



ROUNDTABLE 3: HARMONISATION

LEGAL HARMONISATION INITIATIVE

INTRODUCTION AND SUMMARY

1.

The World Bank has joined with other international financial institutions (IFIs), bilateral aid agencies and several UN agencies in sponsoring a Legal Harmonisation Initiative (LHI) to support the implementation of commitments to improve aid effectiveness through harmonisation and alignment undertaken in the Paris Declaration. The LHI is aimed at harmonising and streamlining legal tools among donors and partner countries, including the removal of key legal impediments to harmonised approaches, in support of aid effective operations at the country level. The LHI will also provide an ongoing forum for legal, operational and policy advisers to discuss and share knowledge across institutions on legal and policy issues relevant to the harmonisation and alignment.

BACKGROUND AND RATIONALE FOR LHI

2.

As the commitments under the Paris Declaration to improve aid delivery and management and change existing business practices are translated into action, it is becoming increasingly evident that the role of lawyers in the implementation process at the country level is critical. Together with operational and policy advisers, legal advisers are facing new issues in procurement, financial management procedures, governance and anti-corruption when multiple donors strive to co-ordinate efforts in the context of joint financing and trust fund arrangements.

3.

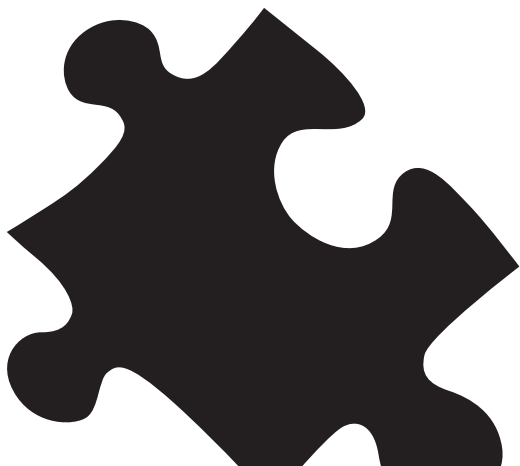
In this evolving context, policy advisers and legal counsel, working together in a more systematic fashion, can contribute significantly to harmonisation and alignment. All have a key role in developing operational policies and procedures, and in rolling out and interpreting these poli-

cies and procedures in the context of actual projects and programs. The involvement of these practitioners is critical to identifying and addressing potential legal, operational and policy issues – particularly (but not exclusively) mandate, fiduciary and safeguard issues – before they become obstacles to effective progress.

4.

Moreover, development institutions face common legal challenges in a variety of matters relevant to the activities they finance. Sharing knowledge and experience in these areas can help in developing solutions on matters of common interest. More importantly, developing joint solutions to these issues can facilitate harmonisation of approaches, and thereby facilitate joint operations.

→ continued on page 4



PROGRESS TO DATE

5.

LHI was launched at a Roundtable hosted by the World Bank at its headquarters in Washington, DC on 19-20 February, 2008. The Roundtable brought together General Counsels, directors, senior advisers and other high level legal and policy representatives from international financial institutions (IFIs), major bilateral aid agencies and UN agencies.

6.

The discussions at the Roundtable were rich and lively. The Roundtable focused largely on how the LHI could facilitate the use of shared model documentation and related operational guidance in jointly financed development programs, but also discussed the related issues of how legal means could be used to facilitate the efficient operation of multi-donor trust funds (MDTFs), enhance the use of country systems in joint operations, and further harmonise approaches to preventing and combating fraud and corruption in operations. LHI participants also learned about the framework accord, known as the Fiduciary Principles Accord, being developed by the UN and the World Bank for working together in emergencies and other operationally challenging situations, as well as about harmonisation efforts in private sector operations of IFIs.

7.

The main immediate outcome of the Roundtable was an Action Plan that set out concrete steps in each of the key areas discussed, including some quick wins such as setting up a “rapid response mechanism” to facilitate the quick resolution of legal and policy issues arising in the use of shared model documents and MDTFs. The LHI Action Plan includes longer term goals, such as developing proposals on handling fraud and corruption issues in the context of pooled financing and other joint operations. The Action Plan also calls for the creation of an LHI community of practice, including the establishment of an LHI website.

8.

The Rapid Response Mechanism has already been established. A working group, including African Development Bank, AusAID, Italy, Japan, the Nordic+ group and the World Bank, has been established to deal with the issue of facilitating joint financing arrangements and has begun its work.

NEXT STEPS

9.

In the run-up to the Accra HLF, the LHI Action Plan calls for the development of a ‘zero’ draft of good practice principles for the use of shared model documentation to facilitate joint financing operations, together with an inventory of issues that will need to be addressed in developing such documentation and related guidance materials. It is anticipated that an LHI website will be launched in the near future.

10.

The World Bank intends to report on the LHI to the Accra High Level Forum, together with an oral update on the implementation of the LHI Action Plan. Depending on the progress made in the coming weeks, the zero draft statement of good practice principles and inventory of issues cited above could also be presented.

11.

Attached for information are the LHI Action Plan and the current list of LHI Participants.

LIST OF LHI PARTICIPANTS

MDBs / IFIs

- African Development Bank (AfDB)
- Asian Development Bank (ADB)
- Caribbean Development Bank (CDB)
- European Bank for Reconstruction and Development (EBRD)
- European Investment Bank (EIB)
- Inter-American Development Bank (IADB)
- International Fund for Agricultural Development (IFAD)
- Islamic Development Bank (IsDB)
- World Bank

Nordic+ Group

- Department for International Development (DFID) (UK)
- Ministry of Foreign Affairs (MoFA) of Finland
- Irish Aid
- Ministry of Foreign Affairs (MoFA) of the Netherlands
- Norwegian Agency for Development Cooperation (NORAD)
- Swedish International Development Cooperation Agency (SIDA)

Other Bilateral Aid Agencies

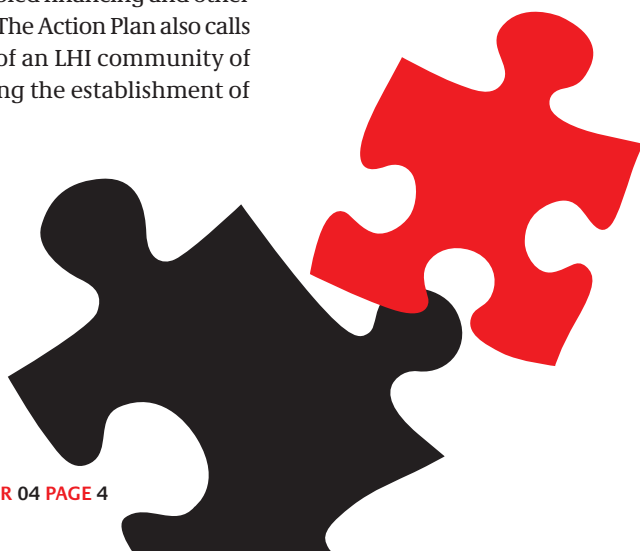
- Australian Agency for International Development (AusAID)
- Canadian International Development Agency (CIDA)
- Federal Ministry for Economic Cooperation and Development (BMZ) of Germany
- Italy (represented by the Permanent Mission of Italy to the UN)
- Japan Bank for International Cooperation (JBIC) and Japan International Cooperation Agency (JICA)
- United States Agency for International Development (USAID) and the Millennium Challenge Corporation (MCC)

European Commission

- EuropeAID

United Nations

- United Nations Development Programme (UNDP)
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- United Nations Children’s Fund (UNICEF)



LEGAL HARMONISATION INITIATIVE ACTION PLAN

LHI GUIDING PRINCIPLES:

- Focus on concrete, practical and innovative solutions
- Rely on light, agile and informal mechanisms; work virtually whenever possible
- Do not duplicate efforts already underway; coordinate with other fora working on similar topics
- Focus on the specific value added that the legal perspective can provide

PRE-ACCRA ACTION POINTS

TOPIC	PRIORITY ISSUE(S)	ACTIVITY	RESPONSIBILITIES
Facilitating Use of Shared Model Documentation in Sectorwide Approaches (SWAs) and other joint operations	Harmonisation of approaches to the use of model documentation in joint operations (including but not limited to SWAs)	Set up rapid response mechanism among senior lawyers and policy advisers in all agencies to facilitate quick resolution of issues re: shared model documentation for joint operations, as well as MDTFs	World Bank / Nordic+ (Coordinators), African Development Bank, AusAID, Japan, [Italy]
		Develop 'zero' draft joint statement of principles for use of shared model documentation for joint operations, and inventory of issues that need to be addressed	
		Begin review of Nordic+ template and sharing of other existing model documentation with LHI participants, based on inventory of issues, with the aim of developing shared model documentation for use in joint operations, with built-in flexibility to accommodate the needs of parties in a wide variety of situations	All LHI Participants
Facilitating Efficient Operations of Multi-donor Trust Funds (MDTFs)	Applicability of policies and procedures	Share Bank-UN Fiduciary Principles Accord (FPA) with other LHI participants; all to review applicability to them	World Bank, UNICEF to distribute; all LHI participants to review
	Entry point issues, decentralization and coordination	Rapid response mechanism (see above)	See above
Organizational issues		Create mechanisms to establish and support the LHI community of practice (e.g., focal points, IT tools) that fit the informal modalities for the LHI's work	World Bank
		Identify and coordinate with other working groups and fora dealing with other harmonisation streams	World Bank Coordinators of each LHI action point

POST-ACCRA ACTION POINTS¹

TOPIC	PRIORITY ISSUE(S)	ACTIVITY	RESPONSIBILITIES
Facilitating Use of Shared Models in SWAps and other joint operations	Harmonisation of approaches to use of model documentation in joint operations (including but not limited to SWAps)	Continue review of existing model documentation. Agree on shared model documentation with built-in flexibility to accommodate the needs of parties in a wide variety of situations, as well as consolidated guidance, including checklist of legal and policy issues and good practices. Consult with partner countries as appropriate	World Bank / Nordic+ (Coordinators), African Development Bank, AusAID, Japan, [Volunteers welcome]
Facilitating Efficient Operations of MDTFs	Role of trustee, flexible application of legal requirements, mutual accountability, donor requirements	Comprehensive identification of legal issues arising in MDTFs (as well as other forms of partnership) as input into work of existing working groups on MDTFs	AusAID [Volunteers welcome]
Facilitating Use of Country Systems (UCS) in Joint Operations	Safeguard harmonisation	Comprehensive legal issue identification re: harmonisation of social and environmental safeguards as input for other working groups working on UCS	IFIs [Volunteers welcome]
Harmonising Approaches to Fraud and Corruption in Operations	Further harmonisation of legal frameworks and practices	Invite legal, integrity and policy functions of IFIs to resume work on harmonisation of legal frameworks and practices regarding fraud and corruption and collaborate with other actors (e.g., UN and bilateral representatives)	
		Undertake 'gap analysis' of legal frameworks of IFIs, bilaterals and UN agencies regarding fraud and corruption; propose priority areas where frameworks and practices could be further harmonised	
	Handling issues of fraud and corruption in joint operations	Develop proposals for handling investigations, sanctioning and contractual remedies in context of pooled financing and other joint financing	
Harmonisation in Private Sector Operations		Ensure involvement of IFIs with private sector mandate in LHI activities where relevant to their operations; IFIs with private sector mandate to indicate when they would like to be involved	
Negative pledge	Harmonisation of negative pledge clauses	Agree on common negative pledge clause	World Bank, Caribbean Development Bank [Volunteers welcome]
Organizational issues		Develop issues notes on cross-cutting themes (e.g., environment, rule of law issues, etc.) for discussion at the Second LHI Roundtable	World Bank [Volunteers welcome]

¹) These action points should begin as soon as possible and be completed in time for review at the Second LHI Roundtable in spring 2009