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Clausen Papers - Multilateral Investment Guarantee Agency [MIGA] -
Correspondence - Volume 3

MIGA
COMMITTEE OF THE WHOLE
Revised Draft Convention
August 8, 1985

CONVENTION ESTABLISHING THE
MULTILATERAL INVESTMENT GUARANTEE AGENCY

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SCHEDULE A: MEMBERSHIP AND SUBSCRIPTIONS

SCHEDULE B: ELECTION OF DIRECTORS

PREAMBLE

The Contracting States

Considering the need to strengthen international cooperation for economic development and to foster the contribution to such development of foreign investment in general and private foreign investment in particular;

Recognizing that the flow of foreign investment to developing countries would be facilitated and further encouraged by alleviating concerns related to non-commercial risks;

Desiring to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their development needs, policies and objectives, on the basis of fair and stable standards for the treatment of foreign investment;

Convinced that the Multilateral Investment Guarantee Agency can play an important role in the encouragement of foreign investment complementing national and regional investment guarantee programs and private insurers of non-commercial risk; and

Realizing that such Agency should, to the extent possible, meet its obligations without resort to its callable capital and that such an objective would be served by continued improvement in investment conditions,

Have Agreed as follows:

Chapter I: ESTABLISHMENT, STATUS, PURPOSES AND DEFINITIONS

Article 1. Establishment and Status of the Agency

(a) There is hereby established the Multilateral Investment Guarantee Agency (hereinafter called the Agency).

(b) The Agency shall possess full juridical personality and, in particular, the capacity to:

(i) contract;

(ii) acquire and dispose of movable and immovable property; and

(iii) institute legal proceedings.

Article 2. Objective and Purposes

The objective of the Agency shall be to encourage the flow of investments for productive purposes among member countries, and in particular to developing member countries, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter referred to as the Bank), the International Finance Corporation and other international development finance institutions.

To serve its objective, the Agency shall:

(a) issue guarantees, including coinsurance and reinsurance, against non-commercial risks in respect of investments in a member country which flow from other member countries;

(b) carry out appropriate complementary activities to promote the flow of investments to and among developing member countries; and

(c) exercise such other incidental powers as shall be necessary or desirable in the furtherance of its objective.

The Agency shall be guided in all its decisions by the provisions of this Article.

Article 3. Definitions

For the purposes of this Convention:

(a) "Member" means a State with respect to which this Convention has entered into force in accordance with Article 67.

(b) "Host country" or "host government" means a member, its government, or any public authority of a member in whose territories, as defined in Article 72, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located.

(c) A "developing member country" means a member which is listed as such in Schedule A hereto as this Schedule may be amended from time to time by the Council of Governors referred to in Article 36 (hereinafter called the Council).

(d) A "special majority" means an affirmative vote of not less than two-thirds of the total voting power representing not less than fifty-five percent of the subscribed shares of the capital stock of the Agency.

(e) A "freely usable currency" means (i) any currency designated as such by the International Monetary Fund from time to time and (ii) any other freely available and effectively usable currency which the Board of Directors referred to in Article 36 (hereinafter called the Board) may designate for the purposes of this Convention after consultation with the International Monetary Fund and with the approval of the country of such currency.

Chapter II: CAPITAL AND MEMBERSHIP

Article 4. Membership

(a) Membership in the Agency shall be open to all members of the Bank and to Switzerland.

(b) Original members shall be the States which are listed in Schedule A hereto and become parties to this Convention on or before October 30, 1987.

Article 5. Capital

(a) The authorized capital stock of the Agency shall be one billion Special Drawing Rights (SDR1,000,000,000). The capital stock shall be divided into 100,000 shares having a par value of SDR10,000 each, which shall be available for subscription by members. All payment obligations of members with respect to capital stock shall be settled on the basis of the average value of the SDR in terms of United States dollars for the period January 1, 1981 to June 30, 1985, such value being 1.082 United States dollars per SDR.

(b) The capital stock shall increase on the admission of a new member to the extent that the then authorized shares are insufficient to provide the shares to be subscribed by such member pursuant to Article 6.

(c) The Council, by special majority, may at any time increase the capital stock of the Agency.

Article 6. Subscription of Shares

Each original member of the Agency shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A

hereto. Each other member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Council, but in no event at an issue price of less than par. No member shall subscribe to less than fifty shares. The Council may prescribe rules by which members may subscribe to additional shares of the authorized capital stock.

Article 7. Division and Calls of Subscribed Capital

The initial subscription of each member shall be paid as follows:

- (i) Within ninety days from the date on which this Convention enters into force with respect to such member, ten percent of the price of each share shall be paid in cash as stipulated in Section (a) of Article 8 and an additional ten percent in the form of non-negotiable, non-interest bearing promissory notes or similar obligations to be encashed pursuant to a decision of the Board in order to meet the Agency's obligations.
- (ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

Article 8. Payment of Subscription of Shares

(a) Payments of subscriptions shall be made in freely usable currencies except that payments by developing member countries may be made in their own currencies up to twenty-five percent of the paid-in cash portion of their subscriptions payable under Article 7(i).

(b) Calls on any portion of unpaid subscriptions shall be uniform on all shares.

(c) If the amount received by the Agency on a call shall be insufficient to meet the obligations which have necessitated the call, the Agency may make further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.

(d) Liability on shares shall be limited to the unpaid portion of the issue price.

Article 9. Valuation of Currencies

Whenever it shall be necessary for the purposes of this Convention to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Agency, after consultation with the International Monetary Fund.

Article 10. Refunds

(a) The Agency shall, as soon as practicable, return to members amounts paid on calls on subscribed capital if and to the extent that:

(i) the call shall have been made to pay a claim resulting from a guarantee or reinsurance contract and thereafter the Agency shall have recovered its payment, in whole or in part, in a freely usable currency; or

(ii) the call shall have been made because of a default in payment by a member and thereafter such member shall have made good such default in whole or in part; or

(iii) the Council, by special majority, determines that the financial position of the Agency permits all or part of such amounts to be returned out of the Agency's revenues.

(b) Any refund effected under this Article to a member shall be made in freely usable currency in the proportion of the payments made by that member to the total amount paid pursuant to calls made prior to such refund.

(c) The equivalent of amounts refunded under this Article to a member shall become part of the callable capital obligations of the member under Article 7 (ii).

Chapter III: THE AGENCY'S OPERATIONS

Article 11. Covered Risks

(a) Subject to the provisions of Sections (b) and (c) below, the Agency may guarantee eligible investments against a loss resulting from one or more of the following types of risk:

(i) Currency Transfer

any introduction attributable to the host government of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee, including a failure of the host government to act within a reasonable period of time on an application by such holder for such transfer;

(ii) Expropriation and Similar Measures

any legislative action or administrative action or omission attributable to the host government which has the effect of

depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with the exception of non-discriminatory measures of general application which governments normally take for the purpose of regulating economic activity in their territories;

(iii) Breach of Contract

any repudiation or breach by the host government of a contract with the holder of a guarantee, when (a) the holder of a guarantee does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach, or (b) a decision by such forum is not rendered within such reasonable period of time as shall be prescribed in the contracts of guarantee pursuant to the Agency's regulations, or (c) such a decision cannot be enforced; and

(iv) War and Civil Disturbance

any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 72.

(b) Upon the joint application of the investor and the host country, the Board, by special majority, may approve the extension of coverage under this Article to specific non-commercial risks other than those referred to in Section (a) above, but in no case to the risk of devaluation or depreciation of currency.

(c) Losses resulting from the following shall not be covered:

- (i) any host government action or omission to which the holder of the guarantee has agreed or for which he has been responsible; and
- (ii) any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

Article 12. Eligible Investments

(a) Eligible investments shall include equity interests, including medium or long term loans made or guaranteed by holders of equity in the enterprise concerned, and such forms of direct investment as may be determined by the Board.

(b) The Board, by special majority, may extend eligibility to any other medium or long term form of investment, except that loans other than those mentioned in Section (a) above may be eligible only if they are related to a specific investment covered or to be covered by the Agency.

(c) Guarantees shall be restricted to economically sound investments which contribute to the development of the host country and the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency. Such investments may include:

- (i) any transfer of foreign exchange made to modernize, expand, or develop an existing investment; and

- (ii) the use of earnings from existing investments which could otherwise be transferred outside the host country.

Article 13. Eligible Investors

(a) Any natural person and any juridical person may be eligible to receive the Agency's guarantee provided that:

- (i) such natural person is a national of a member other than the host country;

- (ii) such juridical person is incorporated and has its principal place of business in a member or the majority of its capital is owned by a member or members or nationals thereof, provided that such member is not the host country in any of the above cases; and

- (iii) such juridical person, whether or not it is privately owned, operates on a commercial basis.

(b) In case the investor has more than one nationality, for the purposes of Section (a) above the nationality of a member shall prevail over the nationality of a non-member, and the nationality of the host country shall prevail over the nationality of any other member.

(c) Upon the joint application of the investor and the host country, the Board, by special majority, may extend eligibility to a natural person who is a national of the host country or a juridical person which is incorporated in the host country or the majority of whose capital is owned by its nationals, provided that the assets invested are transferred from outside the host country.

Article 14. Eligible Host Countries

Investments shall be guaranteed under this Chapter only if they are to be made in the territory of a developing member country.

Article 15. Host Country Approval

The Agency shall not conclude any contract of guarantee before the host government has approved the issuance of the guarantee by the Agency against the risks designated for cover.

Article 16. Terms and Conditions

The terms and conditions of each contract of guarantee shall be determined by the Agency subject to such rules and regulations as the Board shall issue, provided that the Agency shall not cover the total loss of the guaranteed investment. Contracts of guarantee shall be approved by the President under the direction of the Board.

Article 17. Payment of Claims

The President under the direction of the Board shall decide on the payment of claims to a holder of a guarantee in accordance with the contract of guarantee and such policies as the Board may adopt. Contracts of guarantee shall require holders of guarantees to seek, before a payment is made by the Agency, such administrative remedies as may be appropriate under the circumstances, provided that they are readily available to them under the laws of the host country. Such contracts may require the lapse of certain reasonable periods between the occurrence of events giving rise to claims and payments of claims.

Article 18. Subrogation

(a) Upon paying or agreeing to pay compensation to a holder of a guarantee, the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the holder of a guarantee may have had against the host country and other obligors. The contract of guarantee shall provide the terms and conditions of such subrogation.

(b) The rights of the Agency pursuant to Section (a) above shall be recognized by all members.

(c) Amounts in the currency of the host country acquired by the Agency as subrogee pursuant to Section (a) above shall be accorded, with respect to use and conversion, treatment by the host country as favorable as the treatment to which such funds would be entitled in the hands of the holder of the guarantee. In any case, such amounts may be used by the Agency for the payment of its administrative expenditures and other costs. The Agency shall also seek to enter into arrangements with host countries on other uses of such currencies to the extent that they are not freely usable.

Article 19. Relationship to National and Regional Entities

The Agency shall cooperate with, and seek to complement the operations of, national entities of members and regional entities the majority of whose capital is owned by members, which carry out activities similar to those of the Agency, with a view to maximizing both the efficiency of their respective services and their contribution to increased flows of foreign investment. To this end, the Agency may enter into arrangements with such entities on the details of such cooperation, including in particular the modalities of reinsurance and coinsurance.

Article 20. Reinsurance of National and Regional Entities

(a) The Agency may issue reinsurance in respect of a specific investment against a loss resulting from one or more of the non-commercial risks underwritten by a member or agency thereof or by a regional investment guarantee agency the majority of whose capital is owned by members. The Board shall, from time to time, prescribe the maximum amount of contingent liability which may be assumed by the Agency under this Article. Such maximum amount shall initially be set at fifteen percent of the aggregate contingent liability of the Agency under this Chapter. The conditions of eligibility specified in Articles 11 to 14 shall apply to reinsurance operations unless the Board shall decide otherwise, except that the reinsured investments need not be implemented subsequent to the application for reinsurance.

(b) The mutual rights and obligations of the Agency and a reinsured member or agency shall be stated in contracts of reinsurance subject to such rules and regulations of reinsurance as the Board shall issue.

(c) The Agency shall, to the extent possible, include in its contracts of reinsurance provisions whereby the Agency, upon making a payment under the contract of reinsurance or agreeing to do so, shall be subrogated to any rights or claims related to a reinsured investment. The terms and conditions of reinsurance shall require that administrative remedies are sought in accordance with Article 17 before a payment is made by the Agency. Subrogation shall be effective with respect to the host country concerned only after its approval of the reinsurance by the Agency. The Agency shall include in the contracts of reinsurance provisions requiring

the reinsured to pursue with due diligence the rights or claims related to the reinsured investment.

Article 21. Cooperation with Private Insurers and with Reinsurers

(a) The Agency may enter into arrangements with private insurers in member countries to enhance its own operations and encourage such insurers to provide coverage of non-commercial risks in developing member countries on conditions similar to those applied by the Agency. Such arrangements may include the provision of reinsurance by the Agency under the conditions and procedures specified in Article 20.

(b) The Agency may reinsure with any appropriate reinsurance entity, in whole or in part, any guarantee or guarantees issued by it.

(c) The Agency will in particular seek to guarantee investments for which comparable coverage on reasonable terms is not available from private insurers and reinsurers.

Article 22. Limits of Guarantee

(a) Unless determined otherwise by the Council by special majority, the aggregate amount of contingent liabilities which may be assumed by the Agency under this Chapter shall not exceed one hundred and fifty percent of the amount of the Agency's unimpaired subscribed capital and its reserves plus such portion of its reinsurance cover as the Board may determine. The Board shall from time to time review the risk profile of the Agency's portfolio in the light of its experience with claims, degree of risk diversification, reinsurance cover and other relevant factors with a view to ascertaining whether changes in the maximum aggregate amount of contingent liabilities should be recommended to the Council. The maximum amount

determined by the Council shall not under any circumstances exceed five times the amount of the Agency's unimpaired subscribed capital, its reserves and such portion of its reinsurance cover as may be deemed appropriate.

(b) Without prejudice to the general limit of guarantee referred to in Section (a) above, the Board may prescribe:

(i) maximum aggregate amounts of contingent liability which may be assumed by the Agency under this Chapter for all guarantees issued to investors of each individual member. In determining such maximum amounts, the Board shall give due consideration to the share of the respective member in the capital of the Agency and the need to apply more liberal limitations in respect of investments originating in developing member countries; and

(ii) maximum aggregate amounts of contingent liability which may be assumed by the Agency with respect to such risk diversification factors as individual projects, individual host countries and types of investment or risk.

Article 23. Investment Promotion

(a) The Agency shall carry out research and disseminate information on investment opportunities in member countries and in particular in developing member countries, and may, upon the request of a member, provide technical assistance and advice to improve the investment conditions in the territories of that member. In performing these activities, the Agency shall coordinate with other agencies concerned with the promotion of foreign investment, and in particular the International Finance Corporation.

(b) The Agency shall:

(i) encourage the amicable settlement of disputes between investors and host countries;

[(ii) when required, enter with interested members into agreements for the encouragement of flows of capital and technology for productive purposes to developing countries, including agreements with interested host countries on such appropriate standards for the treatment of investments guaranteed by the Agency as would contribute to the improvement of investment conditions. Such agreements shall require the approval of the Board];

or

[(ii) when required, enter into agreements with interested member countries for the encouragement of flows of investments to developing countries, including agreements on the standards of conduct to be followed by foreign investors and the standards for the treatment of foreign investments by host governments. In all cases, such standards shall be fair and equitable. Agreements concluded under this subsection shall apply only to investments guaranteed by the Agency, shall not be less favorable than those otherwise applicable under bilateral investment treaties, and shall require approval of the Board acting by special majority]; and

(iii) promote and facilitate the conclusion of agreements, among its members, on the promotion and protection of investments.

(c) The Agency shall give particular attention in its promotional efforts to the importance of increasing the flow of investments among developing member countries.

Chapter IV: GUARANTEES OF SPONSORED INVESTMENTS

Article 24. Underwriting for Account of Members

In addition to the guarantee operations undertaken by the Agency under Chapter III, the Agency may guarantee investments for the account of members as hereinafter provided.

Article 25. Sponsorship

(a) Any member may sponsor for guarantee an investment to be made by an investor of any nationality or by investors of any or several nationalities.

(b) Subject to the provisions of Sections (b) and (c) of Article 27, each sponsoring member shall share with the other sponsoring members in losses under guarantees of sponsored investments, when and to the extent that such losses cannot be covered out of the Sponsorship Trust Fund referred to in Article 26, in the proportion which the amount of maximum contingent liability under the guarantees of investments sponsored by it bears to the total amount of maximum contingent liability under the guarantees of investments sponsored by all members.

(c) In its decisions on the issuance of guarantees under this Chapter, the Agency shall pay due regard to the prospects that the sponsoring

member will be in a position to meet its obligations under this Chapter and shall give priority to investments which are co-sponsored by the host countries concerned.

(d) The Agency shall periodically consult with sponsoring members with respect to its operations under this Chapter.

Article 26. Sponsorship Trust Fund

(a) Premiums and other revenues attributable to guarantees of sponsored investments, including returns on the investment of such premiums and revenues, shall be held in a separate account which shall be called the Sponsorship Trust Fund.

(b) All administrative expenses and payments on claims attributable to guarantees issued under this Chapter shall be paid out of the Sponsorship Trust Fund.

(c) The assets of the Sponsorship Trust Fund shall be held and administered for the joint account of sponsoring members and shall be kept separate and apart from the assets of the Agency.

Article 27. Calls on Sponsoring Members

(a) To the extent that any amount is payable by the Agency on account of a loss under a sponsored guarantee and such amount cannot be paid out of assets of the Sponsorship Trust Fund, the Agency shall call on each sponsoring member to pay into such Fund its share of such amount as shall be determined in accordance with Section (b) of Article 25.

(b) No member shall be liable to pay any amount on a call pursuant to the provisions of this Article if as a result total payments made by that member will exceed the total amount of guarantees covering investments sponsored by it.

(c) Upon the expiry of any guarantee covering an investment sponsored by a member, the liability of that member shall be decreased by an amount equivalent to the amount of such guarantee; such liability shall also be decreased on a pro rata basis upon payment by the Agency of any claim related to a sponsored investment and shall otherwise continue in effect until the expiry of all guarantees of sponsored investments outstanding at the time of such payment.

(d) If any sponsoring member shall not be liable for an amount of a call pursuant to the provisions of this Article because of the limitation contained in Sections (b) and (c) above, or if any sponsoring member shall default in payment of an amount due in response to any such call, the liability for payment of such amount shall be shared pro rata by the other sponsoring members. Liability of members pursuant to this Section shall be subject to the limitation set forth in Sections (b) and (c) above.

(e) Any payment by a sponsoring member pursuant to a call in accordance with this Article shall be made promptly and in freely usable currency.

Article 28. Valuation of Currencies and Refunds

The provisions on valuation of currencies and refunds contained in this Convention with respect to capital subscriptions shall be applied mutatis mutandis to funds paid by members on account of sponsored investments.

Article 29. Reinsurance

(a) The Agency may, under the conditions set forth in Article 25, provide reinsurance to a member, an agency thereof, a regional agency as

defined in Section (a) of Article 20 or a private insurer in a member country. The provisions of this Chapter concerning guarantees and of Articles 20 and 21 shall be applied mutatis mutandis to reinsurance provided under this Section.

(b) The Agency may obtain reinsurance for investments guaranteed by it under this Chapter and shall meet the cost of such reinsurance out of the Sponsorship Trust Fund. The Board may decide whether and to what extent the loss-sharing obligation of sponsoring members referred to in Section (b) of Article 25 may be reduced on account of the reinsurance cover obtained.

Article 30. Operational Principles

Without prejudice to the provisions of this Chapter, the provisions with respect to guarantee operations under Chapter III and to financial management under Chapter V shall be applied mutatis mutandis to guarantees of sponsored investments except that (i) such investments shall qualify for sponsorship if made in the territories of any member, and in particular of any developing member, by an investor or investors eligible under Section (a) of Article 25 and (ii) the Agency shall not be liable with respect to its own assets for any guarantee or reinsurance issued under this Chapter and each contract of guarantee or reinsurance concluded pursuant to this Chapter shall expressly so provide.

Chapter V: FINANCIAL PROVISIONS

Article 31. Financial Management

The Agency shall carry out its activities in accordance with sound business and prudent financial management practices with a view to

maintaining under all circumstances its ability to meet its financial obligations.

Article 32. Premiums and Fees

The Agency shall establish and periodically review the rates of premiums, fees and other charges, if any, applicable to each type of risk.

Article 33. Allocation of Net Income

(a) Without prejudice to the provisions of Section (a)(iii) of Article 10, the Agency shall allocate net income to reserves until such reserves reach five times the subscribed capital of the Agency.

(b) After the reserves of the Agency have reached the level prescribed in Section (a) above, the Council shall decide whether, and to what extent, the Agency's net income shall be allocated to reserves, be distributed to the Agency's members or be used otherwise. Any distribution of net income to the Agency's members shall be made in proportion to the share of each member in the capital of the Agency in accordance with a decision of the Council acting by special majority.

Article 34. Budget

The President shall prepare an annual budget of revenues and expenditures of the Agency for approval by the Board.

Article 35. Accounts

The Agency shall publish an Annual Report which shall include statements of its accounts and of the accounts of the Sponsorship Trust Fund, as audited by independent auditors. The Agency shall circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

Chapter VI: ORGANIZATION AND MANAGEMENT

Article 36. Structure of the Agency

The Agency shall have a Council of Governors, a Board of Directors, a President and staff to perform such duties as the Agency may determine.

Article 37. The Council

(a) All the powers of the Agency shall be vested in the Council, except such powers as are, by the terms of this Convention, specifically conferred upon another organ of the Agency. The Council may delegate to the Board the exercise of any of its powers, except the power to:

- (i) admit new members and determine the conditions of their admission;
- (ii) suspend a member;
- (iii) decide on any increase or decrease in the capital;
- (iv) increase the limit of the aggregate amount of contingent liabilities pursuant to Section (a) of Article 22;
- (v) designate a member as a developing member country pursuant to Section (c) of Article 3;
- (vi) classify a new member as belonging to Category One or Category Two for voting purposes pursuant to Section (a) of Article 45 or reclassify an existing member for the same purposes;
- (vii) determine the compensation of Directors and their Alternates;
- (viii) cease operations and liquidate the Agency;
- (ix) distribute assets to members upon liquidation; and

(x) amend this Convention, its Annex and Schedules.

(b) The Council shall be composed of one Governor and one Alternate appointed by each member in such manner as it may determine. No Alternate may vote except in the absence of his principal. The Council shall select one of the Governors as Chairman.

(c) The Council shall hold an annual meeting and such other meetings as may be determined by the Council or called by the Board. The Board shall call a meeting of the Council whenever requested by five members or by members having twenty-five percent of the total voting power.

Article 38. The Board

(a) The Board shall be responsible for the general operations of the Agency and shall take, in the fulfillment of this responsibility, any action required or permitted under this Convention.

(b) The Board shall consist of not less than twelve Directors. The number of Directors may be adjusted by the Council to take into account changes in membership. Each Director may appoint an Alternate with full power to act for him in case of the Director's absence or inability to act. The President of the Bank shall be ex officio Chairman of the Board, but shall have no vote except a deciding vote in case of an equal division.

(c) The Council shall determine the term of office of the Directors. The first Board shall be constituted by the Council at its inaugural meeting.

(d) The Board shall meet at the call of its Chairman acting on his own initiative or upon request of three Directors.

(e) Until such time as the Council may decide that the Agency shall have a resident Board which functions in continuous session, the Directors and Alternates shall receive compensation only for the cost of attendance at the meetings of the Board and the discharge of other official functions on behalf of the Agency. Upon the establishment of a Board in continuous session, the Directors and Alternates shall receive such remuneration as may be determined by the Council.

Article 39. President and Staff

(a) The President shall, under the general control of the Board, conduct the ordinary business of the Agency. He shall be responsible for the organization, appointment and dismissal of the staff.

(b) The President shall be appointed by the Board on the nomination of its Chairman. The Council shall determine the salary and terms of the contract of service of the President.

(c) In the discharge of their offices, the President and the staff owe their duty entirely to the Agency and to no other authority. Each member of the Agency shall respect the international character of this duty and shall refrain from all attempts to influence the President or the staff in the discharge of their duties.

(d) In appointing the staff, the President shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

(e) The President and staff shall maintain at all times the confidentiality of information obtained in carrying out the Agency's operations.

Article 40. Political Activity Prohibited

The Agency, its President and staff shall not interfere in the political affairs of any member. Without prejudice to the right of the Agency to take into account all the circumstances surrounding an investment, they shall not be influenced in their decisions by the political character of the member or members concerned. Considerations relevant to their decisions shall be weighed impartially in order to achieve the purposes stated in Article 2.

Article 41. Relations with International Organizations

The Agency shall, within the terms of this Convention, cooperate with the United Nations and with other intergovernmental organizations having specialized responsibilities in related fields, including in particular the Bank and the International Finance Corporation.

Article 42. Location of Principal Office

(a) The principal office of the Agency shall be located in Washington, D.C., unless the Council, by special majority, decides to establish it in another location.

(b) The Agency may establish other offices as may be necessary for its work.

Article 43. Depositories for Assets

Each member shall designate its central bank as a depository in which the Agency may keep holdings of such member's currency or other assets of the Agency or, if it has no central bank, it shall designate for such purpose such other institution as may be acceptable to the Agency.

Article 44. Channel of Communication

(a) Each member shall designate an appropriate authority with which the Agency may communicate in connection with any matter arising under this Convention. The Agency may rely on statements of such authority as being statements of the member. The Agency, upon the request of a member, shall consult with that member with respect to matters dealt with in Articles 19 to 21 and related to entities or insurers of that member.

(b) Whenever the approval of any member is required before any act may be done by the Agency, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Agency may fix in notifying the member of the proposed act.

Chapter VII. VOTING, ADJUSTMENTS OF SUBSCRIPTIONS AND REPRESENTATION

Article 45. Voting and Adjustments of Subscriptions

(a) In order to provide for voting arrangements that reflect the equal interest in the Agency of the two Categories of States listed in Schedule A of this Convention, as well as the importance of each member's financial participation, each member shall have _____ membership votes* plus one subscription vote for each share of stock held by that member.

(b) For decisions relating to sponsored investments, each sponsoring member shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured on the basis of its sponsorship, and each member hosting a sponsored investment shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the

* The number of membership votes to be allocated on an equal basis to all members shall be determined upon the finalization of Schedule A.

amount guaranteed or reinsured with respect to any sponsored investment hosted by it. Such additional votes shall be cast only for decisions related to sponsored investments and shall otherwise be disregarded in determining the voting power of members.

(c) If at any time within five years after the entry into force of this Convention the aggregate sum of membership and subscription votes of members which belong to either of the two Categories of States listed in Schedule A of this Convention is less than forty percent of the total voting power, members from such a Category shall have such number of supplementary votes as shall be necessary for the aggregate voting power of the Category to equal such a percentage of the total voting power. Such supplementary votes shall be distributed among the members of such Category in the proportion that the subscription votes of each bears to the aggregate of subscription votes of the Category. Such supplementary votes shall be subject to automatic adjustment to ensure that such percentage is maintained.

(d) During the fifth year following the entry into force of this Convention, the Council shall review the allocation of shares and shall be guided in its decision by the following principles:

- (i) the votes of members shall reflect actual subscriptions to the Agency's capital and the membership votes as set out in Section (a) of this Article;
- (ii) shares allocated to countries which shall not have signed the Convention may be reallocated to such members and in such manner

as to make possible voting parity between the above-mentioned Categories; and

(iii) the Council will take measures that will facilitate members' ability to subscribe to shares allocated to them.

(e) Within the five-year period provided for in Section (c) of this Article, all decisions of the Council and Board shall be taken by special majority, except that decisions requiring a higher majority under this Convention shall be taken by such higher majority.

(f) In case the capital stock of the Agency is increased pursuant to Section (c) of Article 5, each member which so requests shall be authorized to subscribe a proportion of the increase equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Agency, but no member shall be obligated to subscribe any part of the increased capital.

(g) The Council shall issue regulations regarding the making of additional subscriptions under Section (f) of this Article. Such regulations shall prescribe reasonable time limits for the submission by members of requests to make such subscriptions.

Article 46. Voting in the Council

(a) Each Governor shall be entitled to cast the votes of the member he represents. Except as otherwise specified in this Convention, decisions of the Council shall be taken by a majority of the votes cast.

(b) A quorum for any meeting of the Council shall be constituted by a majority of the Governors, exercising not less than two-thirds of the total voting power.

(c) The Council may by regulation establish a procedure whereby the Board, when it deems such action to be in the best interests of the Agency, may request a decision of the Council on a specific question without calling a meeting of the Council.

Article 47. Election of Directors

(a) Directors shall be elected in accordance with Schedule B.

(b) Directors shall continue in office until their successors are elected. If the office of a Director becomes vacant more than ninety days before the end of his term, another Director shall be elected for the remainder of the term by the Governors who elected the former Director. A majority of the votes cast shall be required for election. While the office remains vacant, the Alternate of the former Director shall exercise his powers, except that of appointing an Alternate.

Article 48. Voting in the Board

(a) Each Director shall be entitled to cast the number of votes of the members whose votes counted towards his election. All the votes which a Director is entitled to cast shall be cast as a unit. Except as otherwise specified in this Convention, decisions of the Board shall be taken by a majority of the votes cast.

(b) A quorum for a meeting of the Board shall be constituted by a majority of the Directors, exercising not less than one-half of the total voting power.

(c) The Board may by regulation establish a procedure whereby its Chairman, when he deems such action to be in the best interests of the

Agency, may request a decision of the Board on a specific question without calling a meeting of the Board.

Chapter VIII: PRIVILEGES AND IMMUNITIES

Article 49. Purposes of Chapter

To enable the Agency to fulfill its functions, the immunities and privileges set forth in this Chapter shall be accorded to the Agency in the territories of each member.

Article 50. Legal Process

Actions other than those within the scope of Articles 63 and 64 may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Agency shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Agency shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Agency.

Article 51. Assets

(a) The property and assets of the Agency, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

(b) To the extent necessary to carry out its operations under this Convention, all property and assets of the Agency shall be free from restrictions, regulations, controls and moratoria of any nature; provided that property and assets acquired by the Agency as successor to or subrogee of a holder of a guarantee, a reinsured entity or an investor insured by a reinsured entity shall be free from applicable foreign exchange restrictions, regulations and controls in force in the territories of the member concerned to the extent that the holder, entity or investor to whom the Agency was subrogated was entitled to such treatment.

(c) For purposes of this Chapter, the term "assets" shall include the assets of the Sponsorship Trust Fund and other assets administered by the Agency in furtherance of its objective.

Article 52. Archives and Communications

(a) The archives of the Agency shall be inviolable, wherever they may be.

(b) The official communications of the Agency shall be accorded by each member the same treatment that is accorded to the official communications of the Bank.

Article 53. Taxes

(a) The Agency, its assets, property and income, and its operations and transactions authorized by this Convention, shall be immune from all taxes and customs duties. The Agency shall also be immune from liability for the collection or payment of any tax or duty.

(b) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Agency to Governors and their Alternates or on or in respect of salaries, expense allowances or other emoluments paid by the Agency to the Chairman of the Board, Directors, their Alternates, the President or staff of the Agency.

(c) No taxation of any kind shall be levied on any investment guaranteed or reinsured by the Agency (including any earnings therefrom) or any insurance policies reinsured by the Agency (including any premiums and other revenues therefrom) by whomsoever held: (i) which discriminates against such investment or insurance policy solely because it is guaranteed or reinsured by the Agency; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Agency.

Article 54. Officials of the Agency

All Governors, Directors, Alternates, the President and staff of the Agency:

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange restrictions as are accorded by the members concerned to the representatives, officials and employees of comparable rank of other members; and

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by the members concerned to representatives, officials and employees of comparable rank of other members.

Article 55. Application of this Chapter

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Chapter and shall inform the Agency of the detailed action which it has taken.

Article 56. Waiver

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Agency and may be waived, to such extent and upon such conditions as the Agency may determine, in cases where such a waiver would not prejudice its interests. The Agency shall waive the immunity of any of its staff in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency.

**Chapter IX: WITHDRAWAL; SUSPENSION OF MEMBERSHIP;
CESSATION OF OPERATIONS**

Article 57. Withdrawal

Any member may, after the expiration of three years following the date upon which this Convention has entered into force with respect to such member, withdraw from the Agency at any time by giving notice in writing to

the Agency at its principal office. The Agency shall notify the Bank, as depository of this Convention, of the receipt of such notice. Any withdrawal shall become effective ninety days following the date of the receipt of such notice by the Agency. A member may revoke such notice as long as it has not become effective.

Article 58. Suspension of Membership

(a) If a member fails to fulfill any of its obligations under this Convention, the Council may, by a majority of its members exercising a majority of the total voting power, suspend its membership.

(b) While under suspension a member shall have no rights under this Convention, except for the right of withdrawal and other rights provided in this Chapter and Chapter X, but shall remain subject to all its obligations.

(c) For purposes of determining eligibility for a guarantee or reinsurance to be issued under Articles 13, 14, 20, 21(a), 25(a) or 29(a), a suspended member shall not be treated as a member of the Agency.

(d) The suspended member shall automatically cease to be a member one year from the date of its suspension unless the Council decides to extend the period of suspension or to restore the member to good standing.

Article 59. Rights and Duties of States Ceasing to be Members

(a) When a State ceases to be a member, it shall remain liable for all its obligations, including its contingent obligations, under this Convention which shall have been in effect before the cessation of its membership.

(b) Without prejudice to Section (a) above, the Agency shall enter into an arrangement with such State for the settlement of their respective claims and obligations. Any such arrangement shall be approved by the Board.

Article 60. Suspension of Operations

(a) The Board may, whenever it deems it justified, suspend the issuance of new guarantees for a specified period.

(b) In an emergency, the Board may suspend all activities of the Agency for a period not exceeding the duration of such emergency, provided that necessary arrangements shall be made for the protection of the interests of the Agency and of third parties.

(c) The decision to suspend operations shall have no effect on the obligations of the members under this Convention or on the obligations of the Agency towards holders of a guarantee or reinsurance policy or towards third parties.

Article 61. Liquidation

(a) The Council, by special majority, may decide to cease operations and to liquidate the Agency. Thereupon the Agency shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of assets and settlement of obligations. Until final settlement and distribution of assets, the Agency shall remain in existence and all rights and obligations of members under this Convention shall continue unimpaired.

(b) No distribution of assets shall be made to members until all liabilities to holders of guarantees and other creditors shall have been dis-

charged or provided for and until the Council shall have decided to make such distribution.

(c) Subject to the foregoing, the Agency shall distribute its remaining assets to members in proportion to each member's share in the subscribed capital. The Agency shall also distribute any remaining assets of the Sponsorship Trust Fund to sponsoring members in the proportion which the investments sponsored by each bears to the total of sponsored investments. No member shall be entitled to its share in the assets of the Agency or the Sponsorship Trust Fund unless that member has settled all outstanding claims by the Agency against it. Every distribution of assets shall be made at such times as the Council shall determine and in such manner as it shall deem fair and equitable.

Chapter X: SETTLEMENT OF DISPUTES

Article 62. Interpretation and Application of the Convention

(a) Any question of interpretation or application of the provisions of this Convention arising between any member of the Agency and the Agency or among members of the Agency shall be submitted to the Board for its decision. Any member which is particularly affected by the question and which is not otherwise represented by a national in the Board may send a representative to attend any meeting of the Board at which such question is considered.

(b) In any case where the Board has given a decision under Section (a) above, any member may require that the question be referred to the

Council, whose decision shall be final. Pending the result of the referral to the Council, the Agency may, so far as it deems necessary, act on the basis of the decision of the Board.

Article 63. Disputes between the Agency and Members

(a) Without prejudice to the provisions of Article 62 and of Section (b) of this Article, any dispute between the Agency and a member or an agency thereof and any dispute between the Agency and a country (or agency thereof) which has ceased to be a member, shall be settled in accordance with the procedure set out in the Annex to this Convention.

(b) Disputes concerning claims of the Agency acting as subrogee of an investor shall be settled in accordance with either (i) the procedure set out in the Annex to this Convention, or (ii) an agreement to be entered into between the Agency and the member concerned on an alternative method or methods for the settlement of such disputes. In the latter case, the Annex to this Convention shall serve as a basis for such an agreement which shall, in each case, be approved by the Board by special majority prior to the undertaking by the Agency of operations in the territories of the member concerned.

Article 64. Disputes Involving Holders of a Guarantee or Reinsurance

Any dispute arising under a contract of guarantee or reinsurance between the parties thereto shall be submitted to arbitration for final determination in accordance with such rules as shall be provided for or referred to in the contract of guarantee or reinsurance.

Chapter XI: AMENDMENTS

Article 65. Amendment by Council

(a) This Convention and its Annex may be amended by vote of three-fifths of the Governors exercising four-fifths of the total voting power, provided that:

- (i) any amendment modifying the right to withdraw from the Agency provided in Article 57 or the limitation on liability provided in Section (d) of Article 8 shall require the affirmative vote of all Governors; and
- (ii) any amendment modifying the loss-sharing arrangement provided in Articles 25 and 27 which will result in an increase in any member's liability thereunder shall require the affirmative vote of the Governor of each such member.

(b) Schedules A and B to this Convention may be amended by the Council by special majority.

(c) If an amendment affects any provision of Chapter IV, total votes shall include the additional votes allotted under Section (b) of Article 45 to sponsoring members and countries hosting sponsored investments.

Article 66. Procedure

Any proposal to amend this Convention, whether emanating from a member or a Governor or a Director, shall be communicated to the Chairman of the Board who shall bring the proposal before the Board. If the proposed amendment is recommended by the Board, it shall be submitted to the Council for approval in accordance with Article 65. When an amendment has

been duly approved by the Council, the Agency shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Council shall specify a different date.

Chapter XII: FINAL PROVISIONS

Article 67. Entry into Force

(a) This Convention shall be open for signature on behalf of all members of the Bank and Switzerland and shall be subject to ratification, acceptance or approval by the signatory States in accordance with their constitutional procedures.

(b) This Convention shall enter into force on the day when not less than five instruments of ratification, acceptance or approval shall have been deposited on behalf of signatory States in Category One, and not less than fifteen such instruments shall have been deposited on behalf of signatory States in Category Two; provided that total subscriptions of these States amount to not less than one-third of the authorized capital of the Agency as prescribed in Article 5.

(c) For each State which deposits its instrument of ratification, acceptance or approval after this Convention shall have entered into force, this Convention shall enter into force on the date of such deposit.

(d) If this Convention shall not have entered into force within two years after its opening for signature, the President of the Bank shall

convene a conference of interested countries to determine the future course of action.

Article 68. Inaugural Meeting

Upon entry into force of this Convention, the President of the Bank shall call the inaugural meeting of the Council. This meeting shall be held at the principal office of the Agency within sixty days from the date on which this Convention has entered into force or as soon as practicable thereafter.

Article 69. Depository

Instruments of ratification, acceptance or approval of this Convention and amendments thereto shall be deposited with the Bank which shall act as the depository of this Convention. The depository shall transmit certified copies of this Convention to States members of the Bank and to Switzerland.

Article 70. Registration

The depository shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 71. Notification

The depository shall notify all signatory States and, upon the entry into force of this Convention, the Agency of the following:

- (a) signatures of this Convention;

(b) deposits of instruments of ratification, acceptance and approval in accordance with Article 69;

(c) the date on which this Convention enters into force in accordance with Article 67;

(d) exclusions from territorial application pursuant to Article 72; and

(e) withdrawal of a member from the Agency pursuant to Article 57.

Article 72. Territorial Application

This Convention shall apply to all territories under the jurisdiction of a member including the territories for whose international relations a member is responsible, except those which are excluded by such member by written notice to the depository of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 73. Periodic Reviews

(a) The Council shall periodically undertake comprehensive reviews of the activities of the Agency as well as the results achieved with a view to introducing any changes required to enhance the Agency's ability to serve its objectives.

(b) The first such review shall take place five years after the entry into force of this Convention. The dates of subsequent reviews shall be determined by the Council.

DONE at _____, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfill the functions with which it is charged under this Convention.

ANNEX ON THE SETTLEMENT OF DISPUTES BETWEEN
A MEMBER AND THE AGENCY UNDER ARTICLE 63

Article 1. Application of the Annex

All disputes within the scope of Article 63 of this Convention shall be settled in accordance with the procedure set out in this Annex, except in the cases where the Agency has entered into an agreement with a member pursuant to Section (b)(ii) of Article 63.

Article 2. Negotiation

The parties to a dispute within the scope of this Annex shall attempt to settle such dispute by negotiation before seeking conciliation or arbitration. Negotiations shall be deemed to have been exhausted if the parties fail to reach a settlement within a period of one hundred and twenty days from the date of the request to enter into negotiation.

Article 3. Conciliation

(a) If the dispute is not resolved through negotiation, either party may submit the dispute to arbitration in accordance with the provisions of Article 4 of this Annex, unless the parties, by mutual consent, have decided to resort first to the conciliation procedure provided for in this Article.

(b) The agreement for recourse to conciliation shall specify the matter in dispute, the claims of the parties in respect thereof and, if available, the name of the conciliator agreed upon by the parties. In the absence of agreement on the conciliator, the parties may jointly request

either the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter called ICSID) or the President of the International Court of Justice to appoint a conciliator. The conciliation procedure shall terminate if the conciliator has not been appointed within ninety days after the agreement for recourse to conciliation.

(c) Unless otherwise provided in this Annex or agreed upon by the parties, the conciliator shall determine the rules governing the conciliation procedure and shall be guided in this regard by the conciliation rules adopted pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(d) The parties shall cooperate in good faith with the conciliator and shall, in particular, provide him with all information and documentation which would assist him in the discharge of his functions; they shall give their most serious consideration to his recommendations.

(e) Unless otherwise agreed upon by the parties, the conciliator shall, within a period not exceeding one hundred and eighty days from the date of his appointment, submit to the parties a report recording the results of his efforts and setting out the issues controversial between the parties and his proposals for their settlement.

(f) Each party shall, within sixty days from the date of the receipt of the report, express in writing its views on the report to the other party.

(g) Neither party to a conciliation proceeding shall be entitled to have recourse to arbitration unless:

- (i) the conciliator shall have failed to submit his report within the period established in Section (e) above; or
- (ii) the parties shall have failed to accept all of the proposals contained in the report within sixty days after its receipt; or
- (iii) the parties, after an exchange of views on the report, shall have failed to agree on a settlement of all controversial issues within sixty days after receipt of the conciliator's report; or
- (iv) a party shall have failed to express its views on the report as prescribed in Section (f) above.

(h) Unless the parties agree otherwise, the fees of the conciliator shall be determined on the basis of the rates applicable to ICSID conciliation. These fees and the other costs of the conciliation proceedings shall be borne equally by the parties. Each party shall defray its own expenses.

Article 4. Arbitration

(a) Arbitration proceedings shall be instituted by means of a notice by the party seeking arbitration (the claimant) addressed to the other party or parties to the dispute (the respondent). The notice shall specify the nature of the dispute, the relief sought and the name of the arbitrator appointed by the claimant. The respondent shall, within thirty days after the date of receipt of the notice, notify the claimant of the name of the arbitrator appointed by it. The two parties shall, within a period of thirty days from the date of

appointment of the second arbitrator, select a third arbitrator, who shall act as President of the Arbitral Tribunal (the Tribunal).

(b) If the Tribunal shall not have been constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President not yet selected shall be appointed, at the joint request of the parties, by the Secretary-General of ICSID. If there is no such joint request, or if the Secretary-General shall fail to make the appointment within thirty days of the request, either party may request the President of the International Court of Justice to make the appointment.

(c) No party shall have the right to change the arbitrator appointed by it once the hearing of the dispute has commenced. In case any arbitrator (including the President of the Tribunal) shall resign, die, or become incapacitated, a successor shall be appointed in the manner followed in the appointment of his predecessor and such successor shall have the same powers and duties of the arbitrator he succeeds.

(d) The Tribunal shall convene first at such time and place as shall be determined by the President. Thereafter, the Tribunal shall determine the place and dates of its meetings.

(e) Unless otherwise provided in this Annex or agreed upon by the parties, the Tribunal shall determine its procedure and shall be guided in this regard by the arbitration rules adopted pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(f) The Tribunal shall be the judge of its own competence except that, if an objection is raised before the Tribunal to the effect that the

dispute falls within the jurisdiction of the Board or the Council under Article 62 or within the jurisdiction of a judicial or arbitral body designated in an agreement under Article 1 of this Annex and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board or the Council or the designated body, as the case may be, and the arbitration proceedings shall be stayed until a decision has been reached on the matter, which shall be binding upon the Tribunal.

(g) The Tribunal shall, in any dispute within the scope of this Annex, apply the provisions of this Convention, any relevant agreement between the parties to the dispute, the Agency's by-laws and regulations, the applicable rules of international law, the domestic law of the member concerned as well as the applicable provisions of the investment contract, if any. Without prejudice to the provisions of this Convention, the Tribunal may decide a dispute ex aequo et bono if the Agency and the member concerned so agree. The Tribunal may not bring a finding of non liquet on the ground of silence or obscurity of the law.

(h) The Tribunal shall afford a fair hearing to all the parties. All decisions of the Tribunal shall be taken by a majority vote and shall state the reasons on which they are based. The award of the Tribunal shall be in writing, and shall be signed by at least two arbitrators and a copy thereof shall be transmitted to each party. The award shall be final and binding upon the parties and shall not be subject to appeal, annulment or revision.

(i) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may, within sixty days after the award was rendered, request interpretation of the award by an application in writing to the President of the Tribunal which rendered the award. The President shall, if possible, submit the request to the Tribunal which rendered the award and shall convene such Tribunal within sixty days after receipt of the application. If this shall not be possible, a new Tribunal shall be constituted in accordance with the provisions of Sections (a) to (d) above. The Tribunal may stay enforcement of the award pending its decision on the requested interpretation.

(j) Each member shall recognize an award rendered pursuant to this Article as binding and enforceable within its territories as if it were a final judgment of a court in that member. Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought and shall not derogate from the law in force relating to immunity from execution.

(k) Unless the parties shall agree otherwise, the fees and remuneration payable to the arbitrators shall be determined on the basis of the rates applicable to ICSID arbitration.

Each party shall defray its own costs associated with the arbitration proceedings. The costs of the Tribunal shall be borne by the parties in equal proportion unless the Tribunal decides otherwise. Any question concerning the division of the costs of the Tribunal or the procedure for payment of such costs shall be decided by the Tribunal.

Article 5. Service of Process

Service of any notice or process in connection with any proceeding under this Annex shall be made in writing. It shall be made by the Agency upon the authority designated by the member concerned pursuant to Article 44 of this Convention and by that member at the principal office of the Agency.

SCHEDULE A: MEMBERSHIP AND SUBSCRIPTIONS

<u>Country</u>	<u>CATEGORY ONE</u>	
	<u>Number of Shares</u>	<u>Subscription</u> (millions of SDR)
Australia	1713	17.13
Austria	775	7.75
Belgium	2030	20.30
Canada	2965	29.65
Denmark	718	7.18
Finland	600	6.00
France	4860	48.60
Germany, Federal Republic of	5071	50.71
Iceland	90	0.90
Ireland	369	3.69
Italy	2820	28.20
Japan	5095	50.95
Luxembourg	116	1.16
Netherlands	2169	21.69
New Zealand	513	5.13
Norway	699	6.99
South Africa	943	9.43
Sweden	1049	10.49
Switzerland	1500	15.00
United Kingdom	4860	48.60
United States	20519	205.19
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	59,473	594.73

* Countries listed under Category Two are developing member countries for the purpose of this Convention.

CATEGORY TWO */

<u>Country</u>	<u>Number of Shares</u>	<u>Subscription</u> (millions of SDR)
Afghanistan	118	1.18
Algeria	649	6.49
Antigua and Barbuda	50	0.50
Argentina	1254	12.54
Bahamas	100	1.00
Bahrain	77	0.77
Bangladesh	340	3.40
Barbados	68	0.68
Belize	50	0.50
Benin	61	0.61
Bhutan	50	0.50
Bolivia	125	1.25
Botswana	50	0.50
Brazil	1479	14.79
Burkina Faso	61	0.61
Burma	178	1.78
Burundi	74	0.74
Cameroon	107	1.07
Cape Verde	50	0.50
Central African Republic	60	0.60
Chad	60	0.60
Chile	485	4.85
China	3138	31.38
Colombia	437	4.37
Comoros	50	0.50
Congo, People's Rep. of the	65	0.65
Costa Rica	117	1.17
Cyprus	104	1.04
Djibouti	50	0.50
Dominica	50	0.50
Dominican Republic	147	1.47
Ecuador	182	1.82
Egypt, Arab Republic of	459	4.59
El Salvador	122	1.22
Equatorial Guinea	50	0.50
Ethiopia	70	0.70
Fiji	71	0.71

* Countries listed under Category Two are developing member countries for the purposes of this Convention.

CATEGORY TWO

<u>Country</u>	<u>Number of Shares</u>	<u>Subscription</u> (millions of SDR)
Gabon	96	0.96
Gambia, The	50	0.50
Ghana	245	2.45
Greece	280	2.80
Grenada	50	0.50
Guatemala	140	1.40
Guinea	91	0.91
Guinea-Bissau	50	0.50
Guyana	84	0.84
Haiti	75	0.75
Honduras	101	1.01
Hungary	564	5.64
India	3048	30.48
Indonesia	1049	10.49
Iran, Islamic Republic of	1659	16.59
Iraq	350	3.50
Israel	474	4.74
Ivory Coast	176	1.76
Jamaica	181	1.81
Jordan	97	0.97
Kampuchea, Democratic	93	0.93
Kenya	172	1.72
Korea, Republic of	449	4.49
Kuwait	930	9.30
Lao People's Dem. Rep.	60	0.60
Lebanon	142	1.42
Lesotho	50	0.50
Liberia	84	0.84
Libya	549	5.49
Madagascar	100	1.00
Malawi	77	0.77
Malaysia	579	5.79
Maldives	50	0.50
Mali	81	0.81
Malta	75	0.75

CATEGORY TWO

<u>Country</u>	<u>Number of Shares</u>	<u>Subscription</u> (millions of SDR)
Mauritania	63	0.63
Mauritius	87	0.87
Mexico	1192	11.92
Morocco	348	3.48
Mozambique	97	0.97
Nepal	69	0.69
Nicaragua	102	1.02
Niger	62	0.62
Nigeria	844	8.44
Oman	94	0.94
Pakistan	660	6.60
Panama	131	1.31
Papua New Guinea	96	0.96
Paraguay	80	0.80
Peru	373	3.73
Philippines	484	4.84
Portugal	382	3.82
Qatar	137	1.37
Romania	555	5.55
Rwanda	75	0.75
St. Christopher and Nevis	50	0.50
St. Lucia	50	0.50
St. Vincent	50	0.50
Sao Tome and Principe	50	0.50
Saudi Arabia	3137	31.37
Senegal	145	1.45
Seychelles	50	0.50
Sierra Leone	75	0.75
Singapore	154	1.54
Solomon Islands	50	0.50
Somalia	78	0.78
Spain	1285	12.85
Sri Lanka	271	2.71
Sudan	206	2.06
Suriname	82	0.82
Syrian Arab Republic	168	1.68
Swaziland	58	0.58
Tanzania	141	1.41
Thailand	421	4.21
Togo	77	0.77
Trinidad & Tobago	203	2.03

CATEGORY TWO

<u>Country</u>	<u>Number of Shares</u>	<u>Subscription</u> (millions of SDR)
Tunisia	156	1.56
Turkey	462	4.62
United Arab Emirates	372	3.72
Uganda	132	1.32
Uruguay	202	2.02
Vanuatu	50	0.50
Venezuela	1427	14.27
Viet Nam	220	2.20
Western Samoa	50	0.50
Yugoslavia	635	6.35
Yemen, Arab Republic	67	0.67
Yemen, People's Dem. Rep. of	115	1.15
Zaire	338	3.38
Zambia	318	3.18
Zimbabwe	236	2.36
	<u>40,527</u>	<u>405.27</u>
Total	100,000	1000.00

SCHEDULE B: ELECTION OF DIRECTORS

1. Candidates for the office of Director shall be nominated by the Governors, provided that a Governor may nominate only one person.
2. The election of Directors shall be by ballot of the Governors.
3. In balloting for the Directors, every Governor shall cast for one candidate all the votes which the member represented by him is entitled to cast under Section (a) of Article 46.
4. One-fourth of the number of Directors shall be elected separately, one by each of the Governors of members having the largest number of shares. If the total number of Directors is not divisible by four, the number of Directors so elected shall be one-fourth of the next lower number that is divisible by four.
5. The remaining Directors shall be elected by the other Governors in accordance with the provisions of paragraphs 6 to 11 of this Schedule.
6. If the number of candidates nominated equals the number of such remaining Directors to be elected, all the candidates shall be elected in the first ballot; except that a candidate or candidates having received less than the minimum percentage of total votes determined by the Council for such election shall not be elected if any candidate shall have received more than the maximum percentage of total votes determined by the Council.
7. If the number of candidates nominated exceeds the number of such remaining Directors to be elected, the candidates receiving the largest number of votes shall be elected with the exception of any candidate who has received less than the minimum percentage of the total votes determined by the Council.

8. If all of such remaining Directors are not elected in the first ballot, a second ballot shall be held. The candidate or candidates not elected in the first ballot shall again be eligible for election.

9. In the second ballot, voting shall be limited to (i) those Governors having voted in the first ballot for a candidate not elected and (ii) those Governors having voted in the first ballot for an elected candidate who had already received the maximum percentage of total votes determined by the Council before taking their votes into account.

10. In determining when an elected candidate has received more than the maximum percentage of the votes, the votes of the Governor casting the largest number of votes for such candidate shall be counted first, then the votes of the Governor casting the next largest number, and so on until such percentage is reached.

11. If not all the remaining Directors have been elected after the second ballot, further ballots shall be held on the same principles until all the remaining Directors are elected, provided that when only one Director remains to be elected, this Director may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.



Record Removal Notice

File Title Clausen Papers - Multilateral Investment Guarantee Agency [MIGA] - Correspondence - Volume 3		Barcode No. 1774264		
Document Date July 25, 1985	Document Type Telexes			
Correspondents / Participants Fr: Shihata To: Clausen and Dr. Muenzberg, Executive Director				
Subject / Title Draft convention				
Exception(s) Attorney-Client Privilege				
Additional Comments		<p>The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.</p> <table border="1"><tr><td>Withdrawn by Ann May</td><td>Date November 03, 2021</td></tr></table>	Withdrawn by Ann May	Date November 03, 2021
Withdrawn by Ann May	Date November 03, 2021			

OCDE

ORGANISATION DE COOPÉRATION
ET DE DÉVELOPPEMENT ÉCONOMIQUES

Téléphone : 524 82.00

Télégrammes : DEVELOPECONOMIE
Télex : 620160 OCDE PARIS

Le Secrétaire général
The Secretary-General
JCP/85.134

181

OECD

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

2, rue André-Pascal
75775 PARIS CEDEX 16

20th March, 1985

Dear Dr. Shihata,

Thank you for your letter of 11th March, 1985, with the draft text of a Convention Establishing the Multilateral Guarantee Agency.

We will continue to work with you and lend support to your efforts to promote international investments including the establishment of such an Agency. I look forward with interest to hearing about the further developments.

Yours sincerely,

J.C. Paye

Dr. Ibrahim F.I. Shihata,
Vice-President and General Counsel,
The World Bank,
Washington, D.C. 20433.

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

March 15, 1985

Dear Governor:


I have had the opportunity to see your telex of February 21, 1985, to Mr. Gutierrez-Castro expressing your support for the Bank's initiative to establish a Multilateral Investment Guarantee Agency. I want you to know how very gratified I am with the position Colombia is taking and wish to thank you for the confidence which you have expressed. Like you, I believe that establishment of the Agency will encourage the flow of resources to developing countries and will benefit countries such as Colombia that may not be well known by some investors.

We have completed a round of consultations with our member countries and have found that there is substantial support for this initiative. We have recently circulated a new draft Convention and the Executive Directors will meet in early April to discuss the procedures to be followed in the negotiations. The Development Committee meeting will also provide an occasion to exchange views on the Agency. I trust that we will continue to make progress and that the Convention can be finalized during the coming months.

Once more let me thank you for your expression of support. The support of Colombia is especially valuable for the success of this initiative.

Best regards.

Sincerely,



Dr. Hugo Palacios-Mejia
Governor
Banco de la Republica
Carrera 6a., Numero 14-85
Bogota, Colombia



Record Removal Notice

File Title Clausen Papers - Multilateral Investment Guarantee Agency [MIGA] - Correspondence - Volume 3		Barcode No. 1774264		
Document Date March 5, 1985	Document Type Letter and telex			
Correspondents / Participants Fr: Hugo Palacios Mejia, Governor Bank of the Republic Bogota To: Mr. Gutierrez, Executive Director				
Subject / Title Draft convention				
Exception(s)				
Additional Comments Declassification review of this record may be initiated upon request.		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.		
		<table border="1"> <tr> <td>Withdrawn by Ann May</td> <td>Date November 03, 2021</td> </tr> </table>	Withdrawn by Ann May	Date November 03, 2021
Withdrawn by Ann May	Date November 03, 2021			

ROUTING SLIP	DATE: Feb. 15, 1985
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**FROM THE OFFICE OF THE
VICE PRESIDENT AND GENERAL COUNSEL**

NAME	ROOM NO.
Mr. A. W. Clausen	

APPROPRIATE DISPOSITION	NOTE AND RETURN
APPROVAL	NOTE AND SEND ON
COMMENT	PER OUR CONVERSATION
FOR ACTION	PER YOUR REQUEST
INFORMATION	PREPARE REPLY
INITIAL	RECOMMENDATION
NOTE AND FILE	SIGNATURE

REMARKS:

The information on MIGA contained in the attached statement may be helpful in answering questions on this subject, if raised after your forthcoming speech in London.

I shall deliver the statement on my way back from Tunis, and plan to return on the same day to Washington.

FROM: Ibrahim F.I. Shihata	ROOM NO.: E-723	EXTENSION: 74945
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OFFICE OF THE PRESIDENT

1985 FEB 15 PM 1:20

RECEIVED

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The New Proposal to Establish a
Multilateral Investment Guarantee Agency

Statement before the ICC Symposium on Private
Foreign Investment in the Face of Spreading Debt Problems

Paris, February 28, 1985

by: Ibrahim F.I. Shihata
Vice President and General Counsel
The World Bank

Mr. Chairman,

Ladies and Gentlemen.

I am delighted to be here today and to have the opportunity to explain to you The World Bank's proposal to establish a new international agency for the promotion of foreign investments in developing countries.

As you all know, financial flows to LDCs are experiencing a marked decline. Net transfers by commercial banks to these countries (i.e., the banks' net disbursements less the interest payments they receive) dropped from some \$16 billion in 1981 to a negative \$21 billion in 1983. Foreign direct investment flows have also declined from over \$17 billion in 1981 to less than \$8 billion in 1983. The volume of Official Development Assistance to many of these countries is also in the decline (\$37.3 billion in 1981 compared to \$33.6 billion in 1983). These sharp reductions are taking place when the export proceeds of several LDCs are still suffering from the effects of recession and protectionism in industrialized countries. The combined effects of these factors are now manifest in the aggravated debt crisis of the LDCs, the counter-productive process of capital flight from them and the reduced demand on the exports of industrialized countries to LDCs (\$362 billion in 1981 compared to \$303 billion in 1983, a drop of \$59 billion).

I am sure you would agree that investment opportunities abound in developing countries. Experience shows, in fact, that they promise on the whole greater returns than those available in developed countries (perhaps by a margin of 50% on average). Yet, as you well realize, the availability of commercially attractive opportunities is only one prerequisite of the investment decision which equally requires a perception by potential investors of an acceptable investment climate. An attractive investment opportunity in an acceptable investment climate presents indeed the optimal mix of a high financial return and a low non-commercial risk, which prudent investors look for everywhere. While these investors readily recognize a good investment opportunity when they see one, the elements of a good investment climate are much more difficult to ascertain. In my mind at least three aspects of such a climate deserve attention. The first of these is the institutional aspect which covers both the "policies" of the host countries (towards investments in general and foreign investment in particular) as well as the "administrative setup" in the country concerned. The second is the physical aspect, that is the extent of the availability and efficiency of the basic infrastructure required for the carrying out of the investment. And the third is the legal aspect which consists in turn of three elements: first, the substantive rules which govern foreign investments, whether these are domestic rules (investment codes) or international agreements (bilateral investment treaties), second, the procedural rules to be followed in the settlement of potential disputes between foreign investors and their

host governments (which may be limited to local remedies or may include resort to international mechanisms for conflict resolution such as those available under the ICC arbitration or the ICSID Convention), and finally, the guarantees against noncommercial risks which may be available from a public agency or from private insurers.

The World Bank has successfully addressed the issue of the settlement of disputes between investors and host countries by establishing in 1966 the International Centre for Settlement of Investment Disputes (ICSID). Concerned with the recent adverse trends I alluded to earlier, the Bank proposes now to address the issue of guarantees against non-commercial risks in the broad context of establishing an international agency for the promotion and encouragement of foreign investments in the LDCs. Although the idea is not new, it is now presented with new features designed to ensure its acceptability to a great number of states; a factor that may prove to be vital for its success.

The new proposal differs in many ways from older proposals of which many of you may be familiar. It is meant to achieve the general objective of creating a better investment climate in the LDCs, and not just to provide compensation to those unfortunate investors who actually experience losses resulting from political risks in these countries. The concern with this broader objective differentiates the agency from simple insurance mechanisms and makes it an instrument of international public policy with the broad aim of improving the world

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investment environment, in the LDCs in particular. In addition to its guarantee or insurance services, the Agency would thus furnish information, undertake research and provide policy advice and technical assistance to its members in the treatment of foreign investment. It will also work on improving the standards applicable to the treatment of foreign investment and should contribute to the progressive development of international law in this area. It will encourage countries to enter into bilateral investment treaties and will itself conclude agreements with host countries for the treatment of the investments it guarantees.

In addition to the above important feature, the newly proposed Agency is different in a number of other respects, mainly, its financial structure, its operations, its links with The World Bank, voting structure, dispute settlement procedure and entry into force provisions. I shall briefly address the distinctive features of the projected Agency in these areas:

Financing

With respect to financing, we propose a combination of capital subscription and sponsorship: The Agency would initially have a share capital of \$1 billion and could become operational when subscriptions amounted to \$250 million. Every member country, including every developing member country, would subscribe to at least 50 shares. Ten percent of the subscription would have to be paid-in; the rest would be subject to call. All payments upon a call, including

payments of 'developing member countries, would have to be made in freely usable currency.

The Board of the Agency would be authorized to set the maximum amount of guarantees as a multiple of capital, reserves and possibly a portion of reinsured amounts. Initially, the amount of guarantees might not exceed capital plus reserves plus reinsured amounts but over time, depending on the Agency's experience and risk profile, the multiple might rise to higher levels set by the Agency within a maximum of five to one, this maximum limit being set in the Convention.

It is envisaged that, in addition to the ceiling on overall investments, appropriate ceilings could be applied such as by project, home country and host country. Sponsorship would simultaneously come into play, allowing the Agency, acting as the agent of the community of sponsoring countries, to guarantee additional investments under a separate account, while preserving the Agency's sound underwriting policies and concern with a balanced portfolio.

The proposed structure is new. Earlier proposals were based exclusively on the sponsorship concept. Combining capital subscriptions and sponsorship would, we believe, best fulfill the objectives of financial viability, acceptance of the Agency as a credible insurer, efficiency of operations, flexibility with respect to its potential growth, and sharing by all members of financial responsibilities in accordance with their relative economic strength.

Operations

With respect to the operations of the Agency, two main points need to be made, in addition to the previously mentioned remark on the Agency's activities other than insurance operations:

1. While the draft Convention sets, in broad terms, the general framework for the Agency's guarantee operations, the scope of these operations will be defined through policies established by the Board to ensure needed flexibility. The contracts of guarantee would be approved by the Agency's management, thus depoliticizing the day to day operations.

2. The Agency would have a clear mandate to complement national investment guarantee schemes rather than to compete with them. It would concentrate on the following operations: guaranteeing investments from member countries which do not have a national investment guarantee program; guaranteeing investments in host countries in which national agencies are overexposed; guaranteeing investments not eligible for a national guarantee which are nevertheless deemed by the Agency to be sound developmental investments (e.g., in cases where the investor fails to meet specific nationality tests applied by the home country's agency); guaranteeing types of investments or risks not covered under the respective national program; co-guaranteeing large investments with national agencies; guaranteeing or co-guaranteeing multinationally-financed investments; as well as providing reinsurance facility for national agencies, and possibly to private insurers if required to encourage them to provide political risk insurance under

appropriate terms and conditions. Through its reinsurance and coinsurance operations, the MIGA would not only enhance the diversification of its own risk portfolio, but also the diversification of the portfolios of the national programs. Also, an MIGA would provide uniform protection to investors from all home countries and thus overcome shortcomings resulting from differences among the national schemes. It would thus lessen the potential for a distortion of investment flows as a result of differing national terms and conditions.

Link with the Bank

We have reviewed with great care the pros and cons of various links between the proposed Agency and The World Bank. Our proposal emphasizes the autonomy of the Agency, but proposes important links which from a practical viewpoint reserves an important role for the Bank. We have been especially conscious of avoiding formal links that would give the perception of the Bank's involvement in possible disputes between the Agency and members in relation to a guaranteed investment and that would result in the Bank being seen as an adversary by the host country in the handling of a dispute. Several Executive Directors of the Bank made it clear that their countries would simply oppose any proposal based on such strong linkage. On the other hand, we considered it important to have links which, without the negative aspects mentioned above, would assist the Agency in gaining recognition as an effective developmental institution and might decrease its administrative costs. We are, therefore, proposing an important organizational link that the President of the Bank be ex officio Chairman

of the Agency's Board of Directors and, in this capacity, nominate the person to be appointed President of the Agency. We envisage that a cooperative agreement would be concluded between the Bank and the Agency to enhance administrative economies by the sharing of certain administrative and technical facilities and services. Although the Agency would have its own Executive Board, its members might, for practical or policy reasons, appoint their respective Executive Directors in the Bank as members of the Agency's Board.

Voting Structure

The proposed voting structure emphasizes that both home countries and host countries have a similarly important stake in the functioning of the institution and that it can only operate successfully by gaining the confidence of home countries and their investors as well as of host countries. This approach is in contrast to previous proposals under which host countries did not contribute to financing the Agency and were not recognized as equal partners.

It is, therefore, proposed that voting power be shared on an equal basis between home countries and host countries, with countries initially classifying themselves as members of one of the two groups, subject to approval of the Agency's Council. As a general rule, decisions of the governing bodies would be taken by simple majority. However, with respect to policies that have a bearing on the financial exposure of the Agency, investor confidence could be increased and the interest of the Agency furthered by the establishment of special majorities. A special majority takes into account the capital subscriptions of members requiring an affirmative vote of not less than 60

percent of the total voting power representing not less than 50 percent of the subscribed shares of the capital stock of the Agency. The proposed voting structure has proved to be the most controversial aspect of the proposal. We are now considering different alternatives for consideration by potential members. While cognizant of the difficulties involved, we are confident that interest in the creation of this important institution will enable interested countries to reach agreement on a reasonable formula which would serve the dual objective of striking a fair balance between the interests of home countries and host countries while maintaining the all-important objective of creating an agency which receives and deserves the confidence of the investors.

Dispute Settlement

In the proposed dispute settlement mechanism, emphasis is placed on the importance of assuring the viability of the Agency by protecting itself against losses and assuring recoupment while at the same time allowing for a certain flexibility of procedure to minimize concerns of host countries.

The Proposal envisages that the Agency would succeed to the rights and claims of the investor against the host country upon paying or agreeing to pay compensation to the investor. It is expected that disputes would be settled by negotiation, failing negotiation, that they would be submitted to international arbitration unless the parties preferred first to try settlement through conciliation. However, here again, there is a certain flexibility. Members that might find

provisions in the Convention for international arbitration between the Agency and the host country with respect to subrogated claims difficult to accept could agree with the Agency, subject to approval by the Board, on alternative dispute settlement procedures.

Entry into Force

Unlike previously discussed schemes, the proposed draft Convention would enter into force upon its ratification by five home countries and ten host countries, provided that the subscription of these countries total \$250 million. This proposal reflects the judgment that the Agency can begin operations on a modest scale and expand its operations as membership increases.

Procedure for Preparation of the Convention

We have just completed a process of consultation with the Bank members and with investors associations on the details of the MIGA proposal. A revised draft Convention which adopts many of the proposals received from our members and clarifies several points in the existing text will soon be distributed to the Bank's Executive Directors. We hope that the Executive Directors will be able to discuss the revised draft and agree on a final draft Convention in the course of the coming few months. Our plan is to have this draft Convention submitted to the Bank's Board of Governors in its annual meeting next October. If this plan is implemented, and every effort will be made to ensure that this will be the case, the Board of Governors would be able to open the Convention for signature by interested countries before the end of this year. While we earnestly continue our

efforts towards this end, we certainly expect and need the unwaivering support of the international business community. I hope that this message will receive the attention it deserves in your deliberations.

x

x

x

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

December 10, 1984

The Honourable
Pranab Kumar Mukherjee
Minister of Finance
Ministry of Finance
Government of India
New Delhi 110 001, India

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

We are undertaking consultations with representatives of Bank members on the proposal on the basis of these documents and would like to invite representatives of your Government and of other developing member countries in the region to a meeting in Bangkok on January 17 and 18, 1985, for an exchange of views on the proposal. The meeting will be held at the Dusit Thani Hotel near the Bank's field office. While we realize that the proposal may not reflect in all respects the views of any one country, we believe that it constitutes a balanced package which hopefully will prove acceptable to the Agency's future membership.

The meeting will be chaired by Mr. Ibrahim Shihata, the Bank's Vice President and General Counsel. It is hoped that Government representatives will be at a senior level and that the meeting will provide a forum for a productive discussion. We have recently consulted with OECD member countries on the draft Convention and will inform the meeting of the results of such consultations. We also intend to consult in the near future with developing member countries from other regions to ensure wide acceptability of the proposed Convention.

We would appreciate being informed at your earliest convenience of the names of your representatives so that we may advise them of the arrangements for the meeting.

Sincerely,



A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

November 30, 1984

Dr. Arifin M. Siregar
Governor
Bank Indonesia
P. O. Box 422
Jakarta
Indonesia

Dear Governor:

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Sincerely,

(Signed) A. W. Clausen
A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

The Honourable
Abdul Daim Bin Haji Zainuddin
Minister of Finance
Ministry of Finance
Block 9, Jalan Duta
Kuala Lumpur, Malaysia

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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Sincerely,

(Signed) A. W. Clausen

A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

The Honorable
Cesar E. A. Virata
Prime Minister and
Minister of Finance
Office of the Monetary Board
Central Bank of the Philippines
Manila 2801, Philippines

Dear Cesar:

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We would appreciate being informed at your earliest convenience of the names of your representatives so that we may advise them of the arrangements for the meeting.

Sincerely,

(Signed) A. W. Clausen

A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

The Honourable
Tony Tan Keng Yam
Minister for Finance
Ministry of Finance
CPF Building, Robinson Road
Singapore 0106
Republic of Singapore

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

His Excellency
Sommai Hoontrakool
Minister of Finance
Ministry of Finance
Na Pralan Road
Bangkok 2, Thailand

Dear Governor:

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

The Honourable
U Tun Tin
Deputy Prime Minister and Minister
for Planning and Finance
Office of the Ministers
Rangoon, Burma

Dear Governor:

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

November 30, 1984

The Honourable
Ronnie de Mel
Minister of Finance and Planning
Ministry of Finance and Planning
P. O. Box 500
Colombo 1, Democratic Socialist
Republic of Sri Lanka

Dear Governor:

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

The Honourable
Ghulam Ishaq Khan
Minister for Finance, Commerce
and Coordination
Secretariat Block "Q"
Islamabad, Pakistan

Dear Governor:

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(Signed) A. W. Clausen

A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

His Excellency
Mahn-Je Kim
Minister of Finance
Ministry of Finance
82 Sejongro Chongro-Ku
Seoul 110, Republic of Korea

Dear Governor:

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

Mr. M. Syeduz-Zaman
Principal Finance Secretary
and Adviser for Finance
Ministry of Finance
Sher-E-Bangla Nagar
Dhaka 7, Bangladesh

Dear Governor:

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

November 30, 1984

The Honourable
Prakash Chandra Lohani
Minister for Finance
and Communications
Ministry of Finance
Babar Mahal
Kathmandu, Nepal

Dear Governor:

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(Signed) A. W. Clausen

A. W. Clausen
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Enclosures

See South. Car. file for

11/5/85 letter from Charles

re MICA.

THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
President

October 5, 1984

The Honourable
P. J. Keating, M. P.
Treasurer of the Commonwealth
of Australia
Parliament House
Canberra, A.C.T., 2600
Australia

Dear Governor:

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

The Right Honourable
Robin Leigh-Pemberton
Governor
Bank of England
Threadneedle Street
London EC2R 8AH
England

Dear Robin:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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A. W. Clausen
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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

Seine Exzellenz
Dr. Franz Vranitzky
Bundesminister für Finanzen
Himmelpfortgasse 4-8, Postfach 2
A-1011 Vienna
Austria

Dear Governor:

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

Son Excellence
Monsieur Willy De Clercq
Vice-Premier Ministre et Ministre
des Finances et du Commerce Extérieur
Rue de la Loi, 12
B-1000 Bruxelles
Belgique

Dear Governor:

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

The Honourable
Michael Wilson
Minister of Finance
Department of Finance
Ottawa, Ontario K1A 0G5
Canada

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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
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October 5, 1984

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Uffe Ellemann-Jensen
Minister for Foreign Affairs
Ministry of Foreign Affairs
Asiatisk Plads 2
DK-1448 Copenhagen K, Denmark

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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
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October 5, 1984

His Excellency
Pekka Vennamo
Minister in the Ministry
of Finance
Aleksanterinkatu 3-D
SF-00170 Helsinki 17, Finland

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We would appreciate being informed at your earliest convenience of the names of your representatives so that we may advise them of the arrangements for the meeting.

Sincerely,

A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

Son Excellence
Monsieur Pierre Beregovoy
Ministre de l'Economie, des Finances
et du Budget
93, rue de Rivoli
F-75056 Paris RP
France

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

Seine Exzellenz
Herrn Juergen Warnke
Bundesminister für wirtschaftliche
Zusammenarbeit
Karl-Marx-Strasse 4-6
D 5300 Bonn 1
Federal Republic of Germany

Dear Governor:

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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

His Excellency
Gerassimos Arsenis
Minister of National Economy
Ministry of National Economy
Plateia Syntagmatos
Athens, Greece

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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A. W. Clausen
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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

His Excellency
Matthias A. Mathiesen
Minister of Commerce
Ministry of Commerce
Reykjavik, Iceland

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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A. W. Clausen
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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

The Honourable
Alan M. Dukes, T. D.
Minister for Finance
Department of Finance
Upper Merrion Street
Dublin 2, Ireland

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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THE WORLD BANK
Washington, D. C. 20433
U.S.A.

A. W. CLAUSEN
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October 5, 1984

Dr. Carlo Ciampi
Governatore
Banca d'Italia
Via Nazionale 91
I-00184 Roma, Italia

Dear Governor:

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

His Excellency
Noboru Takeshita
Minister of Finance
Ministry of Finance
Tokyo, Japan

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

Son Excellence
Monsieur Jacques Santer
Président du Gouvernement
et Ministre des Finances
3, rue de la Congrégation
2910 Luxembourg-ville
Grand-Duché de Luxembourg

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
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October 5, 1984

His Excellency
Dr. H.O.C.R. Ruding
Minister of Finance
Ministry of Finance
Postbus 20201
The Hague, The Netherlands 2500 EE

Dear Governor:

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

Mr. B. V. Galvin
Secretary to the Treasury
The Treasury
Private Bag
Wellington, New Zealand

Dear Governor:

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

His Excellency
Rolf Presthus
Minister of Finance
Ministry of Finance
P. O. Box 8008, Oslo-Dep.
Oslo 1, Norway

Dear Governor:

As you are aware, the Bank Management has examined the feasibility of establishing a Multilateral Investment Guarantee Agency and is convinced that such an agency could greatly encourage the flow of resources to productive enterprises in developing countries. The Agency's functions would include guaranteeing investments in these countries against non-commercial risks and providing other complementary services to improve their investment climate. Bank Management has prepared a specific proposal, and a detailed questions and answers paper, on the main features of the proposed Agency which have been distributed to and discussed with the Bank's Executive Directors over the last few months. Following these discussions, a more specific and detailed formulation of the proposal, in the form of a draft Outline of a Convention Establishing the Agency, was prepared, together with a Commentary on the Convention. The two last-mentioned documents are enclosed.

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Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

October 5, 1984

A Sua Excelência
O Ministro das Finanças e do Plano
Senhor Ernani Rodrigues Lopes
Ministério das Finanças e do Plano
Avenida Infante Dom Henrique
1100 Lisboa, Portugal

Dear Governor:

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A. W. Clausen
President

Enclosures

THE WORLD BANK
Washington, D. C. 20433
U. S. A.

A. W. CLAUSEN
President

March 15, 1985

Dear Governor:


I have had the opportunity to see your telex of February 21, 1985, to Mr. Gutierrez-Castro expressing your support for the Bank's initiative to establish a Multilateral Investment Guarantee Agency. I want you to know how very gratified I am with the position Colombia is taking and wish to thank you for the confidence which you have expressed. Like you, I believe that establishment of the Agency will encourage the flow of resources to developing countries and will benefit countries such as Colombia that may not be well known by some investors.

We have completed a round of consultations with our member countries and have found that there is substantial support for this initiative. We have recently circulated a new draft Convention and the Executive Directors will meet in early April to discuss the procedures to be followed in the negotiations. The Development Committee meeting will also provide an occasion to exchange views on the Agency. I trust that we will continue to make progress and that the Convention can be finalized during the coming months.

Once more let me thank you for your expression of support. The support of Colombia is especially valuable for the success of this initiative.

Best regards.

Sincerely,



Dr. Hugo Palacios-Mejia
Governor
Banco de la Republica
Carrera 6a., Numero 14-85
Bogota, Colombia