JONNAS ESMERALDO MARQUES DE VASCONCELOS

BRICS: AGENDA REGULATÓRIA

Tese de Doutorado

Orientador: Prof. Dr. Luís Fernando Massonetto

UNIVERSIDADE DE SÃO PAULO

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BRICS: AGENDA REGULATÓRIA

Tese apresentada à banca examinadora do Programa de Pós-Graduação em Direito, da Faculdade de Direito da Universidade de São Paulo, como exigência parcial para obtenção do título de Doutor em Direito, na área de concentração Direito Econômico, Financeiro e Tributário, sob a orientação do Prof. Dr. Luís Fernando Massonetto.

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Por razões diferentes, nos períodos de grande bonança econômica internacional, assim como nos períodos de intensificação da competição e das lutas entre as grandes potências do sistema mundial, tendem a se ampliar os espaços e as oportunidades para os Estados situados na periferia do sistema. O aproveitamento político e econômico dessas oportunidades, entretanto, depende, em todos os casos, da existência dentro desses Estados e dessas economias nacionais de classes, coalizões de poder, burocracias e lideranças com capacidade de sustentar, por um período prolongado de tempo, uma mesma estratégia agressiva de proteção de seus interesses nacionais e de expansão de seu poder internacional (FIORI, 2007, p.35).

RESUMO

VASCONCELOS, Jonnas. **BRICS: agenda regulatória**. 2018. 344 fls. Tese (Doutorado em Direito Econômico) - Faculdade de Direito, Universidade de São Paulo, São Paulo, 2018.

O neoliberalismo é um conceito que qualifica o atual estágio de desenvolvimento do capitalismo, marcado, dentre outras características, pela recorrência de crises financeiras e por novas formas da hierarquia internacional e das relações jurídicas. Essas relações são, inclusive, objeto de reflexões no Direito Econômico, campo teórico a que esta pesquisa se filia. No contexto de desdobramentos da grave crise iniciada nos mercados financeiros dos EUA e da Europa, a partir de 2007, o cenário geopolítico foi impactado com o surgimento de uma inédita coalizão entre Brasil, Rússia, Índia, China e África do Sul (conhecida pelo acrônimo BRICS), demandando reformas na arquitetura institucional derivada dos acordos de Bretton Woods (tais como o Banco Mundial, o Fundo Monetário Internacional e o papel do dólar estadunidense como reserva monetária internacional) e criando mecanismos multilaterais próprios (como um banco de desenvolvimento e um arranjo de reservas para situações emergenciais). A esse conjunto de iniciativas em torno do sistema monetário e financeiro internacional, chamamos de *agenda regulatória dos BRICS*, justamente o objeto desta pesquisa. A relação entre essa agenda e o neoliberalismo consiste, por sua vez, na questão que investigamos aqui. Para tanto, tais iniciativas são abordadas em suas dimensões discursivas e práticas. Na primeira, observam-se transformações de uma narrativa “passiva” pelo grupo para outra mais “proativa”. Em ambas as fases, contudo, persiste uma dinâmica de *subordinação conflitiva* com elementos do neoliberalismo. Esta dinâmica também está presente nas práticas dos BRICS enquanto coletivo, revelando-se, especialmente, na análise do funcionamento dos seus mecanismos multilaterais e na comparação deles com instituições congêneres. Assim, a agenda regulatória dos BRICS, apesar de promover conflitos parciais e seletivos, não se apresenta como antagônica ao neoliberalismo.

PALAVRAS-CHAVE: Neoliberalismo. Direito Econômico. BRICS. Agenda regulatória. Subordinação conflitiva.

ABSTRACT

VASCONCELOS, Jonnas. **BRICS: regulatory agenda**. 2018. 334 fls. Thesis (Doctorate in Economic Law) – Law School, University of São Paulo, São Paulo, 2018.

Neoliberalism is a concept that qualifies capitalism's contemporary development stage, which has been marked, among other characteristics, by its frequency of financial crisis and by its new forms of international hierarchy and juridical relations. These new juridical relations have also been subject to Economic Law studies, a theoretical approach adopted by this research. During the development of 2007's economic crisis, which started in US and in Europe's financial markets, the geopolitical situation has seen changes due to the unprecedented creation of an international coalition between Brazil, Russia, India, China and South Africa (better known by the acronym BRICS). Since then, this coalition has demanded reforms in the institutional financial architecture derived from Bretton Woods' agreement (such as in the World Bank, in the International Monetary Fund and in the dominance role of US' currency in international monetary relations). The group has created its own multilateral mechanisms (such as a development bank and a reserve currency arrangement). We then name these initiatives toward the international monetary and financial system as *BRICS' regulatory agenda*, which are our research subject. The relation between this agenda and neoliberalism is the main question of the thesis. Therefore, these initiatives are analyzed in its discursive and practical levels. In the discursive level, we noted changes in BRICS' narrative from a "passive" to a "proactive" approach. In both phases, however, there is a dynamic of *conflicting subordination* in regard to aspects of neoliberalism. The same dynamic is identified when we examine BRICS' practices as a group, especially when analyzing the functioning of its multilateral mechanisms and when comparing those mechanisms with similar institutions. We conclude that BRICS' regulatory agenda doesn't antagonize with neoliberalism, despite partial and selective conflicts with it.

KEYWORDS: Neoliberalism. Economic Law. BRICS. Regulatory agenda. Conflicting subordination.

RÉSUMÉ

VASCONCELOS, Jonnas. **BRICS: agenda de réglementation**. 2018. 334 fls. Thèse (Doctorat en Droit Économique). Faculté de Droit, Université de São Paulo, São Paulo, 2018.

Le néolibéralisme est un concept qui décrit le stade de développement du capitalisme actuel - marqué, entre autres caractéristiques, par la récurrence des crises financières et par des nouvelles formes de hiérarchie internationale et de relations juridiques. En effet, ces relations font l'objet de réflexions du Droit Économique, un domaine théorique auquel se joint la présente recherche. Dans le contexte de l'évolution de la grave crise commencée dans les marchés financiers américains et européens à partir de 2007, le scénario géopolitique a été impacté par l'émergence d'une coalition sans précédent, réunissant le Brésil, la Russie, l'Inde, la Chine et l'Afrique du Sud; connue par l'acronyme BRICS, cette coalition demande des réformes dans l'architecture institutionnelle héritée des accords de Bretton Woods (telles que la Banque Mondiale, le Fonds Monétaire International, et le rôle du dollar américain comme monnaie de réserve internationale), tandis qu'elle veut créer ses propres mécanismes multilatéraux (comme, par exemple, une banque de développement et un fonds de réserves d'urgence). Cet ensemble d'initiatives autour du système monétaire et financier international est dénommé *agenda de réglementation des BRICS* - précisément l'objet de cette recherche. La relation entre cet agenda et le néolibéralisme est, à son tour, la question qu'on étudie ici. Dans ce but, ces initiatives-là sont abordées dans leurs dimensions discursives et pratiques. Dans le premier cas, on observe des transformations qui mènent d'un récit «passif» à un autre, plutôt «proactif», par le groupe. Cependant, il y a dans toutes les deux phases une dynamique de *subordination conflictuelle* avec des éléments du néolibéralisme. Cette dynamique est également présente dans les pratiques des BRICS en tant que collectif: elle se révèle surtout lors qu'on analyse le fonctionnement de ses mécanismes multilatéraux et qu'on les compare avec des institutions similaires. Ainsi, même si l'agenda de réglementation des BRICS peut provoquer des conflits partiels et sélectifs, il ne se présente pas comme antithétique au néolibéralisme.

MOTS-CLÉS: Néolibéralisme. Droit Économique. BRICS. Agenda de réglementation. Subordination conflictuelle.

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LISTA DE SIGLAS

ACR – Arranjo Contingente de Reservas

ADB – Banco Asiático de Desenvolvimento (em inglês: *Asian Development Bank*)

AID – Associação Internacional de Desenvolvimento

AIIB – Banco Asiático de Investimento em Infraestrutura (em inglês: *Asian Infrastructure Investment Bank*)

ALCA – Área de Livre Comércio das Américas

AMRO – Escritório de Pesquisa Macroeconômica do ASEAN+3 (em inglês: *ASEAN+3 Macroeconomic Research Office*)

ASEAN - Associação de Nações do Sudeste Asiático

ASEAN+3 - Associação de Nações do Sudeste Asiático mais China, Coreia do Sul e Japão

BCB – Banco Central do Brasil

Bird – Banco Internacional para Reconstrução e Desenvolvimento

BM – Banco Mundial

BNDES – Banco Nacional de Desenvolvimento Econômico e Social

BRIC – Brasil, Rússia, Índia e China

BRICS – Brasil, Rússia, Índia, China e África do Sul

CID – Cooperação Internacional para o Desenvolvimento

CMI – Iniciativa Chiang Mai (em inglês: *Chiang Mai Initiative*)

CMIM – Multilateralização da Iniciativa Chiang Mai (em inglês: *Chiang Mai Initiative Multilateralization*)

Derin – Departamento de Assuntos Internacionais do Banco Central do Brasil

Deris – Departamento de Riscos Corporativos e Referências Operacionais do Banco Central do Brasil

DES – Direitos Especiais de Saque

Direx – Diretor de Assuntos Internacionais e de Gestão de Riscos Corporativos do Banco Central do Brasil

EMDC – Mercados Emergentes e Países em Desenvolvimento (em inglês: *Emerging Market and Developing Countries*)

ESM – Mecanismo Europeu de Estabilidade (em inglês: *European Stability Mechanism*)

FLAR – Fundo Latino-Americano de Reservas (em espanhol: *Fondo Latinonamericano de Reservas*)

FMI – Fundo Monetário Internacional

FUNAG - Fundação Alexandre de Gusmão

GBC – Grande Burguesia Compradora

GBI – Grande Burguesia Interna

GBM – Grupo Banco Mundial

GM – Guerra Mundial

IBSA – Índia, Brasil e África do Sul

ICBA – Acordo entre Bancos Centrais (em inglês: *Inter-Central Bank Agreement*)

IPEA – Instituto de Pesquisa Econômica Aplicada

Mercosul – Mercado Comum do Sul

NAB – Novos Acordos de Empréstimos (em inglês: *New Arrangements to Borrow*)

NAFTA - Acordo de Livre Comércio da América do Norte (em inglês: *North American Free Trade Agreement*)

NBD – Novo Banco de Desenvolvimento

OMC – Organização Mundial do Comércio

ONG – Organização Não-governamental

ONU – Organização das Nações Unidas

PIB – Produto Interno Bruto

PSDB – Partido da Social Democracia Brasileira

PT – Partido dos Trabalhadores

RMB – Reminbi

SMFI – Sistema Monetário e Financeiro Internacional

SFN – Sistema Financeiro Nacional

STF – Supremo Tribunal Federal

UE – União Europeia

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INTRODUÇÃO

O estouro de bolha no mercado de hipotecas, na Bolsa de Nova Iorque, em 2007, desencadeou uma profunda crise econômica, política e social mundo afora. A magnitude dos prejuízos, das quantidades de falências e de demissões e o desarranjo sistêmico provocado nas finanças encontrariam paralelos somente aos vivenciados no grande *Crash* de 1929. Como dantes servira para descreditar o liberalismo, transformando o modo de funcionamento do capitalismo, houve uma expectativa de que a mais recente crise abalaria o ciclo histórico do *neoliberalismo*. Parte dessa expectativa foi cultivada com o surgimento dos *BRICS* (acrônimo do grupo composto por Brasil, Rússia, Índia, China e África do Sul).

Precedido de articulações informais e paralelas em fóruns multilaterais, desde o ano de 2006 pelo menos, o grupo foi constituído oficialmente no ano de 2009 pelos seus chefes de Estado e Governo. A partir de então, o termo *BRICS* deixou de ser apenas mais um acrônimo de investimentos circulando nas praças financeiras, passando a representar também um ator na cena geopolítica. Tanto pelo ineditismo de uma coalizão entre países de dimensões continentais, distantes geograficamente e com poucas características culturais comuns quanto pela retórica a favor da multipolaridade e de reformas na governança global e pelo bom desempenho econômico que apresentavam nos primeiros anos da crise, holofotes se acenderam sobre o grupo. Os *BRICS* pareciam aproveitar aqueles “espaços e oportunidades” que seriam abertos a Estados da periferia em alguns momentos históricos, como sugere José Luís Fiori (2007, p. 35).

Mas, afinal, qual a relação entre os *BRICS* e o neoliberalismo?

A resposta a essa questão dependeria tanto da forma como se caracteriza e aborda o grupo quanto do conceito de neoliberalismo adotado. Em ambos os tópicos, todavia, não existem consensos na literatura investigada. A presente pesquisa aposta, por conseguinte, que a análise aprofundada das iniciativas do grupo em torno do sistema monetário e financeiro internacional pode contribuir nesses debates. É nesse terreno que os interesses dos países do grupo têm apresentado maior convergência, fornecendo pistas para iluminar qual seria, então, o caráter dos *BRICS*.

Desde seus primórdios, o grupo se articula para promover alterações na arquitetura das finanças e nas relações monetárias herdadas do sistema de Bretton Woods. Como exemplos de ações, encontram-se: as demandas por reformas nas políticas e na governança do Banco Mundial e do Fundo Monetário Internacional e por maior participação nos espaços decisórios internacionais; as críticas à crença na natureza de autorregulação dos mercados e à instabilidade cambial causada pelas políticas econômicas praticadas por países desenvolvidos; a criação de mecanismos multilaterais próprios (um banco de desenvolvimento e um arranjo monetário) entre outros. A esse conjunto de iniciativas chamamos de *agenda regulatória dos BRICS*, justamente o objeto da pesquisa em tela.

A agenda regulatória dos BRICS se constitui como uma fonte normativa tanto para seus países-membros quanto para o sistema internacional. Os discursos oficiais e as práticas emulam normas que interagem com ordens jurídicas em diferentes níveis e intensidades, almejando moldar comportamentos e institucionalidades em torno dos interesses do grupo. Investigar a dinâmica dessa interação é, certamente, um desafio para a ciência jurídica.

Em vista desse desafio, a presente pesquisa adota o prisma de reflexões do campo do Direito Econômico, que se desenvolve em crítica às formas jurídicas do neoliberalismo. Apesar do enfoque jurídico, não pretende realizar uma pesquisa normativa. Isto não significa que regras, contratos e declarações não sejam analisadas, mas que a investigação busca se afastar daquelas narrativas onde algum discurso de “dever ser” jurídico se torna o objetivo final. Ou seja, antes de construir algum tipo de “doutrina” sobre a agenda regulatória dos BRICS, propõe-se aqui a tarefa de compreender a sua dinâmica de funcionamento. Para tanto, faz-se necessário abordar criticamente *discursos e práticas* que conformam essa agenda.

Assim sendo, o trabalho está dividido em duas partes e cinco capítulos. Na primeira, estão os capítulos de natureza teórico-metodológica. Além de posicionar a pesquisa no campo do Direito Econômico, o neoliberalismo enquanto processo histórico e conceito é abordado no **Capítulo 1**. No **Capítulo 2**, estão as características gerais do cenário geopolítico em que se enquadra os BRICS, apresentando ainda uma análise sobre as particularidades da política externa brasileira no período de formação do agrupamento.

Se a primeira parte se assemelharia a um voo panorâmico de contextualização e, por isso, amplo e genérico, a segunda seria um mergulho vertical, onde as especificidades do objeto de

pesquisa podem ser vistas com mais proximidade e detalhes. Destarte, a história da formação dos BRICS e os debates na literatura, sobre a natureza desse grupo e sobre a sua forma organizativa, constituem justamente o cerne do **Capítulo 3**. Na sequência, a agenda regulatória é destrinchada em suas dimensões discursivas (**Capítulo 4**) e práticas (**Capítulo 5**). A investigação sobre o discurso dos BRICS revela os pontos internos de consenso entre seus países-membros, expressando o desenvolvimento da visão do coletivo sobre quais seriam os problemas e as soluções para a regulação financeira e monetária internacional. Esse discurso influi, ainda que com contradições, nas práticas dos BRICS. Nesse sentido, a investigação dos mecanismos multilaterais criados pelo agrupamento e a comparação deles com instituições congêneres revelam-se também fundamentais para compreender o caráter da agenda regulatória.

A hipótese que acompanha o estudo sobre essa agenda é a da existência de uma dinâmica que articula subordinação e conflito a elementos do neoliberalismo. Hipótese que parece se confirmar na análise das dimensões discursivas e práticas das iniciativas dos BRICS para o sistema monetário e financeiro internacional. Entretanto, é importante frisar que concluir sobre um objeto historicamente recente e em contínua transformação e movimento é, decerto, uma tarefa árdua e arriscada, senão impossível. Aqui, nos deparamos com uma sensação semelhante à da cansada e incrédula Alice quando ouve da Rainha Vermelha, em *Alice do Outro Lado do Espelho*, que “é preciso correr o máximo que você consegue para continuar no mesmo lugar. Se quiser ir a algum outro lugar, tem de correr, pelo menos, duas vezes mais rápido”¹. Por isso, antes de conclusões definitivas, reflexões e considerações críticas sobre as relações entre a agenda regulatória dos BRICS e o neoliberalismo são expostas durante toda a caminhada, para que, ao final, não nos encontremos *tão* próximos do ponto de partida.

¹ Tradução livre do diálogo: “Now, *here*, you see, it takes all the running *you* can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that.” (CARROLL, 1996, p. 42)

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Se a história é conformada por camadas, os acontecimentos da “curta duração” seriam como as ondas do mar, visíveis e agitadas, ao passo que os de “longa duração” pareceriam as correntes submarinas, invisíveis e estáveis, determinantes para o movimento dos mares (BRAUDEL, 1990). Em vista dessa analogia, a perspectiva de curta duração sobre os BRICS revela também uma miríade de eventos que, por vezes, confunde o entendimento sobre a direção do seu desenvolvimento. Confusão ampliada pelas características peculiares do grupo quanto ao escopo (uma coalizão geopolítica e de cooperação financeira entre países de dimensões continentais e de pretensões expansivas), quanto ao contexto (formada durante grave crise econômica no capitalismo, notadamente, nos países desenvolvidos) e quanto às iniciativas (demandantes de reformas nos espaços de poder internacional e criadores de mecanismos multilaterais). Por isso que, para analisar os BRICS, precisamos expandir o olhar histórico e compreender o *neoliberalismo* – a “corrente” que modula o seu movimento.

O neoliberalismo se refere tanto a um processo histórico de transformações do capitalismo, com a crise do sistema de Bretton Woods, quanto a um conceito sobre o seu modo particular de funcionamento. Abordado aqui como *um novo sistema de acumulação*, apresenta-se enquanto o modo de desenvolvimento do capitalismo apoiado pela *financeirização*, reconfigurando a divisão internacional do trabalho (FINE; SAAD-FILHO, 2016; SAAD-FILHO, 2017). Os seus processos são, ademais, centralizados em torno de mecanismos que preservam a dominância de potências tradicionais, sobretudo dos EUA, cujas instituições financeiras e cuja moeda exercem papel central na recomposição do sistema pós-Bretton Woods. O neoliberalismo é, desse modo, a base material dos processos internacionais conhecidos por *globalização*.

A despeito de certa retórica que embala as promessas de um mundo sem fronteiras, nações ou muros, de mercados integrados, de policentrismo decisório e de paz, a globalização pode ser melhor compreendida como uma nova forma de hierarquia internacional. Nela, a condição dos EUA de única superpotência, alcançada após o fim da Guerra Fria, é estrangida, de um lado, pelas relações com demais países desenvolvidos e, de outro lado, por países subalternos, em graus diferenciados, críticos ao seu unilateralismo. No campo das relações monetárias e financeiras, os

países do G7, em geral, e os EUA, em particular, são as forças geopolíticas que controlam e centralizam os circuitos de acumulação, utilizando, para tanto, estruturas multilaterais como o Banco Mundial e o FMI, bem como o Dólar (US\$), enquanto ferramentas auxiliares da dominação (DUMÉNIL; LÉVY, 2005; FIORI, 2007; GOWAN, 2003).

Fruto das contradições desse sistema de acumulação, a crise de 2007/8 atingiu frontalmente os países do G7 não apenas em termos financeiros, mas também em sentido geopolítico. A vulnerabilidade econômica daqueles países desenvolvidos forçaria a ampliação do fórum de governança global, que assumiria a forma do G20. Justamente nesse contexto, os BRICS surgiriam enquanto coletivo, demandando reformas em estruturas multilaterais e maior participação nos espaços de poder internacional (STUENKEL, 2015).

A aparição dos BRICS na cena internacional foi, desde o início, objeto de polêmicas. Seus interesses, sua história, sua potencial durabilidade, seu dinamismo, suas contradições, seus posicionamentos, entre outros aspectos, foram (e continuam sendo) questões debatidas e investigadas pela literatura especializada. Se é relativamente consensual que os BRICS influíram na conjuntura internacional, o mesmo não se pode afirmar quanto ao *caráter* e à *força* desta influência. As avaliações são tão múltiplas quanto divergentes. Por exemplo, é possível encontrar tanto quem os enxergue como uma força democratizante na ordem internacional quanto quem avalie o exato oposto, como um grupo apenas interessado em melhorar posições relativas na dinâmica de poder neoliberal.

Decifrar essa esfinge é, certamente, o esforço que motivou a pesquisa em tela. A presente análise sobre os BRICS, contudo, ficou restrita às ações do grupo em torno do sistema monetário e financeiro internacional, aquilo que chamamos de *agenda regulatória*. Ao mesmo tempo em que esse recorte permitiu um aprofundamento “vertical” no tema, colocou também limites a reflexões “horizontais”, vez que passou ao largo de outras agendas (sistema ONU, comércio internacional, intercâmbio universitário etc.) promovidas tanto pelo grupo quanto pelos países que o compõem.

Frente ao recorte e às limitações da pesquisa, as informações coletadas sobre a agenda regulatória dos BRICS, tanto em nível discursivo quanto prático, permitem-nos elaborar algumas reflexões finais, ainda que não conclusivas. No geral, apesar de promover conflitos parciais

e seletivos com aspectos do neoliberalismo, essa agenda regulatória não o antagoniza. Por essa razão, o comportamento *do grupo* se assemelharia a uma *subordinação conflitiva* (BERRINGER, 2015)³³⁵.

O discurso da agenda regulatória não pode ser tomado como *antineoliberal*, ainda que contenha ideias contrárias a aspectos parciais desse sistema, em especial, quanto à configuração dos espaços de poder internacionais. Como visto, o discurso se transformou durante os anos, refletindo as alterações na conjuntura. Nesse processo, duas fases se delineariam: uma “passiva” e outra “proativa”. Durante o primeiro ciclo de Cúpulas, a retórica concentrou-se no apoio: ao G20 enquanto principal fórum de coordenação macroeconômica global (no lugar do G7), às reformas do FMI e BM e à defesa das políticas econômicas adequadas às necessidades dos países “emergentes e em desenvolvimento”. Essas bandeiras foram o cerne da agenda passiva. Na sequência, a piora relativa das condições econômicas dos países BRICS (excetuando China e Índia) frente aos desenvolvidos (G7), as frustrações com o ritmo e com o alcance das reformas nas instituições multilaterais acordadas pelo G20 e o acirramento de conflitos geopolíticos foram acompanhados por mudanças discursivas. Nessa fase proativa, os BRICS se tornaram mais incisivos e diretos em suas críticas aos países desenvolvidos, notadamente aos EUA. Passaram, ainda, a aprofundar e a promover as iniciativas de cooperação intra-BRICS, anunciando mecanismos multilaterais para impulsionar, *pelo exemplo*, mudanças globais.

Em ambas as fases, contudo, a retórica tem sido marcada pela ambivalência, coexistindo críticas e apoios às estruturas tradicionais do sistema monetário e financeiro internacional. A dinâmica da subordinação e do conflito tem sido a sua marca. Ao mesmo tempo em que acusam o déficit de legitimidade e a inadequação das políticas de financiamento do FMI e do BM, os BRICS registram o apoio e o suporte a essas mesmas instituições. Mesmo quando anunciam e defendem novos mecanismos, destacam a importância das estruturas multilaterais outrora

³³⁵ Importante frisar que se trata de uma limitada analogia conceitual para a caracterização teórica da política externa brasileira no período dos governos petistas, que pode (e deve) ser revista à luz de análises tanto sobre ações do grupo fora do campo específico do SMFI quanto sobre as políticas externas e estratégias de desenvolvimento empreendidas pelos demais membros, visto que influem, ainda que com forças diferentes, nas ações do coletivo. Quanto à correlação de forças internas, inclusive, deve-se conferir especial atenção ao papel desempenhado pela China, visto ser a economia mais importante e o país que demonstra, à primeira vista, ter um projeto nacional mais estável, consolidado e expansivo que os demais, conferindo-lhe posição diferenciada na relação intra-BRICS.

criticadas, defendendo parcerias e relações de complementariedade. Mesmo quando conclamam por maior diversidade nas relações monetárias internacionais, estabelecem mecanismos financeiros lastreados no Dólar (US\$).

Essa ambivalência, todavia, não pode ser interpretada nem como mera demagogia tampouco como causa de ineficácia das suas demandas. Se a ideia de demagogia pressupõe a existência de uma unidade de vontade preestabelecida que seria intencionalmente camuflada, isso não parece ser o caso dos BRICS. Antes de expressar (dissimuladamente ou não) um plano prévio e consolidado para o sistema monetário e financeiro internacional, o discurso regulatório do grupo seria melhor compreendido como um *processo*, explicitando os pontos internos de consenso entre seus membros, na construção dessa inédita coalizão. Esse processo é, certamente, mediado pelo senso de oportunidade política (o *quê*, o *como* e o *quando* do discurso são ponderados pela avaliação das suas consequências), mas não só, pois também o é pelas contradições nas relações intra-BRICS e nas relações deles com outras forças internacionais. Por conseguinte, seria idealismo supor que o não atendimento (ou a conquista parcial) das demandas formuladas pelo grupo derivariam das ambivalências do seu discurso. Ainda que a retórica influa nas práticas geopolíticas, a capacidade de promover alterações não depende da radicalidade ou da coerência argumentativa, mas de muitos outros fatores, como força militar, dinamismo econômico e coesão política. A falta de coesão, por exemplo, foi revelada em algumas oportunidades, como na incapacidade do grupo em consensuar em torno de candidaturas para os cargos de direção do BM e do FMI. Mesmo expressiva, a força dos BRICS tem se mostrado inferior à do G7.

As frustrações com as reformas na arquitetura derivada de Bretton Woods e os impasses dentro do G20 contribuíram para os BRICS aprofundarem suas relações de cooperação financeira e, com isso, instituírem mecanismos próprios. O propósito político foi declarado: estes mecanismos serviriam de exemplos da visão do grupo sobre as finanças internacionais baseadas na equidade e na justiça (BRICS, 2016). Ou seja, seus mecanismos seriam, pelo exemplo, modelos para a demandada reforma sistêmica. Tendo como parâmetros o desenvolvimento do ACR e do NBD, únicos instrumentos multilaterais criados até o momento pela coalizão, parece ser possível afirmar que ambos os instrumentos não estão dando sinais de cumprirem, à altura, com o alcance do objetivo declarado, pouco se diferenciando das organizações tradicionais.

O Arranjo, além de não ser um modelo propriamente inovador, possui características normativas que podem torná-lo inoperante. Com pouca capacidade financeira, *vis-à-vis* seus congêneres, estabeleceu que 70% de seus recursos estão vinculados à existência de acordo com o FMI, tornando-o operacionalmente (e politicamente) dependente deste último. Há, ainda, a possibilidade de qualquer um dos BRICS se recusar a prover recursos ao país requerente, sem que isso gere consequências relevantes. Pelas suas próprias disposições contratuais, a força vinculativa do compromisso de compartilhamento de reservas é, por isso, enfraquecida. Não está claro, portanto, *se* o ACR servirá para ajudar seus membros tampouco *como* contribuirá para uma arquitetura financeira mais justa, quando for requerido e finalmente testado.

O Novo Banco de Desenvolvimento, por seu turno, já se encontra em funcionamento desde 2015. Apesar de inovar com a adoção de um sistema de governança equânime entre os BRICS e de focar nos investimentos em infraestrutura sustentável, nos países “em desenvolvimento e emergentes”, o NBD tem sido alvo de severas críticas por seu baixo grau de transparência, pelo pouco diálogo com organizações da sociedade civil, pela absoluta falta de diversidade de gênero em seus quadros de direção³³⁶ e pelas preocupações com a eficácia da política de salvaguardas sociais e ambientais adotada. Frise-se outrossim que o processo de demissão de Paulo Nogueira Batista Jr. revela não somente a escassez de democracia interna e de segurança jurídica nas relações de trabalho, como a baixa autonomia administrativa da organização frente aos governos. É inadmissível um banco multilateral que não estipule, por exemplo, um foro imparcial para a resolução de controvérsias entre a instituição e seus funcionários. Acrescido o dado de que suas políticas e seus instrumentos de financiamento não se diferenciam substancialmente das praticadas por congêneres, pode-se afirmar que o NBD, até o momento, tem sido um contraexemplo para quem almeja um sistema monetário e financeiro mais justo e equilibrado.

Importante frisar, mais uma vez, que se trata de mecanismos recentes. Como tais, diferem de estruturas consolidadas há mais tempo, caracterizadas por maior densidade burocrática e solidez nas suas práticas, onde mudanças institucionais são mais difíceis. O NBD e ACR poderiam, em tese, reajustar mais facilmente as rotas trilhadas até o momento. Para tanto, os BRICS

³³⁶ Tema especialmente denunciado pela organização da sociedade civil chamada *BRICS Feminist Watch*. Disponível em: <<http://www.bricsfeministwatch.org/>>. Acesso em: 22 Fev. 2018.

cumpririam um papel crucial para avaliá-los e para promover as devidas correções. Acontece que, mesmo que desejassem tais mudanças, o acirramento de conflitos internos (mudanças de governos, tensões entre China e Índia, crises econômicas entre outros fatores) e externos (tensões entre Rússia e Reino Unido, China e EUA etc.) pode reduzir as capacidades da própria plataforma de ajustar e coordenar politicamente seus projetos.

Quanto a um dos elementos desses conflitos internos, destacam-se as alterações na política externa brasileira com o governo de Michel Temer. Internacionalmente deslegitimado, o governo promoveu um giro geopolítico, visando realinhar o país com as agendas europeias e dos EUA³³⁷ - movimento que, decerto, afeta o papel do país nas relações intra-BRICS. Reviravoltas, como tal, expressariam as dificuldades da *frente neodesenvolvimentista* em ser uma coalizão de poder capaz de manter uma estratégia prolongada para a proteção de interesses nacionais e a sua expansão internacional (BOITO JR, 2012, 2016). Em certo sentido, o fim da frente, com o golpe parlamentar, pode ser interpretado como o não aproveitamento daquelas oportunidades históricas que, de vez em quando, se abriam aos Estados da periferia, como sugere Fiori (2007, p. 35). Afinal, mesmo que os BRICS não possam ser tomados como uma força *antineoliberal*, o grupo parecia, por um certo período, contribuir com a melhora relativa da posição brasileira na hierarquia internacional, expandindo a sua influência global sobremaneira³³⁸.

A agenda regulatória dos BRICS, ainda que parcialmente conflituosa com o neoliberalismo, não parece ter sido capaz de promover alterações substanciais no sistema monetário e financeiro internacional. O quadro de instabilidade sistêmica e de vulnerabilidade dos países em desenvolvimento ainda persiste, bem como as dificuldades de construção de consensos em torno de reformas globais. O G7, em geral, e os EUA, em particular, ainda mantêm suas posições dominantes na hierarquia global.

³³⁷ As tentativas e as dificuldades do governo para ingressar na OCDE (Organização para a Cooperação e Desenvolvimento Econômico), conhecido como “clube dos países ricos”, expressam tanto o movimento de realinhamento da política externa brasileira quanto a deslegitimação internacional do país em face das suas crises políticas. Sobre a rejeição dos EUA ao pleito brasileiro, vide: <<http://www.valor.com.br/brasil/5026640/eua-defendem-expansao-cautelosa-da-ocde-e-freiam-planos-do-brasil>>. Acesso em: 20 Dez. 2017.

³³⁸ Como observa Stuenkel, os BRICS servem para o Brasil ampliar a sua influência como “formulador de agenda” (STUENKEL, 2013, p. 369).

Talvez os BRICS sejam uma expressão da “fase de interregno” sugerida por Eric Helleiner (2010, p. 627-636). Ao especular sobre o futuro, Helleiner levanta a hipótese da crise de 2007 ter resultado em “crises de legitimidade” do SMFI. De maneira análoga ao ocorrido após as crises de legitimidade dos anos 1930 e 1970, estaríamos, então, no período de interregno, onde coexistiriam múltiplas agendas e conflituosas visões sobre reformas sistêmicas. Sem fim determinado, essa fase seria demarcada por resistências das frações financistas, por questionamentos sobre a legitimidade e o alcance da agenda de reformas propostas pelas potências tradicionais e pela fragmentação e regionalização de iniciativas para contornar os efeitos da crise.

Se, por um lado, a ascensão chinesa e o surgimento de novas coalizões internacionais cumulam para a multipolarização no mundo, por outro lado, os BRICS, *como um grupo*, parecem enfrentar o seu momento mais delicado. Além das dificuldades econômicas em muitos de seus países-membros, eles se encontram face a uma agitada conjuntura política, que mais se assemelha a um *mar revolto*, onde os conflitos internos e externos parecem se agudizar³³⁹. Cientes de que, desde seu começo, os BRICS têm sido objeto de desconfianças sobre a sua durabilidade (tendo, inclusive, o seu fim precipitadamente decretado, diversas vezes, por parte de certa literatura), não podemos perder de vista a possibilidade do grupo não sobreviver intacto a mais essa *tempestade*³⁴⁰. Todavia, pode ser também que estejamos enganados pelos caprichos do “tempo breve” que tanto nos alertou Braudel ou que nos falte um pouco daquele horizonte milenar dos chineses, o que reconfiguraria a nossa avaliação sobre o real *adernamento* dos BRICS³⁴¹. Mantendo-se *aprumado* para não

³³⁹ A renúncia do Presidente Jacob Zuma da África do Sul, país que preside os BRICS no ano de 2018, e os ataques militares na Síria, colocando em trincheiras opostas EUA e Rússia, são os exemplos mais recentes desse acirramento de conflitos, cujas consequências para os BRICS ainda precisam ser compreendidas.

³⁴⁰ Nesse cenário, seria possível cogitar a saída de membros, a entrada de novos, o esvaziamento político de suas atividades por parte de alguns de seus países, em virtude da mudança de governos e de agendas internacionais, a formação de outras coalizões congêneres, o boicote financeiro e político ao funcionamento dos mecanismos multilaterais criados etc.

³⁴¹ Nas palavras de Stuenkel: o grupo BRICS consiste em “(...) um dos elementos de uma visão chinesa muito mais ampla da criação do que eu chamo de uma ‘ordem paralela’: de uma iniciativa enorme de criação de muitas outras instituições, que, aos poucos, vão complementar as instituições existentes.” (STUENKEL, 2017) Ainda que esteja correto quanto às intenções chinesas, é importante salientar que a unidade, a conformação e a continuação do grupo não dependem apenas da vontade deste país. Existe uma série de relações políticas e sociais internas a cada um de seus membros que também influem no destino do agrupamento. Se é correto pensar que, em virtude das contradições do neoliberalismo, haverá uma tendência imanente de alinhamento entre os países dos BRICS (visto que concentram mais de 40% da população e mais de 20% do PIB mundial, mas carecem de voz geopolítica correspondente), a sua efetivação dependerá de interesse, unidade e conveniência política.

naufregar, destarte, o acompanhamento da sua agenda regulatória certamente continuará sendo importante para quem se preocupa com a superação da dependência econômica e da desigualdade social, temas tão caros ao Direito Econômico.

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ANEXOS

ANEXO A

De: faleconosco@bcb.gov.br <faleconosco@bcb.gov.br>

Enviado: sexta-feira, 29 de dezembro de 2017 12:41

Para: [REDACTED]

Assunto: SIC - Banco Central Responde - 18600.003414/2017-43 (rdr 2017491149)

Prezado(a) Senhor(a),

Refiro-me ao requerimento registrado sob o nº 18600.003414/2017-43, por meio do qual Vossa Senhoria solicita acesso a documentos e informações relacionados ao Arranjo Contingente de Reservas (Contingent Reserve Arrangement, ou, simplesmente, CRA).

Sobre o assunto, informo, inicialmente, que o Tratado para o Estabelecimento do Arranjo Contingente de Reservas dos BRICS, promulgado pelo Decreto nº 8.702, de 1º de abril de 2016, não criou qualquer estrutura ou instituição multilateral responsável por conduzir as operações realizadas ao amparo do CRA. O acordo é operacionalizado pelos bancos centrais dos países signatários dentro de suas próprias estruturas e nos termos de ajuste firmado entre as autoridades monetárias.

Feito esse esclarecimento, registro que, nos termos do art. 22 da Lei nº 12.527, de 18 de novembro de 2011, sua solicitação de acesso ao acordo firmado entre os bancos centrais dos países integrantes do CRA não pode ser atendida, uma vez que o referido documento, por revelar aspectos de operações realizadas com as reservas internacionais, está protegido pelo sigilo de que trata o art. 2º, caput, da Lei Complementar nº 105, de 10 de janeiro de 2001.

Quanto a seu pedido para ter acesso "às regras operacionais para uso dos instrumentos do Arranjo Contingente de Reservas", ressalto que semelhantes regras, por previsão do Artigo 6 do Tratado do Arranjo Contingente de Reservas dos BRICS (disponível em: <http://brics.itamaraty.gov.br/images/ACR%20portugues.pdf>) estão previstas no acordo firmado entre os bancos centrais, o qual, como ressaltado acima, não pode ser fornecido a Vossa Senhoria.

Nada obstante, destaco que o próprio Tratado do Arranjo Contingente de Reservas dos BRICS contém informações relativas a aspectos operacionais do CRA, merecendo destaque os dados a seguir:

- ? Montante total disponível de USD 100 bilhões (Art. 2, a);
- ? Instrumentos de liquidez e preventivo (Art. 4);
- ? Limites de acesso aos recursos por país (Art. 5, a), por instrumento (Art. 5, b) e por parcela (Art. 5, c); e
- ? Operacionalização (Art. 9).

Por fim, quanto aos nomes dos servidores que compõem o Comitê Permanente do Arranjo Contingente de Reservas dos BRICS, saliento que, nos termos do Art. 3, c, do tratado referido acima, semelhante comitê será composto por um Diretor e por um Diretor Suplente, nomeados por cada país integrante do arranjo e que estes deverão ser nomeados dentre os funcionários dos bancos centrais. O Brasil é representado no Comitê Permanente pelo Diretor de Assuntos Internacionais e de Gestão de Riscos Corporativos, como Diretor, e pelo Chefe do Departamento de Assuntos Internacionais, como Diretor alterno. A composição é

similar nos demais países membros dos BRICS, de modo que todos os integrantes do colegiado são servidores dos correspondentes bancos centrais.

Conforme prevê o artigo 15 da Lei 12.527, de 2011, no caso de indeferimento de acesso à informação ou às razões da negativa do acesso, poderá o interessado registrar recurso contra a decisão no prazo de 10 (dez) dias perante o Chefe do Departamento de Relações Internacionais (Derin).

Atenciosamente,

Departamento de Atendimento ao Cidadão (Deati)

Divisão de Atendimento ao Cidadão (Diate)

Tel: 145

www.bcb.gov.br/?FALECONOSCO

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Reclamações contra instituições financeiras e administradoras de consórcio. Para registros de reclamações contra instituições fiscalizadas pelo Banco Central.

Código para validação do documento: **AHMPXFVL3EZIMS809532**

A validação do código pode ser realizada no endereço

eletrônico: www.bcb.gov.br/?validacao

ANEXO B

[REDACTED]

[illegible]

By email
Recipient1 Delivery Details.

Figure 1 (continued)

[illegible][illegible]

[REDACTED]

[REDACTED]

[REDACTED]

Partners

Country	Year	Value	Unit
Algeria	2015	1.0	kg
Algeria	2016	1.0	kg
Algeria	2017	1.0	kg
Algeria	2018	1.0	kg
Algeria	2019	1.0	kg
Algeria	2020	1.0	kg
Algeria	2021	1.0	kg
Algeria	2022	1.0	kg
Algeria	2023	1.0	kg
Algeria	2024	1.0	kg
Algeria	2025	1.0	kg
Algeria	2026	1.0	kg
Algeria	2027	1.0	kg
Algeria	2028	1.0	kg
Algeria	2029	1.0	kg
Algeria	2030	1.0	kg
Algeria	2031	1.0	kg
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Algeria	2061	1.0	kg
Algeria	2062	1.0	kg
Algeria	2063	1.0	kg
Algeria	2064	1.0	kg
Algeria	2065	1.0	kg
Algeria	2066	1.0	kg
Algeria	2067	1.0	kg
Algeria	2068	1.0	kg
Algeria	2069	1.0	kg
Algeria	2070	1.0	kg
Algeria	2071	1.0	kg
Algeria	2072	1.0	kg
Algeria	2073	1.0	kg
Algeria	2074	1.0	kg
Algeria	2075	1.0	kg
Algeria	2076	1.0	kg
Algeria	2077	1.0	kg
Algeria	2078	1.0	kg
Algeria	2079	1.0	kg
Algeria	2080	1.0	kg
Algeria	2081	1.0	kg
Algeria	2082	1.0	kg
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Algeria	2089	1.0	kg
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Algeria	2093	1.0	kg
Algeria	2094	1.0	kg
Algeria	2095	1.0	kg
Algeria	2096	1.0	kg
Algeria	2097	1.0	kg
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Algeria	2100	1.0	kg
Algeria	2101	1.0	kg
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Algeria	2106	1.0	kg
Algeria	2107	1.0	kg
Algeria	2108	1.0	kg
Algeria	2109	1.0	kg
Algeria	2110	1.0	kg
Algeria			

[REDACTED]

[REDACTED]

1. Policy Requirements Related to Political Activities

Below are the relevant provisions in the Code of Conduct and employment agreement regarding political activity. The Code of Conduct was officially approved on January 21, 2016. As VPs both Mr. Batista and Mr. Zhu should be responsible for being familiar and complying with the Code of Conduct following its approval, and abiding with the employment agreement terms after its execution.

Clause 3.10 Code of Business Conduct & Ethics “Political Activities

You shall not interfere in the political affairs of any member, nor shall you be influenced in your decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to your decisions.

The President, Vice-Presidents, officers and staff of the Bank, in the discharge of their Bank business, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Therefore, **maintaining political neutrality is important**. The appointees of the Bank are free to exercise their rights during national or provincial elections, **but are not allowed to express views or publish comments on any political issue involving political parties in their own country or at the place of Bank headquarters**, without explicit approval of the Compliance Division.”

Clause 4.23 Code of Business Conduct & Ethics

“Workplace Responsibility

The Code of Conduct provides general guidance and complements the Bank’s rules and policies. While the Bank authorities would provide everything within its means to create a safe working environment, it is expected that you would follow the Code of Conduct and the brief guidelines enumerated below. Failure to do so can cause serious consequences for the Bank and may result in disciplinary actions.

- **maintain political neutrality.”**

Clause 3.d of Employment Terms & Conditions

“Political engagement

While you may be a member of a political party and contribute funds to the party or to individual candidates, you will not, in your personal capacity, attend

political party meetings, assume any leadership role within a political party, or otherwise engage in partisan political activity.”

Based on the above provisions, it is clear that the Bank broadly requires its staff members/officers to maintain political neutrality during their service to the Bank. Due to the international character of the bank, and the fact that it is formed by national governments, political matters are highly sensitive and therefore maintaining political neutrality is key to ensuring comity among the Bank staff and its member countries, as well as allowing the Bank to focus on its core mission of promoting infrastructure investment in developing countries.

In particular, staff/officers of the Bank are explicitly prohibited from expressing views or publishing comments on **any political issue** involving political parties. This provision is very broadly worded; it not only prohibits (without explicit Compliance Division approval) commenting specifically in support of or opposition to political parties, but prohibits expressing views or publishing comments on **any political issue** that **involves** political parties. The term “involves” generally means to be a part of, engage in or take part in. In other words, any political issue that political parties were a part of, engaged in or took part in would be covered by this prohibition.

The provisions in the employment agreement are narrower in scope, and are more specifically focused on activity in support of a particular political party. The term “partisan” generally means activity in support of a specific party or faction.

2. Analysis of Compliance of Published Articles

The detailed analysis of whether the articles published by Mr. Batista and Mr. Zhu comply with the above provisions is in the attached annexures.

Regards,

[REDACTED]
[REDACTED]
[REDACTED]

ANNEX 1 - ANALYSIS OF MR. BATISTA'S ARTICLES

We believe that the below language that appeared in some of Mr. Batista's published articles breaches the Code of Conduct policies regarding maintaining political neutrality and not expressing views or publishing comments on political issues involving political parties in his home country (i.e. Brazil).

Mr. Batista commented on the impeachment of then Brazil President Dilma Rousseff and the consequent political crisis of Brazil more than once:

In the Column Article dated April 1, 2016, Mr. Batista commented on the impeachment of President Dilma Rousseff by stating that "the impeachment without configuration of responsibility crime or common crime is a blow". Mr. Batista stated that "I know it's hard to win a presidential election. The opposition has long been trying, without success. Some important parties have never been able to get the presidency by the vote. But the path of impeachment will not be easy either, especially if it is not clear that the legal order is being strictly adhered to".

From this language, it is clear that Mr. Batista opposed the impeachment of President Rousseff, and that he believed that the opposition parties were incapable of winning power in a democratic vote and used the impeachment of the President as a way to gain power.

- a) In the Column Article dated May 13, 2016, Mr. Batista expressed his exasperation with and distress at the impeachment and the political crisis of Brazil. He said "an aspect hardly discussed in Brazil: the international implications of the Brazilian crisis. A divided country obviously loses influence. But the acute political crisis and the intense polarization of Brazilian society, **exacerbated by the process of impeachment**, take us much further: weaken the country's international position and endanger national autonomy"; and "Until recently, the perception of Brazil was the most favorable. We were seen as a dynamic nation and respected as a young democracy with solid institutions. All this has been put in check by recent events."

This language makes clear that Mr. Batista believes that the impeachment process exacerbated the political crisis and polarization in Brazil.

- b) In the Column Article dated December 9, 2016, Mr. Batista commented on the "growing polarization that affects even a country like Brazil". He said that "in Brazil, in 2014, Dilma Rousseff reelected herself by narrow margin (52% against 48%), indicating already the division of society, **which would be aggravated in the following years by the campaign for impeachment and its unfolding**"; and "in Brazil, much of the middle class took to the streets to demand the overthrow of the president-elect, ignoring or disregarding the **various types of risks impeachment was having** and would continue to have for the country." Mr. Batista also opined that "**the**

growing violence of the political dispute is more than a sight. In Brazil, we are experiencing phenomenal regression in political, institutional, and even behavioral terms.”

The above language makes clear that Mr. Batista believes that the impeachment process made divisions in society worse, and that middle-class protests supporting impeachment created risks for the country.

Mr. Batista commented on the polarization, political degradation and corruption problems of the current Brazilian government several times:

- a) In the Column Article dated December 23, 2016, Mr. Batista stated Brazil is “the most vulnerable” country of the BRICs. He commented that “among the BRICs, Brazil is ‘standout’. Not necessarily in corruption, but in the fragility of the economic, social and political framework. The reasons seem clear. **First, the intense internal polarization.... Intolerance, the collapse of dialogue, the loss of legitimacy of fundamental institutions, the weakening of democracy - all represent an immense danger for the Brazilian nation.**” Mr. Batista also opined “**This political and social degradation causes one of the worst economic crises in our history....** The economic crisis causes the political crisis, and vice versa. **In this environment, the Brazilian governments lost support and legitimacy, the political class reached its lowest point, Justice lost the North.**”

The above language shows that following the impeachment of President Rousseff, Mr. Batista believed that fundamental institutions lost legitimacy and that democracy was weakened.

- b) In the Column Article dated May 26, 2017, Mr. Batista commented on the problem of political corruption in Brazil, stating that “corruption is a systemic problem. It has been deeply entrenched in the functioning of the Brazilian political system for several decades - and no real effort has ever been made to get down to the roots of the issue. Successive scandals and waves of punishment have never led to fundamental change”, and opined that “with the new political shock, the tenuous recovery is seriously threatened. Worse: the country’s social and political stability are at-risk”. Mr. Batista also expressed his view about corruption in political elections, that “**the politicians, or many of them, have become accustomed to operating within the actual system. By a thousand legal ways, gray or even openly illegal, the money set the rules. Distorts and manipulates information. Determines the political decisions and the allocation of the public resources**”. Finally, when discussing the people who marched in 2016 against corruption and are now shocked by continuing corruption, he states, “Well, well. I am sorry to say, but what kind of outcome could have a movement that has a duck, yes, a duck as a symbol?”

The above language states that the recent “political shock” is causing economic recovery to be threatened, and that money controls Brazilian politics. From context, the recent political shock referred to in the article is

likely news reports about the alleged bribery scandals of the current President of Brazil, which were published May 2017. His language also mocks those who pushed for impeachment of the ex-President in 2016.

Mr. Batista commented on a Brazilian politician from a particular political party and expressed views on issues related to the treatment of such politician.

In the Column Article dated July 21, 2017, Mr. Batista expressed his views on the conviction of the ex-President Lula. He said that “something terrifying that happened last week: the sentence of a certain judge, convicting ex-president Lula to more than nine years in prison. With all the absurdities that occur currently in Brazil, is very difficult to find a document that synthetizes, in a perfect manner, our decadence of moral, intellectual, professional and political scheme. The judge beat the record of effrontery.”

Based on the above, we found Mr. Batista frequently expressed views and published comments through his column on Brazil’s political issues involving political parties. In particular, we believe the impeachment of then President Rousseff is clearly a political issue involving political parties, as political parties were central to the entire impeachment process, both in favor and against. His comments showed general sympathy for the Brazil Workers’ Party, or at the very least a negative attitude towards attempts to remove it from power. We therefore believe Mr. Batista’s behavior has violated the Bank’s Code of Business Conduct & Ethics by breaching the general requirement to maintain political neutrality and refrain from commenting on political issues involving political parties in his home country.

ANNEX 2 - ANALYSIS OF MR. ZHU'S ARTICLES

The articles provided to us that were written by Mr. Zhu simply discussed the Bank's plans and plans related to China's "One Belt One Road" initiative. No opinions were expressed on domestic political issues involving political parties in any of the articles provided to us.

Therefore, we do not believe that these articles breached any of the provisions regarding political activity in the Code or employment agreement.

ANEXO C

[DRAFT CONTRACT]

[REDACTED]

[REDACTED]

[REDACTED]

Dear [REDACTED]

You have been appointed to serve as Vice-President of the New Development Bank (hereinafter referred to as “the Bank”). In accordance therewith, authorized by the Board of Governors, I am writing this letter to you to specify the terms and conditions of your service.

1. **Term.** The Board of Governors has appointed you as Vice-President of the Bank as of July 7, 2015 for a period of 6 years.

2. **Principal Responsibilities.** Your duties as Vice-President of the Bank are those at present or in the future set forth in the Articles of Agreement and supplemented by the By-Laws and Resolutions adopted by the Board of Governors and by the Rules and Regulations and decisions adopted by the Board of Directors. Your official duty station will be Shanghai, China.

3. **Code of Conduct.** You are expected to observe the highest standards of ethical conduct, consistent with the values of integrity, impartiality and discretion. You shall strive to avoid even the appearance of impropriety in your conduct. You will have an exclusive duty of loyalty to the Bank and shall avoid any conflict of interest or the appearance of such a conflict.

- (a) **Non-Profit Service and Outside Employment.** It is understood that before your appointment became effective you had resigned from any public or private position that you may hold. It is further understood that during your tenure, you will not apply for or accept any public or private position, whether or not you would receive any compensation, unless such position does not conflict or interfere in any material manner with the performance of your duties.

- (b) **Private Investment Management and Financial Disclosure.** You may manage your private investments and those of members of your immediate family to the extent that the management of those investments does not involve operation of a business or create a conflict of interest, or the appearance of such a conflict, with the performance of your duties. You shall provide annual written disclosures in accordance with the rules to be established by the Bank.
- (c) **Honors, Decorations and Medals.** In view of the international character of your position and in order to maintain the highest standards of independence and impartiality, it is expected that, in respect of services rendered during your tenure with the Bank, you will not accept any gift, fee or favor from any government or from any authority external to the Bank. In addition, you will not accept any honor, decoration or award during your tenure with the Bank without the approval of the Board of Directors, which shall only be given in circumstances where the acceptance of an honor, decoration or award would not give rise to an actual or perceived conflict of interest.
- (d) **Political engagement.** While you may a member of a political party and contribute funds to the party or to individual candidates, you will not, in your personal capacity, attend political party meetings, assume any leadership role within a political party, or otherwise engage in partisan political activity.
- (e) **Clarification.** If you need clarification regarding of the above requirements or their application in a particular circumstance, you should consult with the Board of Directors.

4. **Remuneration.** During your employment with the Bank, you will receive remuneration for your service as follows:

- (a) **Salary and Allowance.** Your initial salary shall be US\$ 397,037 per annum net of income taxes. You will receive a supplementary allowance, in accordance with the policies of the Bank, similarly net of income taxes, payable in equal monthly installments. In addition, you will be reimbursed for reasonable expenses actually incurred for entertainment directly related to the business of the Bank.
- (b) **Annual Adjustment.** Your salary will be adjusted annually beginning on April, 2017 in order to preserve their real purchasing value.

- (c) **Expenses.** You will be reimbursed for all other expenses incurred by you on the business of the Bank. The Bank will reimburse you per diem according to its policies plus reasonable vouchered expenses not covered by the per diem, including all hotel expenses, incurred by you for travel in the interest of the Bank.
- (d) **Tax Allowance.** If applicable, you will receive a quarterly tax allowance on you salary, allowance, and other taxable benefits, in accordance with the By-Laws to be established by the Board of Governors.

5. **Vacation and personnel policy.** During your employment with the Bank, you will be entitled to a reasonable vacation and, in matters of personnel policy, including home leave, to all the benefits established by the Bank excluding Settlement Allowance .

6. **Travel.** Your travel on official Bank business and upon your appointment and separation (as well as that of any family members eligible for such travel) shall be in business class.

7. **End of service.**

- (a) You shall be free to terminate your connection with the Bank at any time. It is expected, however, that, should you desire to resign, you will give the Bank reasonable advance notice of your decision.
- (b) The Board of Governors shall be able to terminate your connection with the Bank in case of breach of the terms stated in this letter, subject to the provisions of the Articles of Agreement.

8. **Termination Allowance.** At the end of your term or terms of service or if you resign after having served for at least two years, you will be paid a termination allowance to be determined by the Bank equal to a percentage of the salary paid to you during your last year of service, according to the length of your service. The termination allowance will be net of income tax and, if applicable, subject to a tax allowance.

9. **Retirement Benefits.**

- (a) You will participate in the Retirement Plan established by the Bank, counting from April 1st, 2016.

- (b) Should you predecease your partner after leaving the Bank, the Bank will pay to your partner and to your children benefits in accordance with the Retirement Plan, determined according to the length of your service.
- (c) In the event of your retirement due to disability or of your death during your period of service as Vice-President, the Bank will pay to your surviving partner and to your children benefits in accordance with the Retirement Plan, determined according to the length of your service.

10. Upon your acceptance of the understandings set forth in this letter, this letter will be publicly disclosed.

Your acceptance of the understandings set out in this letter will constitute the agreement between you and the Bank, which shall become effective from April 1st, 2016.

Sincerely yours,

[Redacted signature line]

[Redacted signature line]

[Redacted signature line]

ANEXO D

September 15, 2017

From: Mr. Paulo Nogueira Batista

To: Mr. Srinivas Yanamandra

Initial response to an analysis of a few of my press articles

The analysis of a few of my articles provided by Mr. [REDACTED], from [REDACTED], is faulty and relies on biased interpretations. It attributes to me statements I did not make and quotes excerpts out of context. The lawyer also attempts to provide a stretched and far-fetched interpretation of the terms of my contract and of NDB's Code of Business Conduct and Ethics.

This submission is an initial response, prepared within the tight timeline given to me by the Compliance officer. If Compliance decides to formally open an investigation on this matter, I will respond in greater detail.

I have published a regular column in Brazilian newspapers since the 1990s. During my whole period as Executive Director in the IMF, from 2007 to 2015, I continued to write for the press in Brazil, only reducing the frequency of publication. In recent years, I have mostly written every 15 days for "O Globo", one of the main newspapers in the country. However, I often fail to keep this periodicity, due to the work burden in NDB or business travel.

The following disclaimer accompanies all my articles:

"Paulo Nogueira Batista Jr. é vice-presidente do Novo Banco de Desenvolvimento, sediado em Xangai, mas expressa seus pontos de vista em caráter pessoal" (Paulo Nogueira Batista Jr. is vice-president of the New Development Bank, headquartered in Shanghai, but expresses views of a personal nature").

I write as a Brazilian economist and citizen, expressing my own opinions and exercising my right to express them. I am a public figure in my own country and write on matters that I deem to be of broad interest as a public, non-partisan figure.

The column I now write is in the op-ed page, not in the economic section of the newspaper. Accordingly, the topics vary considerably. The 28 articles translated for and considered by Mr. [REDACTED], as per the request of the Compliance officer, were published between January 2016 and August 2017, in my bi-weekly column in "O Globo".

The topics of these articles can be broadly classified as follows:

Subject	Quantity
Art/Philosophy/Human Affairs	10
International Affairs	5
NDB	4
Brazilian Economy/Economic Policy	4
Brazilian Political Situation	5

As can be seen from the table above, only a few of the articles address Brazil's serious political situation. Mr. [REDACTED] focuses on these articles for his unfounded accusations.

Before accepting the position of Vice President in NDB, I personally negotiated and drafted most of my own contract. In doing so, I was careful to allow for my long time activity of commentator on matters of public interest, as a non-partisan public figure. My contract was then used, word for word, for the other members of Management, with some differences in the case of the President's contract.

The relevant part of my contract reads as follows:

"While you may a member of a political party and contribute funds to the party or to individual candidates, you will not, in your personal capacity, attend political party meetings, assume any leadership role within a political party, or otherwise engage in partisan political activity."

This same text appears in the contracts of the President and the other Vice Presidents.

The relevant part of NDB's Code of Conduct is the following:

"You shall not interfere in the political affairs of any member, nor shall you be influenced in your decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to your decisions (...). The appointees of the Bank are free to exercise their rights during national or provincial elections, but are not allowed to express views or publish comments on any political issue involving political parties in their own country or at the place of Bank headquarters, without explicit approval of the Compliance Division."

I am not, and have never been, a member of a political party. None of my articles defend or attack political parties. None of them discuss matters related to particular political parties, their programs or their electoral platforms.

I will refer to the excerpts commented by Mr. [REDACTED] and show that my articles are entirely consistent with my contract. Moreover, I maintained political neutrality in my publications and did not discuss partisan political matters. The views expressed had no impact on my duties as Vice President and CRO. They had no effect at all on my responsibilities and my role in the Bank. Moreover, the relevant content was always objective, based on my perception of facts and on general descriptions of the reality in my country. I did not express any subjective preferences nor did I interfere in specific political issues related to political parties. I always took a neutral approach to matters discussed and did not advocate political action. I stated my personal views within the scope of what my contract with NDB allows.

The interpretation given by Mr. [REDACTED] to clause 3.10 of the Code of Business Conduct and Ethics is faulty. The clause does not allow the appointees of the Bank to comment on “any political issues involving political parties”. The reference to involvement of political parties introduces a restrictive aspect with a limiting function and does not allow therefore the clause to be understood in a broad sense. Oddly, Mr. [REDACTED]’ understanding of this clause takes exactly the opposite direction, stretching the interpretation to a point in which any serious social, economic, or political matter would have to be considered a political issue involving political parties. The Code does not say: appointees of the Bank are not allowed to express views on political issues. It refers specifically to “political issues involving political parties”.

Based on Mr. [REDACTED]’ interpretation, any topic of broad public interest, which always involve political parties in one way or the other, would have to be considered “political issues involving political parties”. For example, a discussion of social security reform or abortion or gun control or same-sex marriage or fiscal rules, to quote a few of many possible examples, would have to be understood as “political issues involving political parties”. This is what Mr. [REDACTED]’ forced interpretation would lead us to – for the simple reason that all these kinds of issues are of broad public interest and therefore lead political parties necessarily “to be a part of, engage in or take part in” (using Mr. [REDACTED] wording) their discussion and decisions related to them.

The lawyer’s interpretation of the Code of Conduct would make it impossible for anyone in NDB to make any reference, no matter how general, to political issues or issues with political implications. For instance, President Kamath’s comments on the Indian Government’s ban on large-denomination bills would also need to be considered as an “expression of views on political issue involving political parties in his country” and as “a violation of political neutrality”. In this case, the President could be deemed to have supported the government and the ruling party in a highly controversial issue in India that involved intense discussion between political parties. I refer to the excerpt news report below, published on March 30, 2017:

“Supporting the government’s decision to demonetise high-value currency in November last year, former chairman of ICICI Bank and President of the New Development Bank

(NDB) KV Kamath said it has not only deterred back money hoarders but has also given a big push to online transactions.”

<http://www.thehindubusinessline.com/money-and-banking/note-ban-has-squeezed-timeframe-for-digitisation-kv-kamath/article9608534.ece>

Of course, the interpretation that the President was in violation of the Code is inappropriate, but it would logically follow from Mr. [REDACTED]’ distorted reading of the relevant clause of the Code of Conduct.

To provide another example, the same considerations would apply to an interview given by Vice President Leslie Maasdorp, on February 12, 2016, in which he praises a political announcement made by President Zuma of South Africa:

“South Africa’s representative at the BRICS New Development Bank, Vice President Leslie Maasdorp, said emphasis on the National Development Plan was the highlight of the State of the Nation Address on Thursday.

“What the president did tonight – despite the disruptions – was to emphasise the National Development Plan,” said Maasdorp.

Maasdorp said that this was significant in that the NDP dealt with the structural nature of the economic crisis the country currently faced.”

“NDP is South Africa’s endeavour to ensure that we address the deep structural problems,” said Maasdorp.”

<http://www.enca.co m/money/zuma%E2%80%99s-emphasis-ndp-highlight-speech-brics-official>

Again, under Mr. Isaac’s forced interpretation, this could be inappropriately construed as a breach of political neutrality and as a comment on “a political issue involving political parties”.

Analysis of specific articles

I now turn to the comments made by the lawyer on specific articles I published.

1) Articles that address or mention in passing the impeachment process against former President Dilma Rousseff

- a) Article published on April 1, 2016 – “Coup d’état?”

First, contrary to what the lawyer claims, the translation of this article (as well as of others) is very poorly done. For instance, the title of the article is not “Blow” (sic) but “Coup d’état?”. Note that the translation suppresses the very important question mark from the title. The impeachment process was underway at the time and there was intense debate in Brazil about whether it constituted or not a “parliamentary coup d’état”.

The article asks the question – is impeachment a “coup d’état”? And replies in the negative, indicating that impeachment is foreseen in the Brazilian Constitution. What could, indeed, be considered a coup d’état, I wrote, would be an impeachment without appropriate characterization of a crime of responsibility or a common crime on the part of the President. The article goes on to briefly describe the legal requirements foreseen in the Constitution and points out that many of the then popular arguments in favor of impeachment were inconsistent with Brazil’s legal framework.

Note that the article does not take a view on the actual legal arguments presented to substantiate the ongoing impeachment process of then President Rousseff. Hence the question mark in the title.

The lawyer highlights an excerpt of the article in which I warn of the risks that an impeachment not legally substantiated would have for the country and how it could be perceived. Contrary to what Mr. [REDACTED] writes, I did not state that “the opposition parties were incapable of winning power in a democratic vote and used the impeachment of the President as a way to gain power”. This amounts to putting words in my mouth. I simply mentioned basic facts, including the challenges of winning a presidential election and that impeachment would be a difficult process, especially if it were not very clear that the legal order was being strictly respected. These are general, non-controversial, statements of fact.

The article only raises questions regarding the requirements for an appropriate process. Arguments in favor of the due legal process cannot be interpreted as “comments on political issues involving political parties”.

This is the only article that addresses the issue of impeachment. A few others only mention it in passing.

b) Article published on May 13, 2016 – “Brazil at risk”

In this article, there is a passing reference to the fact that the impeachment process exacerbated the political crisis and the polarization of society. This is a simple statement of fact, of a non-controversial nature. The article does not discuss the impeachment at all. It simply expresses the distress and concern of a Brazilian citizen, writing in a non-partisan manner about the crisis his country is going through. While indicating that the country still had a number of

strong economic points (high international reserves, exchange rate flexibility, a declining current account deficit, among others) the thrust of the article is to point out that the crisis endangers Brazil's international standing, putting at risk national autonomy and opening the door for possible external interference.

c) Article published on December 9, 2016 – “Polarization”

The lawyer misrepresents this article. The topic is not the impeachment but the polarization in Brazil and in various other countries and regions. The USA, the UK, Europe, Austria and Turkey are mentioned, as well as the extreme cases of Syria, Libya, Iraq and Yemen. The article mostly addresses polarization as a broad international phenomenon and does not focus on Brazil only. I mention that the growing polarization in Brazil was surprising to me, given that the country stood out in earlier times for its ability to reconcile divergences. The non-partisan character of the article is clear. The impeachment in Brazil is mentioned only in passing, as an example among other recent cases in other countries (Brexit, the election in the USA, Italy) of the willingness of citizens to opt for risky paths.

The tone of the article is impartial. It recognizes, for instance, that polarization in Brazilian society existed well before the impeachment and that the division in society was also reflected in the very narrow margin by which President Dilma had been reelected in 2014.

Again, the translation is poor and could be misleading. Mr. [REDACTED] quotes excerpts out of context and in a distorted manner.

2) Articles that comment on polarization, political degradation and corruption

First, the lawyer falsely states that I commented on “corruption problems of the current Brazilian government several times”. Not once did I comment specifically on allegations of corruption against the current government or any other previous government. I challenge him or anyone else to prove the contrary. When I mentioned the topic of corruption, it was in a general way, pointing out its systemic nature – not only in Brazil, by the way, but in other political systems.

a) Article published on December 23 , 2016 – “Brazil in danger”

This article makes essentially the same argument as the one published on May 13, 2016 and commented above. The thrust of this article is to point out again that the national crisis creates dangers for Brazil. It is again non-partisan in nature and does not defend any particular government or party.

The lawyer claims misleadingly that the impeachment was somehow the focus of the article. In fact, impeachment is not even mentioned. The article clearly refers to a period that

begins earlier than the impeachment. I write, for instance, that Brazilian governments (in plural) had lost support legitimacy due to the economic crisis and its effects in terms of unemployment and real wage reductions. This crisis began in 2013 at the end of President's Dilma first term.

The article concludes that Brazil needs urgently to find a way to overcome the destructive polarization that has taken hold of the country.

b) Article published on May 26, 2017 – “Money buys everything”

This article addresses one of the major concerns of Brazilian society – corruption. I present it as a systemic and deeply entrenched problem that goes back several decades. I mention examples from the 1990s.

In the immediately preceding article, published on May 12, I had commented on the signs of recovery in the Brazilian economy. In the meantime, a new political shock was seriously threatening the tenuous economic recovery. This is a statement of fact, amply noted in press comments, in Brazil and abroad.

The lawyer again misrepresents the article by claiming that “from context, the recent political shock referred to in the article is likely news reports about the alleged bribery scandals of the current President of Brazil”. No reference is made in the article to these allegations. The article, again, is about the systemic nature of corruption in Brazil, without singling out the current government.

c) Article published on July 21, 2017 – “Point paragraph”

Again, Mr. [REDACTED] misrepresents this article. In this article, I write about the striking weaknesses in a verdict against former President Lula. The article deals with legal, not political issues. It discusses, for instance, the legal requirements to characterize the crimes of passive corruption and argues that they were not fulfilled in this case. I express my bewilderment at the judge's bias and partiality, and commented on what in my opinion constitutes a miscarriage of justice. This verdict has sparked intense debate in Brazil and has become a matter of public concern, beyond party allegiances. In fact, there have been so many allegations of illegality in this process that the National Justice Council of Brazil has called the judge for a hearing on the matter.

Again, the translation of this article is poor and misleads the reader.

Final considerations

Mr. [REDACTED] does his best to point out supposed violations of my contract in his document, but fails to make the case. His observations about my articles do not prove any violation of my contract or of the Code of Conduct. Some of his observations are irrelevant, others beside the point. He sometimes puts words in my mouth. He claims in his conclusion that my comments “showed general sympathy for the Brazil Workers’ Party”. This claim is unfounded. I challenge him or anyone else to show a single reference to this party or any other political party in any of the articles under consideration.

The lawyer’s interpretation of the Code of Conduct is twisted and contorted. None of the examples he presents can be understood as a violation of the Code. My comments on Brazil’s political situation were always made in general terms, in a non-partisan manner, and without any reference to specific parties.

Mr. [REDACTED] concludes that I “frequently expressed views and published comments through my columns on Brazil’s political issues involving political parties”. It is not hard to see that the few articles he refers to represent only a fraction my published articles. The word “frequently” does not apply in this case and is used in an incorrect, if not spurious, way.

Most worryingly, the analysis consists of a series of false accusations against me. No appropriate evidence is provided by the lawyer to sustain his claim that I commented on political issues involving political parties. In a rather desperate attempt to make his case, he suggest a broad definition of “involve” that ends up covering all issues of public interest that have political implications.

Since 2013, my country has been experiencing a long and deep crisis, probably unprecedented in Brazil’s recent history. I wrote only occasionally about this crisis and when I addressed it, I did so in a non-partisan way, as a Brazilian citizen and public figure, deeply concerned and indeed anguished by the acute problems my country has been facing in the last four years.

ANEXO E

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[REDACTED]

[REDACTED]

By email
Recipient1 Delivery Details.

Further Opinion on Breach of Code of Conduct

On Friday September 15, 2017, Mr. Paulo Batista ("**Subject**") submitted a response ("**Response**") to our September 11 legal opinion on whether certain articles he published complied with employment terms and conditions ("**employment agreement**") and Code of Conduct ("**Code**").

In his Response, the Subject raised a few main points about the scope of restrictions with which he must comply under the employment agreement and the Code, and then also specifically responded to points about each article cited in our September 11 opinion. The main points were as follows:

- He specifically negotiated the terms of his employment agreement, and the employment agreement only restricts partisan political activities, which he has not engaged in.
- In all his articles he inserts a disclaimer at the end making clear that he is writing in his personal capacity and not as a representative of the Bank.
- The scope of restriction on political activities in the Code was interpreted too broadly in our original September 11 opinion, and that it would capture public comments made by other senior officers of the Bank.

[illegible]

After reviewing the Response, we still believe that the Subject breached the Code, which also constitutes a breach of his duties under the employment agreement. Our analysis is below.

1. Main Points

The Subject argues that Article 3(d) of the employment agreement only restricts him from a very narrow scope of political activities (i.e. in his personal capacity attending political party meetings, assuming any leadership role with a political party, or otherwise engaging in any political activity), and that this term was specially negotiated. Further, none of the articles were partisan in nature. Our response is as follows:

- First, our September 11 opinion that there was a breach of the Code was not based on this provision in the employment agreement, but rather was made based on Clauses 3.10 and 4.23 of the Code, which are broader in scope than Article 3(d) of the employment agreement (we actually explicitly stated in the opinion that Article 3(d) is narrower in scope than the aforementioned Code provisions, which is why in our analysis in the annex regarding whether the articles were in compliance with the Subject's duties and obligations, we focused on the Code). Therefore, the arguments in his Response claiming that his articles were not partisan in nature are irrelevant to addressing the points made in our actual opinion, because we do not argue that the articles were partisan.
- Second, if the Code was only meant to restrict partisan comments or comments specifically in support or opposition to specific political parties, then there would not be any difference between what the Code restricts and what the employment agreement Article 3(d) restricts. If such is the case, then it would make no sense that the Code uses different and broader wording than what is in Article 3(d) of the employment agreement; the Code would have simply repeated what is in the employment agreement regarding political activities. The only reasonable interpretation for why the Code includes different language regarding the scope is that different/additional restrictions were meant to apply, i.e. the scope is meant to be broader than what is in Article 3(d) of the employment agreement.
- Further, as explained in more detail at the end of this opinion, as a Vice President, the Subject has a duty to fully comply with the Code. In other words, the Subject has a duty to comply with **both** the employment agreement and the Code; this is not an issue of complying with one or the other. The Code, as a set of Rules and Regulations approved by the Board of Directors, is meant to further explicate and detail the duties and obligations the Subject is meant to uphold and follow, as referenced in Article 2 of the employment agreement. In other words, while the employment agreement summarizes some basic terms and conditions of employment (mainly focusing on salary and benefits), it is not meant to cover exhaustively all the Subject's duties and obligations to the Bank. As Article 2 of the employment agreement makes clear, the Subject's duties are outlined in other documents such as the Articles of Agreement, By-laws and Resolutions of the Board and Directors, and Rules and Regulations approved by the Board of Directors.

- The Subject also sent an e-mail on September 18 with links to articles published prior to 2005, claiming these are proof that he is not a partisan supporter of a particular party. However, as explained above, these articles would not be relevant to our analysis, as the September 11 opinion was based on Code provisions which do not simply restrict partisan activity, but rather require maintaining political neutrality and restrict publishing comments on political issues involving political parties. Further, the September 11 opinion is only based on articles published since the Code was approved by the Board of Directors, since the analysis of whether the Subject is in compliance with the Code should only be based on articles published after the Code was approved.

With regards to the Subject's point that he always included a disclaimer in his articles that he was writing in his personal capacity and not as a representative of the Bank, our response is:

- This is irrelevant to whether there was a breach of the Code. Clause 3.10 of the Code simply states that maintaining political neutrality is important and that "appointees of the Bank are not allowed to express views or publish comments on any political issue involving political parties in their own country." There is no exception for making comments in one's personal capacity and not as a representative of the Bank. If the Bank intended there to be such an exception, then it would have explicitly stated so; many company policies we have seen that wish to allow people to publicly comment on political events as long as they do so in their personal capacity (and not in the capacity of company representative) would explicitly state so. The only exception to this restriction in the Code is if the Compliance Division gives explicit approval.
- The Subject's logic that as long as one makes statements in one's personal capacity and not as a Bank representative, there is no breach, also does not make sense. In such case, anyone at the Bank can make the most explicitly and inflammatory political statements, such as "The ruling party are totally corrupt and should be driven from power by force if necessary", and this would be fine as long as the appointee makes clear in the article that such statement is in his personal capacity and not as a Bank representative.

The final main point the Subject makes is that the Code Clause 3.10 is interpreted too broadly in the September 11 opinion, as the wording "involving political parties" is meant to *narrow* the scope of the restriction on political commentary. Further, he says if the Code is interpreted as broadly in what we stated in the prior opinion, comments by other senior staff would also be a breach. Our response is as follows:

- First, similar to the point above, if the Code was only meant to restrict partisan comments or comments specifically in support or opposition to specific political parties, then there would not be any difference between what the Code restricts and what the employment agreement Article 3(d) restricts. Further, the word "partisan" does not appear anywhere in Clause 3.10 of the Code. Finally, if the Code was meant to only restrict comments in support or opposition to political parties, the Code would have stated simply and straightforwardly that Bank appointees cannot express comments in support or opposition to political parties

rather than using the current wording i.e. restricting comments on "political issues involving political parties".

- The Subject also creates a strawman argument that any issue whatsoever that potentially has some connection to a political party, no matter how remote, may be covered by our interpretation. However, the argument was that the Code restricts on public comments on *political* issues that political parties are *engaged* in. He then cites examples of other senior officers' public comments that generally remarked on economic policies in their home countries.

However, these are not comparable to the comments in the Subject's articles. The comments by other senior officers cited by the Subject were general high-comments about economic policy. By contrast, the articles of the Subject cited in the September 11 opinion remarked on the impeachment process in Brazil, which was an explicitly political process where political parties were absolutely central. Arguing that the impeachment process in Brazil was not a political issue involving political parties would be like arguing that the impeachment of President Clinton of the US in the House of Representatives (dominated by the opposition party at the time) was not a political issue involving political parties. Impeachment, by its very nature and regardless of country, is an inherently political issue as the impeachment process is done in a political institution (e.g. parliament), which is dominated by political parties (not objective neutral non-partisans). Even the Subject admits this in his article dated April 1, 2016, in which he says, "It is **not enough to say that all impeachment is an eminently political question. Undoubtedly it is**, but in democracy all political issues have to be dealt with within the legal system." In other words, though he mentions legal processes should be followed, he himself states that impeachment is an explicitly political process.

In short, general comments on *economic* policy are completely different in nature from comments on an explicitly political issue (**where political parties play an absolutely central role**) such as the impeachment of the former President in Brazil.

2. Other Points

The Subject also makes other minor points and specific points about each article cited in the September 11 opinion.

For example, he says that only a few articles (5 out of 28 since January 2016 he claims) touched on political issues in Brazil. However, we cited six articles in the opinion, and this was out of 27 articles published since the Code was approved by the Board of Directors (we specifically excluded an article he published in January 2016, which actually did praise a political appointee, because it was published prior to approval of the Code). This means over 22% of the articles published since Code approval remarked on the political situation in Brazil. This is not an insignificant percentage (over 1/5).

With regards to the April 1, 2016 article we cited in the September 11 opinion, he first says the translation is poor (and points to the translation of the title of the article). However, the title of the article is irrelevant to the analysis of whether this article

breaches the Code and employment agreement, and the Subject fails to point how any translation error would have impacted the analysis. We also reiterate that our Brazilian colleagues reviewed the translation and confirmed that there are no material translation errors that would impact the opinion. In particular, the Subject does not point to any supposed translation errors in the key wording from the article cited in the opinion.

Further, when claiming that this article did not present any opinion at all on impeachment, he fails to quote the actual words from the article, claiming the opinion put words in his mouth. However, the actual wording from the article relied on in the opinion (which is quoted in full in the opinion) makes clear that the **opposition** has been trying to win presidential elections without success, and that some important **parties** have never been able to get the presidency **by vote**. He then says that the "path of impeachment" will not be easy either. Since this sentence comes right after the previous sentences regarding opposition not being able to obtain the presidency by vote, it is clear the "path" he is referring to here is the path *to the presidency*. In other words, it is clear that his point is the opposition is using impeachment as a path to the presidency, which is what we stated in our opinion.

In his Response regarding the May 13, 2016 and December 9, 2016 articles, which are two other articles where impeachment is explicitly mentioned, he says that the tone in the article is "impartial" and "uncontroversial". However, as quoted in our September 11 opinion, in the May 2016 article he explicitly states that political polarization was **exacerbated** by the impeachment. This is clearly a negative view of the impact of impeachment. Exacerbate is not an impartial or neutral term. For example, supporters of impeachment may not view the impeachment as being responsible for the increasing polarization in society, and instead may point to other factors as being more significant. The point is not to argue which view is correct, but to simply state that the question of whether the impeachment had a negative impact on Brazil (e.g. by exacerbating polarization) is a political question over which views may differ.

The same exact point would be applicable to the December 9, 2016 article in which the Subject explicitly stated that the impeachment process "aggravated" the divisions in society and that when the middle class took the streets to call for impeachment they ignored the "risks impeachment was having and would continue to have for the country". Aggravating divisions and stating that impeachment posed "risks" for the country are not neutral remarks about a political issue involving political parties.

The Response regarding the above two articles conveniently overlooks these wordings from the two articles which we directly quoted.

In the December 23, 2016, the Subject claims that he only stated that Brazilian governments have lost legitimacy due to the economic crisis, and therefore it is politically neutral. However, as pointed out in our opinion, the article also remarks on the "intense internal polarization" (which as noted in the articles cited above, the Subject believes was exacerbated by impeachment) and also remarks on "the loss of legitimacy of fundamental institutions, the weakening of democracy", which are political statements.

On the May 26, 2016 article, the Subject claims that the article was about the systemic nature of corruption of Brazil and not the recent allegations against the current President.

He also claims that where the articles states the "**new** political shock" was threatening the economic recovery, this is just objective fact. However, he leaves out the part (quoted in our opinion) where he also states that the country's **social and political stability are at risk** due to the **new** political shock. Even though there is no specific reference to the (at the time) new reports about the current President, what other **new** political shock was the Subject referring to? If he was just referring to systemic nature of corruption in Brazil, then why refer to the *new* political shock? Further, while economic recovery arguably is quantifiable and objective (though the impact of a specific event on such recovery is a matter of opinion), an opinion on political and social stability is not.

Finally, the article published on July 21, 2017, was about a politically controversial trial of an ex-President and prominent member of the Workers' Party (the Subject himself admits in the Response that this was politically controversial) and expresses a negative opinion about the outcome of the trial.

3. Conclusion

In conclusion, after reviewing the arguments made in the Response, and for all the reasons stated above, we believe that the articles published by the Subject do represent a breach of the Code.

Further, Article 2 of the employment agreement states that his duties as Vice President are set forth in the Articles of Agreement and "are supplemented by the Rules and Regulations and decisions adopted by the Board of Directors". The Code is one of the Rules and Regulations adopted by the Board of Directors. Furthermore, Chapter 1 of the Code explicitly states that the guidelines and principles contained in the Code, along with other rules, regulations and internal policies, "should be complied with by the Directors, President, **Vice Presidents**...".

In other words, compliance with the Code is a duty that the Subject must fill under Article 2 of the employment agreement. Therefore, a breach of the Code would be a breach of the Subject's duties as Vice President and therefore a breach of Article 2 of the employment agreement. Further, Article 3 of the employment agreement (Code of Conduct) states that he must uphold the highest standard of ethical conduct, and compliance with the Code is essential for meeting this standard, so a breach of the Code would breach this article in the employment agreement as well.

Regards,

[REDACTED]
[REDACTED]

ANEXO F

From: Mr. Paulo Nogueira Batista Jr.

To: Mr. KV Kamath

Further response to an analysis of a few of my press articles

Initial considerations

I have received and reviewed the email from Mr. Yanamadra, dated September 20, 2017, reporting the conclusions of an investigation of my past publications, focusing on six of my articles published in Portuguese in Brazil from April 2016 to July 2017. The Compliance Division has reviewed these articles based on opinion of an external lawyer, and concludes that I violated Clauses 3.10 and 4.23 of the Bank's Code of Business Conduct & Ethics. On these grounds, the Compliance Division now warns me that because any violation of the Code constitutes a violation of my Employment Agreement, the Board of Governors may terminate "my connection with the bank." Under the Bank's Articles of Agreement, I understand that the President of the Bank may now take a view on whether to bring this matter to the attention of the Board of Directors and the Board of Governors.

The Bank's handling of this situation will have long-term repercussions for the Bank's stature, credibility, and effectiveness beyond my own personal case. As explained below and also in my initial response to these accusations (attachment 1 – a list of the attachments is provided at the end of this document), I have ensured that my publishing activities complied with the explicit restrictions on "political engagement" spelled out in my employment agreement. This situation demonstrates a need for attention to the manner in which the Bank has subsequently implemented further restrictions on the publishing activities of its executives.

Before I joined the Bank, I was already an established non-partisan and independent commentator on public affairs in Brazil and outside Brazil. This was publicly known. The Bank's founders affirmatively sought me out to recruit me for my current position as Vice President of the New Development Bank.

My contract with NDB

Before agreeing to join the Bank, I requested a contract that would, among other things, allow me to remain a non-partisan commentator on public affairs. The Bank did not yet have any formal employment agreements for its senior personnel, so I helped to adapt a similar agreement from contracts for Management of the IMF and the World Bank, using them as a model for senior executives of the new Bank. This was done during the second quarter of 2015, before I joined the Bank. External attorneys were not involved in this process.

While drafting the agreement, the appropriate limitations on the role of Bank management in public affairs were carefully considered. These discussions resulted in Section 3 of my Employment Agreement, captioned "Code of Conduct." It includes four separate subsections on: "(a) Non-Profit Service and Outside Employment", (b) "Private Investment Management and Financial Disclosure." (c) Honors, Decorations and Medals", (d) Political Engagement." The subsection on political engagement reads:

"While you may a member of a political party and contribute funds to the party or to individual candidates, you will not, in your personal capacity, attend political party meetings, assume any leadership role within a political party, or otherwise engage in partisan political activity."

Note the reference to the obligation not to engage in **partisan** political activity. When I agreed to join the Bank, I committed to accept these limitations on my involvement in public affairs. I have lived up to this commitment. As I explained in my initial written statement to the Compliance Division (attachment 1), my past publications cannot be reasonably construed as "partisan political activity." I have remained a non-partisan and neutral commentator on matters of public concern, as contemplated when the terms of my employment agreement were drafted.

The Code of Conduct

The Bank subsequently adopted somewhat tighter restrictions. There was no Code of Business Conduct & Ethics when I joined the Bank; the Code was approved in January 2016. Section 3.10, captioned "Political Activities", provides:

"You shall not interfere in the political affairs of any member, nor shall you be influenced in your decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to your decisions."

The President, Vice-Presidents, officers and staff of the Bank, in the discharge of their Bank business, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties."

*Therefore, **maintaining political neutrality is important. The appointees of the Bank are free to exercise their rights during national or provincial elections, but are not allowed to express views or publish comments on any political issue involving political parties in their own country or at the place of Bank headquarters, without explicit approval of the Compliance Division.***" (emphasis added)

Section 4.23 of the Code of Business Conduct & Ethics further requires employees to "maintain political neutrality."

The key passages for the issue at hand are highlighted in bold.

Flaws in the Code of Conduct

Before addressing the key provisions, I mention, in passing, that Section 3.10 (the first two paragraphs thereof) is actually in part a transcription of the Articles of Agreement of NDB (Article 13, *e* and *f*). The compliance officer, or whoever drafted this Code of Conduct, made however a confusion and included in the Code something that pertains to member governments. I refer to the sentence: "Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties." (Article 13, *f*). This sentence is actually entirely out of place here. It refers to the obligation of member countries of the Bank and their representatives to respect the

international character of the duties of the Management and staff of NDB and to refrain from any attempt to influence them¹.

The confusion increases when the drafter(s) of the Code introduced a *non sequitur*: “Therefore, maintaining political neutrality is important.” Here the drafter(s) illogically go back to speaking about obligations of Management and staff, linking it incorrectly to a sentence from the Articles that refers to member countries.

I mention this only to show that in a new institution, where all rules and procedures are being developed and tested, great caution is needed when applying them and when concluding that someone is breaching the Code. The Code itself is work in progress and reveals, when carefully examined, elementary flaws and inconsistencies.

Interpretation of the Code of Conduct

In any event, the conclusions of the Compliance Division and the analysis of the external legal counsel focus on the above-quoted two sections of the Code of Conduct. In essence, six selected articles have been deemed as “comments on political issues involving political parties in my country” that fail to “maintain political neutrality.”

I will argue below that this conclusion is unwarranted and that it is based on an unreasonable interpretation of the Code of Conduct. I would like, first, to note that the external legal counsel's opinions acknowledge that Sections 3.10 and 4.23 of the Code of Business Conduct & Ethics are actually *broadier in scope* than section 3(d) of my employment agreement. He explains that section 2 of my employment agreement defines the duties of my post with reference to “those at present or in the future set forth in the Articles of Agreement and supplemented by the By-Laws and Resolutions adopted by the Board of Governors and by the Rules and Regulations and decisions adopted by the Board of Directors.” Because the Board of Directors later took actions to adopt the Code of Business Conduct & Ethics, the Compliance Division has concluded that section 2 of my employment agreement would thus require my publishing activities to conform to the stricter standards of the Code of Business Conduct & Ethics.

I understand the reasoning behind the Compliance Division's approach to Sections 3.10 and 4.23 of the Code of Business Conduct & Ethics. This approach raises, however, several serious concerns.

First, I recognize that the language of section 2 of my employment agreement might be construed as suggested by the Compliance Division. Nevertheless, I hope that the President will duly acknowledge (as does the Compliance Division's external counsel) that the restrictions on publication being imposed through Sections 3.10 and 4.23 of the Code of Business Conduct & Ethics are materially broader than the limitations on “political engagement” set forth in section 3(d) of my employment agreement.

Second, the external lawyer's proposed interpretation of Sections 3.10 and 4.23 of the Code of Business Conduct & Ethics would effectively bar public comment on any potentially

¹ The definition of “member” is provided in Article 5 of the Articles of Agreement of NDB.

politically sensitive topics. I disagree with the external counsel's dismissal of this concern as a "strawman" – a refutation of a different, weaker argument. The external counsel interprets the rule against commenting on "political issues involving political parties" under Sections 3.10 Code of Business Conduct & Ethics as barring public comments on "*political* issues that political parties are *engaged* in." Applying this principle requires case-by-case assessments of the extent to which a topic qualifies as "political" and the extent to which political parties are "engaged." Problematically, virtually any issue of public interest can have political dimensions. Although the external counsel suggests that "general comments on an economic policy are completely different in nature from comments on an explicitly political nature," questions of economic policy can be just as politically sensitive as any other topic of public discourse. Similarly, comments on racial or religious discrimination, environmental protection, or even controversial literature can be politically charged and result in intense engagement of political parties.

Section 3(d) of my employment agreement contemplates a bright-line rule against publicly endorsing or aligning with a specific political party. If the Bank steps away from this bright-line rule, the guidelines for permissible public comment slide into case-by-case assessment of the relative importance of different issues to different political parties to distinguish "political issues involving political parties" from "political issues *not* involving political parties." This would be an ambiguous standard vulnerable to inconsistent interpretation and uneven application in practice.

My own reading of the Code of Conduct is the one I explained in my initial response to the external lawyer (page 2). I read the Code to mean that appointees of the Bank should maintain political neutrality and not express views or publish comments on political issues *involving political parties*, such as defending or attacking political parties, discussing their programs or their electoral platforms, commenting on election results, or defending or attacking governments. I believe my articles, without exception, respect that standard.

In any event, I would like to note that no one amongst the Bank's executive leadership, Directors, or Governors have brought any concerns about my publishing activities to my attention previously. My publication activities predate my affiliation with the Bank and have continued without interruption during my time at the Bank. As I observed in my initial response, these publishing activities did not interfere in my responsibilities and my role as Vice President of NDB. Nor did they affect in any way my relations with the Brazilian governments during the last two years.

If a few articles I published were a genuine managerial concern for the operations of the Bank, I would have hoped that the President or my peers would have raised this issue as an administrative matter a long time ago. Note that the oldest of the few articles in question was published in April 2016. Until this investigation was opened in August 2017, no comment was ever made to me on any of the articles referred to by the external lawyer.

It is regrettable that this issue has been raised as a compliance complaint more than two years after I joined the Bank, particularly when my publishing activities preceded my work in the Bank, continued without interruption throughout my work at the Bank, and were permitted under the negotiated rules against political engagement.

The Bank is a unique international entity. Our institution does not yet have internal compliance procedures and safeguards comparable to the IMF, World Bank and UN systems. Accordingly, it is vital that the Bank remain mindful of the long-term implications of this matter for its reputation and for other employees.

The external lawyer's further opinion

I now turn to the specifics of the external lawyer's "further opinion", dated September 20, on what he sees as breaches of the code of conduct. This "further opinion" is the lawyer's reply to my initial response to the accusations he made in his original opinion, dated September 11. I ask the President to excuse me for now resorting to stronger language. When I read this further opinion from the lawyer hired by NDB, I was outraged by the weakness of the arguments and the bias of his assessment of the case.

Can I say that the lawyer hired by the Bank is strenuously trying to make the case he was paid to make? This may not be true, but it definitely is the impression that he conveys. In attempting to make his case, he resorts to all the tricks in the proverbial lawyer's bag, including but not limited to: crude sophistry, forced interpretation of the Code of Conduct and of a few articles I published, distortion of facts, twisted arguments, and putting again words in my mouth (as he did in his previous opinion). Moreover, it is also clear from what he writes that he knows little or nothing about Brazil's recent political and economic situation, and this hampers severely even his understanding of the articles that he tries to incriminate.

In this "further legal opinion", a response to my written reply to his initial opinion, the hired lawyer engages in polemics with me. The overall tone of his "legal opinion" is polemical and argumentative, adopted by someone who is not making, as he should, a dispassionate analysis of some articles, but doing his best to make a particular case.

I will respond to the lawyer's arguments and accusations one-by-one, showing that he is unfair and actually wrong every single time. The arguments and statements will be addressed in the sequence they are presented by the lawyer, starting on page 2 of his "further opinion".

First, the lawyer admits that he is not arguing that the articles were partisan – an important admission. However, he claims absurdly that the fact that my articles are not partisan is "irrelevant". Now, to begin with, the word and concept **partisan** is critical to the matter at hand, as noted when I commented above on the obligations set out in my employment agreement, section 3 (d). I draw attention to the meaning of the word "partisan", which is "an adherent or supporter of a person, group, party, or cause, especially a person who shows a biased, emotional allegiance". Accordingly, the antonyms of the word partisan are "neutral, fair, unbiased, impartial", among others. That is exactly what I avoided when publishing articles.

One wonders how the hired lawyer can write that the fact that "the articles were not partisan in nature are irrelevant to addressing the points made in our actual opinion, because we do not argue that the articles were partisan"... (page 2 of the "further opinion"). Does the lawyer even know what he is talking about?

What I argued in my initial response was precisely that my articles were not partisan because they were impartial and unbiased, maintaining political neutrality, consistent with NDB's Code of Conduct.

Second, the lawyer writes irrelevantly: "if the Code was only meant to restrict partisan comments or comments specifically in support or opposition to specific political parties, then there would not be any difference between what the Code restricts and what the employment agreement restricts". This is completely beside the point. Where have I argued that there is no difference in scope between what the Code restricts and what my employment agreement restricts?

Third, he forces another open door when he points to section 2 of my employment agreement. Again, this has not been contested by me. The lawyer is simply making, once again, an unnecessary argument, challenged by no one.

What he has been hired to prove is that that I breached the Code – and there he fails, despite his strenuous attempts, as I will show point-by-point.

Fourth (now on page 3 of the "further opinion"). I sent to Compliance on September 18 a number of articles I published in the period up to 2005. In his first analysis of a few of my articles, the external lawyer had stated that "I showed general sympathy for Brazil's Worker's Party". In my initial response to this (attachment, page 8), I pointed out that I have always expressed my views in an independent and non-partisan manner. To further prove my independence from any political party or government, I provided as examples the links to six articles I published in the Brazilian press, in which I strongly criticized the Lula administration and Brazil's Worker's Party.

The lawyer claims, however, these articles are not "relevant" to his analysis. But they definitely are. These earlier articles are relevant because they show unambiguously that I have consistently independent of political parties.

Furthermore, in my initial reply (page 8), I challenged him (or anyone else) to show a single reference to Brazil's Worker's Party in the articles under consideration.

The lawyer did not pick up the challenge. He could not.

Since he cannot rise to the first challenge that I raised, he shifts his ground, and tries to argue that the disclaimer that always accompanies my articles is "irrelevant".

The following disclaimer, I repeat, accompanies all my articles:

"Paulo Nogueira Batista Jr. é vice-presidente do Novo Banco de Desenvolvimento, sediado em Xangai, mas expressa seus pontos de vista em caráter pessoal" (Paulo Nogueira Batista Jr. is vice-president of the New Development Bank, headquartered in Shanghai, but expresses views of a personal nature".)

This disclaimer is indeed relevant to the matter at hand. It shows that I write as a Brazilian economist and citizen, expressing my own opinions and exercising my right to

express them. I am a public figure in my own country and write on matters that I deem to be of broad interest as a public, non-partisan and neutral figure.

The hired lawyer's "further opinion" reaches an apex of primitiveness when he writes: that my logic is that "as long as one makes statements in one's personal capacity (...) there is no breach" of the Code. And adds: "In such case, anyone at the Bank can make the most explicitly and inflammatory political statements, such as 'The ruling party are (*sic*) totally corrupt and should be driven from power by force if necessary'".

This is rather ridiculous. In terms of the Code of Conduct, the grotesque example he writes down would indeed be a violation of the Code, for the simple reasons that it involves a specific attack on a political party ("the ruling one") and calls for political action ("the ruling party should be driven from power by force if necessary").

Mr. [REDACTED]'s argument is simply childish. Frankly, I am outraged that I have to spend time responding to this low-level legal opinion.

After all this foolishness, the hired lawyer finally reaches the crux of the matter (bottom of page 3 of his "further opinion"), as he attempts unsuccessfully to respond to arguments presented in my initial response.

The arguments he seeks to challenge are the following:

- 1) My contention that the wording of the Code – "any political issue **involving political parties** in your own country" (emphasis added) – is meant to narrow the scope of the restriction on comments and publications.
- 2) My observation that if the Code is read according to the hired lawyer's forced interpretation, comments by other senior management, including the President himself, would also constitute a breach of the Code.

On point 1, I will simply summarize what I wrote in my initial response (page 3) and that the hired lawyer seems to overlook or feigns to ignore. The Code does not say: appointees of the Bank are not allowed to express views on political issues. It refers specifically to "political issues involving political parties". The reference to involvement of political parties introduces a restrictive aspect with a limiting function and does not allow the clause to be understood in a broad sense, as the lawyer seeks to do.

Reductio ad absurdum could certainly apply to the lawyer's strenuous interpretation. If it is to be taken seriously, any topic of broad public interest, which always involve political parties, would have to be considered "political issues involving political parties". For example, any discussion of constitutional reform, campaign financing rules, tax reform, new taxes or increases in existing ones, death penalty, media regulation, labor market reform, financial sector reform or regulation, to quote a few of many possible examples, would have to be understood as "political issues involving political parties". Clearly, this is completely absurd.

But it would necessarily lead him to conclude that other members of NDB Management have breached the Code of Conduct. The hired lawyer is eager, however, to clear other members of NDB management from any possible accusation and goes out of his way to justify statements

I mentioned in my initial response (page 3 and 4) made by the President and another Vice President.

Does he succeed? Let us see.

The hired lawyer tries to present the comments I quoted from interviews given by President Kamath and Vice President Maasdorp as “general high-comments (*sic*)” about economic policy. The lawyer struggles with language as well as with logic, as can be seen from the excerpts I have been quoting. In any event, I wish to go back to interviews by the President that may not be easily cleared as appropriate, if we are to accept the lawyer’s interpretation of the Code. Other examples could be provided, if needed.

I refer, first, to an interview given by the President to the “Economic Times”, an Indian newspaper, published on March 31st 2017, in which he comments on and celebrates the electoral victory of the ruling party in Uttar Pradesh.

“Bharatiya Janata Party's sweeping victory in the UP elections will give the government the additional momentum needed to drive its reforms agenda further and faster”, said New Development Bank president KV Kamath.(...)

*Kamath pointed out that the political "noise" that's (*sic*) attended the poll result in UP is only heard within the country. From overseas, India is seen as the "brightest spot" with an attractive infrastructure story amid global economic uncertainty.*

“Probably this victory will give the government the momentum required to get a whole lot of things done,” he said. “The steps taken, particularly this year, and the government’s ability to perhaps act even at faster pace augur very well for the country.”(...)

"The passage of GST, the successful execution of demonetisation and a whole lot of things that have been done in past two to three years I think indicate the bias for action that the government has," he said, adding he is bullish on India.

<http://economictimes.indiatimes.com/news/politics-and-nation/bjps-win-in-uttar-pradesh-polls-to-put-reforms-on-fast-track-says-kv-kamath/articleshow/57925995.cms>

Note that this interview was considered entirely appropriate by the Bank and was posted on NDB’s website, under “President’s Desk”. In this interview, I stress, the President makes positive comments on a political party, comments on election results, points out that the “political noise” that attended the poll results was not heard outside the country, and showers praise on the government.

Would the hired lawyer claim that the President is maintaining political neutrality? Would he claim that the President is making “general high-comments”? Or that he is commenting on political issues involving political parties in his own country?

I leave it to the lawyer, and to the Compliance officer who hired him, to ponder on and to provide answers to these questions.

One additional and final example. I refer to an interview by President Kamath, published in the same “Economic Times” on December 13, 2016.

When asked “*What would you have done if sought advice [by the government]?*”, President Kamath replied:

“I would have been a huge votary. I would only have said this: it takes enormous courage to do this [demonetisation of large bills]. That courage our Prime Minister has got. And that is the difference. Enough people would have argued there are challenges. And it would only be somebody with the bias for action, and the courage to take action, who can actually drive this.”

<http://economictimes.indiatimes.com/news/politics-and-nation/somebody-fighting-against-corruption-will-be-saluted-kv-kamath-on-demonetisation/articleshow/55949182.cms>

Note the definition of *votary*: “devotee; a devoted admirer; a devout or zealous worshipper”.

Again, I ask the Compliance officer, and the lawyer he hired, to consider the following questions. Would they claim that the President is maintaining political neutrality? Would they claim that the President is making “general high-comments”? Or that he is commenting on political issues involving political parties in his own country?

I leave these questions to their kind consideration.

Moving on to another point, I must say that the lawyer is clearly a votary of the obvious. It is remarkable that he spends more than half a page arguing earnestly that impeachment is a political question, and claiming that when I recognized this triviality I was practically confessing to have breached the Code.

In a moment of particular brilliance, the hired lawyer invokes the following striking example: “To argue that the impeachment process in Brazil was not a political issue involving political parties would be like arguing that the impeachment of President Clinton of the US in the House of Representatives (dominated by the opposition party at the time) was not a political issue involving political parties”.

Why former President Clinton needs to be brought into this discussion at all is a mystery to me. I missed however a reference to the very relevant role of Monica Lewinsky.

This lawyer cannot be taken seriously. Again, I am outraged that I have to spend time responding to this second-rate “legal opinion”. And that the Bank is wasting tax payer money to hire such a lawyer.

Second round of comments by external lawyer on a few of my published articles

I turn now to the lawyer’s second round of comments on a few articles I published. Since the beginning of 2016, I devoted only a few articles to the political situation in Brazil. When I did, I always strictly preserved political neutrality and avoided comments – positive or negative – about political parties or the Brazilian governments. I challenge the Compliance

officer and the lawyer he hired to point to any comment of such nature in the articles under consideration. I remained therefore within the bounds of what I understood to be the requirements of the Code of Conduct.

I will briefly respond to some of the misguided observations by the lawyer on a few articles that he considered inappropriate:

a) Article published on April 1, 2016 – “Coup d’état?”

First, the lawyer is again mistaken when he argues that the title of the article is “irrelevant”. Actually, the original translation of the title was grotesquely wrong (“Blow”) and I had to correct it. As I noted in my initial response (page 5), the original translation suppressed the very important question mark from the title. Actually, the article in questions maintained neutrality, as required by the Code, and did not take a view on whether the ongoing impeachment process was consistent with the due process and the legal requirements set out in the Brazilian Constitution. Hence the question mark in the title. I was actually at pains to stress that, although impeachment is always a political issue, in a democracy all political issues have to be dealt within the legal order. And I went on to describe the legal requirements for the impeachment process foreseen in the Constitution.

The lawyer tries to make a fuss about certain simple statements of fact, rather trivial, included in that article. For example, that the opposition had been trying to win a presidential election without success for some time; and that some important parties had never won the Presidency by direct vote. All of these statements are factual and non-controversial. I concluded by stating that the path of impeachment would not be easy, especially if it were not crystal clear that the legal order was being rigorously respected.

But the hired lawyer wants to put a different spin on my words and is eager to interpret them arbitrarily. His bias shows clearly when he suggests that the article should be read as criticizing the opposition for using impeachment as a means to power. He thus shows his ignorance of the political situation in Brazil at the time. It was not only, or even mainly, the opposition parties that were in favor of impeachment. Important parties in the political base of the government were actively working for impeachment. So his interpretation makes no sense.

I do not want to repeat what I wrote on this article in my initial response. For a full description of this article, please refer to page 5 of my initial response.

b) Articles published on May 13, 2016 – “Brazil at risk” and article published on December 9, 2016 – “Polarization”

The lawyer misrepresents these articles. Their topic is not the impeachment but the polarization in Brazil and in various other countries and regions. Actually, the one published on December 9, is mostly not even about Brazil and would not even be relevant to the discussion at hand, since the Code refers to comments political issues involving political parties **in my own country**. The neutral and non-partisan character of these articles is crystal

clear. The impeachment in Brazil is mentioned only in passing. Please refer to my description of these two articles on pages 5 and 6 of my initial response.

Again, the lawyer is at pains to incriminate these articles and tries to argue that they are inappropriate because they mention that the impeachment exacerbated polarization in Brazil and divisions in our society. This amazes me. Who would deny, knowing anything about Brazil, that impeachment of a recently re-elected President did not exacerbate divisions in society? Even the most ardent supporters of impeachment, if sound of mind, would recognize this simple fact.

c) Article published on December 23 , 2016 – “Brazil in danger”

I have already commented on this article in my previous response (see pages 6 and 7). However, the hired lawyer has a new claim to make: he tries to make a big deal of my statement that governments (in plural, I note, meaning not only the current government but also the previous one) have lost legitimacy due to the economic crisis and that fundamental institutions and democracy itself were being weakened. Again, for any reasonable person that knows even a little about my country, these are non-controversial statements of fact.

I refer to a recent speech by the Brazilian president, Michel Temer, in which he states that Brazil may be on the path of a dictatorial or “de facto” regime (“regime de exceção”).

<https://noticias.uol.com.br/politica/ultimas-noticias/2017/09/22/oito-dias-apos-denuncia-temer-diz-que-brasil-esta-trilhando-caminho-de-regimes-de-excecao.htm?cmpid=copiaecola>

Similar statements have been made by former President Dilma Rousseff.

Again, the thrust of this article is an attempt to argue that Brazil needs to find a way of the destructive polarization that took hold of the country.

d) Article published on May 26, 2017 – “Money buys everything”

In his initial opinion, the hired lawyer falsely stated that I commented on “corruption problems of the current Brazilian government several times”. Not once did I comment on allegations of corruption against the current government or any other previous government.

In my initial written response I challenged him or anyone else to show that I commented on corruption in the current or previous governments in the articles under consideration (page 6).

The lawyer did not pick up the challenge. He could not. I ask him again, or the Compliance officer that was so ready to endorse the lawyer’s accusations, to provide one single example. One would be enough.

I repeat: when I mentioned the topic of corruption, it was in a general way, pointing out its systemic nature – not only in Brazil, by the way, but in other political systems. On page 7 of my initial response, I explained this very clearly. The lawyer, engaging again in misguided polemics, tries to make the case that references to a new political shock in that

article were somehow an indirect criticism of the current President. This is false. He asks the foolish question: If I was just referring to systemic nature of corruption in Brazil, then why refer to the “new political shock”? Simply, Mr. [REDACTED], because the whole country was concerned with the matter in those weeks. I simply took the adverse political news as a starting point to discuss a structural problem of Brazil: the systemic nature of corruption.

I stress once again that the political shock in question was recognized by everyone, in Brazil and outside Brazil, as a threat to the incipient economic recovery of the country.

e) Article published on July 21, 2017 – “Point paragraph”

I have already commented on this article in my initial response (see page 7). The hired lawyer, in his quest to condemn me, puts words into my mouth. I did not say, in my written response, that the trial was politically controversial. What I said was different: that the verdict in question became a matter of public concern, beyond party allegiances. This article deals entirely with legal issues and is not a comment on political issues involving political parties.

Final considerations

As a member of Management of the New Development Bank, with a fiduciary responsibility to the institution, I am concerned at the way this investigation is being conducted by the Compliance Division.

Tax payer money, entrusted to us, is being simply wasted on paying for low quality legal opinion.

Mr. [REDACTED] and his firm [REDACTED] have been profiting, probably handsomely, from the investigations against me. They have been hired so far to undertake the following tasks:

- 1) To assist and accompany Compliance in the investigation, including interviews, against me on accusations brought forward by a disgruntled dismissed employee.
- 2) To provide an “independent legal opinion” on the validity of ad hoc committee constituted to oversee this investigation against me.
- 3) To provide an “independent legal opinion” on a request to invalidate a panel constituted to select a principal professional for the Bank.
- 4) To provide a legal opinion on articles published by me.
- 5) To provide a rejoinder on my written response to the first legal opinion.

Now, I request to be informed how much the Bank is spending on all these legal opinions and activities.

Moreover, in my opinion the above-mentioned activities could have been addressed, at least in part, by in-house by application of mind. Hiring external legal counsel is often simply a way of avoiding work and evading responsibility. But Management and staff have a responsibility to do actual work and avoid unnecessary waste of taxpayer money.

September 27, 2017

Incidentally, NDB seems to have a Legal Counsel, Mr. Sergei Kuznetsov. I know that he has yet to prove why he was hired at all by NDB. But he is there. He is on the Bank's payroll. And one wonders why he has not been called upon, at least occasionally, to perform his duties as Legal Counsel.

In conclusion, I wish to reiterate that the compliance officer, and the lawyer he hired, have no case against me. I did not breach my contract nor did I breach the Bank's Code of Conduct, reasonably interpreted.

If the President carries this issue forward, which I sincerely hope he will not do, in the interest of our Bank, I am convinced that he will open the way for problems and injustice that will follow the institution a long way down the road.

ANEXO G

LOAN NUMBER: **16BR01**

LOAN AGREEMENT

(Development of the Renewable Energy Sector In Brazil)

Between

NEW DEVELOPMENT BANK

And

BANCO NACIONAL DE DESENVOLVIMENTO ECONÔMICO E SOCIAL - BNDES

DATED April 26, 2017

BNDES SIC
99903000202201700

LOAN AGREEMENT

Agreement, dated the 26th day of April, 2017 ("Loan Agreement" including all schedules, annexures and appendices), between the New Development Bank being a multinational development bank established under the Agreement on the New Development Bank dated July 15, 2014 Fortaleza, Brazil ("NDB") and Banco Nacional de Desenvolvimento Econômico e Social – BNDES a wholly owned government company constituted under the laws of Brazil and having its registered office at Brasília and principal place of business at Avenida República do Chile nº 100, Rio de Janeiro, Brazil ("Borrower").

WHEREAS:

- (A) In response to the request made by the Federative Republic of Brazil to NDB to provide to the Borrower, with a financial assistance aggregating to USD 300 million (USD Three Hundred Million) ("Loan") for the purpose of development of the Renewable Energy Sector in the Federative Republic of Brazil; and
- (B) In consideration of the request by the Federative Republic of Brazil, NDB has agreed to extend the Loan on the terms and conditions contained herein.

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I: Construction

- Section 1.1 -** The General Conditions shall be deemed to constitute an integral part of this Loan Agreement and all capitalized terms shall have the meanings ascribed to them therein, unless otherwise defined under **Schedule I (Definitions)**.
- Section 1.2 -** The Borrower has read and understood the terms contained under the General Conditions. The Borrower shall comply and where applicable, ensure compliance with the General Conditions. It is clarified that, in case of conflict between the General Conditions and the Loan Agreement, the Loan Agreement shall prevail.
- Section 1.3 -** The General Conditions is modified as follows:

- (i) **Tax:** Section 3.3 (a) (ii) of the General Conditions is deleted in its entirety and replaced with the following:

"(ii) the Borrower shall pay all principal, interest, indemnity and other amounts due under the Loan without deduction of any Brazilian taxes whatsoever; provided that, if the Borrower is obliged to make any such deduction, it will gross up the payment to NDB so that after deduction, the net amount received by NDB is equivalent to the sum due.

The parties note that NDB is exempt of any tax derived from its activity."

- (ii) **Costs & Expenses:** Section 3.3 (b) (Costs & Expenses) of the General Conditions is deleted in its entirety and replaced with the following:

"(i) The Borrower shall bear all costs and expenses accruing in connection with the disbursement of the Loan, as well as all costs and expenses accruing in connection with the maintenance or enforcement of this Loan Agreement and of all other documents related to this Loan Agreement, as well as all rights, penalties, losses and fees resulting from this Loan Agreement.

(ii) The Borrower's obligation to pay the costs duly documented in connection with this Loan Agreement, which include with the preparation, negotiation, execution and registration of this Loan Agreement or any documents related to this Loan Agreement will be limited to an amount of USD 30,000.00.

(iii) If any such cost or expense is paid by NDB, the Borrower shall within fifteen (15) calendar days on demand reimburse NDB provided that proper documentation has been submitted."

- (iii) Section 4.1 of the General Conditions is deleted in its entirety and replaced with the following:

***a) General information:** The Borrower will furnish to NDB the information for the Sub-Projects according to **Schedule V** (Sub-Project Information), when submitting the Sub-Project in conformity with Article IV herein.*

***b) Visitation:** The Borrower shall till the Final Settlement Date, provide all reasonable opportunities and ensure that NDB's representatives shall at all times be entitled to visit the Borrower and the facilities and sites in relation to the Sub-Project, as NDB may deem necessary and appropriate. All the visits by NDB's representatives must be made together with a Borrower's representative and such visits will be made at NDB own expenses.*

***c) Reports:** The Borrower will furnish to NDB on January 31st of every year, a report in the form and manner provided under **Schedule VI** (Sub-Project Reporting Format) and **Schedule VII** (Sub-Project Disbursement Statement).*

***d) Final Reports:** Promptly after the full amount of the Loan has been either drawdown or cancelled, but in any event not later than six months after the Last Availability Date, the Borrower shall prepare and furnish to NDB a report, in the form and manner provided under **Schedule VI**.*

***e) Cooperation and Information:** NDB and the Borrower shall cooperate fully to ensure that the purposes for which the Loan is made will be accomplished. To that end, NDB and the Borrower shall:*

(i) enable NDB or its authorized representative to inspect and evaluate - together with representatives of the Borrower - any Project and any relevant records and documents maintained by BNDES, subject to banking secrecy law;

(ii) from time to time, at the request of any of them, exchange views with regard to the Loan and performance of their obligations under the Loan; and

(iii) promptly inform each other of any condition that interferes with, or threatens to interfere with, the performance of obligations of the Loan Agreement."

- (iv) Section 4.2 (a) –(d) of the General Conditions is deleted and replaced with the **Schedule IV** (Borrower Undertakings).

- (v) Section 5 of the General Conditions is deleted in its entirety and replaced with the following:

"a) The Borrower undertakes that, its obligations and liabilities in terms of the Loan Agreement rank and will rank pari-passu with the payment obligations to all its other External Indebtedness, except for obligations mandatorily preferred by law.

b) If the Borrower grants to a third party any Lien over its assets in respect of any future External Indebtedness, it shall, if so required by NDB, provide equivalent Lien to NDB for the performance of its obligations under this Loan, provided, however, that this provision will not be applicable to transactions in the ordinary course of business, such as:

- (i) any Lien to secure External Indebtedness incurred or assumed by the Borrower (x) in connection with a Project Financing; or (y) on any of its assets to finance or refinance the acquisition of the assets on which such Lien has been created or permitted to subsist;*
- (ii) any Lien on any assets of the Borrower in favor of any Person in connection with derivatives, future options, swaps or any other hedge structure entered into to protect the Borrower against a loss related to any indebtedness;*
- (iii) any Lien arising by operation of law, decree or governmental regulation of general applicability on any assets (including properties, revenues and claims of any kind) of the Borrower;*
- (iv) any Lien that is not otherwise permitted herein, provided that the aggregate principal amount of External Indebtedness secured by all such Liens that is outstanding at any time does not as at the date any such Lien is created or suffered to exist exceed 25% of the Shareholders' Equity of the Borrower."*

- (vi) Section 6.1 (a) (iii), (ix), and (xii) of the General Conditions is deleted in its entirety and replaced with the following:

"(iii) a situation shall have emerged as a result of events which have occurred after the date of the Loan Agreement which shall make it unlikely that the Borrower will be able to perform their obligations under the Loan Agreement;"

"(ix) the Statutes of the Borrower shall have been amended, suspended, abrogated, repealed or waived in such way as to affect materially and adversely the operations or the financial condition of the Borrower or to perform any of its obligations under the Loan Agreement;"

"(xii) the Borrower, or any of their respective officers, employees, shall have been considered by a judicial decision as engaged in any Prohibited Practice without the Borrower having taken any appropriate action satisfactory to NDB to address such Prohibited Practices; or"

- (vii) Section 6.2 (c) of the General Conditions is deleted in its entirety and replaced with the following:

"c) If at any time NDB determines that:

(i) the procurement of any item made under a Sub-Project is inconsistent with the procedures set forth or referred to in the Loan Agreement or if such item is not a Financing Cost under this Loan Agreement;

*(ii) funds drawdown under the Loan have been used for a Sub-Project not complying with the Criteria referred to in **Schedule III**; or*

(iii) with respect to any Sub-Project to be financed in full or in part from the proceeds of the Loan, any officer of the Borrower, or the beneficiary of the Sub-Loan has engaged in any Prohibited Practice during the procurement or execution of the Sub-Project, without the Borrower having taken timely and appropriate action satisfactory to NDB to remedy the situation;

*NDB will notify the Borrower, who shall, within 180 days from the notification, submit to NDB another Sub-Project to replace the one notified by NDB. Such proposed Sub-Project shall comply with the Criteria referred to in **Schedule III**. In case the proposed sub-project does not comply with the criteria or is not acceptable to NDB, NDB will notify the Borrower and then all amounts outstanding in relation to such Sub-Project shall stand cancelled and be repayable by the Borrower within 15 Business Days from NDB Notification."*

- (viii) Sections 7.2 and 7.3 are deleted and replaced with the **Schedule III** (Drawdown Criteria).

- (ix) **Dispute Resolution:** Section 8.2 is hereby amended in order to include the following sub-sections:

(e) The place of arbitration shall be London, UK.

(f) The Borrower and NDB hereby agree that both parties have no confidential obligation regarding the text of the final arbitration award. The Borrower, can disclosure such text to the extent required by the applicable Brazilian law.

- (x) **Dispute Resolution:** Section 8.2 (b) (iv) is hereby deleted and replaced by the following:

"(iv) Notwithstanding the provisions of the UNCITRAL Arbitration Rules, the arbitral tribunal shall not be authorised to take any interim measures of protection or provide any pre-award relief and none of the parties to the Legal Documents may address to any judicial authority a request for any interim measures of protection or pre-award relief."

- (xi) Section 9.6 of the General Conditions shall not be applied in its entirety to this Loan.
- (xii) All references to the terms "Sub-project Entity", "Project" "Project Entity" and "Project Agreement" shall not be applicable to this Agreement.
- (xiii) **Interest Period:** the definition of "Interest Period" provided in Part B of Appendix I of the General Conditions is deleted in its entirety and replaced with the following:

"means, for any Drawdown, the period commencing on the date of such Drawdown (inclusively) and ending on the next Interest Payment Date (exclusively), and each period thereafter commencing on an Interest Payment Date (inclusively) and ending on the next Interest Payment Date (exclusively). Provided that, if such Drawdown is made less than fifteen (15) Business Days prior to the next Interest Payment Date, the first Interest Period for such Drawdown shall commence on the date of such Drawdown (inclusively) and end on the Interest Payment Date (exclusively) following the next Interest Payment Date".

ARTICLE II: The Loan

- Section 2.1 -** NDB agrees to extend to the Borrower the Loan in the Loan Currency, into the Designated Account on the terms and conditions set forth in this Loan Agreement, for the Purpose.
- Section 2.2 -** The Borrower may submit a Drawdown Request to NDB, subject to compliance with **Schedule III (Drawdown Criteria)** up to the Last Availability Date.

ARTICLE III: The Payments

- Section 3.1 - Interest:** The Borrower shall pay interest at the Interest Rate (6 months Libor plus Spread) on each Interest Payment Date on all amounts, outstanding from time to time.
- Section 3.2 - Commitment Charge:** A charge of 0.25% (Zero Point Two Five Per cent) shall be payable annually by the Borrower, calculated on the following basis:
 - (i) One year after execution of the Loan Agreement: on 15% (Fifteen Percent) of the Loan amount less amounts disbursed;
 - (ii) Two years after execution of the Loan Agreement: on 45% (Forty Five Percent) of the Loan amount less amounts disbursed;
 - (iii) Three years after execution of the Loan Agreement: on 85% (Eighty Five Percent) of the Loan amount less amounts disbursed; and
 - (iv) Thereafter, on the entire undisbursed Loan amount.

Provided however that: (a) the commitment charge shall not be effective for a period of 60 days from the date of execution of the Loan Agreement; and (b) if the amount disbursed at the end of the first year, second year and the third year after execution of the Loan Agreement exceeds 15%, 45% and 85% respectively of the Loan amount,

then the commitment charge shall be nil.

All amounts to be paid hereunder shall be due every 12 (Twelve) months from the date of signing this Loan Agreement and shall be payable within 15 days of receipt of an invoice from NDB.

Section 3.3 - Front End Fee: The one-time, non-refundable, front end fee referred to under Section 3.1(c) of the General conditions shall be equal to 0.25% (Zero Point Two Five Per cent) on the entire Loan amount and shall be deducted from the first disbursement in accordance with Section 3.1(e) of the General Conditions.

Section 3.4 - The Loan shall be repaid by the Borrower in accordance with **Schedule II (Amortization Schedule)**.

Section 3.5 - Except for Sections 3.2 (**Commitment Charge**) and 3.3 above (**Front End Fee**), Interest, other costs, fees and charges on the Loan shall be payable on every Interest Payment Date.

ARTICLE IV: Loan Specific Covenants & Conditions

Section 4.1- Sub-Project Selection Process:

- (i) NDB's prior approval shall be obtained by the Borrower for all Sub-Project(s), where the Sub-Loan is in excess of the Free Limit or assessed as an Environmental or Social Category A Sub-Project by the Borrower.
- (ii) NDB's prior approval shall not be required for Sub-Projects where the Sub-Loan is equal to or lower than the Free Limit. Sub-Project information shall be provided in line with sub-section (vi) hereunder.
- (iii) All proposed sub-project(s) where the Sub-Loan is in excess of USD 70 million (USD Seventy Million) shall be appraised by NDB independently. The Borrower shall provide information and assistance in case of NDB independent appraisal.
- (iv) All applications for sub-project approval shall be submitted to NDB within 30 (Thirty) months from the date of signing of this Loan Agreement.
- (v) NDB shall be required to process appraisal requests for not more than one sub-project at a time. Further, NDB shall within 10 Business Days of submission of the project appraisal report (in relation to sub-section (i) and (ii) above) by the Borrower notify the Borrower whether the proposed subproject has been approved or not.
- (vi) All submissions, including indent (iii) for sub-project approval or information shall contain information required pursuant to Schedule V (*Sub-Project Information*).

Section 4.2- Allocation and Funding Criteria:

All Drawdowns under the Loan shall be subject to the following criteria:

- (i) **Number of Sub-Projects:** Borrower utilizing the Loan to finance at least 5 (Five) Sub-Projects.
- (ii) **Proportional Drawdown:** Borrower financing (from its own sources) an amount at least equal to or more than the amount disbursed by NDB for each Sub-Project.
- (iii) **Sub-Loan Maturity:** Each Sub-Loan shall have a maturity exceeding 7 years.

- (iv) **Individual Sub-Loan Requirements:** Sub-Loan(s) provided to any Sub-Project shall be limited to 25% (Twenty Five Percent) of the Loan.

Section 4.3- Borrower Undertaking: The Borrower hereby confirms and undertakes to comply with the Borrower Undertakings (**Schedule IV**) till the Final Settlement Date.

Section 4.4- Retroactive Financing: The Loan shall be available for reimbursement of Retroactive Payment(s) and upto the Retroactive Financing Limit.

Section 4.5- Permitted Investment: Up to 20% (Twenty Percent) of the entire amount of Loan can be used by Borrower for financing Sub-Projects (eligible for Sub-Loans) by way of financing of debentures / bonds subject to the terms contained herein. The Loan proceeds may not be used for intermediate or bridge financing.

ARTICLE V: Addresses

The following shall be addresses and the Representative(s) of the Parties:

For the Borrower:

Representative: Superintendent of the Financial and International Division
Address: Avenida República do Chile, nº 100 – Centro, Rio de Janeiro (RJ) – Brazil.
Postcode 20031-917
Phone Number: +55(21)2172-7528

For NDB:

Representative: Mr Xian Zhu – Vice-President and Chief Operations Officer
Address: 36th Floor, Oriental Financial Center, 333 Lujiazui Ring Road, Shanghai – China. Postcode 200120
Phone Number: +86(21)80211818

ARTICLE VI: Disclosure

In accordance with Brazilian law, the Borrower will publish an extract of this Loan Agreement in the Brazilian Official Gazette and the Loan Agreement may also be disclosed by the Borrower, as a Brazilian governmental institution, including to supervisory and other competent authorities. In any event of disclosure of this Loan Agreement, the Borrower will promptly notify NDB.

BNDES

Cristina Blaso Banat da Silva
Legal Counsel

IN WITNESS WHEREOF the parties, have caused this Loan Agreement to be signed under their respective names and delivered to NDB's principal office.

BANCO NACIONAL DE DESENVOLVIMENTO ECONÔMICO E SOCIAL – BNDES, a wholly owned governmental company, constituted by and under the laws of Brazil and having its registered office at Brasília and principal place of business at Rio de Janeiro, Avenida República do Chile nº 100.

By
Mr Marcelo de Siqueira Freitas
(Executive Officer)

By
Mr Luiz Roberto Paranhos de Magalhães
(Attorney in Fact)

NEW DEVELOPMENT BANK

By
Mr Xian Zhu
(Vice-President – Chief Operations Officer)

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DEFINITIONS

"BRL" shall mean the Brazilian Real.

"Business Day" shall mean a day (other than a Saturday or Sunday or any other holiday): in relation to any payment, on which the banks are open for foreign currency transactions in Rio de Janeiro, Brazil and New York, United States; and (b) in all other cases, on which the banks are open for foreign currency transactions in Rio de Janeiro, Brazil and Shanghai, China.

"Designated Account" shall mean the account to be designated by the Borrower to receive the drawn amounts.

"Effective Date" means the date upon which NDB dispatches to the Borrower notice of NDB's acceptance of the evidence required in terms of Schedule III (A).

"External Indebtedness" shall mean indebtedness which is denominated or payable or optionally payable in any currency and is owed to a Person who is a non-resident of the Federative Republic of Brazil or whose principal place of business or registered office is outside the Federative Republic of Brazil.

"Final Settlement Date" shall mean such date on which all outstanding Loan and other amounts in relation to the same have been paid/repaid/prepaid by the Borrower

"First Repayment Date" shall mean the date falling 42 months from the date of signing this Loan Agreement.

"Free Limit" shall mean an amount aggregating to USD 35 million (USD Thirty Five Million) proposed to be given to a Sub-Project from NDB Loan.

"General Conditions" shall mean the terms and conditions prescribed by NDB and cited as General Conditions for Loans without Sovereign Guarantee to National Financial Intermediaries dated 23 September 2016.

"Last Availability Date" shall mean the later of (a) 3 years from the date of signing of this Loan Agreement; or (b) 12 months after NDB approval for a specific Sub-Loan, when applicable.

"Loan Currency" shall mean USD.

"Person" means an individual, corporation, partnership, joint venture, trust, unincorporated organization, government, sovereign state or any agency, authority or political subdivision thereof, international organization, agency or authority (in each case, whether or not having separate legal personality).

"Project Financing" means any financing (but not a refinancing) of the acquisition, construction or development of any properties in connection with a project if the Person(s) providing such financing expressly agree to look to the properties financed and the revenues to be generated by the operation of, or loss of or damage to, such properties as the principal source of repayment for the moneys advanced;

"Renewable Energy Sector" shall mean renewable energy projects, specifically for solar, wind, small hydropower plants, bio-gas, agro-waste and bio-mass.

"Representatives" shall mean such persons as indicated under Article V or as notified by the parties from time to time.

"Purpose" shall mean financing the direct cost of equipment, consulting services and civil works for the Sub-Project(s).

"Reference Rate" shall mean LIBOR (six months).

"Retroactive Payment(s)" means financing provided by the Borrower to a Sub-Project on or after the Retroactive Financing Date.

"Retroactive Financing Date" means 360 days prior to the signing of the Loan Agreement.

"Retroactive Financing Limit" means 20% of the Loan.

"Shareholders' Equity" means the amount which, as at the date any determination is being made, is the amount of the total shareholders' equity of the Borrower appearing in its most recently published audited consolidated financial statements, prepared in accordance with accounting principles generally accepted

in Brazil; and

"Sub-Loan" shall mean the amount taken by BNDES from the Loan (in USD) regarding the financing of the Sub-Project(s) (in BRL or USD).

"Spread" shall mean 1.90% which shall remain fixed for the term of the Loan.

"Sub-Project" shall mean a project in the Renewable Energy Sector in the Federative Republic of Brazil and selected for the Loan in line with Section 4.1 and 4.2 hereinabove.

Cristina Biaso Banal da Silva
Legal Counsel

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AMORTISATION SCHEDULE

All outstanding Loan amounts shall be repaid in 18 equal half yearly installments, calculated from the First Repayment Date with in a period of 12 years from the date indicated above as the date of signing this Loan Agreement.

Cristina Blaso Banal da Silva
Legal Counsel

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DRAWDOWN CRITERIA

(A) CONDITIONS PRECEDENT TO EFFECTIVENESS

The effectiveness of the Loan shall be subject to compliance with the following terms and conditions, to the satisfaction of NDB:

- a) The Borrower shall furnish to NDB a legal certificate signed by an Executive Officer of the Borrower confirming without reservations the authority of each signatory and the authorised specimen signature of each signatory;
- b) Execution of the Loan Agreement and submission of certified true copies of all relevant corporate approvals (in English and Portuguese) for availing the Loan and execution of the Loan Agreement;
- c) The Borrower shall furnish to NDB a legal opinion issued by its Chief Legal Counsel (in form and substance satisfactory to NDB), confirming the Borrower's capacity to sign the Loan Agreement and the validity and enforceability of obligations of Borrower under the Loan Agreement.

(B) CONDITIONS PRECEDENT TO EACH DRAWDOWN

Each drawdown from the Loan shall be subject to compliance with the following terms and conditions, to the satisfaction of NDB:

- a) Receipt of a Drawdown Request duly signed by the authorised Representative
- b) Receipt of registration certificate of the payment schedules (*esquema de pagamento*) in relation to the immediately previous drawdown through the Central Bank of Brazil Information System ("SISBACEN"), issued in relation to the previous drawdown and in case of the last drawdown within 90 days of the drawdown;
- c) Receipt of certification from the Borrower confirming that
 - (i) There has been no default under the Loan Agreement;
 - (ii) It is not in breach of or in default under any law, authorisation, agreement, instrument or obligation which might have material adverse impact on the ability of the Borrower to duly observe and perform its obligations under the Loan Agreement;
 - (iii) All necessary approvals, licenses, consents and clearances from the government, central banks and other concerned regulatory and corporate authorities in relation to the Loan have been obtained and complied with, as applicable (unless previously submitted); and

- (iv) the Sub-Loans have been executed in accordance with BNDES' s standard procedures, rules and policies, which includes, but is not limited to, the prior assessment by BNDES of the economic and financial viability of the Sub-Project aimed to verify if the resources generated or received by the Sub-Project are sufficient to cover the spending related to management, operation, maintenance, and the financial costs and depreciation of the sub-project.

c) CONDITIONS SUBSEQUENT

Upon request by NDB, the Borrower will issue a certificate for acknowledgement of debt from the date of first Drawdown and every year thereafter; and

The Borrower's audited financial statements, for each financial year, as soon as available but within 180 (One Hundred Eighty) days after the end of the respective financial year (for the Borrower).

BNDES

Cristina Blasi Banaí da Silva
Legal Counsel

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BORROWER UNDERTAKINGS

(A) IN RELATION TO THE LOAN:

The Borrower represents and undertakes that:

- a) **Approvals:** If in relation to any payment, an approval of the Central Bank of Brazil for foreign currency remittance is required, the Borrower shall obtain the same.
- b) **Prudential Ratios:** The Borrower shall at all times maintain applicable mandatory prudential ratios, stipulated pursuant to any regulatory requirement of the Federative Republic of Brazil, on the basis of its financial statements; and
- c) **Credit Rating:** The Borrower shall inform NDB's authorised Representative as soon as possible (by way of email and registered post/courier) of the occurrence of the following events:
 - a. international credit rating of the Borrower (from at least two reputed international credit rating agencies) falls below the sovereign rating of Brazil; and
 - b. The Borrower's credit is no longer rated.

In such event, the Borrower and NDB shall within 30 (thirty) days after such rating is declared or discontinued, engage in a discussion on the implication of such events in relation with the Loan.

(B) IN RELATION TO THE SUB-PROJECTS/SUB-LOANS:

The Borrower represents and undertakes that:

- a) **Procurement:** The Borrower shall ensure that, the following selections should be undertaken, for every eligible Sub-Project, through a process of procurement systems prevailing in the Federative Republic of Brazil with due consideration to the principles of procurement given under **Appendix V (Procurement Policy- Core Principles)** of the General Conditions (as applicable to private sector procurement):
 - (i) In the case of concessions or public private partnership , the selection of project sponsor / company;
 - (ii) In case of public companies' projects, the selection of engineering, procurement and construction contractor/construction contractor; and,
- b) **ESI aspects:** The Borrower shall ensure compliance by the Sub-Projects with the requirements of the ESI framework prevailing in Brazil taking into account the core principles in the NDB Environment and Social Framework. The Borrower shall notify NDB, as soon as becoming aware of any non-compliance by the Sub-Project along with the applicable remedial actions proposed.
- c) **Execution Standard:** The Borrower shall ensure that the Sub-Project is carried out with due diligence and efficiency; in accordance with administrative, technical, financial,

environmental, social, safety and labour standards and practices under the laws of the Federative Republic of Brazil, the General Conditions and Loan Agreement.

- d) **Insurance:** The Borrower shall require the Sub-Projects to make adequate provision and maintenance for the insurance of any goods securing the Sub-Loan or, in conformity with the Borrowers policies, required for the Sub-Project, if financed out of the proceeds of the Loan, covering the repair or replacement of the relevant damaged good, in accordance with usual standards and practices.
- e) **Prepayment:** In case of total prepayment in the Sub-Loan, the Borrower shall inform NDB in writing of the same and may either utilize the funds towards another Sub-Loan, subject to compliance with all the terms for providing a new Sub-Loan, or making a prepayment in accordance with the terms herein. Such new Sub-loan approval will be sought from NDB within a period of 6 months from the date of prepayment. Funds prepaid may not be used for any purpose other than envisaged in the Purpose.

BNDES

Cristina Blasso Banal da Silva
Legal Counsel

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SUB-PROJECT INFORMATION

1. Information on the Client Beneficiary		
Company Name		
Legal existence	Country of registered office	
	Number and place of registration	
Address		
Shareholders' background	Shareholders' background information, subject to no breach of the Banking Secrecy Law	
Economic sector and activity(ies)		
2. Details on the Sub-project		
Type/Category of project		
Main characteristics of the project		
Size of scheme (installed capacity)		
Estimated yearly production		
Location and site		
Status of the project / Beginning of operation		
Type of Equipment financed		
Power evacuation/ Status of grid-connection		
3. Cost Estimate and Financing Plan		
Cost break-up		
Financing plan		
Details on BNDES Loan	Direct / Indirect Financing Amount Term Grace Period Interest rate Securities or guarantees requested	
Amount of financing requested on the NDB Credit facility		
4. Financial & Economic Viability		

Information about the minimum DSCR required by BNDES internal policies and the minimum and maximum internal rate of return (IRR) applicable to a portfolio of similar projects at the moment of submitting this Schedule V to NDB.

5. Development Impact

Environmental and Social impact study (EIA/RIMA or RAS)

Environmental license

Job creation estimate

CO2 reduction estimate

6. Regulatory Agency Approvals

Status

Cristina Blasi Banal da Silva
Legal Counsel

BNDES SIC
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SCHEDULE VI

SUB-PROJECT REPORTING FORMAT

The Borrower shall annually report on the development of each sub-project, describing its progress and current status.

The report must present the following information:

1. Development of the Brazilian energy sector (with special focus on renewable energies)

- Important changes in sector policies and reforms
- Important changes in legal and regulatory framework of the sector

2. Activities of BNDES in the Renewable Energy

- Important changes in the design and/or implementation of sector programmes
- Demand for BNDES financing in the Renewable Energy sector

3. Progress of Sub-Projects

- Description of the progress of the implementation of the sub-projects
 - i. Any over cost, delay, interruption
 - ii. Any public civil action against the project
- Information on any severe difficulties relevant for the implementation of the sub-project and description of mitigation measures
- Information on the status of grid-connection

4. Use of the Loan

- Information on disbursements to Sub-Projects; and
- Preview of demand for outstanding amounts of the Loan.

Cristina Basso Banel da Silva
Legal Counsel

SCHEDULE VII

SUB-PROJECT DISBURSEMENT STATEMENT

(in US\$)

A	B	C	D	E	F	G	H	I	J	K
Sub-pro ject number ¹	Name of sub-pro ject	Sub-project cost			Financing from NDB loan			BNDES Financing		
		Apprai sed and approv ed cost	Actual expendi ture incurred till date	Projecte d expendi ture for the next 12 months	Commit ted amount	Actual disbur sed till date	Projec ted for the next 12 month s	Commit ted amount	Actual disbur sed till date	Projec ted for the next 12 month s

Notes:

G + H <= F

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¹ As assigned by NDB Projects Team

Legal Document Number: 16BR01

**GENERAL CONDITIONS
(LOANS WITHOUT SOVEREIGN GUARANTEES TO NATIONAL FINANCIAL
INTERMEDIARIES)**

DATED: 23 September 2016

**BNDES SIC
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[Signature]
Cristina Biaso Banai da Silva
Legal Counsel

ARTICLE I – CITATION & APPLICABILITY

Citation: The general conditions set out herein may be cited as the ‘General Conditions for Loans Without Sovereign Guarantees to National Financial Intermediaries dated 23 September 2016’.

Applicability: The General Conditions for Loans Without Sovereign Guarantees to National Financial Intermediaries dated 23 September 2016 (“General Conditions”) shall be applicable to the Loan Agreement and all other agreements in relation to a Loan without Sovereign guarantee provided by NDB to a National Financial Intermediary and with floating interest rates, to the extent contemplated under the Loan Agreement.

ARTICLE II – CONSTRUCTION

Section 2.1- Interpretation: The provisions of these General Conditions shall be interpreted in accordance with the rules of construction in Part A, of **Appendix I (Interpretation)**.

Section 2.2- Definition: Capitalised terms used herein shall have the meanings ascribed to them in Part B, of **Appendix I (Definitions)**.

ARTICLE III – LENDING & PAYMENT TERMS

The Borrower shall have a right to request a drawdown into a Designated Account and up to the Available Amount, subject to the terms of the Loan Agreement and these General Conditions.

Section 3.1- Interest And Other Charges

- a) **Interest:** The Borrower shall pay to NDB interest at the Interest Rate on each Interest Payment Date on all amounts, outstanding from time to time.
- b) **Commitment Charge:** The Borrower shall pay to NDB a commitment charge on the undisbursed Loan amount at the rate and in accordance with the terms stipulated in the Loan Agreement.
- c) **Front End Fee:** The Borrower shall, before the first Drawdown, pay to NDB a front end fee on the Loan amount at the rate stipulated in the Loan Agreement.
- d) **Default Interest:** If the Borrower fails to pay any principal amount, when due and payable by it, in terms of the Loan Agreement, then the Borrower shall pay to NDB over and above the interest:
 - (i) an additional interest at a rate of 0.50% (Zero Decimal Five Zero Per Cent) for all amounts of principal remaining unpaid 30 (Thirty) days from the date such principal amount was due till the date of actual payment; and
 - (ii) an overdue interest penalty at a rate of 0.50% (Zero Decimal Five Zero Per Cent) for all amounts of principal remaining unpaid 30 (Thirty) days from the date such principal amount was due till date of actual payment.

All overdue interest and default interest shall be compounded on each Interest Payment Date.

- e) **Capitalisation:** Except as otherwise provided in the Loan Agreement, NDB shall, on behalf of the Borrower, withdraw from the Available Amount at the time of the first Drawdown and pay to itself the amount of the Front-end Fee payable pursuant to Section 3.1 (c) above.

Section 3.2 - Loan Availability & Drawdown

- a) **Loan Availability:** The Borrower's right to submit a Drawdown Request shall be effective from the Effective Date and terminate upon the Last Availability Date.
- b) **Drawdown:** All Drawdowns shall be subject to compliance by the Borrower with all conditions precedent to Drawdowns in form and manner satisfactory to NDB. Otherwise than as provided in Section 3.6 (herein below), all amounts drawn shall be utilised only for expenditures incurred after the Loan Agreement has been signed by the parties and prior to the Last Availability Date.

Section 3.3 - Payments

- a) **Payments**

The Borrower shall ensure that:

- (i) all amounts payable to NDB under the Legal Documents shall be paid in accordance with the terms of the Loan Agreement, in the Loan Currency, on the Loan Repayment Date, at such bank(s) and in such place(s) as NDB shall from time to time designate;
- (ii) all amounts payable to NDB under the Legal Documents shall be paid free and clear of any deductions or withholdings of any kind, without set-off or counterclaim and without restrictions of any kind imposed by, or in the territory of, the Member Country;
- (iii) any agreement, instrument or document to which these General Conditions apply or relate shall be free from any and all Taxes levied by, or in the territory of, the Member Country on or in connection with the execution, delivery, evidentiary recording or registration thereof; and
- (iv) The proceeds of the Loan shall be utilised only towards the Purpose and shall not be drawn down towards any item in Appendix III (*Environmental & Social Adverse Impact List*).
- b) **Costs and Expenses:** The Borrower shall pay or, as the case may be, shall reimburse all legal, banking, transfer or exchange fees and costs incurred by NDB in the preparation, execution, delivery and registration of the Legal Documents and any related document.
- c) A certificate of NDB as to any amount payable under the Loan Agreement shall be final, conclusive and binding on the Borrower unless it contains manifest error.

Section 3.4 - Prepayment

- a) **Notice:** The Borrower may, prepay all or part of the principal amount of the Loan drawn down, together with all accrued interest and Charges thereon, after giving not less than 60 (sixty) days, prior written notice to NDB, which notice shall be irrevocable and binding on the Borrower.

b) **Premium**

If prepayment is made on:

- (i) the Interest Payment Date, no premium shall be payable by the Borrower.
- (ii) any other date, other than on an Interest Payment Date, the actual loss incurred by NDB, calculated based on the rate at which the amount could be reinvested and NDBs funding costs till the next Interest Payment Date, shall be payable by the Borrower as prepayment premium.

c) **Priority**

In the case of partial prepayment, such prepayment, shall be appropriated in the following manner:

- (i) first, towards Charges;
- (ii) second, towards the interest payable; and
- (iii) third, towards the principal amount of the Loan outstanding, applied in inverse order of maturity.

Section 3.5 - Market Disruption

- a) If a Market Disruption Event occurs, NDB shall promptly notify the Borrower.
- b) If NDB notifies the occurrence of a Market Disruption Event and until NDB notifies to the Borrower that the Market Disruption Event has ceased to exist:
 - (i) interest shall accrue on such portions on the Loan at the Disruption Rate;
 - (ii) NDB shall have the right, in its discretion, to change the duration of any relevant Interest Period by sending to the Borrower a written notice thereof. Any such change to an Interest Period shall take effect on the date specified by NDB in such notice.
- c) Notwithstanding anything contained herein above, if a Market Disruption Event occurs and NDB or the Borrower so requires, within five (5) days of the notification by NDB, NDB and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest applicable to the Loan. If agreement cannot be reached, the Borrower may prepay the Loan on the next Interest Payment Date, but without any prepayment premium.

Section 3.6 - Retroactive Financing

The Loan Agreement may provide for the financing of Retroactive Payment(s). In such case, the Loan Agreement specifies the Retroactive Payment(s) eligible for financing, the Retroactive Financing Date and the Retroactive Financing Limit.

Section 3.7 - Supplementary Finance

At the request of the Borrower and on such terms and conditions as NDB and the Borrower shall agree, NDB may enter into supplementary finance commitments in writing to pay amounts for Eligible Expenditures ("**Supplementary Finance**").

ARTICLE IV – PROJECT EXECUTION

Section 4.1 – Reporting

- a) **General Information:** The Borrower and Project Entity shall furnish or cause to be furnished to NDB, promptly, all plans, specifications, reports, contract documents and construction and procurement schedules for the Project and any material modifications thereof or additions thereto, in such detail as NDB shall reasonably request.

The Borrower shall promptly inform NDB of any proposed change in the nature or scope of the Project or of any party related to the Project and of any event or condition which might materially affect the carrying out of the Project or the carrying on of the business or operations of any person related to the Project materially.

- b) **Visitation:** The Borrower and Project Entity shall provide all reasonable opportunities and ensure that NDB's representatives shall at all times be entitled to visit the Member Country, the facilities and sites in relation to the Project, examine all assets of the Project (including all goods, areas, books, services and documents) and meet representatives and employees of the Borrower as NDB may deem necessary and appropriate.
- c) **Reports:** The Borrower and Project Entity shall furnish or cause to be furnished to NDB periodic Project reports in a form satisfactory to NDB every 12 (Twelve) months or at such periodicity as may be stipulated in the Loan Agreement and/or Project Agreement, by NDB ("**Reporting Period**"), indicating among other things: the progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy those problems and the proposed programme of activities and expected progress during the Reporting Period.
- d) **Periodic Reports:** The Borrower and Project Entity to the extent specified in the Loan Agreement, at the end of every Reporting Period shall furnish or cause to be furnished to NDB, until the full amount of the Loan has been repaid or cancelled:
- (i) periodic financial statements and reports in respect of the financial covenants specified in the Loan Agreement;
 - (ii) periodic reports, in a form satisfactory to NDB, on the operation and maintenance of Project facilities; and
 - (iii) annual reports on environmental, health, safety and labour matters relating to the Borrower's operations.
- e) **Final Report:** Promptly after:
- (i) the Project has been completed; and
 - (ii) the full amount of the Loan has been either drawn down or cancelled, but in any event not later than six months after the Last Availability Date or such later date as NDB may agree;

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the Borrower and Project Entity shall prepare and furnish to NDB a report, in a form satisfactory to NDB and of such scope and in such detail as NDB shall reasonably request, on the execution and initial operation of the Project, including information on environmental, health, safety and labour matters relating to the Project, its cost and the benefits derived and to be derived from it, the performance by the Borrower and NDB of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.

f) **Cooperation and Information**

NDB and the Borrower shall cooperate fully to ensure that the purposes for which the Loan is made will be accomplished.

To that end, NDB and the Borrower shall:

- (i) from time to time, at the request of any of them, exchange views with regard to the Project, Loan and performance of their obligations under the Legal Documents, and furnish to the other parties all such information related thereto as shall have been reasonably requested; and
- (ii) promptly inform each other of any condition that interferes with, or threatens to interfere with, the matters referred to in paragraph (i) above.

Section 4.2 - Execution

- a) **Execution Standard:** The Borrower and Project Entity shall ensure that the Project is carried out with due diligence and efficiency; in accordance with administrative, technical, financial, environmental, social, safety and labour standards and practices; and in conformity with the General Conditions and Loan Agreement.
- b) **Insurance:** The Borrower and Project Entity shall make adequate provision for the insurance of any goods required for the Project and to be financed out of the proceeds of the Loan, against hazards incident to the acquisition, transportation and delivery of the goods to the place of their use or installation. Any claim in terms of such insurance shall be payable in a freely usable currency to either replace or repair such goods.
- c) **ESI Compliance:** The Borrower and Project Entity shall ensure that the Project adheres to the Environmental and Social framework principles given under **Appendix IV**.
- d) **Procurement:** Except as NDB shall otherwise agree, procurement of goods, works and services, including consultants' services, required for the Project and to be financed out of the proceeds of the Loan shall adhere to the Procurement Policy principles given under **Appendix V (Procurement Policy)**.
- e) **Disputed Area:** In the event that the Project is in an area which is or becomes disputed, neither NDB's financing of the Project, nor any designation of or reference to such area in the Legal Documents, is intended to constitute a judgment on the part of NDB as to the legal or other status of such area or to prejudice the determination of any claims with respect to such area.

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ARTICLE V - COVENANTS

Section 5 - Negative Pledge

- a) The Borrower undertakes that, its obligations and liabilities in terms of the Loan Agreement rank and will rank *pari-passu* with the payment obligations to all its other unsubordinated creditors, except for obligations mandatorily preferred by law.
- b) The Borrower undertakes that, except as NDB shall otherwise agree:
 - (i) if the Borrower creates any Lien on any of its Assets as security for any debt, such Lien will equally and rateably secure the payment of the principal amount of, and interest and Charges on, the Loan, and in the creation of any such Lien express provision will be made to that effect, at no cost to NDB; and
 - (ii) if any statutory Lien is created on any assets of the Borrower as security for any debt, the Borrower shall grant at no cost to NDB an equivalent Lien satisfactory to NDB to secure the payment of the principal amount of, and interest and Charges on, the Loan.
- c) The foregoing undertakings shall not apply to:
 - (i) any Lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of that property or as security for the payment of debt incurred for the purpose of financing the purchase of such property; or
 - (ii) any Lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

ARTICLE VI – SUSPENSION, CANCELLATION & ACCELERATION

Section 6.1 - Suspension

- a) **Suspension Events:** If any of the following events shall have occurred and be continuing, NDB may, by notice to the Borrower, suspend, in whole or in part, the right to make Drawdowns:
 - (i) Borrower shall have failed to make a payment (notwithstanding the fact that such payment may have been made by a third party on behalf of the Borrower) of principal or interest or any other amount due to NDB under any contract (including loan agreements other than the Loan Agreement) or any other arrangement;
 - (ii) Borrower shall have failed to perform any other obligation to NDB pursuant to an agreement between the Borrower and NDB, or under the Charter;
 - (iii) a situation shall have emerged as a result of events which have occurred pursuant to the date of the Loan Agreement which shall make it unlikely that the Project can be carried out or that the Borrower will be able to perform their obligations under the Loan Agreement;

- (iv) Drawdowns are prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations;
 - (v) the Member Country shall have been suspended from membership in NDB, or shall have ceased to be a member of NDB, or shall have delivered to NDB a notice to withdraw from such membership;
 - (vi) the Borrower or any Project Entity (or any other entity responsible for implementing any part of the Project) has ceased to exist in the same legal form as that prevailing as of the date of the Loan Agreement;
 - (vii) any material adverse change in the condition of the Borrower from that represented by the Borrower as of the date of the Loan Agreement shall have occurred prior to the Effective Date;
 - (viii) a representation made by any party to a Legal Document shall have been incorrect or misleading in any material respect;
 - (ix) the Statutes of the Borrower or any Project Entity shall have been amended, suspended, abrogated, repealed or waived in such a way as to affect materially and adversely the operations or the financial condition of the Borrower or any Project Entity or its ability to carry out the Project or to perform any of its obligations under the respective Legal Document;
 - (x) any event specified under Section 6.2(c) (Cancellation) or Section 6.5 (c)-(e) (Acceleration) shall have occurred;
 - (xi) NDB shall have suspended or otherwise modified access to NDB resources by the Member Country which has recommended the Borrower, pursuant to a decision of the Board of Governors of NDB pursuant to the terms contained under the Charter;
 - (xii) the Borrower, or any Project Entity, or any of their respective officers, employees, agents or representatives shall have been found by a judicial process or other official enquiry to have engaged in any Prohibited Practice without the Borrower or Project Entity having taken any appropriate action satisfactory to NDB to address such Prohibited Practices; or
 - (xiii) any other event specified in the Loan Agreement for the purposes of this Section shall have occurred.
- b) **Extent of reinstatement:** The right of the Borrower to make Drawdowns shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to suspension shall have ceased to exist, unless NDB shall have notified the Borrower that the right to make Drawdowns has been restored; provided, however, that the right to make Drawdowns shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of NDB in respect of any other subsequent event described in this Section.

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Section 6.2 - Cancellation by NDB

- a) On the Last Availability Date, any remaining Available Amount shall be cancelled automatically.
- b) If the right of the Borrower to make Drawdowns of any part of the Loan stands suspended for a continuous period of 30 (thirty) days, NDB may, by notice to the Borrower, cancel such amount of the Loan.
- c) If at any time NDB determines that:
 - (i) the procurement of any item is inconsistent with the procedures set forth or referred to in the Loan Agreement and NDB establishes the amount of expenditures in respect of such item that would otherwise have been eligible for financing out of the proceeds of the Loan; or
 - (ii) funds drawn down under the Loan have been used for purposes other than those provided for under the Loan Agreement; or
 - (iii) with respect to any contract to be financed in full or in part from the proceeds of the Loan, any representative of the Borrower, any Project Entity or any other beneficiary of the Loan has engaged in any Prohibited Practice during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to NDB to remedy the situation;

NDB may, by notice to the Borrower, cancel the equivalent of such amount of the Loan. Such cancellation shall take effect when notice is given.

Section 6.3 - Cancellation by Borrower

The Borrower may, without payment of any cancellation fee or premium, cancel all or part of the Available Amount after giving not less than 60 (Sixty) days, prior written notice to NDB.

Section 6.4 - Borrower Obligations

Notwithstanding any cancellation or suspension, all the provisions of the Loan Agreement shall continue in full force and effect except as specifically provided herein.

Section 6.5 - Events of Acceleration

If any of the following events shall have occurred and shall be continuing for the period specified below, then at any time during the continuance of that event NDB may, by notice to the Borrower, cancel the Loan and declare the principal amount of the Loan then outstanding to be due and payable immediately, together with the interest and Charges thereon, and upon any such declaration such principal amount, together with such interest and Charges, shall become due and payable immediately:

- a) An event specified in Section 6.1(a)(i) shall have occurred and shall have continued for 30 (thirty) days from the date of such event.
- b) Any event specified in Section 6.1(a)(ii) or 6.1(a)(iii) shall have occurred and shall have continued for 30 (thirty) days after notice thereof shall have been given by NDB to the Borrower.

- c) The Borrower or any Project Entity shall have become unable to pay its debts as they mature or any action or proceeding shall have been taken by the Borrower or any Project Entity or others whereby any of the Assets of the Borrower or any Project Entity shall or may be distributed among its creditors.
- d) Any authority or entity having jurisdiction or Control over the Borrower or any Project Entity shall have taken any action for the dissolution or disestablishment, or the suspension of operations, of the Borrower or any Project Entity.
- e) Any other event specified in the Loan Agreement for the purposes of this Section shall have occurred and shall have continued for the period, if any, specified in the Loan Agreement.

ARTICLE VII – EFFECTIVENESS & CONDITIONS PRECEDENT

Section 7.1 - Effective Date

Except as NDB and the Borrower shall otherwise agree, the Legal Documents shall become effective on the Effective Date. If Loan Agreement has not been notified as effective 60 (Sixty) days from the date of execution of the Loan Agreement ("**Last Effective Date**"), then NDB's obligations under such agreements by or for NDB shall stand terminated, in all respects, unless NDB agrees to revise the Last Effective Date.

Section 7.2 - Conditions Precedent to Drawdown

- (i) The execution and delivery of the Loan Agreement on behalf of the Borrower been duly authorised or ratified by all necessary governmental and corporate action and constitutes a valid and legally binding obligation on the Borrower, enforceable in accordance with its terms.
- (ii) The execution and delivery of each Project Agreement, if any, on behalf of each Project Entity have been duly authorised or ratified by all necessary governmental, corporate and administrative action.
- (iii) All other events specified in the Loan Agreement as additional conditions to its effectiveness have occurred.
- (iv) Receipt of a Drawdown Request duly signed by the Authorised Representative along with all requisite documents and evidence, in form and substance satisfactory to NDB. Payment of all relevant Charges.
- (v) The Borrower and each Project Entity shall furnish to NDB sufficient evidence of the authority and the authorised specimen signature of each signatory.
- (vi) The Borrower and each Project Entity shall furnish, or cause to be furnished, to NDB an opinion or opinions (in form and substance satisfactory to NDB), of counsel acceptable to NDB, in respect of such matters as may be specified in the Loan Agreement or as shall be reasonably requested by NDB.

Section 7.3 - Conditions Subsequent to Drawdown

- (i) Within reasonable period as requested by NDB from the date of each Drawdown, auditor certificate confirming the end use of the proceeds from the Loan;
- (ii) The Borrower's and Project Entity's audited financial statements, for each financial year, as soon as available but within 180 (One Hundred Eighty) days after the end of the respective financial year;
- (iii) A certificate for acknowledgement of debt at regular periods from the date of first Drawdown, in a format provided by the NDB.

ARTICLE VIII – DISPUTES

Section 8.1 - Enforceability

The rights and obligations of the parties to the Legal Documents shall be valid and enforceable in accordance with their terms notwithstanding any local law to the contrary. No party to such agreement shall be entitled under any circumstances to assert any claim that any provision of the Legal Documents is invalid or unenforceable for any reason.

Section 8.2 - Dispute Resolution

- a) The parties to the Loan Agreement shall endeavour to settle amicably any dispute or controversy (collectively the "Dispute") between them arising out of the aforementioned agreement. At the initiative of any such party, the required parties shall meet promptly to discuss a possible resolution and, if requested by the initiating party in writing, shall reply in writing to any written submission received.
- b) If any such Dispute, or any claim relating thereto, cannot be amicably settled as provided for herein above, within sixty (60) days of the date on which the request for a meeting is made, such Dispute, or claim relating thereto shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force as at the date of these General Conditions, subject to the following:
 - (i) The number of arbitrators shall be 3 (three): One arbitrator shall be appointed by the Borrower and one by NDB. In case the parties are unable to agree upon the third arbitrator within ten (10) days, the appointment shall be made by Secretary-General of the Permanent Court of Arbitration.
 - (ii) The language to be used in the arbitral proceedings shall be English.
 - (iii) The law to be applied by the arbitral tribunal shall be public international law, the sources of which shall include
 - (a) the Charter and any relevant treaty obligations that are binding reciprocally on NDB and the Member Country;

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- (b) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognised as having codified or ripened into binding rules of customary law applicable to states and international financial institutions, as appropriate;
 - (c) other forms of international custom, including the practice of states and international financial institutions of such generality, consistency and duration as to create legal obligations; and
 - (d) applicable general principles of law.
- (iv) Notwithstanding the provisions of the UNCITRAL Arbitration Rules, the arbitral tribunal shall not be authorised to take any interim measures of protection or provide any pre-award relief against NDB and none of the parties to the Legal Documents may address to any judicial authority a request for any interim measures of protection or pre-award relief against NDB.
 - (v) The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any dispute or controversy properly brought before it by NDB, Borrower or any Project Entity insofar as such dispute or controversy arises out of the any Legal Document; but subject to the foregoing no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings.
- c) Notwithstanding the provisions of this Section, nothing contained in these General Conditions or in the Legal Documents shall operate or be regarded as a waiver, renunciation or other modification of any immunities, privileges or exemptions of NDB under the Charter, under international conventions or under any applicable laws.
 - d) In any arbitral proceeding arising out of the any Legal Document, the certificate of NDB as to any amount due to NDB under such agreement shall be prima facie evidence of such amount.

ARTICLE IX – MISCELLANEOUS

Section 9.1 - Notices: All notice(s) and request(s) in relation to the Legal Documents shall be in writing and in English.

Except as otherwise provided, such notice or request shall be deemed to have been duly given or made when it has been delivered to the party to which it is required to be given or made at the party's address specified in the respective Legal Document, or at any other address as the party shall have specified in writing to the party giving the notice or making the request.

Except as otherwise provided, such delivery may be made by hand, mail (electronic mail may be permitted if specifically envisaged and to the extent agreed upon in writing) or facsimile transmission. Deliveries made by telex or facsimile transmission shall also be confirmed by mail.

Section 9.2 - Authority to Act: Any action required or permitted to be taken and any documents required or permitted to be executed under the Legal Documents shall be taken or executed by the respective Authorised Representatives.

Section 9.3 - Amendments: The Legal Documents shall be amended only by a written instrument.

Section 9.4 - Language: The Legal Documents (including all document(s) to be executed by or for the benefit of NDB) shall be in English Language.

Any document delivered pursuant to the Legal Documents shall be in the English language.

Section 9.5 - Failure to Exercise Rights: No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the Legal Documents upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 9.6 - Reimbursement and Setoff: NDB may at its sole discretion deduct from sums to be lent and advanced to the Borrower any monies then remaining due and payable by the Borrower to NDB in terms of the Loan Agreement.

Section 9.7 - Assignment: The rights and obligations of any Party under the Legal Documents will not be assignable or transferable by such Party without the prior written consent of the other Parties.

Section 9.8 - Counterpart: Any Legal Document, to which NDB is a party, may be executed in any number of counterparts.

Section 9.9 - Survival: Notwithstanding anything contained herein, the provisions contained in Section 3.3 (a) (iii) and 3.3 (b) pertaining to taxes, Costs and Expenses shall survive post termination of the Loan Agreement.

Section 9.10 - Severability: If any term or provision of the Legal Documents is held for any reason to be invalid or unenforceable, in whole or in part, such term or provision or part will to that extent be deemed not to form part of the Legal Documents and the legality, validity and enforceability of the remainder of the respective Legal Document will not be affected or impaired.

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CONSTRUCTION**PART A****Interpretation**

- a) References in these General Conditions to Articles or Sections are to Articles or Sections of these General Conditions.
- b) In these General Conditions, or in an agreement to which these General Conditions apply, unless the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting persons include corporations, partnerships and other legal persons and references to a person includes its successors (whether by merger, liquidation (including successive mergers or liquidations) or otherwise)) and permitted assigns.
- c) In these General Conditions, or in an agreement to which these General Conditions apply, the headings of Sections, as well as the table of contents, are inserted for convenience of reference only and shall not be used to interpret these General Conditions or such agreements.
- d) If a provision of the Loan Agreement or any other agreement to which these General Conditions apply is inconsistent with a provision of these General Conditions, the provision of such agreement shall govern to the limited extent of the inconsistency.
- e) If the due date for any payment under the Loan Agreement would otherwise fall on a day which is not a Business Day, then such payment shall instead be due on the next succeeding Business Day. Unless otherwise provided, all amounts shall accrue from (and including) the 1st (first) day of that period.
- f) Any reference to an agreement, treaty, convention or document, as the case may be, shall include all schedules, annexures, appendices and amendments to the same, from time to time.
- g) All references to the term Project shall, where applicable, be deemed to include each Sub-Project.
- h) In a case in which:
 - (i) there is no Project Agreement, references in these General Conditions to the "Project Agreement" shall be disregarded;
 - (ii) the entire Project is to be carried out by the Borrower, or only by Sub-Project Entities, all references in these General Conditions to the "Project Entity" shall be disregarded; and

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PART B

Definitions

- a) The terms "Borrower", "Designated Account", "Last Availability Date", "Loan", "Loan Currency", "Eligible Expenditure", "Project", "Project Agreement", "Project Entity", "Purpose", "Spread", "Sub-Project", "Sub-Project Entity" and other capitalised terms used herein but not defined shall, have the meaning ascribed to them under the Loan Agreement.
- b) Except where stated otherwise, capitalised terms, wherever used in these General Conditions or in an agreement to which these General Conditions apply, shall have the following meanings:

"Assets"	includes property, revenues or claims of any kind.
"Authorised Representative"	means the individual designated by the Borrower, NDB and any Project Entity as its authorised representative, under the Legal Document to which it is a signatory, as may be applicable.
"Available Amount"	means so much of the Loan as shall not, from time to time, have been cancelled, or drawn down.
"Business Day"	means a day (other than a Saturday or Sunday) and: (i) where the currency of the Loan is USD, is a London Banking Day; (ii) where the currency of the Loan is Euro, commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in London, England, and which is a TARGET Day; (iii) where the currency of the Loan is RMB, is a China Banking Day; and (iv) for currencies other than USD, Euro or RMB and national currencies of other member countries, such reference rate for the Loan Currency as shall be specified or referred to in the Loan Agreement.
"Charges"	means charges, commissions, fees, premiums, and default interest in respect of the Loan.
"Charter"	means the articles of agreement between Brazil, Russia, India, China and South Africa dated 15 July 2014, establishing NDB.
"China Banking Day"	means a day on which commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in Shanghai, China and on which commercial banks and foreign exchange markets settle payments in the Loan Currency in the Financial Centre.
"Coercive Practice"	means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

"Collusive Practice"	means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
"Control"	as used in respect of any person or entity (including, with correlative meanings, the terms "controlled by", "controlling" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting shares or by contract or otherwise."
"Corrupt Practice"	means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
"Disruption Rate"	means a rate equal to the sum of: <ul style="list-style-type: none"> (a) the Spread; and (b) the rate which expresses as a percentage rate per annum the cost to NDB of funding the Loan from whatever source NDB may reasonably select, as notified by NDB to the Borrower as soon as practicable and in any event before interest is due to be paid in respect of the relevant Interest Period.
"Dollars" or "USD"	means the lawful currency of the United States of America.
"Drawdown"	means the use of a part of the Available Amount by the Borrower through a payment or payments made by NDB to the Borrower or to the order of the Borrower.
"Drawdown Request"	means the request for a Drawdown, submitted to NDB by the Borrower's Authorised Representative at least fifteen (15) Business Days prior to the proposed date of the Drawdown, substantially in the form and manner prescribed in Appendix II.
"Effective Date"	means the date upon which NDB dispatches to the Borrower notice of NDB's acceptance of the evidence required in terms of Section 7.1. "Euro" or "EUR" or "€" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty on European Union.
"EURIBOR"	means for any Interest Period, the Euro interbank offered rate for deposits in Euro for 6 (six) months, expressed as a percentage per annum, that appears on the Relevant Rate Page as of 11:00 a.m., Brussels time, on the Reference Rate Reset Date for the Interest Period. If the rate is less than zero, EURIBOR shall be deemed to be zero.

"Financial Centre"	means: (a) for a currency other than Euro, the principal financial centre for the relevant currency; and (b) for the Euro, the principal financial centre of the relevant member state in the Euro Area.
"Fraudulent Practice"	means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
"Heritage International Convention"	means international conventions relating to the protection of biodiversity resources or cultural heritage including Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention), Convention Concerning the Protection of the World Cultural and Natural Heritage and Convention on Biological Diversity).
"Interest Payment Date"	means 31 March and 30 September in each year, unless specified to the contrary under the Loan Agreement.
"Interest Period"	means, for any Drawdown, the period commencing on the date of such Drawdown and ending on the next Interest Payment Date, and each period thereafter commencing on an Interest Payment Date and ending on the next Interest Payment Date. Provided that, if such Drawdown is made less than fifteen (15) Business Days prior to the next Interest Payment Date, the first Interest Period for such Drawdown shall commence on the date of such Drawdown and end on the Interest Payment Date following the next Interest Payment Date.
"Interest Rate"	means an aggregate of Reference Rate for the Loan Currency and the Spread, on the basis of the actual number of days elapsed.
"International Maritime Standards"	mean international standards applicable or governing maritime organisations or tankers including International Convention for the Prevention of Pollution from Ships and International Convention for the Safety of Life at Sea.
"Internationally Restricted Vessels"	means all vessels that are either over 25 (Twenty Five) years old (single hull tanker) or restricted under international law (including, tankers banned by the Paris Memorandum of Understanding on Port State Control and tankers due to phase out under MARPOL regulation 13G).

"Legal Documents"	Loan Agreement, each Project Agreement or other agreements, documents or instruments envisaged under the Loan Agreement.
"LIBOR"	means for any Interest Period, the London interbank offered rate for deposits in the relevant Loan Currency for six months, expressed as a percentage per annum, that appears on the Relevant Rate Page as of 11:00 a.m. London time on the Reference Rate Reset Date for the Interest Period. If the rate is less than zero, LIBOR shall be deemed to be zero.
"Lien"	includes mortgages, pledges, charges, privileges and priorities of any kind and any arrangement having an equivalent effect.
"Loan Agreement"	means the loan agreement to which these General Conditions apply.
"Loan Repayment Date"	means any day falling on one of the dates specified in the Loan Agreement for repayment of the principal of the Loan, provided, however, that, if any Loan Repayment Date would otherwise fall on a day which is not a Business Day, such Loan Repayment Date shall be changed to the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.
"London Banking Day"	means a day (other than a Saturday or Sunday) on which commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in London, England.
"Market Disruption Event"	means: <ul style="list-style-type: none"> (a) on the Reference Rate Reset Date for the relevant Interest Period, the Reference Rate Page is not available and none or only one of the major banks active in, as the case may be, the London interbank market (for USD), the Euro-zone interbank market (for Euro), the Shanghai interbank market (for RMB) or for currencies other than USD, Euro or RMB and national currencies of other member countries, the relevant interbank market for the Loan Currency as shall be specified or referred to in the Loan Agreement, supplies a lending rate to NDB to determine the Reference Rate for the Loan Currency for the relevant Interest Period, as the case may be; or (b) before close of business in London on the Reference Rate Reset Date for the relevant Interest Period, NDB determines that the cost to NDB of obtaining matching deposits in, as the case may be, the London interbank market (for USD), the Euro-zone interbank market (for Euro), Shanghai interbank market for RMB or for any

currency other than USD, Euro or RMB and national currencies of other member countries, the relevant interbank market for the Loan Currency as shall be specified or referred to in the Loan Agreement, would be in excess of the Reference Rate.

"Member Country" means a member country which has recommended the Borrower to avail credit facilities from NDB.

"National Financial

Intermediary"

means entities which fulfil all of the following criteria:

- (i) Wholly or majority owned by the national governments of the Member Country;
- (ii) Has as one of its object the financing of the infrastructure and sustainable development sectors; and
- (iii) Identified jointly by the Member Country and NDB, to avail financial facilities from NDB.

"NDB"

means the New Development Bank.

"Prohibited Practice"

means any Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

"Reference Rate"

means, for any Interest Period:

- (a) LIBOR, where Loan Currency is USD.

If such rate does not appear on the Relevant Rate Page, NDB shall request the principal London office of each of four major banks to provide a quotation of the rate at which it offers six-month deposits in the relevant Loan Currency to leading banks in the London interbank market at approximately 11:00 a.m. London time on the Reference Rate Reset Date for the Interest Period. If at least two such quotations are provided, the rate for the Interest Period shall be the arithmetic mean (as determined by NDB) of the quotations. If less than two quotations are provided as requested, the rate for the Interest Period shall be the arithmetic mean (as determined by NDB) of the rates quoted by four major banks selected by NDB in the relevant Financial Centre, at approximately 11:00 a.m. in the Financial Centre, on the Reference Rate Reset Date for the Interest Period for loans in the relevant Loan Currency to leading banks for six months.;

- (b) EURIBOR, where Loan Currency is Euro.

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If such rate does not appear on the Relevant Rate Page, NDB shall request the principal Euro Area office of each of four major banks to provide a quotation of the rate at which it offers six-month deposits in Euro to leading banks in the Euro area interbank market at approximately 11:00 a.m. Brussels time on the Reference Rate Reset Date for the Interest Period. If at least two such quotations are provided, the rate for the Interest Period shall be the arithmetic mean (as determined by NDB) of the quotations. If less than two quotations are provided as requested, the rate for the Interest Period shall be the arithmetic mean (as determined by NDB) of the rates quoted by four major banks selected by NDB in the relevant Financial Centre, at approximately 11:00 a.m. in the Financial Centre, on the Reference Rate Reset Date for the Interest Period for loans in Euro to leading banks for six months.;

(c) SHIBOR, where the Loan currency is RMB.

If such rate does not appear on the Relevant Rate Page, NDB shall request the Shanghai office of four leading dealers in the interbank market to provide a quotation of the rate at which it offers six-month deposits in the relevant Loan Currency to leading banks in the interbank market at approximately 9:30 a.m. Shanghai time on the Reference Rate Reset Date for the Interest Period. If at least two such quotations are provided, the rate for the Interest Period shall be the arithmetic mean (as determined by NDB) of the quotations. If less than two quotations are provided as requested, the rate for the Interest Period shall be the arithmetic mean (as determined by NDB) of the rates quoted by four major banks selected by NDB in the relevant Financial Centre, at approximately 9:30 a.m. in the Financial Centre, on the Reference Rate Reset Date for the Interest Period for loans in the relevant Loan Currency to leading banks for six months;

(d) if NDB determines that LIBOR or EURIBOR or SHIBOR, with respect to the relevant currencies has permanently ceased to be quoted for such currency, such other comparable reference rate for the relevant currency as NDB shall determine; and

(e) for currencies other than USD, Euro or RMB and national currencies of other member countries, such reference rate for the Loan Currency as shall be specified or referred to in the Loan Agreement.

"Reference Rate Reset Date" means:

- (a) for USD, the day, two London Banking Days prior to the first day of the relevant Interest Period;
- (b) for Euro, the day, two TARGET Settlement Days prior to the first day of the relevant Interest Period;

- (c) for RMB, the day, one China Banking Days prior to the first day of the relevant Interest Period; and

for any currency other than USD, Euro or RMB and national currencies of other member countries, such day for the Loan Currency as shall be specified or referred to in the Loan Agreement.

"Relevant Rate Page" means the display page designated by an established financial market data provider selected by NDB as the page for the purpose of displaying the Reference Rate for deposits in the Loan Currency.

"Retroactive Financing

Date" means, the date specified in the Loan Agreement as the earliest date (date including), on which a Retroactive Payment may be made in order to be eligible for financing out of the proceeds of the Loan.

"Retroactive Financing

Limit" means, the maximum aggregate amount of the Loan specified in the Loan Agreement that may be withdrawn for specified Retroactive Payments. The Loan Agreement may specify a Retroactive Financing Limit for Retroactive Payments of certain or all expenditures eligible for financing out of the proceeds of the Loan.

"Retroactive Payment" means, a payment made prior to the date of the Loan Agreement that would, if made on or after the date of the Loan Agreement, be eligible for financing out of the proceeds of the Loan in accordance with the provisions of the Loan Agreement.

"RMB" means the lawful currency of the People's Republic of China.

"SHIBOR" means for any Interest Period, the Shanghai interbank offered rate for deposits in RMB for 3 (Three) months, expressed as a percentage per annum, that appears on the Reuters Screen SHIBOR Page under the heading "FIXING @ 9:30a.m." of the "SHANGHAI INTERBANK OFFERED RATE" as of 9:30a.m., Shanghai time, on the Reference Rate Reset Date. If the rate is less than zero, SHIBOR shall be deemed to be zero.

"Statutes" means, in respect of the Borrower (if not a member of NDB) or a Project Entity, its founding statute, act, decision, charter, or other similar instrument, as may be more specifically defined in the Loan Agreement or each Project Agreement.

"TARGET Day" means a day on which the Trans-European Automated Real-Time Gross Settlement Payment System (TARGET) System is open for the settlement of payments in Euro.

"Taxes"

includes imposts, levies, fees and duties of any nature, whether in effect at the date of the respective Legal Document or thereafter imposed on the territory of the Member Country or under authority of the Member Country.

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A handwritten signature in black ink, appearing to read "Cristina Blasi Banat da Silva", is positioned above the name and title.

Cristina Blasi Banat da Silva
Legal Counsel

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DRAWDOWN REQUEST

Date: _____
 Loan No. _____
 [Tranche No. _____]¹

To: [NDB]

Dear Sirs:

In accordance with the agreement dated [] between NDB and ourselves (the "Loan Agreement"), we hereby request you to disburse the amount in the Loan Currency. All capitalized terms used herein unless otherwise defined herein shall have the respective meanings assigned to them under the Loan Agreement.

Amount of Disbursement: _____² [³] ([⁴] _____⁵)

Please make a Disbursement of the above-mentioned amount by remitting the same into our Designated Account./account specified below:

Bank Name/Branch Name:
 Address of the Branch:
 SWIFT Code of the Bank/Branch:
 Address of the beneficiary:
 Account Name/Account Number:

We hereby confirm that payment by NDB to the above-mentioned account shall be a Drawdown under the Loan Agreement and shall, as from the date of such remittance, constitute a valid and binding obligation upon us in respect of repayment of the amount thereof and payment of interest thereon and any other amounts payable in terms of the Loan Agreement in relation thereto, each in accordance with and in the manner contemplated by the Loan Agreement.

We enclose herewith all documents required as per terms of the Loan Agreement specifying the above-mentioned amount.

We hereby certify that, as at the date hereof, neither a default nor an event or circumstance which, with the lapse of time, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute a default under the Loan Agreement has occurred and is continuing or would result from the making of such Drawdown and all the representations and warranties made or given by the Borrower in the Loan Agreement is true and accurate in all respects.

¹ If applicable

² Amount in numbers

³ Loan Currency to be mentioned

⁴ Loan Currency representation

⁵ Amount in Words

Yours faithfully,

[]⁶

()⁷

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⁶ Signature of the Borrowers Authorized Representative. If sub-delegation then, letter of authority will have to be submitted and verified by the NDB. Specimen signature, with valid identity proof, acceptable to the NDB, to be attached along with.

⁷ Name and title of the Borrower's Authorized Representative. If sub-delegation then, letter of authority will have to be submitted and verified by the Bank. To be submitted with the request.

ENVIRONMENTAL & SOCIAL ADVERSE IMPACT LIST

- (i) Production of, or trade in, alcoholic beverages, excluding beer and wine;
- (ii) Production of, or trade in, tobacco;
- (iii) Gambling, casinos and equivalent enterprises;
- (iv) Production of, trade in, or use of un-bonded asbestos fibres;
- (v) Commercial logging operations or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests;
- (vi) Marine and coastal fishing practices, such as large-scale pelagic drift net fishing and fine mesh net fishing, harmful to vulnerable and protected species in large numbers and damaging to marine biodiversity and habitats;
- (vii) Production of, or trade in, weapons and munitions, including paramilitary materials;
- (viii) Trade in wildlife or production of or trade in wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- (ix) Trans-boundary movements of waste prohibited under international law (Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal);
- (x) Shipment of oil or other hazardous substances in conflict with International Maritime Standards or restricted under Internationally Restricted Vessels; and
- (xi) The production of or trade in, any product or activity, deemed illegal under: (a) national laws or regulations of the Member Country or the nation involved in the transaction (to the extent of the transaction); international conventions and agreements (subject to international phase out or bans); any Heritage International Convention.

Cristina Blasco Banal de Silva
Legal Counsel

ENVIRONMENT AND SOCIAL FRAMEWORK

Core Principles:

The core principles and the intent which form the basis of the Framework, standards and procedures as well as the associated guidelines are delineated as follows:

- (i) **Inclusive and sustainable development:** A principle focus area of NDB is to ensure inclusive sharing of development benefits and opportunities including among the traditionally deprived sections such as the poor, disadvantaged, women, children and minorities. The process of inclusion entails both access to and delivery of services. NDB recognizes the importance of maintaining policy and operating standards which (a) promote sustainable development; (b) are aligned with international good practices; and (c) effectively respond to environmental and social risks;
- (ii) **Country systems:** NDB promotes the use of strong country and corporate systems in the management of environment and social risks and impacts. NDB also assists in further strengthening the country systems through a variety of mechanisms in both the public and private sector, including by (a) favouring use of country systems, with adequate support, at the operational level as it also fosters greater accountability and ownership; (b) coordinating closely with other multilateral development banks, international financial institutions and relevant centres of expertise; and (c) maintaining a risk based and outcome focused approach through measures aligned with the core principles;
- (iii) **Environment and social interests:** NDB integrates the principles of environment and social sustainability into its policies and operations, as an integral part of its decision making process, to ensure its financing and investment in infrastructure and sustainable development projects have minimal adverse impact on environment and people;
- (iv) **Climate change:** NDB seeks to promote mitigation and adaptation measures to address climate change. Recognizing the sustainable nature of green economic growth and the associated benefits, NDB aims to build upon existing green economic growth initiatives and provide support for the new ones at regional, national, sub-national and private sector level. NDB also encourages climate proofing of its infrastructure financing and investments to build resilience to climate change;
- (v) **Conservation of natural resources:** NDB promotes the conservation of natural resources including energy, water and supports sustainable land use management and urban development;
- (vi) **Gender equality:** NDB believes that gender equality is important to successful and sustainable economic development and accordingly considers it imperative to mainstream gender equality issues in all its operations;
- (vii) **Precautionary approach:** NDB uses a precautionary approach to justify discretionary decisions in situations where there is the possibility of environmental and social harm from making project decisions; and
- (viii) **Co-operative functioning and knowledge dissemination:** NDB seeks to complement the existing efforts of multilateral financial institutions, regional financial institutions and other agencies. In co-financed projects, NDB seeks to promote harmonization of its policies with partnering financial institutions and other agencies by way of adopting a common approach to appraisal, environmental and social management requirements, monitoring and reporting. In addition, NDB intends to disseminate knowledge gained with its development partners.

NEW DEVELOPMENT BANK**PROCUREMENT POLICY****Core Principles:**

The policy upholds the following six principles of good procurement as essential to facilitate efficient and economic use of NDB support by clients.

- (i) **Economy**: Procure goods and services of right kind, quality, quantity, and technology to achieve cost effectively the envisaged project output and outcomes over the project's entire life cycle.
- (ii) **Efficiency**: Plan and procure goods and services timely using methods that are most appropriate for the scale and scope of activity and the risks associated with procurement.
- (iii) **Value for money**: The procurement outcome needs to provide the best value for money for the client. This may require consideration of life cycle costs (purchase price, maintenance and running costs, and cost of disposal), fit for purpose (type, quality, quantity, timeliness, and technology), and impact on other developmental objectives—social economic, and environmental. Thus, value for money means price alone may not necessarily be the sole indicator of value.
- (iv) **Fit for purpose**: Procurement outcomes achieve value for money when (a) procurement is appropriate, and of a necessary standard, for its intended use; and (b) methods and procedures used for procurement and its oversight are also appropriate for the purpose.
- (v) **Competition**: Promote competitive procurement by (a) providing equal access to information and opportunity to all eligible bidders to participate, and (b) following fair and consistent process to achieve the best price outcomes.
- (vi) **Transparency**: Combat moral hazards, fraud, and corruption during procurement and execution of contracts by ensuring high standards of transparency during the entire project cycle, with clients and bidder/suppliers/contractors participating in NDB financed procurement are required to maintain highest standards of integrity and avoid conflict of interest during procurement and execution of contracts.

Cristina Blasi Banal da Silva
Legal Counsel

VASCONCELOS, Jonnas. **BRICS: agenda regulatória**. 2018. 342 fls. Tese (Doutorado em Direito Econômico) - Faculdade de Direito, Universidade de São Paulo, São Paulo, 2018.

ERRATA

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