

Amended and Restated Declaration of Trust - Execution Copy

THIS AMENDED AND RESTATED DECLARATION OF TRUST is made the 14th day of March 2003 by:

- (1) MC Trust Ltd of 10 Frère Felix de Valois Street, Port Louis Mauritius;
- (2) Minimax Ltd of 10 Frère Felix de Valois Street, Port Louis Mauritius; and
- (3) SG Hambros Trust Company Ltd of 41 Tower Hill, London, EC3N 4SG

(collectively the "**Original Trustees**").

WHEREAS:

- (A) The Government of the United Kingdom of Great Britain and Northern Ireland acting through the Secretary of State of the Government of the United Kingdom of Great Britain and Northern Ireland at the Department for International Development ("**DFID**") has agreed with the Original Trustees to make a grant to the Original Trustees of USD100,000,000 with the intent that they should hold such funds upon the trusts and in the manner and for the purposes hereinafter declared and the Swiss State Secretariat for Economic Affairs of the Government of the Confederation of Switzerland ("**SECO**"), the Netherlands Minister for Development Co-operation ("**the Netherlands Ministry**") and the Government of Sweden represented by the Swedish International Development Co-operation Agency ("**Sida**") also support the purposes hereinafter declared.
- (B) Accordingly the Original Trustees executed the Declaration of Trust of the Public Private Infrastructure Development Trust on 1 December 2001 (the "**Original Declaration of Trust**").
- (C) For the purposes of identification this trust shall now be known as the "**Private Infrastructure Development Group Trust**" or the "**the PIDG Trust**" or by such other name as the Trustees (as defined in Clause 2 of Part 1 of this Declaration of Trust) may from time to time in their discretion declare to be the name of this trust.
- (D) The Trustees have acquired all the issued share capital of the Emerging Africa Infrastructure Fund Ltd, a company incorporated and registered in Mauritius ("**EAIF**").

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- (E) MC Trust Ltd is a qualified Trustee as defined in the Mauritius Trusts Act 2001 (the "**Act**").
- (F) This Declaration of Trust amends and replaces the Original Declaration of Trust.
- (G) The Protector and Enforcer have consented to the execution of this Declaration of Trust.

NOW THIS INSTRUMENT WITNESSES as follows:

PART 1

1. Proper Law and Dispute Resolution

- 1.1. Subject to the powers conferred on the Trustees by this Declaration of Trust and to each and every exercise thereof the proper law of the PIDG Trust is the law of Mauritius notwithstanding that one or more of the Trustees may from time to time be resident or domiciled elsewhere than in Mauritius.
- 1.2. Any dispute arising out of or in respect of this instrument shall be referred to and determined by arbitration in Geneva, Switzerland in accordance with the rules of the International Chamber of Commerce and will be in English.

2. Interpretation

- 2.1 In this instrument where the context so admits the expressions hereinafter specified shall have the meanings and bear the interpretations thereby assigned to them respectively:

"Accounts Administration Provisions" means the provisions set out in Schedule 4.

"Account" means an account opened by the PIDG Trust in accordance with the provisions of Schedule 4.

"Contribution" means any contribution paid by a Donor to the PIDG Trust made either in accordance with the provisions of a Funding Instrument and

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Funders' Arrangement or for application to General Administration Costs or Project Development Costs.

"Developing Countries" means countries in the following categories of the Organisation for Economic Co-operation and Development's Development Assistance Committee's List of Aid Recipients as amended from time to time: Developing Countries and Territories (all five columns of the Part I table).

"Donor" means any member of PIDG.

"EAIF Investment Policy" means the investment policy of EAIF in the form adopted by the board of directors of EAIF on 29 April 2002 as amended from time to time in accordance with the constitution of EAIF.

"Enforcer" means the person for the time being constituted as the Enforcer pursuant to Part 3.

"Ethical Policies" means the Environmental, Economic and Social Development Policies set out in Schedule 2.

"Funders' Arrangement" means an arrangement between the Donors who have contributed to a particular Investment.

"Funding Instrument" means an instrument entered into between a Donor and the PIDG Trust for the provision of funds to the PIDG Trust.

"the Funds" means

- (a) the funds paid to the Trustees by DFID and set out in Part 5 hereof;
- (b) all money investments or other property paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions;
- (c) all accumulations (if any) of income directed to be held as an accretion to capital; and
- (d) the money investments and property from time to time representing the said money investments property additions and accumulations

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including any proceeds from the Trustees' investment in EAIF or any other investment made pursuant to the Investment Plan.

"General Administration Costs" has the meaning given in the PIDG Constitution.

"Investment" means an investment made by the PIDG Trust in accordance with the Investment Plan.

"Investment Plan" means a plan to invest or apply the Funds adopted and amended from time to time by the Trustees in accordance with the provisions of Clause 12.6 of this Part 1.

"Investment Vehicle" means any company or other entity in which an Investment is made.

"PIDG" means the multi-donor arrangement of that name established and directed by its members, that is DFID, SECO, the Netherlands Minister and Sida together with any other entity which may become a member of PIDG from time to time as notified to the Trustees by the PIDG Secretariat.

"PIDG Administration Budget" means a budget of estimated General Administration Costs prepared by the Principal Trustee in conjunction with the PIDG Secretariat and approved by the Governing Council of PIDG in accordance with the PIDG Constitution.

"PIDG Constitution" means the constitution of PIDG as validly amended from time to time.

"PIDG Secretariat" means the secretariat of PIDG which is required to act at all times on the authority of PIDG. In the first instance the PIDG Secretariat will be CA Legal of St Nicholas House, St Nicholas Road, Sutton, Surrey, SM1 1EL, or such other person as may be notified in to the Trustees writing by PIDG.

"Portfolio Investments" shall have the meaning given in the constitution of EAIF.

"Principal Trustee" means SG Hambros Trust Company Ltd or such other Trustee as the Protector shall appoint from time to time;

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"**Proceeds**" means all dividends, interest and other monies received by the PIDG Trust in respect of any Investment and all other proceeds received in respect of such Investment (whether by way of redemption, bonus, preference, option, substitution, conversion or otherwise) and any monies received by the PIDG Trust from or in connection with any sale, expropriation, requisition or seizure, or similar action, with respect to such Investment.

"**Project Development Costs**" has the meaning given in the PIDG Constitution.

"**Protector**" means the person or persons for the time being constituted as the Protector pursuant to Part 4.

"**Purposes**" means the purposes described in Part 2.

"**Termination Day**" means such day if any as the Trustees may by instrument declare to be the date of termination of the PIDG Trust in accordance with Clause 14 of Part 1 such date not to be earlier than the date of execution of such instrument.

"**Transaction Documents**" means any document, agreement, or other instrument required to establish, incorporate, fund, lend to or otherwise support any Investment or Investment Vehicle.

"**Trustees**" means the Original Trustees or other Trustees from time to time of the PIDG Trust.

"**Trustees' Obligations**" has the meaning set out in Clause 7.4 of Part 1.

"**Trust Period**" means the period from 1 December 2001 until whichever of the following dates shall first occur namely:

(a) the day on which shall expire the period of twenty five years from 1 December 2001; or

(b) the Termination Day.

1.1.1 Any reference in this Declaration of Trust to:-

(a) "**benefit**" shall be construed in its widest possible sense;

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- (b) "**capable of acting**" shall be interpreted so that without limitation a person shall be considered not to be capable of acting if through illness age or other cause he is unable to give reasoned consideration to financial or business matters the existence of any such inability being determined by certificate delivered to the Trustees of a physician attending to such person's care at any relevant time;
- (c) "**charitable purposes**" means purposes charitable either according to the proper law notwithstanding that they are or may be carried into effect in any part of the world or according to the law of the country in which the organisation carrying out such purposes is incorporated and "**charity**" has a corresponding meaning;
- (d) "**connected**" shall be interpreted so that:
- (i) a company shall be deemed to be connected with another person if that other person is its beneficial owner or its holding company or subsidiary or a company which is a subsidiary of that holding company or is a director officer employee or agent of any of the above (including without limitation the company first above mentioned); and
 - (ii) an individual shall be deemed to be connected with another person if that other person is a spouse relative partner employee or agent of him or is an employee of his employer;
- (e) "**constitutional documents**" shall be interpreted in its widest possible sense and, in relation to EAIF, shall include the EAIF Investment Policy;
- (f) "**officer**" shall be interpreted in its widest possible sense and, in relation to EAIF, shall include any member of the board of directors, credit committee or new business committee of EAIF;
- (g) "**proper law**" shall be interpreted to mean the law by which from time to time and to the exclusive jurisdiction of which the PIDG Trust and the rights of all parties are to be governed and in accordance with which the PIDG Trust is to be interpreted; and

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(h) **“property”** shall be interpreted to include all real and personal property provided that for as long as the proper law is the laws of Mauritius it shall not include any immovable property situated in Mauritius.

2.1.1 Words importing the singular shall include the plural and the masculine gender shall include the feminine and the neuter and vice versa in each case.

2.1.2 Words importing persons shall include bodies of persons whether corporate or unincorporated.

2.1.3 Reference to a Clause or a Part shall be a reference to a Clause or a Part of this instrument.

2.2 The headings in this instrument are for reference only and shall not affect its construction.

3. Principal Trusts

3.1 The Trustees shall hold the Funds during the Trust Period upon trust to apply use or hold the same (as appropriate) to procure the Purposes in accordance with the provisions of this Declaration of Trust at such times and in such manner as the Trustees may in their discretion think fit.

3.2 As long as the proper law is the laws of Mauritius the Trustees shall not hold any immovable property (as defined under the Act) situated in Mauritius.

4. Ultimate Trusts

The Trustees shall at the expiration of the Trust Period stand possessed of the Funds and any other assets held by the Trustees upon trust for such charitable purposes consistent with the Purposes as the Trustees may prior to the Termination Day in their discretion determine with the consent of the Protector and failing such determination upon trust for charitable purposes generally.

5. Appointment and Removal of Trustees

5.1 The power of:

5.1.1 appointing Trustees including the Principal Trustee; or

5.1.2 removing any Trustee including the Principal Trustee who :

- (a) in the opinion of the Protector, is unfit incapable or unwilling to act;
- (b) has, for any reason, received written notice of fourteen (14) days from the Protector; or
- (c) fails to provide evidence satisfactory to the Protector that the Trustee is insured in respect of

professional indemnity insurance directors' and officers' insurance to such minimum value as the Protector shall specify from time to time

shall be vested in the Protector.

5.2 There shall be no requirement that there be more than one Trustee. As long as the proper law is the laws of Mauritius, the number of Trustees shall not exceed four (4) of whom at least one Trustee must at all time be a qualified Trustee as defined under the Act. It shall be lawful for any company or corporation (whether or not a trust corporation) to be appointed a Trustee hereof and any person whether an individual or a body corporate may be appointed and if appointed may act as a new or additional Trustee notwithstanding that he is resident outside the jurisdiction of the proper law always provided that the Enforcer for the time being shall not be appointed Trustee.

5.3 The office of a Trustee shall be ipso facto determined and vacated if such Trustee being an individual shall be found to be a lunatic or of unsound mind or if he shall otherwise not be capable of acting or if he shall become subject to any proceedings under any bankruptcy or insolvency laws applicable to him or if such Trustee being a company shall enter into liquidation or dissolution whether compulsory or voluntary (not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction).

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- 5.4 Any Trustee may at any time retire from his position as Trustee on giving not less than six (6) months' written notice to the other Trustees (if any) and to the Protector (if any) and upon the expiration of such notice the Trustee so doing shall cease to be a Trustee to all intents and purposes except as to acts and deeds necessary for the proper vesting of the Funds in the continuing or new Trustee or Trustees.
- 5.5 Any Trustee which retires from his position as Trustee ("**the Retiring Trustee**") shall be released from all claims demands actions proceedings and accounts of any kind on the part of any person (whether in existence or not) actually or prospectively interested under the PIDG Trust for or in respect of the Funds or the income of the Funds or any act or thing done or omitted in execution or purported execution of such trusts other than and except only actions arising from any fraud, fraudulent breach of trust recklessness wilful misconduct or negligence in which such Trustee or (in the case of a corporate Trustee) any of its officers was a party or privy.

6. Liability of Trustees

- 6.1 To the extent permitted by law in the execution of the PIDG Trust and powers hereof no Trustee shall be liable for any loss to the value of the Funds arising in consequence of any matter or thing except fraud recklessness wilful conduct or negligence on the part of the Trustee who is sought to be made liable.
- 6.2 To the extent permitted by law without prejudice to the generality of Clause 6.1 of this Part 1 the Trustees shall not incur any liability whatsoever arising from the negligence or fraud of any delegate or agent appointed or employed by the Trustees or any of them in good faith provided that such appointment or employment was made after appropriate due diligence had been carried out by the Trustees to satisfy themselves of the agent's or delegate's experience reputation and ability to perform the tasks required and the Trustees have exercised the standard of care of a reasonable and prudent man of business in the supervision of the activities of the agent or delegate.
- 6.3 With due regard to the nature and amount or value of such loss, the Trustees shall, and the Enforcer shall cause the Trustees to, promptly sue any agent or delegate appointed by the Trustees for any loss to the value of the Funds arising out of any act or omission of that agent or delegate

7. Remuneration And Expenses

7.1 In relation to the administration of the Investment in the Emerging Africa Infrastructure Fund Limited, the Trustees shall be entitled to the following annual fees:

Principal Trustee	£10,000 + VAT (Global Establishment Fee) £25,000 + VAT (Annual Management Fee)
MC Trust Ltd	USD1000 (exclusive of VAT)
Minimax Ltd	USD1000 (exclusive of VAT)

7.2 In relation to the administration of any other Investment, the Trustees shall be entitled to such annual fees as agreed from time to time between the Trustees and the Protector.

7.3 All remuneration shall be paid in accordance with the Accounts Administration Provisions.

7.4 The Trustees' fees will be payable in arrears in two equal instalments on 1st December and 1st May each year. The Trustees' annual fees will cover all administration activities actually and necessarily incurred in the Trustees' performance of their obligations and role as set out in this Declaration of Trust ("**the Trustees' Obligations**").

7.5 The Trustees will be entitled to reimbursement of the actual costs properly and necessarily incurred in connection with the performance of the Trustees' Obligations duly invoiced and evidenced with supporting documentation as follows:

- (i) annual administrative costs estimated at £ 1,000 per annum;
- (ii) cost of any independent legal advice;
- (iii) cost of the preparation of the annual audited accounts of the PIDG Trust.

7.6 The Trustees will obtain the Protector's written consent before incurring:

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- 7.6.1 any administrative costs in excess of £1,000 per annum;
 - 7.6.2 any costs relating to independent legal advice;
 - 7.6.3 any costs relating to the preparation of the annual audited accounts of the PIDG Trust.
- 7.7 To avoid any actual or perceived conflict of interest for the Trustees, any Trustee or any person connected with a Trustee may only be employed or appointed in any capacity by the Trustees or by any Investment Vehicle or by any person connected with a Trustee with the prior written consent of the Protector.

8. Powers and Immunities

- 8.1 The Trustees shall in relation to the Funds have the powers and immunities set out in Schedule 1 or in this instrument provided that the Trustees shall not exercise any of their powers so as to conflict with Clause 3 of this Part 1 or to infringe any restrictions expressly imposed herein upon the exercise of any powers.
- 8.2 If in the course of the management or administration of the Funds the Trustees shall consider that any sale lease mortgage surrender or other disposition or any purchase investment acquisition expenditure or other transaction whatsoever and wheresoever the same is to be effected is expedient but the same cannot be effected by reason of the absence of any power for the purpose vested in the Trustees by this Declaration of Trust the Trustees may by deed with the prior written consent of the Protector confer upon themselves or their nominees either generally the statutory powers of a beneficial owner or in any particular instance the necessary power for that purpose provided that the exercise of such power shall be subject to the proviso contained in Clause 8.1 of this Part 1.
- 8.3 With the prior written consent of the Protector the Trustees shall have power from time to time by instrument revocable or irrevocable to release or to any extent to restrict the future exercise of any powers conferred on them by the PIDG Trust or by deed notwithstanding the fiduciary nature of any such powers.

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- 8.4 With the prior written consent of the Protector, any Trustee may from time to time in accordance with Clause 6.2 delegate to any person (including a Trustee or delegate of a Trustee) for any period and upon any terms whatsoever the execution or exercise of all or any powers and discretions of an administrative nature vested in him under this Declaration of Trust provided such delegation is made in good faith after appropriate due diligence has been carried out by the Trustees to satisfy themselves of such person's experience reputation and ability to perform the tasks required.
- 8.5 In the performance of their duties and in the exercise of their powers hereunder the Trustees shall act unanimously.

9. Disclosure

- 9.1 Save as required by law and subject to an order of any competent court the Trustees shall not be bound to disclose to any person other than to the Protector and the Enforcer any document or other matter relating to the PIDG Trust.
- 9.2 The Trustees may make such disclosures concerning the PIDG Trust or the Funds (including without limitation disclosure of any direct or indirect interests in any Investment Vehicle and of any dealings in shares in any Investment Vehicle) as may be properly required by any competent authority or person (whether or not such requirements shall have the force of law in the jurisdiction of the proper law and whether or not such disclosure may be enforced upon the Trustees) including without limitation any disclosure required under any legislation regulating transactions in securities and any rules of any stock exchange or regulated market or authority in any place in which EAIF is registered from time to time.

10. Variation and Rectification

The Trustees shall have power from time to time by instrument to rectify any manifest errors in this Declaration of Trust or to revoke or vary any of the administrative provisions of this Declaration of Trust or to add any administrative provisions thereto in such manner in all respects as the Trustees with the written consent of the Protector may think fit.

11. Change of Proper Law

- 11.1 Notwithstanding anything contained in this Declaration of Trust the Trustees with the written consent of the Protector may from time to time by instrument declare that the proper law of the PIDG Trust shall be the law of some other place in any part of the world under which the terms of the PIDG Trust shall be capable of taking effect (and in particular under which trusts for non-charitable purposes are valid and enforceable) and such law shall thereupon become the proper law of the PIDG Trust but subject to the power conferred by this clause and until any further declaration be made under such power.
- 11.2 Whenever any such declaration as aforesaid shall be made the Trustees shall be at liberty to make such consequential alterations or additions in or to the trusts powers and provisions of the PIDG Trust as the Trustees with the written consent of the Protector may consider necessary or desirable to ensure that the trusts powers and provisions of the PIDG Trust shall (*mutatis mutandis*) be as valid and effective as they are under the law of Mauritius.

12. Provisions Relating To Investment Vehicles

- 12.1 The Trustees may only exercise their powers contained in this Declaration of Trust or conferred by law in relation to the authorisation issue pledge or other encumbrance transfer or disposal of shares or other securities in any Investment Vehicle with the prior written consent of the Protector.
- 12.2 The Trustees shall not act to amend the constitutional documents or the place of incorporation of any Investment Vehicle or any of the Transaction Documents without the prior written consent of the Protector.
- 12.3 The Trustees shall obtain the written agreement of the Protector prior to nominating, appointing or removing any officer of any Investment Vehicle.
- 12.4 The Trustees shall obtain the written consent of the Protector prior to exercising any rights arising from an Investment relating to:
- 12.4.1 any proposed merger or restructuring or reorganisation or change of control of any Investment Vehicle;
- 12.4.2 any material change in the nature of the business of any Investment Vehicle;

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- 12.4.3 any sale, transfer, lease, assignment or substantial dismantling and disposal by any Investment Vehicle other than in the normal course of business;
- 12.5 The Trustees shall not take steps to wind up any Investment Vehicle without the prior written consent of the Protector.
- 12.6 The Trustees shall draw up the Investment Plan in consultation with the Protector and with the prior written consent of the Protector shall adopt it. The Investment Plan shall be reviewed annually by the Trustees in consultation with the Protector and shall not be changed save with the prior written consent of the Protector.
- 12.7 In exercising any discretion to invest or otherwise apply the Funds the Trustees ensure that the PIDG Trust has sufficient Funds to meet its obligations under any Transaction Documents entered into in accordance with the Investment Plan.

13. Principal Trustee

Without prejudice to Clause 8.5 of Part 1, the Principal Trustee shall perform the tasks set out in Schedule 3.

14. Declaration of Termination Day

The Trustees with the prior written consent of the Protector may by instrument revocable or irrevocable at any time declare that a day not earlier than the date of such instrument shall be the Termination Day.

15. Irrevocability

The PIDG Trust hereby created shall be irrevocable.

PART 2

The Purposes

The PIDG Trust is established for the purposes of:

1. facilitating the provision of the infrastructure needed to eliminate poverty in developing countries by encouraging private investment;
2. making Investments in accordance with the Investment Plan;
3. exercising any rights of control and influence arising from the Investments; and
4. investing applying or otherwise using the Funds for the relief of poverty in Developing Countries in such manner as the Trustees with the consent of the Protector but otherwise in their discretion think fit;
5. administering and paying the General Administration Costs and the Project Development Costs.

PART 3

Enforcer Provisions

1. On condition that at the written request of the Protector he shall as soon as practicable appoint as his successor any person(s) and/or entit(y)/(ies) named by the Protector and immediately thereafter resign from that office, the Enforcer of the PIDG Trust shall be DFID.
2. It shall be the duty of the Enforcer to enforce the PIDG Trust in consultation with PIDG in accordance with the PIDG Constitution.
3. Subject to Clause 1 of this Part 3 and to any express provision contained in his own appointment, the Enforcer may at any time appoint an additional or replacement Enforcer.
4. If at any time there is no Enforcer the Trustees shall with the prior written consent of the Protector take such other steps as may be necessary to secure the appointment of an Enforcer.
5. If at any time the Trustees have reason to believe that the Enforcer is unwilling or refuses to act or is unfit or incapable of acting the Trustees shall as soon as practicable inform the Protector and, if the proper law is the laws of Mauritius, the Attorney General of Mauritius of this fact.
6. No appointment under the foregoing provisions of this Part 3 shall have any effect if the person appointed is at the time of such appointment a Trustee and if at any time a Trustee would but for this provision be an Enforcer that person shall forthwith cease to be an Enforcer.
7. On the death of an Enforcer he shall cease to be an Enforcer and in the case of a corporation this provision shall have effect with the substitution of a reference to the commencement of the winding up of or the dissolution of the corporation (whichever first occurs) for the reference to death.
8. The office of Enforcer shall be determined and vacated if an Enforcer shall according to the law applicable to him be a lunatic or of unsound mind or if he shall become incapable of acting or become subject to any proceedings under any bankruptcy or insolvency laws applicable to him.

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9. If at any time there shall be more than one person holding the office of Enforcer any power of the Enforcer under the PIDG Trust shall be validly exercised by unanimous decision and if any one or more of them shall cease to be an Enforcer then subject to any express provision in the terms of their appointment and subject to any other appointment under this Declaration of Trust such one or more of them as has not so ceased shall remain in office and thereupon become the Enforcer.

10. The Enforcer shall be provided with annual accounts of the PIDG Trust, any legal opinions and advice received by the Trustees and shall be entitled, on request and at all reasonable times, to have made available to him by the Trustees any books, documents and records (however kept) which relate to the PIDG Trust.

11. No Enforcer shall be liable for any loss to the Funds arising by reason of any mistake or omission made in good faith or of any other matter or thing except fraud or wilful misconduct on the part of the Enforcer who is sought to be made liable.

12. The Enforcer shall not:
 - 12.1 place himself in a position which may conflict with his duties to enforce the Purposes;
 - 12.2 derive directly or indirectly any profit by reason of his appointment other than any reasonable fee for his service agreed in advance with the Protector and for any reasonable expenses which he may have incurred in the discharge of his duties;
 - 12.3 enter on his own account into any dealing with the Trustees.

PART 4

Protector Provisions

1. The first Protector of the PIDG Trust shall be appointed by the Trustees with the prior written consent of the PIDG Secretariat. Until such time as the Protector is appointed, in all matters where the Trustees are required to obtain the consent of the Protector in accordance with the provisions of this instrument the Trustees will be required to obtain the consent of the PIDG Secretariat.
2. The power of appointing a new or additional Protector or removing any Protector unfit incapable or unwilling to act shall be vested in PIDG acting through the PIDG Secretariat in accordance with the PIDG Constitution. All appointments of a Protector shall be in writing and notice thereof containing the acceptance of the appointment shall be forthwith delivered to the Trustees and shall be effective when the document or a certified copy thereof is received by the Trustees.
3. A new Protector may be appointed in accordance with Clause 2 of this Part 4 whenever a Protector for the time being (being an individual) dies or is desirous of being discharged from the position of Protector or (being a company) is put into liquidation (whether voluntary or compulsory) or otherwise ceases to exist or passes a resolution to the effect that it desires to be discharged from the position of Protector.
4. If at any time there is no Protector the Trustees shall request PIDG to nominate any person to be the Protector.
5. If at any time there shall be more than one person holding the office of Protector any power of the Protector under this Declaration of Trust shall be validly exercised by the unanimous decision of the Protector.
6. The Protector shall be provided with:
 - 6.1 as soon as available, but in any event within forty-five (45) days after the end of each quarter unaudited financial statements for each quarter in respect of the Funds;

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- 6.2 within forty-five (45) days of the end of each quarter progress reports on the status of the activities of all entities in which the Trustees have investments, hold shares or otherwise support including, in the case of EAIF, any special reports relating to the investments of EAIF in such form and detail as PIDG may require but in any event including confirmation from EAIF that all Portfolio Investments made by EAIF during that quarter were made in compliance with the EAIF Investment Policy;
 - 6.3 reports on the activities of the PIDG Trust including all special reports relating to any investments of the PIDG Trust in such form and detail as PIDG may require;
 - 6.4 an annual management assertion, together with an attestation from the Trustees' external auditors, of the satisfactory performance of the procedures and controls used by the Trustees in administering the Funds;
 - 6.5 annual audited accounts of the PIDG Trust and of each Investment Vehicle prepared in accordance with international accounting standards;
 - 6.6 any legal opinions and advice received by the Trustees.
7. The Trustees shall maintain separate records and ledger accounts in respect of the Funds, and shall retain until at least five (5) years after the Protector has received the audit report for the fiscal year in which the last disbursement of the Funds was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing the expenditures and ensure that such records and accounts are included in the annual audit of the PIDG Trust.
 8. The Protector shall be entitled, on request and at all reasonable times:
 - 8.1 to have made available to him by the Trustees any books, documents and records (however kept) which relate to the PIDG Trust; and
 - 8.2 to review projects financed by EAIF individually.

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9. The Protector shall not derive directly or indirectly any profit by reason of his appointment other than any reasonable fee for his service agreed in advance with the PIDG Secretariat and for any reasonable expenses which he may have incurred in the discharge of his duties.

10. In order to exercise his power of appointment and removal of Trustees set out in Clause 5.1 of Part 1 effectively, the Protector shall, in consultation with the PIDG Secretariat, conduct a review of the Trustees' performance of the Trustees' Obligations each calendar year after 1st December 2001 and at different intervals if requested by the PIDG Secretariat.

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PART 5

The initial Funds shall consist of **USD 21 million (twenty one million United States Dollars)**.

IN WITNESS WHEREOF this Amended and Restated Declaration of Trust has been duly executed the day and year first above written

THE COMMON SEAL OF)
Minimax Ltd)
was hereunto affixed)
in the presence of:)

THE COMMON SEAL OF)
MC Trust Ltd)
was hereunto affixed)
in the presence of:)

THE COMMON SEAL OF)
SG Hambros)
Trust Company Limited)
was hereunto affixed)
in the presence of:)

**SCHEDULE 1
Powers and Immunities of the Trustees**

1. Power of investment

1.1 The Trustees shall have power with the prior written consent of the Protector to apply funds to any investment of whatever nature and wherever situate whether producing income or not (including the purchase of any immovable property not situated in Mauritius or movable property or any interest in such property)) and which are consistent with the Investment Plan and which the Protector has confirmed in writing are consistent with the Ethical Policies as the Trustees shall in their absolute discretion think fit so that subject to the terms of this Declaration of Trust the Trustees shall have the same full and unrestricted powers of making and changing investments of such moneys as if they were absolutely and beneficially entitled to such moneys and without prejudice to the generality of the above the Trustees shall not be under any obligation to diversify their investment of such moneys.

1.2 The Trustees shall have powers with the prior written consent of the Protector to exchange property for other property of a like or different nature and for such consideration and on such conditions as they in their absolute discretion think fit.

2. No duty to diversify

The Trustees shall have power with the prior written consent of the Protector to leave any assets subject to the trusts hereof in the state of investment in which they may be from time to time (notwithstanding that the whole or a substantial part of the assets of the PIDG Trust may consist of shares or securities of a single private or public company) and to invest the Funds in the purchase of shares or other securities (additional or otherwise) in any such single private or public company notwithstanding that the whole or a substantial part of the assets of the PIDG Trust already comprises shares in such company.

3. Power to lend and give guarantees

The Trustees shall have power with the prior written consent of the Protector to lend money or property either free of interest or on such terms as to

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payment of interest and generally as the Trustees shall in their absolute discretion think fit.

4. Power to borrow

The Trustees shall have power with the prior written consent of the Protector to borrow and raise money on the security of the Funds for any purpose (including the further investment of the moneys so raised) and to mortgage charge or pledge any asset of the PIDG Trust as security for any moneys so raised and to guarantee the payment of money and the performance of obligations in respect of borrowings by any company fully or partly owned by the Trustees and in connection with such guarantees to enter into such indemnities as the Trustees shall in their absolute discretion think fit.

5. Power to give indemnities

The Trustees may with the prior written consent of the Protector give or enter into any indemnity warranty guarantee undertaking or covenant or enter into any type of agreement that they shall in their absolute discretion think fit relating to the transfer or sale of a business or private company shareholding held or owned for the time being by the Trustees whether relating to the business or company itself its assets liabilities shares or employees or any other aspect of the business or company in favour of any transferee purchaser or other relevant party and including any limitation or restriction on value or otherwise as the Trustees shall in their absolute discretion think fit.

6. Power to accumulate income

The Trustees may accumulate income for any period of time to the extent permitted by the proper law of the PIDG Trust and may invest such accumulations in any Investments.

7. Power of appropriation

The Trustees may with the prior written consent of the Protector in their absolute discretion appropriate any part of the Funds in their then actual condition or state of investment in or towards satisfaction of any interest or share in the Funds as may in all the circumstances appear to them to be just and reasonable and for the above purposes from time to time to place such value on any or all investments or other property as they shall in their absolute discretion think fit.

8. Power to promote companies

The Trustees may with the prior written consent of the Protector (without prejudice to the generality of their powers of investment) promote or join with any other person or persons in promoting or incorporating any company in any part of the world or subscribe for or acquire any of the shares or stock or debentures or debenture stock or loan capital of any company.

9. Trustees not bound to interfere in business of Investment Vehicles

Where the Trustees have received prior written confirmation from the Protector in relation to an Investment Vehicle the Trustees shall not be bound or required to interfere in the management or conduct of the business of such Investment Vehicle so long as the Trustees shall have no notice of any act of dishonesty or misappropriation of moneys on the part of the directors having the management of such Investment Vehicle the Trustees shall be at liberty to leave the conduct of its business (including the payment or non-payment of dividends) wholly to the officers.

10. Power to insure property

The Trustees shall maintain professional indemnity insurance and directors' and officers' insurance to the values specified in Clause 5.1.2(c) of Part 1 at their own expense.

Subject to this, the Trustees may insure against any loss or damage from any peril against which a prudent owner of the Funds would reasonably insure for any reasonable amount and to pay the premiums out of the Funds.

11. Charities

The Trustees may with the prior written consent of the Protector establish promote or support any charity or charities wherever resident or incorporated and may pay or transfer any assets comprised in or any income of the Funds to the person who purports to be the treasurer or other appropriate officer of any charity to which such payment or transfer is made and the receipt of such person shall be a full discharge to the Trustees.

12. Power to vote and to employ nominees and custodians

In respect of any property comprised in the Funds the Trustees shall have power with the prior written consent of the Protector:-

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- (a) to vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligation of any corporation trust association or concern whether or not affecting the security or the apparent security of the Funds or the purchase or sale or lease of the assets of any such corporation trust association or concern;
- (b) to deposit any such shares securities or property in any voting trust or with any depository designated under such a voting trust;
- (c) to give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property;
- (d) to hold any or all securities or other property in bearer form or in the names of the Trustees or any one or more of them or in the name of some other person or partnership or in the name or names of nominees or custodians without disclosing the fiduciary relationship created by the PIDG Trust and to deposit the said securities and any title deeds or other documents belonging or relating to the Funds in any part of the world with any bank firm trust company or other company that undertakes the safe custody of securities as part of its business without being responsible for the default of such bank firm trust company or other company or for any consequent loss.

13. Power to delegate management of investments

- 13.1 With the prior written consent of the Protector the Trustees may have power to engage the services of such investments adviser or advisers as the Trustees may from time to time think fit (in this Clause referred to as "**the Investment Adviser**") to advise the Trustees in respect of the investment and reinvestment of the Funds with power for the Trustees without being liable for any consequent loss to delegate to the Investment Adviser discretion to manage all or any part of the Funds within the limits and for the period stipulated by the Trustees and the Trustees shall settle the terms and conditions for the remuneration of the Investment Adviser and the reimbursement of the Investment Adviser's expenses as the Trustees shall in their absolute discretion think fit and such remuneration and expenses shall be paid by the Trustees from the Funds.
- 13.2 The Trustees shall not be bound to enquire into nor be in any manner responsible for any changes in the legal status of the Investment Adviser.

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13.3 The Trustees shall incur no liability for any action taken pursuant to or for otherwise following the advice of the Investment Adviser however communicated.

14. Delegation of powers

14.1 With the prior written consent of the Protector the Trustees may delegate the operation of any bank, building society or other accounts.

14.2 With the prior written consent of the Protector the Trustees may from time to time delegate to any person (other than a Trustee or delegate of a Trustee) for any period and upon any terms whatsoever the execution or exercise of all or any powers and discretions of an administrative nature vested in him in connection with the PIDG Trust.

15. Power to appoint agents

With the prior written consent of the Protector the Trustees may instead of acting personally employ and pay at the expense of the Funds any agent in any part of the world whether attorneys solicitors accountants brokers banks trust companies or other agents to transact any business or act as nominee or do any act in the execution of these trusts including without prejudice to the generality of the above the receipt and payment of moneys and the execution of documents, without being responsible for the default of any agent if employed in good faith and provided that such appointment is made after appropriate due diligence has been carried out by the Trustees as to the agent's experience reputation and ability to perform the acts which he is to do as an agent and the Trustees have exercised the standard of care of a reasonable and prudent man of business in the supervision of the activities of the agent or delegate.

16. Power to permit self dealing

With the prior written consent of the Protector the Trustees shall have power to enter into any transaction concerning the Funds notwithstanding that one or more of the Trustees may be interested in the transaction other than as one of the Trustees.

17. Release of powers

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With the prior written consent of the Protector the Trustees shall have power from time to time by instrument revocable or irrevocable to release or to any extent to restrict the future exercise of any powers conferred on them by this Declaration of Trust or by deed notwithstanding the fiduciary nature of any such powers.

SCHEDULE 2

Environmental, Economic and Social Development Policies

1. Poverty Elimination

All investments made by the Trustees must contribute to the reduction of poverty by one of the following means:

- 1.1 underpinning pro-poor economic growth and the broader policies and context for poverty reduction and elimination, and leading to social, environmental and/or economic benefits for poor people; or
- 1.2 benefiting broad-based population groups, including poor people, but also addressing issues of equity and barriers to participation or access of poor people; or
- 1.3 focusing predominantly on the rights, interests and needs of poor people.

2. Environmental

The Trustees will:

- 2.1 seek to ensure that the environmental effects of their investments are assessed and monitored in the planning implementation and operational stages;
- 2.2 require all projects in which they invest to be designed and operated using internationally accepted environmental good practice;
- 2.3 take account of all relevant international environmental agreements, including the 1992 Framework Convention on Climate Change and the 1997 Protocol to that Convention, the Convention on Biological Diversity and the Convention on Desertification;
- 2.4 not knowingly support projects or businesses which contravene any relevant international environmental agreement to which either the host country or any Government which funds or supports the PIDG Trust or EAIF is a signatory; and
- 2.5 assess the environmental standards and practices proposed for planned projects and achieved by operational projects with reference to the relevant World Bank standards for the activity concerned, or local regulations if these are more stringent.

3. Health & Safety

The Trustees will:

- 3.1 require that all projects or businesses in which they invest comply with local legislative requirements as an absolute minimum, as far as occupational health and safety are concerned;
- 3.2 require that all projects or businesses in which they invest have a health and safety policy, produced after consultation with all relevant persons and brought to the notice of all persons, with clear procedures and allocation at senior level of responsibility for implementation;
- 3.3 require that, where there is no local legal framework, all projects or businesses in which they invest in defining their health and safety policy take account of the recommendations of the following World Bank documents:
 - 3.3.1 Occupational Health and Safety Guidelines for specific industries (issued September 1988);
 - 3.3.2 Health and Safety Guidelines – General (issued September 1995);
- 3.4 raise occupational health and safety as an issue at Board level wherever the Trustees have representation;
- 3.5 require each project or business in which they invest to assess the specific risks arising from the work activities carried out with a view to introducing measures to eliminate or reduce those risks; and
- 3.6 require all persons engaged by the Trustees to follow best practice in relation to health and safety.

4. Social Issues

The Trustees will:

- 4.1 seek to ensure that the social effects of their investments are assessed and monitored in the planning, implementation and operational stages. Areas of key social impact which may be identified include resettlement importation of labour, change in the provision of social services, substantial job losses and cultural property issues;

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- 4.2 require their investments to meet or exceed the standards required by the national laws of the host country, including those that protect core labour standards, and international treaties ratified by the host country;
- 4.3 seek to adopt a consultative approach to recognise the ways in which an investment will affect people both directly and indirectly;
- 4.4 require all projects or businesses in which they invest to be designed and operated in a way which takes account of the effects on people, reflecting international good practice;
- 4.5 not invest in projects or businesses which employ forced labour of any kind;
- 4.6 not invest in projects or businesses which exploit child labour;
- 4.7 require that wages meet or exceed industry or legal national minima and must be sufficient to meet basic needs;
- 4.8 require that employees be treated fairly in terms of recruitment, progression, terms and conditions of work and representation, irrespective of gender, race, colour, disability, political opinion, religion or social origin. In some countries there may be cultural issues which the Trustees must recognise in seeking to implement this policy;
- 4.9 ensure that all of the investments recognise the importance of consultative work-place structures and associations which provide employees with an opportunity to present their views to management; and
- 4.10 ensure that all projects or businesses which the Trustees invest provide access to basic services so that:
 - 4.10.1 employees and dependants who live with them have access to a nutritious diet and to potable water;
 - 4.10.2 employees and dependants who live with them have access to good quality primary health care;
 - 4.10.3 resident children of employees who are of primary school age are in school;
 - 4.10.4 where secondary schooling is available, and where employees are prepared to pay any relevant fees, ways are sought to facilitate access for their children; and

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4.10.5 company housing, when provided, meets or exceeds local norms (or statutory standards where applicable).

SCHEDULE 3

Role of the Principal Trustee

1. The Principal Trustee shall initiate and co-ordinate timely Trustees' meetings and actions to perform the Trustees' obligations including:
 - 1.1 performing the PIDG Trust's obligations under the Transaction Documents;
 - 1.2 in consultation with the Protector, exercising the PIDG Trust's rights arising from any Investment including any shareholding in any Investment Vehicle;
 - 1.3 applying the Funds (with the necessary consents) in accordance with the Investment Plan the Accounts Administration Provisions and any Funding Instruments;
 - 1.4 in conjunction with the PIDG Secretariat preparing, reviewing and revising periodically but not less than annually PIDG Administration Budget for consideration by PIDG;
 - 1.5 co-ordinating the payment of any General Administration Costs or Project Development Costs which the PIDG Trust has agreed to pay in relation to any contract which the PIDG Secretariat or, in the case of Project Development Costs, those Donors who have agreed to the PIDG Trust's payment of such costs, in each case with the prior written consent of the Protector, have executed;
 - 1.6 co-ordinating the payment of fees and expenses due to the Trustees, Enforcer(s) and Protector(s) under this Declaration of Trust against the receipt of appropriate invoices and supporting documentation which shall be added to the records of the PIDG Trust;
 - 1.7 obtaining, preparing and providing to the Protector for circulation to Donors the information set out in Clause 6 of Part 4;
 - 1.8 maintaining records and ledger accounts of the PIDG Trust in accordance with Clause 7 of Part 4;
 - 1.9 any other tasks agreed between the Protector and the Principal Trustee from time to time.

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2. The Principal Trustee shall consult with the Protector and, having consulted the PIDG Secretariat, submit timely requests for Protector consents where relevant.

SCHEDULE 4

Accounts Administration Provisions

1. The Trustees will open:
 - (a) an account in the name "The Public Infrastructure Development Trust US Dollar Account (General Administration Costs) Re: Name of Donor" for each Donor (hereinafter referred to as a "**General Administration Costs Account**");
 - (b) an account in the name "The Public Infrastructure Development Trust US Dollar Account (Project Development Costs) Re: Name of Donor" for each Donor;
 - (c) an account in the name "The Public Infrastructure Development Trust US Dollar Account ([name of Investment/Investment Vehicle]) Re: Name of Donor" for each Donor for each Investment or Investment Vehicle with respect to which that Donor has agreed to make Contributions (hereinafter referred to as an "**Investment Account**").

- 5 Each Donor's Contribution will be received into that Donor's applicable Account in accordance with the provisions of the relevant Funding Instrument.

- 6 Each Donor's share of General Administration Costs, as set out in the PIDG Administration Budget, will be debited by the Trustees from each Donor's General Administration Costs Account. Each Donor's share of Contributions with respect to an Investment or Investment Vehicle will be debited by the Trustee from such Donor's applicable Investment Account.

- 7 All Proceeds will, on receipt by the PIDG Trust, be credited to the Donor Investment Accounts in accordance with the relevant Funders' Arrangement and Funding Instrument. Proceeds that are to be reapplied to other Purposes in accordance with the terms of this Declaration of Trust and the Investment Plan shall be transferred by the Trustee to the applicable Donor Investment Account as required.

- 8 Upon:
 - 8.1 winding-up of the PIDG Trust; or

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8.2 Proceeds of an Investment having been held in a Donor's Account for two calendar years without having been reapplied in accordance with the terms of this Declaration of Trust,

the balance of each Donor's Accounts, or, in the case of sub-clause 8.2, any such Proceeds as have not been reapplied, after the Donor's share of all General Administration Costs and of any other amounts due to the Trustees under this Declaration of Trust have been debited, shall, at the option of that Donor, be repaid to the Donor or applied for the Purposes on the instruction of the relevant Donor or as otherwise provided in the relevant Funding Instrument.

**AMENDED AND RESTATED
DECLARATION OF TRUST**

Dated 14th March 2003

MC Trust Ltd

Minimax Ltd

SG Hambros Trust Company Ltd

THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST

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