



Code of Conduct CONEX Initiative

Preamble

Natural resources can be a major contributor for development. Investment agreements in the oil, gas and mining sectors can last for decades, involve the complex sharing of economic rent between investors and host governments, and have significant environmental and social impacts. Well-conceived and negotiated contracts for foreign investment can generate revenues, boost development and protect the interests of the host country and foreign investors.

However, many low-income countries lack the capacity to successfully conduct complex contract negotiations. As a result, they conclude contracts that fail to maximize the potential benefits. A number of options for external negotiation support exist, but there is room for improvement. Notable gaps include non-legal (fiscal, economic, social) and industry-specific expertise (geological, mining, environmental), sufficiently rapid support, strategic support that links natural resource investments to development strategies and a lack of mutual trust.

To address this issue, G7 leaders announced at the 2014 Brussels G7 summit:

“(...) a new initiative on Strengthening Assistance for Complex Contract Negotiations (CONNEX) to provide developing country partners with extended and concrete expertise for negotiating complex commercial contracts”, G7 Summit Communiqué, June 5, 2014

The objective of this Initiative is to strengthen advisory support to low-income country governments in their negotiation of complex commercial contracts – to make the support that is available more comprehensive and more responsive to government’s needs and to contribute to fairer, more sustainable investment deals. This includes not only the provision of information and capacity building, but also the improvement of advisory services involved directly in contract negotiations.

In the case of direct advisory support in concrete contract negotiations, a triangular relationship exists between the Client, the Support Provider, and the Advisors. This triangular relationship is simple in theory, but complex in practice, especially in terms of transparency and accountability. This Code of Conduct, together with domestic laws, is the centerpiece to regulate this triangular relationship.

The Code of Conduct of the G7 CONNEX Initiative defines the values held by the G7 CONNEX Initiative and outlines duties and guiding principles for all Advisors providing multidisciplinary advice to governments on negotiating contracts under its heading. It provides procedural rules as well as guidelines for the substantive quality of the advice.

The Code of Conduct shall:

- serve to reassure Clients that the advice will be confidential and free of political influence and conflicts of interest;
- help ensure that Advisors act in accordance with transparent conduct requirements and principles;
- safeguard the independence and provide firm ground for the advisors' mandate in a politically and legally sensitive environment;
- protect the reputation of all parties involved, including the G7.

The Code of Conduct seeks to provide client governments with significant latitude to direct Advisors, who will retain sufficient flexibility to ensure that the specific needs and interests of the Client are properly addressed.

This Code of Conduct also aims to ensure that the substance of the advice provided under the G7 CONNEX Initiative reflects international best practices. Advisors shall provide consistently high quality advice, based on the qualifications, skills, education, and experience necessary to advise on the purposes of the Engagement Letter. Advisors shall endeavor to ensure that advice provided is aligned with internationally accepted principles, such as the *UN principles for responsible contracts*, and values:

- Human rights, as provided in the UN Charter, the *Universal Declaration of Human Rights*, the UN Covenants on *Civil and Political Rights and Economic, Social, and Cultural Rights* and other internationally accepted human rights instruments;
- Internationally accepted standards and goals for sustainable development, as provided in the *Rio Declaration on Environment and Development, the UN General Assembly Resolution 66/288 ("The future we want") of 2012*, as well as the forthcoming *Sustainable Development Goals*.

The Advisor's advice shall also reflect current research and international debate, including but not restricted to aspects of transparency, accountability, and international efforts on fighting illicit financial flows. In order to promote credibility and accountability, commitments need to be made to monitor and assess the activities of Advisors by the Support Provider.

We encourage all Support Providers and / or parties to incorporate the Code of Conduct and its values as legally binding for the respective mandate.

Definitions

Advisor – A person or firm or other organization that provides advice to Clients on negotiating large-scale investment contracts. Advisors are contracted or procured by a Support Provider for the benefit of the Client.

Client – The government that has requested advisory services for contract negotiations.

Support Provider – any unit, forum, technical assistance provider or facility providing contract negotiation support, either by contracting Advisors on request by the Client or by providing the necessary means for the Client to contract Advisors.

Engagement Letter – The contract between the Client and the Advisor concerning the project for which advisory services have been requested.

Mandate Letter – The contract between the Support Provider and the Advisor.

Standard of Conduct

- (1) Advisors shall observe the highest standards of ethical conduct in carrying out their duties for a Client and shall act with integrity, honesty and probity in all dealings with Clients, the Support Provider and others with whom the Advisors come into professional contact in the course of activities contemplated herein.
- (2) In conducting their work, Advisors are expected to treat others with courtesy and respect and to act with tolerance, sensitivity and impartiality towards other persons' cultures and backgrounds. An Advisor shall strive to avoid even the appearance of impropriety in his or her conduct and to avoid behavior that would reflect adversely on the Advisor, Client or Support Provider.

Independence

- (3) Advisors shall maintain their professional independence and be afforded the protection of such independence in giving Clients unbiased professional advice and representation.
- (4) Payment by the Support Provider must not affect the Advisor's independence and professional judgment in rendering services to the Client. For the avoidance of doubt, the interests of any parties providing financial support to the Client through the

Support Provider shall have no bearing on the content of any advice that the Advisors offer to their Clients. Advisors are not, and shall not hold themselves out as, representatives or agents of the Support Provider.

Client's Interests

- [5] An Advisor shall treat the Client's interests as paramount, subject to the Advisor's duty to observe the law and to maintain ethical standards.
- [6] Issues in contract negotiation raise concerns that may be viewed differently in different agencies and entities within the Client government. As this may cause confusion in the discernment of Client interests, the contract for advisory services entered into by the Advisor and the Client shall (i) clearly designate the Government official/s from whom the Advisor is to take instruction as to the interests and objectives of the Client and (ii) describe the circumstances and procedures whereby the Advisor may be entitled to rely upon instructions from anyone other than such designated Government official.
- [7] Notwithstanding the foregoing, Advisors should recognize that their role may extend to the mediation of different views within the Client Government. In such cases, Advisors must remain sensitive and impartial to the interests and political issues involved.

Role of Advisors

- [8] Advisors are not decision-makers for the Client. Rather, all decisions remain the responsibility of the Client. An Advisor shall provide his or her professional opinion on issues under consideration, as well as information and analysis, to help the Client decide upon its interests, priorities, and strategies, to assist the Client in understanding options, and to weigh the trade-offs that may be involved when goals conflict.
- [9] Advisors shall not impose solutions but shall help Clients to evaluate available options.
- [10] Advisors shall not act as public advocates for any party and shall refrain from making any statements to the public or media. There may be rare exceptions to this requirement, but only if the Client requests statements from an Advisor and the Advisor concludes that such requests are consistent with the letter and spirit of this Code.

Quality of Advice

- (11) Advisors are not expected to provide “generic” advice; rather their advice shall be tailored to the specific circumstances of the contract negotiations, including but not limited to the potential investor’s strategy and interests, the likely profitability of the investment, and the Client’s strategy, investment policy, and interests, including but not limited to its investment climate, legal system, administrative capacity, international commitments and alternative arrangements that might materialize. The advice shall be aligned with the internationally accepted standards and values laid down in the UN principles for responsible contracts, human rights conventions, and internationally accepted principles and goals. The Advisor shall give special attention to the economic, social, environmental and cultural implications of the planned investment and support transparency and accountability in the process.
- (12) The Support Provider’s evaluation of the quality of advice provided by an Advisor shall be based primarily on evaluations obtained from the Client and mandatory reports submitted by the Advisors, subject always to the Advisor’s adherence to the word and spirit of this Code of Conduct. The Client and Advisor consent that the quality of the advice provided may be subject to independent and external evaluation. The Support Provider shall establish an effective non-judicial grievance mechanism for third parties, including those affected by the negotiation support, but who are not party to the relationships among the Client, the Support Provider and the Advisor.

Professional Standards

- (13) Advisors’ work shall be carried out in a competent, professional, and timely manner. Advisors shall not take on work that they do not reasonably believe can be carried out in that manner for reasons of competence, personal conflicts, professional conflicts, workload, physical or mental illness, or other personal or professional reasons. An Advisor shall act only within his or her level of competence and shall clarify any limitations to the Client when asked to act beyond it.
- (14) When an Advisor is a member of a team of advisors, he or she will respect the other members of the team and the views and perspectives brought by them, regardless of the disciplines, specialties or types of organizations from which they come. Recognizing that there may be differences of opinion within any team of advisors, an Advisor will endeavor to work with other team members to provide advice to the Client, drawing on the various skills of the team members. If the team has a designated Team Leader, the Advisor will follow the directions of the Team Leader, subject always

to the Advisor's duty to observe the law and to maintain ethical standards. The Team Leader will respect the dignity, professionalism and possibly different viewpoints of each team member.

- (15) To the extent practical, it may be beneficial for a group of Advisors to seek an understanding at the outset of any program of work as to the areas of competence and responsibility of each member of such team to facilitate efficient coordination of advice. Each Advisor shall act in accordance with the spirit of any such understanding that may be reached. Nothing in this paragraph shall be interpreted as requiring that each Advisor subscribe to advice with which he or she strongly disagrees, but differing advice must be presented in a way that respects the positions of other members of a team.
- (16) Advisors will not communicate independently of the Client with a potential investor or its advisors, unless explicitly asked to do so by the Client. For any direct substantive communication with a potential investor, Advisors will copy the Client on correspondence and will report to the Client in detail on any conversations.

Corrupt Practices

- (17) Advisors shall not offer or make any payment of cash, or other transfers of value, to a Client, official, family member of an official, or a business associated with an official, to obtain an assignment or for any other reason. Advisors may accept gifts for reasons of courtesy, yet have to cede them to the Client who will decide on their further whereabouts. Advisors shall not accept any other benefits and gifts, including monetary gifts, invitations, consultancies, employment, or directorships from investors, donors, suppliers, the Client, and other persons, which have been offered as a result of their engagement as Advisors.
- (18) In spite of the above and subject to Client approval, Advisors may accept reimbursement or provision in kind from the investor of travel expenses connected directly with site visits or travel to negotiations. Advisors may also accept lunch or dinner invitations if directly work-related and provided they take place in an appropriate and standard business framework. Where Advisors are contracted by a Support Provider, Advisors will inform the Support Provider of all such reimbursement of expenses, provisions in kind or invitations.
- (19) Paragraph 17 shall remain in force for at least two years after the Advisory role is completed.

- (20) In case of investigations following the suspicion of corrupt practices, Advisors are obliged to fully cooperate with the investigating authority.

Conflicts of Interest | Avoidance of Conflicts of Interest

- (21) Advisors shall avoid situations and actions that compromise, or could appear to compromise, their ability and complete commitment to carrying out, in a conscientious and personally disinterested way, their responsibility to provide the best professional advice to their Clients.
- (22) Advisors shall not misuse their position to pursue their own private interests, which include both financial or personal interests and those of their family members, relatives, business associates and friends.
- (23) An Advisor shall not assume a position in which a Client's interest conflicts with that of the Advisor or a person or entity affiliated with the Advisor, or another client of the Advisor in a substantially related matter, unless permitted by the Client's written authorization. "Affiliated" shall be defined as having an existing commercial, professional, and/or personal relationship with the Advisor. Should such a situation arise, the Advisor shall disclose this to the Client as soon as he or she becomes aware of it.
- (24) The giving of advice that is or can be construed as intentionally or unintentionally designed to generate financial gain for an Advisor is prohibited. Information that is not available to the public that is acquired in the course of working as an Advisor shall not be used for personal financial gain.

Disclosure of Conflicts of Interest

- (25) Advisors shall disclose any financial, business, or personal interests that might be in actual or apparent conflict with their obligations under this Code of Conduct. For these purposes, prospective Advisors must disclose their investments, management positions and directorships in the company involved in negotiations with the Client, or affiliates of such company, or competitors of such company, as well as representational or consulting arrangements with other clients for similar projects, currently or in the past.

- (26) Where disclosure of any such relationships is prohibited by law or contract, an Advisor must disclose the existence of such a relationship and the reason(s) it cannot be disclosed.
- (27) Disclosure should include all of the above types of activities undertaken by Advisors, their spouses, dependent children, and others living in the same household. Prospective Advisors must also report possible conflicts of interest involving family members, business associates, or individuals in significant personal relationships, whether or not those individuals are members of the same household.
- (28) Disclosure must also include activities of the sort listed above that are engaged in by an "Associated Entity." Associated Entity in this case refers to trusts, organizations, businesses, and the like, in which an Advisor alone or with members of his or her household or extended family are employed or exercise a controlling interest. A controlling interest in this context is defined as an interest of 10 percent or more of the equity in the Associated Entity.
- (29) Whether any of the above activities disqualify a prospective Advisor is to be determined by the Support Provider (where relevant) and the Client, with Client determinations that a prospective Advisor should be disqualified being determinative. In the event that such conflict or potential conflict is disclosed in a declaration and neither the Client nor the Support Provider determines that disqualification of the Advisor is required, the Advisor shall nevertheless forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- (30) Where the Advisor is a firm or other legal entity, but the work will be undertaken by a specific employee of that entity, "Advisor" shall be read in this context to mean both the individual employee or agent and the entity, each of which shall make separate disclosures.

Employees and Subcontractors

- (31) Where an Advisor is a firm or organization, the personnel of such firm or organization who are assigned to a project shall act in a manner consistent with this Code of Conduct.
- (32) Firms or organizations shall ensure that Advisors so assigned acknowledge and agree to abide by this Code of Conduct.

- [33] Firms shall also ensure that Advisors so assigned shall have the authority to act on their behalf within the scope of the mandate for the project.
- [34] Advisors shall require any sub-consultants and agents that they engage in service of a Client to agree to this Code of Conduct through contractual provisions to ensure compliance by all parties acting on behalf of the Client.

Confidentiality

- [35] Advisors shall not use information gathered during the course of the provision of advice for any purpose other than the provision of advice to the Client and shall take all appropriate steps to safeguard such information.
- [36] Any disclosure to any person, agent or sub-consultant for the purpose of a project shall be in strict confidence and shall be on a “need to know” basis and extend only so far as may be necessary for the purpose of that project. Advisors shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that confidential information is not divulged by any such person, agent or sub-consultant.
- [37] Advisors shall treat communications with a Client as confidential and privileged, and shall not disclose such communications except as required by law or as permitted by the Client. Advisors should advise the Client, prior to the disclosure of any communication requested or permitted by the Client, that any disclosure of the Advisor’s communications with the Client may result in the waiver of a privilege.

Collusion

- [38] An Advisor or prospective Advisor shall not: (1) communicate with any person other than staff of the Support Provider or prospective members of an advisory team the amount of any tender or work proposal, or adjust the amount of any tender or proposal by arrangement with such person, (2) make any arrangement with any such person about whether or not the Advisor, the Prospective Advisor or that other person should or should not tender or submit a work proposal, or (3) otherwise collude with any other person in any manner whatsoever in the tender or contract award process. Advisors shall provide their services at rates and terms commensurate with standard practice. Discounted rates are encouraged.

Miscellaneous Matters

- [39] This Code of Conduct should be attached to or enclosed in every Mandate Letter and Engagement Letter.
- [40] No statement of principles or Code of Conduct can provide for every situation or circumstance that may arise. Consequently, Advisors must act not only in accordance with professional rules and standards and applicable laws, but also in accordance with the dictates of their conscience, and in keeping with the general sense and ethical culture that inspires this Code of Conduct.
- [41] Where a specific clause of this Code of Conduct conflicts with any existing laws, rules, regulations or ethical standards that the Advisor is bound to obey, the Advisor and the Support Provider can agree to exceptionally suspend that clause of this Code of Conduct in the Mandate Letter and the Engagement Letter. The suspension of a specific clause does not free the Advisor of the obligation to act in accordance with the general spirit of that clause and does not constitute a waiver of any other clause in this Code of Conduct.
- [42] Violation of specific rules in any part of this Code of Conduct or of the spirit of the rules constitutes grounds for termination of the assignment, and may result in the Advisor being barred from future advisory positions for the Client or the Support Provider.
- [43] In case of dispute between a Client, an Advisor and the Support Provider, the parties will endeavor to find an amicable solution where possible. Engagement Letters and Mandate Letters shall include clauses that will specify the venue and the procedural and substantive laws applicable to any dispute resolution arising from the contract.



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