

Clarifications - Invitation to submit an Expression of Interest - DEPA Infrastructure

HELLENIC REPUBLIC ASSET DEVELOPMENT FUND SA

Athens, 29th January 2020

Responses to clarification requests submitted by Interested Parties in connection with the Invitation to submit an Expression of Interest for the acquisition of a 100% shareholding in DEPA Infrastructure (the “Invitation”). Unless otherwise specified herein, capitalized terms used in the present shall bear the same meaning as in the Invitation.

Reference in Invitation sections		Question	Answer
1.	4.3.3 & 4.3.1	With reference to the requirements set forth under point 4.3.3 of the Invitation, can you please confirm that (i) should the Interested Party be able to prove that it meets the Financial Requirements by presenting the three most recent audited financial statements, there is <u>no</u> explicit requirement for the Interested Party to provide audited financial statements pro-forma for every acquisition of or merger with any other business performed over the last three financial years (“Pro-Forma Statements”), and that (ii) failure to attach Pro-Forma Statements will not by itself constitute a reason for the Interested Party not to be qualified to participate in the Binding Offers Phase?	Your understanding is correct - it would suffice for the Interested Party to prove compliance with Financial Requirements as per the provisions of clause 4.3.1, i.e. through its annual audited financial statements for the last three (3) financial years. Pro-forma statements of clause 4.3.3 (accompanied by auditor’s certification as further specified therein) serve as an additional test in case the requirements of clause 4.3.1 of the Invitation cannot be satisfied by the Interested Party.

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2.	5.1.1 par. (b) & 4.5.1	With reference to the requirements set forth under point 5.1.1 paragraph (b) of the Invitation, as well as the rest of the Invitation, can you please provide the exact legal definition of the wording “group of companies”? For the avoidance of doubt, if the Interest Party is <i>de facto</i> controlled by a broader sovereign entity (the “ Controlling Entity ”), does the Letter of Expression need to include details of the group structure of the Controlling Entity?	The Invitation provides under clause 4.5.1 par. (b) a definition of the “<i>Affiliate</i>” and “<i>Control</i>”, which shall be taken into account for the determination of the group of companies referred to under clause 5.1.1 (b) of the Invitation. Without prejudice to the Fund’s rights set forth under clauses 4.1.3 and 10.3 of the Invitation, the details required in the context of clause 5.1.1 par (b) of the Invitation refer to: (i) The group of companies of the Interested Party; and (ii) The group of companies of the Controlling Entity.
3.	1.2	In relation to the demerger, please clarify whether any joint liability mechanism operate between demerged and demerging entities and, in that case, please kindly explain whether possible instruments aimed at neutralizing the relevant risks may exist.	The liability issues between demerged and demerging entities are explicitly addressed under the provisions of Energy Law [Article 80I paragraph 1(a)].
4.	5.2.1, 5.3.2, 7.3, Annex I & Annex II	With reference to Annexes I and II of the Invitation, please confirm whether their structure can be modified in order to allow for the signature of each member of the board of directors of the Interested Party (as per the requirements set forth under point 7.3 of the Letter), since, currently, Annexes I and II only envisage the signature of the person having the power to represent the Company.	As per clauses 5.2.1 and 7.3 of the Invitation, this understanding is correct with respect to Annex I. We clarify that Annex I must be signed by all board members and the legal representative(s) of the Interested Party. Therefore, the respective section of the declaration in Annex I shall be adjusted accordingly, based on the signatory as the case may be (i.e. “<i>...in my capacity as member of the board of directors of [Interested Party]</i>” OR “<i>in my capacity as legal representative of [Interested Party]</i>”). It is noted though that the above is not applicable with regard to Annex II, which (in case of an Interested Party being a legal

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			entity) is only signed by the legal representative(s) of the entity, according to the explicit provision of clause 5.3.2 (a). Therefore, it is clarified that Clause 7.3 only refers to the Solemn Declaration (in capitalized terms), which according to the Invitation (clause 5.2.1) refers to the declaration of Annex I.
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