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			<p><i>Affiliate Supporter from being a Technical Affiliate Supporter to the Interested Party”;</i></p> <ul style="list-style-type: none"> – details of the business of the Technical Affiliate Supporter evidencing that it satisfies the Technical Requirements shall be inserted in the presentation and/or relevant documentation and/ or other relevant information to be submitted by the Interested Party.
7	5.3, 5.4	In relation to the proof of Financial and Technical Requirements (paras 5.3 and 5.4 of the Invitation) we understand that, in the event that the Interested Party decides to use an Affiliate Supporter (whether Financial or Technical), such Supporter does not have nor does it incur any further liability towards the Fund, other than its liability (towards the Fund) in connection with the content of the solemn declarations of Annexes III and IV.	<p>The Affiliate Supporters are liable towards the Fund in respect of the documentation submitted and details provided and described in connection with them, as such are summarized in the response granted to the above question (Q 6).</p> <p>The Affiliate Supporters are liable for any violation of the terms and conditions of the Invitation.</p>
8		I note in section 7.3 of the Invitation to Submit an EOI that the Solemn Declaration requires all members of the Board to sign and signatures to be originals (7.2.3). Logistically this may be challenging for us given the deadline. Is it possible to have one Director signing the Solemn Declarations and EOI?	Please refer to Q 5 above as regards the issue of signature of the Solemn Declaration of Annex I.