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THE ARAB GULF DEVELOPMENT FUNDS: AN ANALYSIS OF  
THEIR LEGAL STRUCTURE & OPERATIONS

BY

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PART THREE  
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THE FUTURE PROSPECTS OF ARAB AID  
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CHAPTER EIGHT  
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THE PROSPECTS OF AID IN THE AGE OF G.C.C  
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8.1 Introduction  
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Having analysed the legal structure of the Arab Gulf Funds in Part Two, we now turn to the future prospects of arab aid. This first chapter deals with the prospects of aid in the so-called age of the GCC. It is divided into three sections. The first deals with the way in which the formation of the GCC was a major step towards arab unity in the Arabian peninsula. The second analyses the relationship between the arab development funds and the other bilateral and multilateral financial institutions. The future prospects for arab aid are dealt with in the final section, before various conclusions are drawn.

## 8.2 The GCC : A step closer to Arab unity \*\*\*\*\*

The formation of the Gulf Co-operation Council was a natural step for the Arab Gulf states to take. They faced challenges from all sides as a result of being at centre of the international power struggle. The Arabian Gulf has been threatened with the return of sea piracy by superpowers who felt that if their interests in the region were at risk they might be served by an embargo imposed on Arab oil exports.

The term "Arab Gulf states" applies to all the Arab States with direct access to the Gulf and the dream of Gulf unity has always included all such states. The circumstances prevailing in Iraq, however, have prevented it from joining the Gulf Co-Operation Council at present. The Iraqi leadership was nevertheless prompt in announcing its support for any form of coordination between Arabs in general and the Arab Gulf states in particular.

A glance at the geographical position of the six states of the Gulf Co-Operation Council, (GCC), shows that unity is natural. They are connected by proximity as well as by sharing a common economic structure, similar political institutions, and national aims and aspira-

tions. Recent bilateral agreements exist between the states for co-operation in the field of economics, information media and culture which have heightened the feeling of belonging to one family.

For a long time the Gulf states recognised the importance of cohesion, particularly in the face of changing circumstances. Now this has become a reality. Kuwait, for example, started co-operating with its Gulf neighbours in 1952 when it helped finance educational, health and building facilities in certain Gulf countries. The Kuwait Fund was founded to promote economic development in the Arab World as a whole, and the Gulf States in particular.

In May 1976: H.H. the Emir of Kuwait, Sheikh Jaber Al-Ahmad Al-Sabha, who was then Prime Minister and Crown Prince, called for "the establishment of Gulf Unity with the object of realising co-operation in all economic, political, educational and informational fields and the creation of a form of unit or a union with solid foundations to serve the interests and stability of the peoples in the region". The Arabian Gulf region witnessed a number of attempts to unify its political institutions even before they assumed their present forms.

Intense efforts were made to unite the seven Trucial Coast Emirates with Bahrain and Qatar as early as the Dubai Agreement of February 27, 1967. They proved fruitless in the summer of 1971 when a disagreement over the unification announcement of the nine Emirates led to the establishment of a union between the Trucial States which comprised initially Abu Dhabi, Dubai, Sharjah, Ajman, Umm AL-Quwain and Fujairah and to which Ras Al-Khaimah was welcomed in early 1972. In this way the seven Emirates formed the State of the United Arab Emirates, while Qatar and Bahrain declared their independence as two separate states in August and September 1971, respectively.

The six countries that agreed to set up the Gulf Co-Operation Council, namely the United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait, cover an area of nearly 2,500,000 square kilometres. They are inhabited by more than ten million people. In the past their combined oil production has exceeded 10m barrels a day.

Since the countries of the Gulf already constitute a natural unity by virtue of their geographical make-up, by integrating their efforts in the political, cultural and social fields, they have an excellent chance of

forming an effective union to face the challenges of both the present and future.

**8.3 Arab development funds and banks : approaches to  
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trilateral co-operation  
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The international economic system has undergone an irreversible and profound change. The emergence of new centres of development, finance and investments in the Arab region has far-reaching implications in this context for the development of:

- the Arab oil-exporting countries;
- the Arab non-oil-exporting countries and thus for the whole Arab region;
- other developing countries and continents;
- the international economic and financial situation.

The recent substantial fall in oil revenue has made estimates of the accumulated surplus funds even more difficult to calculate. It has also shown that while the sums were substantial the new wealth of some Arab countries has built-in constraints:

- "first, we are very much aware that oil revenues are not truly disposable income like income that accrues, say, from agriculture or industry. Oil revenues are

- only another form of our countries' capital wealth, a monetary form of the oil reserves in the subsoil;
- second, these reserves are relatively fast-wasting resources, which, if we fail to adopt adequate development policies, may one day leave us perhaps in a situation worse, from the social as well as the human points of view, than before the oil era. The present oil reserves could last us 30, 50 or even more years but these are mere instants in the lifetime of nations" [01].

The oil crisis in 1973 opened, for the Arab region, new horizons for more rapid economic development and greater international influence. The Arab oil-exporting countries have evolved their own priorities for the use of their revenues and their own operational style. They established national and regional development funds and thus institutionalised their assistance commitment to the non-oil-exporting developing countries. Although operational style and geographic coverage of different Arab development finance intermediaries differ, their project-oriented approach is a striking characteristic of all institutions. The underlying reasons include:

- the reluctance to get involved in the national development plans of individual developing countries;



- the possibility of better control of the use of development assistance and effective allocation of funds;
- the existence of other Arab mechanisms for providing general support loans.

The increased volume of Arab assistance will make it necessary to introduce programme lending in addition to project assistance. Arab funds will, however, contribute to programme loans only if there is a substantial involvement (in terms of evaluation, finance, technology, management, market outlets, etc.), by the industrialised countries. In addition, developing countries will have to strengthen their institutional infrastructure, particularly national development finance institutions, to provide for efficient channels to absorb the additional funds and for their allocation to sectors with the highest development potential. This more integrated approach should provide greater chances for the success of common development objectives through risk-sharing and a more committed involvement.

The flow of international resources into the Arab region since the early 1970's has led to a new relationship between the Arab world, developing and developed countries. For the first time a group of nations - considered part of the Third World - are providing

substantial assistance to countries in their own economic and social group. A major objective of the new Arab aid is the concept of "additionality" whereby the flow of additional assistance should not merely substitute traditional sources, but increases the total volume of capital invested in the Third World. This approach, together with the fact that developing countries appear as donors, may help in the transition from relations based upon assistance to those based upon partnership and co-operation.

The involvement of three different groups in joint development efforts, i.e. the Arab oil-exporting countries, developing countries and industrialised nations, may bring about special approaches to trilateral co-operation. The motivation and the mix of contributions as well as conditions will vary from project to project; primarily it will depend upon the balance of interests of the three groups involved in the specific development tasks and will be the result of negotiating processes among the three parties.

Since motivations and expectation vary considerably, present forms of co-operation are surrounded by many constraints which impair the potential development impact of joint operations. Therefore innovative forms

of co-operation, more integrated than project approaches, prevailing at present, are called for to maximise the development potential of trilateral co-operation arrangements.

Furthermore, the lack of comprehensive legal and institutional provisions to promote trilateral co-operation is another bottleneck. The existing framework in the form of guarantee systems, export promotion schemes, investment codes, etc., represents a patchwork of national and regional endeavours which are inadequate for preparing a new transnational system of law for trilateral co-operation.

**The consequence of these conclusions include the following:**

1. The resurgence of the Arab world as a new focal point in the international scene is one of the striking events of the second half of the twentieth century. This resurgence of a region which already played a decisive role in history may possibly have far reaching consequences for the entire world. It is the combination of traditional values and new material wealth which offers to the Arab region this new challenging role.

The strategy of Arab oil-exporting countries is focusing on the development of their own economies as an integral part of the preparation of the Arab region for the post-oil period. They also emphasise assistance to the adjacent regional areas and the development of economic sectors complementary to and supportive of their own economic requirements. They also advocate the "additional" support of other developing countries, primarily in conjunction with the industrialised countries.

Insofar as the Arab oil-exporting countries belong simultaneously to the financially rich, but technically poor countries, they may assume the function of mediators in the dialogue between the rich and the poor. The old simplistic relationship between rich and poor countries is being superseded by a more complex pattern. This will also help the Arab world in the post-oil period and will accelerate the industrialisation process of developing countries. It appears from this that all developing countries could obtain some additional benefits from new forms of co-operation in the long run.

2. More integrated schemes of project aid will be required to enhance the development impact of Arab assistance. In the immediate future this may be in the form of sector programmes or regional projects. They will be designed, financed and implemented together with industrialised countries and regional and international organisations. The development from multi-participant project financing will require innovative schemes for specific tasks. The most prominent example is the Arab Authority for Agricultural Investment and Development (AAAID), which was created to implement a basic agricultural programme in the Sudan and thereby turn it into the "breadbasket of the Arab world". It was intended to continue the AAAID's operations after the completion of the Sudan programme in other Arab countries. It was hoped that it might become a pilot scheme which could also be applied for other sectors, first in the Arab region and later in other parts of the developing world.

Another approach is through development facilities designed specifically for supporting non-Arab countries. The Arab states created the Arab Bank for Economic Development in Africa (BADEA), [02],

to provide concessional finance to non-Arab African countries. A more important step at global level was the OPEC Special Fund in 1976. In both cases, the founders were determined to enhance solidarity and co-operation among developing countries. Both institutions act as major catalysts in channelling concessional finance both Arab and traditional donors into developing countries. The commitment of \$4.35mn and the disbursement of \$ 201.71 mn [03], from the OPEC Special Fund's resources to the International Fund for Agricultural Development (IFAD) was made available under the provision that the industrialised countries of the OECD contribute \$600mn. This has established a financial link of joint development efforts and therefore for trilateral co-operation. For each dollar contributed by the OPEC Fund \$1.5 is contributed by OECD countries for agricultural development in the Third World. The OPEC Special Fund will, in its project operations with BADEA, resort to co-financing operations with industrialised countries and regional and international finance institutions.

These two examples show that the joint operational activities start much more quickly and efficiently if the co-operation is built into the charters of

establishment. These and similar development mechanisms can be more effective in development assistance; it is a form appropriate to the sums of money involved. It is not only a means of international development finance, but also an instrument to reshape economic relationships to the benefit of the developing countries.

3. Development finance institutions could assume special functions. They could supplement the project-oriented policy by channelling their credit lines to, or administer special trust funds for, specific sectors and important programmes in the country in which they operate. These national development institutions would have two advantages:

i) to increase the absorptive capacity of recipient countries; and

ii) to offer the Arab funds the opportunity to have a higher and quicker operational impact without getting too seriously involved in the development plans of individual countries.

So far, national development institutions have secured their finance predominantly from their national governments and from international, regional and bilateral finance agencies. These

sources will decrease proportionally in the future. The development banks will have to explore the possibility of attracting additional sources of development assistance, particularly from Arab funds, if they are to continue aid with appropriate scope and sufficient scale.

The assistance of Arab funds to national development banks has been limited largely to institutions in the Arab region. But an international awareness exists that Arab funds could be channelled as institutional credits to the development finance institutions, particularly to the poorest countries for sub-lending for small and medium scale industries. Such a proposal was first brought forward by the UNIDO-convened Export Group Meeting on the industrialisation of the least developed countries, November 1976 in Vienna.

Furthermore, the regional grouping of national development finance institutions in Latin America, Africa and recently also in Asia and the Pacific could be followed by co-operation among national Arab development institutions. This would be particularly beneficial in the field of project information, organisation of training programmes



and communication with other development and investment agencies outside the Arab region. A possible network of project and sector information could also increase the absorptive capacity of the recipient countries.

Additionally, formal co-operation among national finance intermediaries within one continent will be strengthened significantly through the active participation of regional development banks, such as the Islamic, African & Asian Development Banks. These have supported the national development banks in their areas, both through the a provision of credit lines and technical assistance. Regional institutions are promoting the interaction between national banks and are establishing links with international finance centres. Arab funds may also consider regional intermediaries to support national development banks in the various regions of the Third World.

Development finance institutions could be mobilised across the continents to become agents and promoters for trilateral co-operation with Arab involvement. There is a discernible trend to increase the financial flows into developing coun-

tries at commercial or near-commercial terms. Profitable programmes will therefore more easily attract finance, technology and expertise. The difference between profit and loss is sometimes marginal: better management, technical improvement, new market outlets etc., can make all the difference. In such cases development finance institutions could contribute not only by "internationalising" their resource basis through Arab surplus funds, but also by "internationalising" their client enterprises to become eligible for loans at near commercial terms.

Development finance companies co-operating with Arab institutions could aim at:

- a) providing additional credit lines from their existing funds to increase their resource allocation for normal operations and special projects depending upon Arab priorities.
- b) joint operations with Arab investment companies in profitable investment and in less seriously affected developing countries;
- c) participation in development programmes with

regional impact.

Development banks could take the lead in boosting trilateral cooperation with Arabs. Thus they would secure the required finance to fulfil the new development objectives of their countries, provide investment opportunities for Arab capital and establish co-operative links which may last beyond the period of Arab surplus.

4. The new financial wealth of the Arab world for a finite period permits accelerated industrialisation and economic integration of the Arab region. This is also a prerequisite of success in the post-oil era. The region needs:

- i) production capacities which are not deletable;  
and
- ii) a pattern of new relationships both with the industrialised nations and the non-oil-exporting developing countries.

Until 1973 rich countries integrated only with other rich countries and the poor countries only with other poor countries. Since 1973, a new situation has emerged. Developing regions have obtained sufficient funds to be freed from previous financial constraints.

The Arab region is at present "rich" in capital but "poor" in technology. An innovative approach of combinations of "rich-poor" and "poor-rich" countries may be beneficial for all concerned. Trilateral co-operation could help develop the Arab region at an accelerated pace and in a more efficient fashion. This formula, once it has proven to be successful, could be applied in other developing regions.

Now that the world is shrinking because of economic, financial and trade interdependence, the development of any region must consider its adjacent areas as well as the international scene. In this new economic context the individual project approach has to be replaced by a new frame of relationships and by a re-shaping of the system of international interaction.

Each region has some development potential which could be realised with properly concerted action from inside and outside the area.

Trilateral co-operation could:

- i) help the different economies combine their complementary strengths for regional schemes;

ii) become part of a complete development mechanism, at national, regional and international level, integrated in a new system of concerted interaction.

5. The lack of adequate legal and institutional provisions in the Arab region and in developing countries is a major barrier to investment. There is not only a close relationship between economic, financial, institutional and legal problems, but also a link between investment problems and the economic cost of the lack of legal protection. At present legal and institutional mechanisms are evolving in the Arab world to facilitate the flow of investment. So far, it represents a patchwork of various national - and in some instances of regional - systems. The industrialised countries aim to cover political risks. The capital exporting Arab countries are also concerned with political risks. One of their strongest motivations for trilateral co-operation, however, is the limitation of commercial risks through the participation of experienced partners. The guarantee schemes of the industrialised countries were conceived for a wider geographical coverage than those of the outer groups which limit their schemes to the Third World, the Arab region or industria-

lised countries. There is a trend at present to enlarge the coverage beyond that originally stated in the articles of establishment as shown by the amendments of the charter of the Inter-Arab Investment Corporation. The legal protection must be improved and the interests of all groups involved in trilateral co-operation will have to be safeguarded.

6. Trilateral co-operation requires:

i) Increased technical assistance for project and programme planning to achieve:

- profitability combined with development impact;
- research and development related to the growth sectors of the Arab world;
- an institutionalised system of information on proposed projects and programmes;
- comprehensive training programme for project evaluation and programme development, particularly on the level of national development banks.

ii) Innovative policy changes:

ii) Innovative policy changes:

- to end the link made by industrialised countries between the financial assistance they give and an undertaking by the recipients to buy their technology to execute the project.
- to establish a fair package for industrialised nations and capital exporting Arab countries to finance both directly productive projects and infrastructure and social projects;
- to establish a fair division between promotional activity of a capital exporting country and its realistic chances for procurement opportunities;
- to develop industrial adjustment policies between countries.

iii) Incentives in order to attract more Arab participation in development schemes and to reduce the risk for Arab venture capital to an acceptable level. These would include:

- the availability of expertise on short notice and subsidised by industrialised countries;
- guarantee systems and investment codes for

catalysing foreign capital in the third world;

- assistance to develop a favourable physical and human infrastructure to increase the absorptive capacity in the Third World and to increase the profitability of subsequent investment.

iv) Innovative approaches for developing new forms for trilateral cooperation arrangements:

- to combine "complementary" advantages of the various economies in mutually profitable schemes, whereby "profitability" is not only measured in financial terms;
- to unite the not yet fully utilised capacities and resources of the three different groups on a selective basis for quickly visible results to promote the concept of trilateral cooperation in pragmatic terms;
- to mobilise additional capital for development purposes by providing complementary loans from development funds and selling participations in those loans to commercial Arab banks; such a scheme of



"complementary financing" has been developed recently by the Inter-American Development Bank for Latin America, [04].

- to devise new combinations of contributions to trilateral schemes where foreign equity is not desired, e.g. a "technology study package", [05], providing not only the technological hardware, but also management and specialised operator manpower, the latter on the basis of a service contract. This would have to give the "servicer" adequate operating authority and proper financial incentives, but leave overall control to the developing country;

- to assist in developing programmes with project components for a whole developing region - within and outside the Arab area - which could interest Arab participation at regional level. Existing examples are the Basic Agricultural Programme for the Sudan and the Programme for the Sahel, promoted by the "Club of the Friends of the Sahel".

7. Specific measures and incentives and not generalised schemes have to be evolved to mobilise surplus Arab funds for the Third World. The reasons for this are:

- i) Surplus Arab funds now constitute the main substantial source of additional development finance;
- ii) Even relatively minor measures and incentives could mobilise much larger amounts from the Arab finance centres than from other potential donor and investment groups, last but not least because specific barriers exist for this new flow of funds;
- iii) The availability of Arab funds permits, to some extent, experimentation with more innovative, potentially high-yield schemes which - once successfully implemented - could be generalised, first at a selective basis and later applied at global level.

In principle, the present situation is not completely new in the history of economics. A mere 150 years ago the U.S.A. was a developing country. The development of the American railroads at that time is an instructive example of how venture capital, foreign technology and development potential were combined in highly profitable schemes. It is obvious that benefits will have to be distributed differently. The challenge and

opportunity of the additional development finance accumulated in the Arab region has similar potential, albeit on a much grander scale.

Trilateral co-operation is only one facet of a new mechanism evolving the new international economic order. This study attempted to provide an overview of the present state of the art and to indicate directions which future development could take. Many avenues are open and will have to be explored. Some of these may well prove to be dead ends. Nevertheless it cannot be said at this stage what the right way in the post-oil period will be. Therefore the following possibilities should be looked into:

- i) The potential role of trilateral co-operation in the context of the establishment of a new international economic order with more equitable distribution of wealth and welfare at national, regional and international levels.
- ii) The complementary nature of trilateral development and investment finance for the Third World.

- iii) Development finance institutions as promoters of trilateral projects, alternative implementation and promotion mechanisms.
- iv) Packaging of finance components such as loans and equity on project and programme level through direct and indirect development finance institutions' activities.
- v) Assessment of existing opportunities (number of projects in individual countries and regions, investment outlays involved, priority sectors, priority regions for implantation of such ventures, etc.) for establishing trilateral ventures.
- vi) Required communication infrastructure and channels in order to ensure the maximum possible co-ordination on important matters concerning the establishment of trilateral project.
- vii) The relationship between foreign private investment and development assistance by a combination of resource providers and recipients.
- ix) The minimum complementary policy measures (in the three groups) required to facilitate the establishment of trilateral ventures.

- x) The role of trilateral co-operation arrangements to contribute efficiently to the economic integration of the Arab region and other regions in the third world.

#### **8.4 Arab Aid prospects** \*\*\*\*\*

The temporary nature of the surpluses of most Arab oil countries makes it difficult for all but a few of them to evolve long-term aid policies towards other developing countries. The current surpluses represent an accumulation of liquid assets which will be required eventually for financing their own development needs. These needs are much larger than had been expected at the time of the major rise in oil prices in 1973 or the second revision in 1979. Indeed, the current account surplus of the oil-exporting Arab group is estimated to have declined from \$40 bn in 1976 to \$25 bn in 1978 and from \$119 bn in 1980 to an estimated \$65 bn in 1981 and to a deficit of about \$12 bn by the end of 1982 [06]. The subsequent fall in oil revenues has increased the current account deficit. In 1986 Saudi Arabia alone is expecting a deficit of between \$20 - \$25 bn [07]. IMF figures show the current account surplus of Kuwait to have declined from \$6.3bn to 5.6bn in 1985 [13].

However, United Arab Emirates after the deficit of (DhBn) 0.09 in 1983 made surplus of 6.27 (DhBn) in 1984 and a surplus of 2.64 (DhBn) in 1985 and of 4.80 (DhBn) in 1986 [14].

A look at the oil revenue surpluses and Arab aid shows that there is a strong correlation between aid and surpluses. Therefore, forecasting future Arab aid levels necessitates a prior estimation of oil revenue surpluses which is, however, very tricky. If one looks at the estimates of the Morgan Guarantee Bank, the Chase Manhattan Bank or the World Bank, one finds that they tend to range across a very wide spectrum because of the uncertainty of the factors involved. Among the most important of these variables are the price of oil, the world demand for its supply, and the capacity of the surplus countries to import from the industrial world. In the recent past surpluses have been dwindling at a very rapid rate, although none of the estimates projected such a rapid erosion. In fact, any small change in a key variable can have such a drastic effect on oil revenue surpluses that any guess about future surpluses is as good as another.

It is however almost unthinkable that the big three Arab aid donors - Saudi Arabia, Kuwait and U.A.E. - will ever decide that Arab aid is not an important element in

their foreign policy planning, following Islamic ideals. It is likely that they will be active donors provided that their long term oil revenues exceed the absorptive capacities of their economies. The giving of foreign aid is an economic, political and moral decision and the outlook for the future will depend on the multitude of factors. Over the long term, some of the aid will get recycled anyway as loans are paid back. But to keep the aid flowing, even at past rates, the donor governments will have to continue to draw on current income. As a result, it cannot be assumed that concessional financing will keep rising to meet the money available from balance of payments surpluses. Much of this money will have to be used in non-concessional investment to get as high a return as possible against the day when there are no more surpluses to use.

Almost all Arab funds have seen their capital double during the last few years. Furthermore, the ratification of the Arab development decade provided an additional \$5bn for project financing in the six least developed Arab countries. Moreover, the charters establishing most of the funds gave them the right to go on borrowing in capital markets and this can increase the money available to them by almost two-and-a-half times as much as their declared capital. The Arab Funds can borrow to fulfil the new programmes. This policy is

similar to the World Bank which consider the borrowing a steady and permanent policy.

What will change during the years ahead is not so much the amount that will be available for aid but the emphasis on how aid will be used, the purpose for which it will be used, and how it will be programmed. Aid which in earlier years was in the form of handouts from one government to another in accordance with the economic circumstances of the time has acquired, with the passage of time, more of an economic nature and hence is more and more tied to economically feasible projects. This does not preclude the possibility that money will continue to be given for balance of payments support, famine, drought or war reconstruction.

Projections of capital requirements in the eighties of non-oil-exporting developing countries indicate that these requirements will grow quite rapidly during the remainder of the decade. The level of net capital inflows required to achieve an income growth target ranging between 4 per cent and 5 per cent is projected to range between \$147bn and \$206bn in 1990. The projected capital requirements are equivalent to 1.2 per cent of the projected GNP of OECD countries in that year and 0.86 per cent of projected combined GNP of OECD



countries and of oil surplus countries [08].

To be sure, the probable constraint with regard to the availability of development finance will be the scarcity of concessional funds. It is therefore possible that in the absence of sufficient concessional finance, some countries may attempt to maintain growth rates by financing their investment needs by loans from the commercial banking system.

In order to persuade the commercial banks to divert a greater part of their resources to the developing countries some sort of guarantee against financial and political risk should be devised. Under the present world circumstances any default or re-scheduling of debts will certainly expose the whole international banking system to unprecedented danger. The setting up a new regional insurance fund to guarantee commercial bank loans for Arab development projects against default has been suggested. The protection against financial risk that this would provide would complement the protection against political risk provided by the Inter-Arab Investment Guarantee Corporation.

The resources of this regional insurance fund would be

derived from several sources; from insurance premiums payable by the commercial banks, from a certain percentage of the annual profit of the national and regional development funds operating within the Arab countries and from, let us say, one per cent of the loans committed to countries in the area. Since the participating development institutions have the requisite administrative skills and expertise, they can jointly undertake management of this fund.

Practical forms of co-operation between the commercial banks and the development funds, can be suggested. This can be through parallel financing by commercial banks of projects conceived and prepared by the development funds. The idea is to have commercial banks finance the short end of the loan - say the first 5 years - at a commercial rate and conditions while the development funds would finance the long end of the loan - say the remaining 10 years - at concessionary rates and conditions. Secondly, there is the possibility of financing the soft component of the package by development funds and the commercial component by commercial banks. Parallel financing for Third World development projects would provide the commercial banks with the advantages of additional political and financial security, a cheaper method of loan processing, a better evaluation of risk, a friendly borrower, more

knowledge of the recipient country and the profits stemming from a greater participation in financing trade with developing countries.

However, in resorting to commercial loans, developing countries should be careful so as not to increase their debt service burden. For example, it is estimated that if loans from private markets were to make good the shortfalls in official flow, gross borrowing from private capital markets would have to increase by 14 per cent a year, reaching an annual level of \$140bn in 1990. For developing countries as a whole, the substitution of private capital for official development assistance on such a scale would result in an increase in the proportion of debt service to exports of goods from 13 per cent in 1980 to about 32 per cent in 1990, [09].

Along with concessional flows and bank loans there should be an increase of direct commercial investments in other developing countries, especially in the Arab countries. In fact, aid can never be a substitute for lasting cooperation among developing countries. Arab surpluses need to be invested for the benefit of future generations. A more balanced relationship should be sought that will allow both donor and recipient to benefit from their co-operation. Most developing

countries are now taking major steps to encourage commercial flows among them for direct investment purposes, through new regulations and new ventures. These efforts have also affected trade. Arab trade with other developing countries grew significantly after 1973 but it still remains less important than Arab trade with industrial countries. Arab trade with the Third World should be strengthened and new mechanisms, including export credit arrangements, should be developed.

In the Arab countries the interflow of private investment within the Arab countries is still rather limited. The previous lack of adequate legal and institutional provisions within the Arab region was a major barrier for investing Arab surplus funds in the Arab homeland. At present the Arab countries realise that an expansion of long term private investment flows requires some guarantee for the investors as well as investments incentives, the availability of well-studied projects ready for financing and easy access to implementation of investment. To meet this need the Arab countries have established new investment mechanisms to guarantee against political risk, such as the Inter-Arab Investment Guarantee Corporation and the Inter-Arab Investment Agreement, which was recently

ratified by the Arab states.

### **8.5 Future Prospects**

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This section concludes with an assessment of the future prospects of Arab financial institutions in developing countries. The activities of these institutions during the 1970's and early 1980's were shaped largely by continuously increasing oil revenues and the associated capital surplus. How the recent decline in oil revenues and the drawdown of the surplus will affect these activities in the remainder of 1980's and in the 1990's remains to be seen.

The first point to note is that oil prices during the 1980's are more likely to be determined by the free interplay of supply and demand in the international oil market. By 1985, this market was showing considerable softening and oil prices were drifting downwards. The associated high supply elasticity in most OPEC members was caused by idle oil production capacity. Future increases in oil revenues for the individual oil exporters, if any, will thus come from increases in the quantity of exported oil.

The drop in OPEC oil revenues since 1981 has been

associated with various changes in government expenditures, which have hitherto been the engine of growth in member countries. Although government current expenditures have declined somewhat in Saudi Arabia, Qatar, and UAE, they have continued to expand at modest rates in Kuwait. By contrast, government investment or development expenditures have declined substantially below their 1981 peak levels, for example, in the UAE by 35 per cent and in Saudi Arabia by 37 per cent, [10]. All these countries have introduced fiscal discipline after years of accelerating expansion. At the same time, a recession of major proportions has begun to develop and has already reduced private incomes and expenditures. During the remainder of the 1980's and early 1990's however, government expenditures in nearly all OPEC countries are expected to increase owing to demographic expansion.

In the face of these trends if OPEC oil revenues decline or cease to increase, OPEC governments will incur budgetary deficits which must be financed through either external borrowing or drawdown of reserves and investments abroad. In the latter, maintenance of the principal sums is possible only if the size of budgetary deficits is limited to the income generated from financial placements and investments abroad, estimated

roughly at about US\$ 1 billion for Qatar, US\$ 12 billions for Saudi Arabia, and US\$ 3 billions for UAE. Some of these countries may have to dip into the principal of their investments, as was indeed the case in Saudi Arabia during 1983-84 and 1984-85. [11] Other OPEC members have already gone beyond their accumulated surpluses: Algeria, Ecuador, Indonesia, Iraq, Iran and Nigeria have even accumulated large debts. The accumulated surplus attained in 1981 was not only a historical peak for OPEC collectively, but also a peak for most individual member countries, who started their withdrawals shortly thereafter.

As a result, Arab/OPEC aid has declined steadily since that time. Although aid disbursements in 1984 were less than one half of their 1980 peak level, their ratio to GNP in the relevant donor countries continued to exceed 2 per cent, which is several times the ratio associated with other sources of concessional assistance (OECD, CMEA). During the rest of the 1980's, total Arab/OPEC aid, especially from bilateral sources, may decline further because the donor countries will most likely continue to be squeezed by stagnant or declining oil revenues and rising government expenditures. However, the smaller portion of aid flows managed by Arab/OPEC development funds for project financing or program loans

may not decline markedly. Recent statements by policy makers in the Arab Funds suggest that the disbursements of some Funds may stabilise or possibly increase somewhat through 1990.

Now that Arab financial institutions have established a presence in international financial/development circles and have gained experience in transferring substantial amounts of resources to developing countries, they can expect other challenges in the future. The greatest of these challenges for some will be to survive the vagaries of the international financial environment, which has changed significantly since the debt crisis broke out in 1982, leaving financial intermediaries on shakier ground than ever before and the economies of developing countries more vulnerable. These challenges could be captured if Arab Financial Institutions make more co-operation and co-ordination and move towards unified policy. It is necessary also to build their staff capabilities and depend on the high qualified and experienced personnel.



## 8.6 Conclusions

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In conclusion it can be said that Arab oil surpluses have changed the world economy. They have opened a wide range of socio-political and economic opportunities, not only for the Arab countries but also for the developing countries and the industrialised countries as well. Although Arab countries were the first beneficiaries of these oil surpluses in the form of Arab aid, labour remittances, and increased trade and investment, the developing countries in Africa, Asia and even Europe and Latin America have also enjoyed Arab loans and assistance. As for the industrialised countries, they recycled Arab money, increased their exports to Arab markets, and benefited from Arab assistance to the Third World in that it was these same industrialised countries that supplied the goods and services for projects financed by Arab money. The international banking system played its part by carrying on the recycling process and by using Arab deposits to extend loans to developing countries.

In short, Arab assistance has proved useful in achieving a large number of needed development projects all over the Third World and has helped to spark new loans and

investment in these countries. But the process of development is a continuous one. As we have seen, the resource gap is still great. Continuous efforts are necessary to channel more resources to the developing countries. The committed backing of governments, the readiness of bankers, and the leadership of development institutions is called for to support this human cause that concerns not only us, but future generations and humanity as a whole, [12].

**FOOTNOTES**

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- 01). Y Al-Hamad, "Arab Funds & International Economic Cooperation", op cit, p.4
- 02). The initials are taken from the French rather than the English name for the bank.
- 03). OPEC Fund for International Development, **Annual Report, 1980**, Riyadh, 1980  
  
OPEC countries committed \$435.5mn  
OECD countries committed \$567.0mn  
Non-oil LDC's committed \$ 24.7mn
- 04). **The Inter-American Development Bank & Complementary Financing**, Washington, D.C., 1976, p.4 et seq
- 05). This interesting, "project contribution combination" was suggested by Ms Winifred Armstrong, International Economist and Consultant in discussions held in Paris in February 1976.
- 06). Dr Al-Imady, op cit, pp.67 - 72
- 07). Economist Intelligence Unit, "EIU Regional Review: The Middle East & North Africa 1986", London, p.9
- 08). *ibid*
- 09). *ibid*
- 10). As computed from budget statistics occasionally published in MEES, various 1985 issues.
- 11). Kingdom of Saudi Arabia, **Government Budget 1403/1404 A.H. and 1404/1405 A.H.**
- 12). Dr Al-Imady, op cit, pp.68 - 77
- 13). Elu - 1986-87 Country Profile - Kuwait - p.25
- 14). Elu the Economist Intelligence Unit 1987-1988 - Country Profile United Arab Emirates, p.39

CHAPTER NINE  
\*\*\*\*\*

THE FORMATION OF THE ARAB GULF DEVELOPMENT FUND  
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9.1 The justification for the establishment of the  
\*\*\*\*\*  
Arab Gulf Development Fund, (AGDF).  
\*\*\*\*\*

The members of the Gulf Co-operation Council were very keen to give significance to the co-operation and economic integration between them. For this reason they entered into the GCC Economic Agreement in 1983 which expressly sought to strengthen the co-operation and co-ordination between the members of the GCC in the areas of development aid to the Third World. The establishment of a new development fund would be in accord with this Agreement for the following reasons:

1. The Arab Gulf Development Fund would be the best means of implementing and co-ordinating policy towards the economic development of the Third World.
2. The Arab Gulf Development Fund would be capable of

putting forward a comprehensive plan of development in the Third World which would replace the current ad hoc participation in projects.

3. Because of the recent decline in oil revenue, many countries have been unable to continue their financial support of existing development projects. The establishment of a united fund would provide such projects with alternative sources of finance.
4. Since the GCC established the Kuwait based Gulf Investment Company in 1983, with a capital of \$ 500 mn, the new Fund would have a ready source of finance to their mutual advantage.
5. The co-operation between the Fund and the Gulf Investment Company would encourage the financial involvement of the region's commercial banks.
6. The achievement of tripartite co-operation between the Gulf Investment Company, the commercial banks and the Fund in investing in developing countries would also provide the benefit of increasing trade and commerce between donors and recipients. It would also encourage exports, strengthen bonds and provide the opportunity to expand.
7. Co-operation between the three parties would result

in the evolution of a new financial centre in the Gulf, headed by the GCC, which serves the interests of the Gulf states and the developing countries.

8. Increased co-operation between the three parties would encourage greater private sector involvement as investing in the developing world would be given greater credibility.

Thus the establishment of a new fund would be the cornerstone of encouraging development in the Third World to speed up and strengthen the development process.

## **9.2 Islamic Philosophy of Assistance & Distribution of \*\*\*\*\* Wealth \*\*\*\*\***

Holy Qur'an, the First Primary of Shari'ah urges for aid and assistance

"In it is guidance, for those who spend out of what we have provided for them."

The Sources from which Funds are used for Aid are as follows:

A: Zakat: One of the pillars of Islam which demands

that 2.5 or 1/40 the part of our savings should be given to the poor and needy as a poor-rate. These funds were collected and managed in the Bait al-mal of Muslims for the welfare of the Ummah. The Zakat is only payable by Muslim subjects from their cash property, trade merchandise and herds of cattle. The non-Muslims are exempted from the payment of Zakat.

Being one of the five pillars of Islam there occur a number of verses of injunctions on Zakat in the Qur'an:

1. "And they pray regularly and give Zakat." [01]
2. "Tie be to the polytheists who do not give Zakat and disbelieve in the life after death."  
[02]
3. "My mercy is spread on all things. So I shall write it for those who are righteous and give Zakat and believe in our signs." [03]
4. "Whatever Zakat you give to seek pleasure of Allah, such people will increase their property two-fold in the Next World." [04]

B: Sadaqah or Infaq Fi Sabilillah

Sadaqah is a voluntary charity given by individuals over and above the payment of the compulsory Zakat to relieve the problems and sufferings of fellow-human beings. According to the Ahadith, Sadaqah must be given in such a way that 'even the left hand of the donor does not know what the right hand gives'.

The word sadaqah and Infaq fi-sabilillah occur several times in the Holy Qur'an:

1. "And in their poverty is the right of the beggar and those devoid of riches (i.e. poor)."  
[06]
2. "And spend in the path of Allah and do not throw yourselves with your own hands into destruction." [06]
3. "O you who are believers, spend from the pure things that you have earned." [07]
4. "You give to your relative his right and to the



poor and a way-farer." [08]

5. "O you who believe, spend from what we have given you." [09]

#### **The Right of the Poor:**

As promised in the Qur'an, "Allah will deprive usury of all blessings, but will give increase for deeds of charity." [10] Thus, Islam lays great stress on the relief of poverty by the rich:

"The poor and the unfortunate have a right in their (the rich people's) property." [11]

It is not considered to be a favour by the rich if they help the poor; on the other hand, it is a duty of the rich and prosperous men to take part in the economic uplift of the poor. The Qur'an condemns all those who go on collecting wealth but do not spend it for charitable purposes:

"And those who go on hoarding gold and silver and do not spend it in the way of Allah, give them warning of a great punishment." [12]

The Holy Qur'an reminds us that in the past many nations were destroyed because the rich and well-to-do among them did nothing to better the condition of the poor, tried to keep them in a state of poverty and treated them with great disrespect and indignity. The Prophet Nuh (Noah), when he began to remind the rich people of his nation of their duties towards the poor, he was told by the well-to-do sections:

"Does your religion demand of us that we should give up worshipping what our fathers worshipped and what we should not be free to do whatever we like with our wealth and property." [13]

This shows that in all ages the Prophets of Allah preached that men are not free to use and spend their wealth as they liked, but that the poorer sections of the people have a right in their wealth and possessions. The Holy Prophet was a great friend of the poor and treated them with respect and kindness. He not only instituted the system of Zakat as ordained by Allah to relieve poverty, but also stressed the fact that if a man has paid his Zakat, his duty towards the unfortunate members of the community has not ended. He is still required to help the poor and the needy. A Hadith of the Holy Prophet says:

"If a man brings up and educates an orphan, he will be as near to paradise as the fingers of a hand are near to each other."

In another Hadith, the Prophet has said:

"A man who helps and spends his time and money in looking after widows and the poor, holds the same position in the eyes of Allah as one who fights in the holy war, or fasts every day and prays the whole night over a number of years." [14]

**9.3. The strategy of the Arab Gulf Development Fund**  
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It is now the time for the developing countries to set up their policies for their economic and social development of their own, free will of any outside political and economic pressures.

With the framework of this philosophy for the Third World Development in mind, the Gulf Council Countries may establish a relationship with the developed countries which is based upon mutual benefits and fair

negotiations. These negotiations should be a part of the economic and social structures of the GCC countries. They are also considered relatively backward developing countries according to the usual standards used to define the term "developing". For that reason they all share the common characteristics and problems of economic and social backwardness. They are also dependent on one finite resource for almost all their export revenues. Naturally the fluctuating price of this crude oil is bound to affect the level of aid. Since crude oil is the principal source of income all of the GCC's economic activities are dependent on this source. Other natural resources need to be developed with proper planning in order to enable the developing countries to diversify their economic and social development.

The philosophy of assistance given by the Arab Gulf countries to the Third World springs from the basic Islamic philosophy of giving help and assistance based on generous terms and conditions which do not only consider economic returns. The basic philosophy of giving assistance is to help the economic development of the recipient countries and to achieve greater cooperation and understanding among them. In addition, the assistance offered by the Arab funds is far less conditional than that given by the industrial countries.

Arab aid is also less tied to the choice of donor's choice of consultants and contractors. [15]. The Arab Funds also encourage national consultants and contractors from the recipient countries if they are qualified.

It is well understood that the Arab oil exporting countries give a larger proportion of their GDP in the form of aid when compared to the proportion given by the industrialised developed countries. Moreover, the Arab assistance has focused on not only Arab and Islamic countries but also the least developed countries of the Third World.

**9.4 The organisational structure of the Arab Gulf  
\*\*\*\*\*  
Development Fund  
\*\*\*\*\***

**Capital**

It is proposed that the capital fund should be \$ 2,100 mn which is similar to the capital of the new Gulf Investment Company which the GCC has established. The Gulf Co-operation Council members should pay their share in the same portion as they did in the Gulf Investment Corporation.

### **Location**

There are three main reasons to choose Kuwait to be the main office of the new Arab Gulf Development Fund.

1. The Kuwait Fund was the pioneer of Gulf aid. It is therefore both natural and logical that Kuwait should have play the leading role in the AGDF
2. The GCC chose Kuwait to be the head office of the Gulf Investment Cooperation, (GIC), and it is recommended that the new Fund will act as a bridge between the GIC's investment and aid in the developing countries.
3. Kuwait is the base for the Arab Fund for Economic Development and it is natural that co-operation will be closer between the two development institutions.

### **Structural organisation**

It is proposed that co-ordination offices should be opened in the recipient countries. These offices will not all be opened at one time but only following consideration of the priorities on the basis of the size of aid and the number of projects.

These offices will be a guarantee for the success of development and will be able to adopt the theory of "learning through doing".

The open co-ordination offices in most recipient countries will serve:

- (a) AGDF activities.
- (b) Regional development funds in each recipient country.
- (c) To co-ordinate and co-operate with United Nations financial institutions and all other development institutions.
- (d) To investigate the proper international investments that speed up the development purposes.
- (e) To prepare studies and recommendations for the financing of projects through the funds and the investment institution.

Beside the AGDF offices in the recipient countries, the AGDF offices in the member states are necessary to act as a link between each member state and the new Fund.

### **A working plan**

It is proposed that experts from the Kuwait Fund, Abu Dhabi Fund and Saudi Fund should prepare technical study determining:

1. The conceptualisation of the proposed fund, particularly on the definition of its nature, objectives and methods of intervention.
2. The Arab Gulf Development Fund's Task.
3. Its organisation structure
4. The drafting of the technical and administrative regulations governing its activities.

In conclusion the proposed fund along with the cooperation of the Gulf Investment Company and the Gulf's commercial banks would both broaden and strengthen the economic infrastructure in the Gulf region. It would also encourage Third World development. The time has come when an incremental percentage of the present funds invested abroad by GCC countries should be redirected to the developing countries by using the Arab Gulf Development Fund as a vehicle.



**FOOTNOTES**

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- [01] Qur'an, ch. 2: 44
- [02] Qur'an, ch. 41: 87
- [03] Qur'an, ch. 7:156
- [04] Qur'an, ch. 30: 39
- [05] Qur'an, ch. 51: 19
- [06] Qur'an, ch. 2:191
- [07] Qur'an, ch. 2:268
- [08] Qur'an, ch. 30: 38
- [09] Qur'an, ch. 2:255
- [10] Qur'an, ch. 2:276
- [11] Qur'an, ch. 51: 19
- [12] Qur'an, ch. 5: 24
- [13] Qur'an, ch. 8. 88
- [14] Doi, Abdur Rahman I., "Shari'ah", The Islamic Law, Ta Ha Publishers - London, pp.391-392
- [15] Source : Annual Report (1982) Abu Dhabi Fund for Arab Economic Development, Page 12.

CHAPTER TEN  
\*\*\*\*\*

A MODEL FOR THE ESTABLISHMENT OF THE ARAB GULF  
\*\*\*\*\*

DEVELOPMENT FUND AND ITS PROPOSED ARTICLES OF ASSOCIATION  
\*\*\*\*\*

10.1 Introduction  
\*\*\*\*\*

Governments of member states of the Gulf Cooperation Council Countries endeavour to develop and enhance mutual relations through the system of the G.C.C. in order to secure optimum, mutually satisfactory benefits for their peoples. In order to cultivate a unified system of economic, financial, monetary, commercial, industrial and customs duty (trade) relations, the G.C.C. member states agreed in 1983 to enter into a Unified Economic Agreement. The Agreement consists of 27 Articles. Article 20 of the Unified Economic Agreement requires that G.C.C. member states endeavour to unify the systems and laws pertaining to investment so as to achieve a joint investment policy capable of directing domestic and foreign investments to serve their peoples interests and aspirations. Recognising the importance of investment in developing their national resources, one of the first decisions taken by the G.C.C. was the establishment of the Gulf Investment

Corporation, the first such institution to be set up and jointly owned by the Governments of the six member states. Article 22 of the Unified Economic Agreement provides that G.C.C. member states coordinate their external policies as a first step to the provision of international and domestic aid for development. In implementation of this Article, I recommend the establishment of a new fund, and to be called the Arab Gulf Development Fund (A.G.D.F.). I propose here this new institution be set up under the auspices of and jointly owned by the Governments of the six G.C.C. member states. This new Fund will play an important role in the field of development. A special mechanism for cooperation and coordination should be arranged between the Gulf Investment Corporation and the A.G.D.F. in order to speed up development programmes in the Third World. Below is set down my suggestions for the "Establishment Agreement" and "Articles of Association" of the proposed new Fund.

**10.2 ARAB GULF DEVELOPMENT FUND**  
\*\*\*\*\*

**Preamble**

With reference to Law No.:            of            promulgated on  
approving the agreement incorporating the **ARAB GULF**

**DEVELOPMENT FUND** issued in the Official Gazette issue No.:          dated          , the said Law [01] contains two parts:

**Part I - Establishing Agreement**

**Part II - Articles of Association**

**10.2.1 PART 1 - The model for establishing agreement**  
\*\*\*\*\*

The Governments of United Arab Emirates, State of Bahrain, Kingdom of Saudi Arabia, Sultanate of Oman, State of Qatar, and State of Kuwait [02] in the light of the principles and purposes of the Gulf Cooperation Council and in order to cement the relations between member states, have agreed upon the following:

**Article 1**

In accordance with this Agreement and Articles of Association attached thereto and in compliance with the Laws of the State of Kuwait, a shareholding fund in the name of the **ARAB GULF DEVELOPMENT FUND** shall be incorporated. It shall be referred to hereinafter as "The Fund". It shall enjoy an independent legal personality and is entrusted with every necessary power for fulfilling its purposes. In particular 'The Fund'

is authorised to accept deposits from Government Agencies and individuals.

#### **Article 2**

The Fund's principal office and legal place of business shall be the city of Kuwait, and it may establish branches and agencies anywhere else [03].

#### **Article 3**

The duration of The Fund shall be indefinite.

#### **Article 4**

The purposes of The Fund shall be ;

- a). investing its monies and any other entrusted funds in all fields of investment in member states or elsewhere ;
- b) supporting the economic and financial sources of the member states ;
- c) offering economic aid to Arab, Islamic and other developing countries.

#### **Article 5**

1. The capital of The Fund is fixed at US \$ 2,100 mn duly divided into 2,100,000 equal shares at par value of US \$ 1,000.

2. The Governments who are signatories to this agreement have subscribed to the capital in equal shares in the following manner: [04]

Subscriber Government	No. of Shares	Value in US \$
U.A.E.	350,000	350,000,000
Bahrain	350,000	350,000,000
Saudi Arabia	350,000	350,000,000
Oman	350,000	350,000,000
Qatar	350,000	350,000,000
Kuwait	350,000	350,000,000

3. Any shareholding Government may transfer ownership of the part of its subscription in the capital not exceeding 49% to its financial institutions and companies in accordance with the stipulations of the Articles of Association.

4 . Capital of The Fund and subscription shares shall be adjusted in accordance with the terms of the Articles of Association attached thereto.

#### **Article 6**

Liability of shareholders shall be limited to the amount, if any, of their unpaid subscription to the capital of the Fund. Shareholders shall not otherwise be liable for the obligations of the Fund towards third parties.

## **Article 7**

### **Immunities and Exemptions**

#### **Funds and Transaction of The Fund**

1. Funds and assets of the Fund in the member states shall not be subject to nationalisation or confiscation or capture unless for executing a final judgment issued by a concerned judicial authority.
2. Funds, profits and financial transactions of the Fund shall be exempted from any restrictions which may be imposed by any shareholding Government on currency transfers.
3. Assets, revenues and licensed transactions of the Fund under this agreement shall be exempted from taxes and charges in all member states, excluding charges due to services offered to the Fund by any public facility. Dividends payable on and shares of the Fund upon subscription shall be exempted from all taxes and charges. This exemption, shall cover any securities issued by the Fund and consequently any other levied interests or commissions.

### **Board Members and Staff of The Fund**

1. Board members shall enjoy immunity against any legal or executory proceedings in respect of their bona fide actions whether performed in their official capacity or while performing the duties of The Fund.
  
2. Board members and staff shall be exempted from any taxes levied on salaries and remunerations paid by the Fund. Travel and residence facilities shall be granted to them in the state of residence and other member countries to enable the said members and staff to perform their duties in accordance with laws and regulations operative in each state. This shall not entail any obligations on any of the member states towards its nationals in respect of granting the said immunities or exemptions to its nationals.

### **Article 8**

#### **Legal System of the Corporation**

In respect of this Fund and shareholding rights, the provisions of this agreement and those of the Articles



of Association shall apply and shall be considered an integral part of the laws effective in the state of residence and shall be considered complementary to the said provisions.

## **Article 9**

### **Settlement of disputes**

1. In case of any dispute between any of the contracted governments or between any government and the Fund in respect of construing or applying the provisions of this agreement, an attempt should be made to settle such a dispute amicably through negotiations. In case no settlement is reached within 90 days from the date of any party requesting such settlement, the matter shall be resolved by one or more arbitrators according to the following terms:
2. Arbitration proceedings will start upon a notice to be forwarded from the party requesting arbitration to the other party or parties giving details of the dispute and the resolutions requested and the name of the arbitrator appointed by this party. The other party or parties shall within 30 days from the date of receipt of such notice inform the party requesting arbitration and any other parties of the name of the arbitrator appointed by him or them. The two arbitrators shall select within 30 days from the

date of appointing the last one, a casting arbitrator who shall preside over the arbitration panel and who shall have a casting vote.

3. In case any party fails to appoint his arbitrator within 30 days as specified above in (2) the said arbitrator and the casting arbitrator shall be appointed by the GCC General Secretary.
  
4. Notwithstanding what is specified in paragraph 2 and 3 of this article, parties involved in the dispute may jointly agree to appoint one arbitrator to look into the dispute within 30 days from the date of receipt of the notice forwarded by the party requesting arbitration. If having so agreed the parties then fail to appoint the said arbitrator, he will be appointed by GCC General Secretary. This arbitrator shall have all powers and jurisdictions of the Arbitration Panel stated in this Article.

#### **Article 10**

##### **Amendment of the Agreement**

Any amendment in this agreement related to capital and subscription will be in accordance with the terms of this agreement. As for matters not specified in this

Agreement, amendment shall be made by agreement of member states.

#### **Article 11**

##### **Enforcement of the Agreement**

This agreement shall come into effect after 6 months as from the date of its approval by the GCC Supreme Council [05].

#### **10.2.2 Explanation for the Establishing Agreement of the proposed A.G.D.F.**

##### **Explanation - Article 1**

Compliance with the Laws of Kuwait is deemed essential so long as the principal office of the Fund is suggested to be in Kuwait. It is also essential that this Fund enjoy independent juridical personality distinct from the owner states. Authorising the Fund to accept deposits from government agencies and individuals is a new concept here. No other fund in the Gulf is allowed to accept such deposits except the KFAED. This authorisation implies a new role for the Fund in development work:

1. The aid provided will be flexible because the Fund will have more assets than capital.
2. It will allow for greater participation by government financial institutions in certain projects.
3. Individuals can participate in some projects and can feel they are helping the countries and people of the Third World, something that was not possible in the past as individuals were not in a position to contact the candidate developing country. Here, individuals, by having the right to participate, will also achieve the following:

- 1 - Secured interest;
- 2 - Contributing to charity or help for the needy;
- 3 - Participation in all or much of the financing of projects, and adding their names to projects, e.g., calling the dam project in Nigeria the Dam of Sheikh Ahmad Ben Muhammad or the motorway project in Kenya the Saud Ben Abdul Rahman motorway, etc.,

#### **Explanation - Article 2**

There are three reasons for proposing Kuwait as the headquarters of this Fund:

1. The presence of the Kuwait Fund for Arab Economic Development, which was the first Fund established in the Arab World and is considered the leading Arab development fund.
  
2. The presence of the Gulf Investment Corporation - the first unified Gulf financial institution established in implementation of the Unified Gulf Economic Agreement.
  
3. Kuwait's hosting of the Arab Fund for Economic and Social Development (established in 1968 and the main office of the Organisation of Arab Petroleum Exporting Countries (OAPEC). Kuwait is also the suggested place for the proposed Institute of Development Studies. In short, we may consider Kuwait the financial centre of the Gulf and Middle East, just as London is considered the financial centre of Europe and the world.

#### **Explanation - Article 3**

The duration of 'The Fund' shall be indefinite. By this provision we link the life of the Fund with that of the G.C.C. itself. This provision is similar to Article 3

of the Agreement establishing the Gulf Investment Corporation.

**Explanation - Article 4**

The principal aims and objectives of the new Fund are as follows:

1. Investing its monies and other entrusted funds in member states and other countries in the world. This will give the fund flexibility in its operations and allow for cooperation with the Gulf Investment Fund, investment companies and other international financial institutions.
  
2. Supporting the economic and financial sources of the member states. This aim is essential for rendering the Fund the right arm of the G.C.C. and assisting member states whenever necessary.
  
3. Offering economic aid to Arab, Islamic and other developing countries. Priority is given to Arab countries because, being first and foremost an Arab Fund, the A.G.D.F. should serve the Arab cause. Second priority will be given to Islamic countries

and have a religious obligation to assist other Islamic countries. Finally, the G.C.C. states are part of the developing countries and third world; the Fund aid should play a greater role than that played by the Gulf regional funds for the last twenty five years. A.G.D.F. aid will be extended in the form of loans, direct investment and technical expertise and assistance in the various fields of economic development. If we compare the objectives of the new Fund with these of Arab national and regional development institutions as outlined in **Chapter Five** we find that they have similar aims, including the main aim of providing economic aid to Arab, Islamic and Third World countries. However, in the A.G.D.F. there is the provision that this aid proceed from the policy and strategy drawn up, from time to time, by the Supreme Council of the G.C.C. Nevertheless, the concept of aid remains the same in all these funds.

#### **Explanation - Article 5**

The proposed capital of the A.G.D.F. is similar to the approved capital of the Gulf Investment Company. The shares of member states are equal, which is a logical step providing each country with equal rights and

obligations and avoiding the potential controversy over management and decision should the shares differ from one country to the next. If we compare the A.G.D.F. capital with that of any Arab national or regional development institution, (see Chapter Five), we note that the proposed capital is almost half of the capital of OPEC Fund for International Development and Double of the Arab Bank for Economic Development in Africa.

There is a simple explanation for why the proposed capital should be in US Dollars:

1. The G.C.C. have no unified currency though it is hoped that this goal be reached in the near future. A unified Arab currency would be a very important step towards the Unified Economic System for the Gulf countries.
2. The currency used in the World bank and other international financial institutions is the US Dollar.
3. Consistent with this proposal was the G.C.C.'s endorsement of US currency as the capital of Gulf Investment Company.



#### **Explanation - Article 6**

Here we provide the interpretation and implementation of paragraph 2 of Article 1 of the proposed Agreement establishing the new Arab Gulf Development Fund. The Fund enjoys an independent legal personality. According to this Article, the Fund will be an independent party where contracting is concerned or whenever any dispute arises between the Fund and the beneficiary country or agency. Such matters will be between the Fund alone (not any member country) on the one side and the beneficiary country or agency on the other.

#### **Explanation - Article 7**

Three points are involved:

First: Immunity of A.G.D.F. funds and assets from nationalisation or confiscation, except in the case of execution of a final judgement by a concerned juridicial authority. This provision protects Fund assets from any future decision order or even law issued by any member country to obtain access to Fund assets by means of nationalisation or confiscation.

Secondly: It is deemed very necessary that all Fund

profits and financial transactions be rendered legally free from any obstacle or restriction imposed by a shareholding government.

Thirdly: This paragraph is deemed necessary to protect the assets and revenues of the Fund from all taxes levied by member states. It is also necessary to exempt Board members and staff of the Fund from taxes and assure them immunity from legal proceedings. This immunity is common to all regional and international financial institutions and is approved by all members of the United Nations.

#### **Explanation - Article 8**

This Article defines the application of the legal provision governing the Fund, i.e., that the Fund shall be governed by:

1. This Agreement.
2. By the Articles of Association making up this Agreement.
3. By the local laws of Kuwait, so long as these laws do not contravene this Agreement and the attached Articles of Association.

This provision resolves the conflict of laws issued and makes it expressly clear that the Agreement and the Articles should prevail in any legal conflict that may arise in future.

#### **Explanation - Article 9**

Arbitration in this Article refers to disputes between any contracted government and the Fund. Thus, it is different from other arbitration provisions included in loan agreements between the Fund and the borrower, as explained in the proposed model of the Standard Form of Loan Agreements. In the arbitration clause provided in this Agreement greater leeway is given to the Secretary General of the G.C.C. in choosing the Umpire. The provision is similar to that of Article 37 of the Agreement establishing the Arab Fund for Economic and Social Development. In that Article the Umpire is appointed by the Secretary General of the Arab League. Article 37 of that Agreement reads:

"Whenever a disagreement arises between the Fund and a state or a country which has ceased to be a member, or between the Fund and a member during the final liquidation of the Fund, any party may submit such disagreement to arbitration by a tribunal of three

arbitrators, one appointed by the Fund, another by the second party, and the third arbitrator shall be selected by the two arbitrators. In case the two arbitrators fail to agree on the selection of the third arbitrator, the Secretary General of the League of Arab States shall select one from among Arab jurists. The award of the arbitration tribunal shall be final and binding.

**Explanation - Article 10**

As in all Agreements, an amendment clause is added to accommodate potential changes which the member states may deem necessary. These amendments should be agreed upon by all members according to the same formula when they enter into this Agreement. Naturally, if the members agree to have a new member in the G.C.C. in future, it means that this member will also become party to this Agreement.

**Explanation - Article 11**

A period of six months is needed to enable each member to secure the approval of its legislative branch. Time is also needed for payment of the share of each country, recruitment of staff and so on. The text of this Article is similar to Article 11 of the Gulf Investment

Corporation Establishing Agreement.

**10.3. PART II - A model for the Articles of Association  
\*\*\*\*\*  
of the new Arab Gulf Development Fund, (AGDF).  
\*\*\*\*\***

## **Chapter 1**

### **The establishing agreement**

#### **Article 1**

Under the Establishing Agreement and the Articles of Association a shareholding Fund was established under the name of the ARAB GULF DEVELOPMENT FUND, referred to hereinafter as The Fund.

#### **Article 2**

The Corporation, principal office and legal domicile of The Fund shall be in the city of Kuwait. However, the Board of Directors may establish branches or agencies in the State of Kuwait or abroad.

#### **Article 3**

The duration of The Fund shall be indefinite.

#### **Article 4**

##### **10.3.1 Purposes of The Fund**

The purpose of The Fund is to assist Arab States and

Developing States in developing their economies and, in particular, to provide such states with loans, grants and technical assistance for the implementation of their development programmes, in accordance with the provisions of this Agreement [06].

The Fund shall participate in the financing of economic and social development projects in the Arab States, Islamic Countries and other developing countries [07] by:

1. Financing economic projects of an investment character by means of loans granted on easy terms to Governments, and to public or private organisations and institutions, giving preference to economic projects that are vital to the Arab entity and to joint Arab projects.
2. Encouraging, directly or indirectly, the investment of public and private capital in such a manner as to ensure the development and growth of the Arab economy.
3. Providing technical expertise and assistance in the various fields of economic development [08].

### **10.3.2 : Chapter II - Functions of the Fund**

#### **Article 5**

##### **Operations of the Fund**

The Fund shall exercise its functions in such manner as the Board may deem appropriate, and in particular by:

- (a) extending loans to Arab and other developing states, or to corporate bodies which are under the control, or have the nationality of any such state, or constitute a joint venture among such states. Provided that such corporate bodies contribute to the economic development of such states or any of them and that their objects are not restricted to the mere making of profit;
- (b) extending grants and technical assistance to such entities as are enumerated in paragraph (a) of this section;
- (c) providing guarantees in respect of obligations of such entities as are enumerated in paragraph (a) of this section;
- (d) contribution to the capital stock of corporate bodies which are under the control of or have the nationality of any Arab or other developing state

or constitute a joint venture among such states,  
and which are of a developmental nature;

- (e) contributing to the capital stock of developmental finance institutions and other international and foreign developing institutions whose object is to assist developing countries or any of them in developing their economies. The Fund may represent the State in such institutions [09].

#### **Article 6**

The Fund shall, in particular, carry out the following operations:

1. Borrow funds from internal and foreign markets and determine any guarantee necessary therefore.
2. Guarantee the securities relating to the projects wherein The Fund has invested its resources in order to facilitate their sale.
3. Buy and sell the securities issued or guaranteed by it or wherein it has invested its resources.
4. Invest surplus resources, its savings and pension funds and the like, in first class securities.
5. The Fund may also accept deposits from the GCC governments and public establishments in accordance with stipulations and circumstances specified by the Board of Directors [10].



6. Carry out any other operation connected with the purposes of the Fund as provided for in Article 4 [11].

## **Article 7**

### **Guarantees**

1. All lending operations undertaken by the Fund in favour of a public or private organisation or institution shall be guaranteed by the Government of the State or the country where the project is carried out.
2. The Fund is entitled, when financing a non-governmental project, to ask for special guarantees in addition to the governmental guarantees stipulated in paragraph 1 of this Article [12].

## **Article 8**

### **Limitations on financing**

1. The Fund shall not finance a project in the territory of any member without the permission of the government concerned.
2. The Fund shall stipulate that the proceeds of the loan be used for the purpose(s) for which the loan

was granted.

3. The Fund shall not share in the management of any project wherein it has invested its resources.
4. The Fund shall carry out its financing operations on the terms it shall deem appropriate, taking into consideration the requirements and risks of the project.
5. The Fund shall ascertain, through its technical experts, the viability of any project before financing it.
6. The Fund shall strive for the continuous investment of its resources on satisfactory terms.
7. The Fund may raise loans in any member country to finance a project after obtaining the permission of the government of that country. In case the project is to be carried out in the country of another member, the member in whose country the loan is raised shall undertake to transfer the proceeds of the loan to the country where the project is to be carried out, at the Fund's request [13].

## **Article 9**

The Fund may provide loans covering all or part of the foreign exchange costs of a project provided that no loan shall exceed 50% of the total cost thereof.

The above provision notwithstanding, the Board may, for special considerations relating to the beneficiary state or to the project, approve financing of local costs or exceeding the said ratio of 50% [14].

## **Article 10**

### **Economic Consideration**

The Fund, when considering applications for loans, shall be guided by the following considerations, reports and verifications.

- (a) The soundness of the position of the borrower and the guarantor.
- (b) The soundness and adequacy of financial guarantees submitted by a third party.
- (c) The relative importance and priority of the project to be financed.
- (d) A complete and thorough estimate of the cost of the project.

- (e) A thorough economic and technical study of the project, including feasibility study of implementation, if so necessary.
- (f) Verification that the money required for carrying out and completion of the project, over and above the proportion financed by the Fund, is available.
- (g) Verification that the project in question does not contradict the economic interest of Abu Dhabi or any other Arab state [15].

## **Article 11**

### **10.3.3 Loan agreements**

Loan agreements concluded between borrowers and the Fund shall provide, among other things, for the following:

- (a) the financial conditions, including the dates and the terms of payment of principal and interest and other charges, provided that the Board may, where it deems necessary, approve the granting of a loan without interest;
- (b) an undertaking by the borrower to furnish The Fund with sufficient information relating to the progress of work on the project from the date of

signature of the loan agreement until final settlement of the loan;

- (c) an undertaking by the borrower to extend to the Fund's representatives such facilities as may be necessary to enable them to acquire information about the progress of the projects financed by the Fund;
- (d) The measures necessary for ascertaining the use of the proceeds of the loan for the purpose of meeting expenditures on the project as and when they arise;
- (e) an undertaking that no other external debt will have priority over the Fund's loan or the interest or other charges thereon by means of a lien created on the assets of the borrower save to such extent as the Fund may approve;
- (f) an undertaking that all the transactions, assets and income of the Fund in the borrower's country will be exempt from all taxes, dues and other levies;
- (g) an undertaking to facilitate all financial transactions of the Fund and to lift all foreign exchange restrictions with regard to direct and indirect transfers arising from the loan agreements;

- (h) an undertaking to treat as confidential all documents, records and correspondence of the Fund such that the Fund shall, in this respect, be accorded full immunity;
- (i) an undertaking to exempt all assets and income of the Fund from nationalisation, confiscation and seizure.

In case the loan is made to a party other than the beneficiary state but under its guarantee the undertakings enumerated in paragraphs (f) to (i) of this Article shall be incorporated in the Guarantee Agreement [16] .

#### **Article 12**

In addition to the rate of interest provided for in each loan agreement, there shall be payable on the amounts withdrawn from the loan and outstanding a charge of one half per cent (0.5%) per annum for the purpose of meeting administrative expenses and the costs incurred in the implementation of the loan agreement [17].

### **Article 13**

Loan agreements shall be written in the Arabic language [18].

### **Article 14**

#### **Currencies in which loans are granted**

The Fund shall pay the borrower the amount of the loan in the currency agreed upon by the two parties as required for the execution of the project [19].

### **Article 15**

#### **Conversion of currencies**

The Fund shall be entitled to convert the currencies at its disposal into any other currency deemed best suited for its purposes [20].

## **Chapter III**

### **10.3.4 The Fund's capital and shares**

### **Article 16**

1. The Fund capital is fixed to be US\$ two thousand one hundred million divided into two million and one hundred thousand nominal shares, the value of each is US\$ 1,000.

2. The Governments who are signatories to this agreement shall subscribe to the capital as follows:

Subscriber	Government	No. of Shares	Value in US\$
U.A.E.		350,000	350,000,000
Bahrain		350,000	350,000,000
Saudi Arabia		350,000	350,000,000
Oman		350,000	350,000,000
Qatar		350,000	350,000,000
Kuwait		350,000	350,000,000

#### Article 17

1. The subscribers shall pay 20% of shares out of the total nominal value subscribed to within 90 days following the execution of the Fund agreement. Such amounts are to be payable into an account opened for this purpose with one bank or more authorised in the country where the Fund shall be domiciled. Such amounts shall not be drawn without a decision resolved by the Constituent General Assembly.
2. The balance of nominal shares value shall be settled on the dates and in the manner specified by the Board of Directors provided that the



shareholders shall be advised thirty days prior to such dates.

3. The payment for each volume of shares is due on a specific date. If the payment is not forthcoming then a financial penalty can be levied at the rate of 15% per annum unless the Board of Directors decide not to collect the delay penalty [21]

#### **Article 18**

All the Corporation shares shall be nominal and the rights to each share shall be indivisible.

#### **Article 19**

1. Deeds representing the shares shall be issued out of a book with slips given serial numbers signed by the Chairman and another member of the Board of Directors and to be impressed with or stamped by the Fund's seal. The deed shall include a statement that the shares are nominal, the number of the Decree licensing the Fund's capital, the number of shares, the Fund's objective, its principal offices and its duration.
2. Upon a request made by one of the shareholders or

in compliance with conditions established by the Board of Directors. The Fund may issue deeds representing a set of shares. Such deeds are issued instead of issuing individual deeds for each share alone of the same number, or against delivering such deed to the Fund to be cancelled [22].

#### **Article 20**

1. Any of the shareholding countries may transfer to its citizens, individuals and corporate bodies holding its nationality the ownership of a part not exceeding 49% of its total share, which is beneficially held by its citizens, provided that it regulates the relationship between them and it as deems fit. The Government shall guarantee the rights and liabilities of these shares.
  
2. In the event that any of the Fund shares are transferred by legacy or heritage from subjects of one of the shareholding countries to a subject of another shareholding country, the Government of the State in which the legatee has nationality, shall be entitled to purchase the same at its ruling market price. In the event of a dispute arising

about the same, the Board of Directors shall determine the disputable value. And in case of transferring any of the Fund shares in the manner referred to subjects other than the incorporating states, the Government of the State of which the legatee belongs shall purchase the same at the value determined by the said manner [23].

#### **Article 21**

1. Without violation of the provisions of Article 20 of this Agreement, any of the shareholding countries may transfer to its financial institutions or corporate bodies, holding its nationality, the ownership of all or part of its shares. But at any time, the Board of Directors has the right to cancel this restriction and allow individuals and corporated bodies holding any of the member states nationality to exchange the shares. The Board of Directors is authorised as well to set up any conditions in this respect.
2. Transfer of ownership of shares should be proved in writing by abdication registered in a special record at the Fund.

**Article 22**

No member shall be deemed liable, by virtue of its membership, for the Fund's obligations beyond the limits set out in this agreement and it is not permissible to increase these obligations.

**Article 23**

It is stipulated that share ownership shall entail acceptance of provisions of The Fund's articles of association and the resolutions of its General Assembly.

**Article 24**

Each share entitles its owner to equal proportionate rights with other member without discrimination in dividend profits, as hereinafter provided.

**Article 25**

The latest owner of the share shall register its ownership in the Fund's records and only the registered owner is entitled to amounts receivable under each share whether such amounts are portions of profits or portions of the Fund's assets.

**Article 26**

1. The Fund's capital may be increased by issuing new shares or by transferring the reserve fund into shares. This can be carried out only by a resolution issued by the General Assembly which is entitled to lay down provisions for issuing new shares.
  
2. It is not permissible for the Fund to issue shares having more than their nominal value. If shares have been issued more than their real nominal value, at a premium the difference will be considered as issuing allowance and in this case it should be added to the legal reserve after covering the issuing expenditures.
  
3. Priority in subscription of the new shares will be given to each shareholding government with its financial institutions [24] and corporate bodies enjoying its nationality. A portion in the new shares depends on what percentage each shareholding government with its citizens own compared to 'the Fund's' total shares. A period of 15 days will be granted to shareholding Governments for practising this right taking effect from the date of

announcing the invitation for subscription. The unsubscribed remaining shares will be offered to shareholding Governments who wish to subscribe in the same way until those Governments decide their unwillingness to any further subscription.

**Article 27**

With a resolution from the General Assembly, The Fund may decide to issue types of shares besides the ordinary ones mentioned above. The manner of issuing these shares, their subscription priority and any rights related to voting entailed on shares, will be subjected to the same provisions mentioned in this statute.

**10.3.5 : Chapter IV - Organisation and management**

**Article 28**

The Fund shall be managed by a Board of Directors comprising two members for each shareholding Government provided that one of them should be the Minister of Finance or any other Minister designated by his government [25].

#### **Article 29**

1. The Board of Directors has a Chairman and a Vice-Chairman. These two posts are alternatively occupied every two years by Ministers from the member governments' delegates according to the alphabetical names of their countries.
2. The Chairman of the Board of Directors shall be the Fund's legal representative, provided that his deputy may act in proxy during his absence.

#### **Article 30**

The Chairman shall have the power to sign on behalf of the Fund, provided that his deputy or any other member deputed by the Board of Directors in this respect, has the power to sign during the Chairman's absence. The Board of Directors, however, may authorise any of the Fund's staff to sign on behalf of the Fund within proper considered limits laid down by the Board.

#### **Article 31**

1. An executive committee is appointed by the Board of Directors from the Board's members for conducting the Fund's activities under the Board's supervision and within the drawn limits. The powers of the

executive committee and its conduct for the Fund's business are limited by the Board of Directors.

2. The Board of Directors may appoint a Managing Director from its members, as well as, a Director-General for the Fund.

### **Article 32**

The Board of Directors shall meet four times at least per annum at times requested by its Chairman. These or additional meetings may be requisitioned by at least three members of the Board. The meeting will be considered valid provided a quorum is present representing countries holding no less than two-thirds of the total shares.

### **Article 33**

1. Upon voting at the Board of Directors each country-member shall have the same votes entailed to it according to Article of this Statute [26].
2. Unless otherwise stated, decisions of the Board shall be made in all cases by an absolute majority of the votes. In case of equal votes, the Chairman shall have a casting vote.



**Article 34**

The Board of Directors shall determine the remunerations to be paid to the members of the Board and Managing Director as well as the salary of the Director-General of the Fund.

**Article 35**

The Board of Directors shall be charged with practising all necessary powers for conducting the Fund and perform all duties according to the Fund's purposes and requirements.

Nothing will restrict the Board's powers except provisions stated in this statute or resolutions of the General Assembly. The Board of Directors shall be charged specially with performing the following:

1. Restricting and pay the administrative expenditures.
2. Drawing the general policy the Fund must follow including the policy of financial operations.
3. Laying down the rules and financial administrative regulations for organising the Fund.
4. Buying and selling the moveables and the real estate mortgaging them and conducting any disposition deemed to be proper in the Fund's roots.
5. Granting loans and issuing guarantees.

6. Borrowing.
7. Ratifying the reconciliation, arbitration and rights abdication bonds with or without requital.

#### **Article 36**

The Board's members shall not be responsible for any personal obligations related to the Fund's commitments and obligations due to the performance of their duties.

#### **Article 37**

##### **The General Assembly**

1. The General Assembly consists of one delegate for each shareholding country to be selected from the Ministers concerned in financial affairs or from any other Minister selected by his Government. Each delegate will represent the shareholding citizens of his country in addition to his Government. There is no need for these Ministers to acquire any authorisation from their national citizens.
2. The General Assembly shall convene in the country of the Fund's legal domicile. It may convene in any of the member states under a resolution passed

by the Board of Directors.

### **Article 38**

1. Notice of a meeting of the General Assembly ordinary or non-ordinary sessions shall be addressed in writing by registered mail at least with 30 days before the session date. The invitation should include the session agenda laid down by the Board of Directors.
2. In cases where the General Assembly ordinary session is convened at the request of some shareholding states or auditors, an agenda is to be laid down by the requested delegates and it is not permissible to discuss any other matter than those included on this agenda.

### **Article 39**

The ordinary meeting of the Board shall be deemed valid provided a quorum is present representing not less than two-thirds of the total voting power. In case that quorum is not present, an invitation to a second session shall be issued. The second meeting shall be deemed

valid if attended by delegates representing more than half of the total shares.

In case of non-availability of the quorum in the second meeting, an invitation for a third meeting shall be issued. The session shall be deemed valid if attended by delegates representing any number of total shares.

#### **Article 40**

##### **Voting**

In voting at the General Assembly, each member shall have two hundred and fifty votes, regardless of the number of shares he may hold, plus one additional vote for each share held by the Government or its financial institutions. When each country's delegate votes it shall be as a single and indivisible parcel of votes.

#### **Article 41**

The General Assembly shall first convene as an incorporated Assembly within 30 days from the date of publication of the charter establishing of the Fund for the purpose of determining initial procedural matters and restricting the initial expenditures. The General Assembly will appoint in this meeting the auditors and announce the final stage of establishing the Fund and

the beginning of its activities.

The first meeting of the General Assembly shall be deemed valid provided the quorum stated in Article 29 is present.

**Article 42**

The General Assembly shall have an ordinary session at least once a year upon an invitation made by the Board of Directors within four months before the expiration of The Funds financial year, or whenever the Board deems it necessary. In addition the Board of Directors must summon such a meeting upon the request of two member states representing not less than one-third of 'the Fund's' total shares.

**Article 43**

The General Assembly shall be in charge of all the Fund's matters except in those cases outlined by the Articles of Incorporation.

**Article 44**

The Board of Directors shall submit to the General Assembly convened at its ordinary session a report consisting of a detailed statement about 'the Fund's'

activities . The Funds' financial position, the General Budget, a statement of account showing profits and loss of the finished year, a statement about remunerations of the Board's members, fees and remunerations of auditors and the Board's suggestion regarding the distribution of profits.

**Article 45**

In its ordinary session the General Assembly shall discuss the report of the Board of Directors, the auditors' report, the reappointment for the coming year of the Board of Directors and the fixation their fees and remunerations.

**Article 46**

The General Assembly shall convene in a non-ordinary session upon an invitation made by the Board of Directors or upon a written request addressed to the Board from two delegates of the member states representing not less than one-third of the Fund total shares. In this case the Board of Directors must summon a meeting of the General Assembly extraordinary session within 45 days from the date of receiving the request.

**Article 47**

A meeting of the General Assembly in its extraordinary session shall be valid if there is a quorum present of those who represent at least three-quarters of the Fund's total shares. In case that quorum is not present in the first meeting, the non-ordinary General Assembly shall be convened upon a second invitation within the next 30 days. In this case its session shall be deemed valid if the meeting is attended by delegates representing more than half of 'the Fund's' total shares. The extraordinary General Assembly resolutions shall be issued in all cases with the approval of delegates representing more than half the Funds' total shares.

**Article 48**

The General Assembly alone shall have at its extraordinary session the following powers :

1. To amend the Fund's Articles of Association.
2. To sell the whole project carried out by the Fund or dispose it at any other way.
3. To dissolve or incorporate the Fund in another Fund or Corporation.
4. To increase or decrease the capital and consequently the distribution of portions of the

shares.

**Article 49**

**The Fund's accounts**

The Fund shall have one or more auditors, appointed from among chartered accountants. The General Assembly shall select such auditor and fix his remuneration. He shall however have complete responsibility for auditing the accounts of the financial year appointed for.

**Article 50**

The Fund's financial year shall commence upon the first day of January and expires on the 31st December in every year, save the first financial year which shall commence on the date of the Fund's final incorporation in the commercial registry and expires on 31st December in the following year.

**Article 51**

The auditor shall have the powers and liabilities provided for in the law of the country where the Fund is domiciled and he shall have the right to peruse and check all the Fund's books, records and documents and request any statement he deems necessary to obtain and



shall also have the right to verify the Fund's assets and liabilities. However, in the event of failure to exercise such power, he shall state this fact in a written report, to be submitted to the Board of Directors and put before the General Assembly, which he is entitled to call for such a purpose.

#### **Article 52**

The auditor shall furnish the General Assembly with a report indicating that the balance sheet and profit and loss accounts are in conformity with the relevant facts and clearly and fairly reflects the Fund's actual financial position, and that the Corporation holds reliable accounts, and stock-taking is carried out in compliance with the applicable rules, and whether the Board of Directors report conforms with the facts stated in the Fund's Articles of Association or the Law Provisions, and whether violations occurred during the financial year in a manner affecting the Fund's activities or its financial position, the auditor further clarified whether such violations are still existing in his capacity as attorney representing the total number of shareholders. Every shareholder shall have the right during the assembly meeting to question the auditor regarding any statements shown in his report.

### **Article 53**

A percentage of annual gross profit fixed by the Board of Directors shall be deducted for asset depreciation or fall in value and such funds shall be used for purchase and repair of equipment, utilities and materials. The deducted profit may not be distributed to shareholders.

### **Article 54**

#### **Allocation of net income**

Net profit shall be distributed in the following manner:

1. 10 per cent shall be set aside for the obligatory reserve but the General Assembly may suspend this deduction if the obligatory reserve exceeds 50 per cent of the Fund's capital.
2. A further percentage of not less than 10% shall be deducted for the optional reserve. Such deduction need not be made upon a resolution made by the General Assembly under a proposal passed by the Board of Directors.
3. An amount sufficient required for distributing an initial dividend of not less than 5% among the holders, of paid up shares shall be deducted and accordingly distributed.

4. The Board of Directors shall determine how the profits shall be distributed in one of the following methods :

- (a) To shareholders as an additional share.
- (b) Shall be brought forward to the next year.
- (c) Under proposal made by the Board of Directors to be allocated as reserve for any emergency requirements.

**Article 55**

Dividends shall be paid up to shareholders at the place and date fixed by the Board of Directors.

**Article 56**

The reserve fund shall be utilised under a resolution made by the Board of Directors in a manner securing a maximum profit for the company. The obligatory reserve shall not be distributed among shareholders as dividends.

**Article 57**

The Fund's cash funds shall be deposited with one or more banks as decided by the Board of Directors. The

Board shall also fix the maximum cash funds to be kept in the treasury of the company.

#### **Article 58**

##### **Suspension of the operations of the Fund and liquidation of its assets**

1. The Fund shall be dissolved if it is declared to be dissolved by liquidators appointed by the General Assembly. Such liquidators shall have all necessary powers to investigate 'the Fund's' assets and liabilities. The liquidators remuneration shall be determined by the General Assembly.
2. Upon the appointment of the liquidators, the Board of Directors powers shall be suspended but the General Assembly shall remain in existence to approve the liquidators terms and to give authority to liquidators.
3. After settling the Fund's obligations the balance shall be distributed among shareholders each pro rata his nominal share.

**10.3.6 Chapter V : Legal status, immunities & privileges [27]**

**Article 59**

1. The Fund shall possess juridical personality and, in particular, the capacity:
  - (a) to contract;
  - (b) to acquire immovable and movable property and to dispose of same;
  - (c) to institute legal proceedings;
2. Actions shall be brought against the Fund only in the courts having competent jurisdiction in the place where its Head Office is situated.
3. No actions shall be brought against the Fund by members or persons acting for or deriving claims from members.
4. All property and assets of the Fund shall, wherever located and by whomsoever held in the member countries, be immune from all forms of provisional measures before the delivery of final judgement against the Fund.
5. All property and assets of the Fund, wherever located and by whomsoever held in the member countries, shall be immune from search, requisition, confiscation, expropriation, or any similar forms of compulsory measures by an

executive or legislative authority.

6. The papers, registers and documents of the Fund, wherever located and by whosoever held, shall be inviolate.

#### **Article 60**

##### **Freedom of assets from restriction**

All property and assets of the Fund, to the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, shall be free from all restrictions, regulations, controls, and moratoria of any kind.

#### **Article 61**

Communications of the Fund shall be accorded by each member the same treatment that it accords to the official communications of other members.

#### **10.3.7 Chapter VI : Ratification, deposit and accession**

#### **Article 62**

This Agreement shall be ratified by the signatory Gulf Cooperation Council States, in accordance with their basic laws as early as possible. The instruments of ratification shall be deposited with the Secretariat

General of the Gulf Cooperation Council which shall make a record of depositing of the instruments of ratification and to notify the Gulf member states thereof.

**Article 63**

This Agreement shall come into force one month after the deposit of the instruments of ratification by states whose total subscription is not less than 45% of the capital stock provided for in Article 5 hereof.

**Article 64**

The Secretary General of the Gulf Cooperation Council States convene the first meeting of the Board of Governors.

IN WITNESS WHEREOF, the authorised delegates whose names appear below have signed this Agreement on behalf and in the name of their Governments.

Done in \_\_\_\_\_, on \_\_\_\_\_  
in a single document in Arabic to be kept with the Secretariat General of the Gulf Cooperation Council. A certified true copy shall be handed in each signatory state.

10.4 The explanatory notes for the model for the Articles  
\*\*\*\*\*  
of Association of the proposed Arab Gulf Development  
\*\*\*\*\*  
Fund, (AGDF).  
\*\*\*\*\*

**Chapter 1 - The Establishing Agreement**

The following are notes which help explain the Articles of Association of the AGDF. They follow the agreement article by article and should be read in conjunction with the article.

**Article 1**

The proposed name of the new fund is the "Arab Gulf Development Fund" (AGDF). It is "Arab" because all Gulf Cooperation Council members are Arab countries and members of the Arab League. The word "Gulf" is included because they are all situated around or in the Gulf region and are members of their organisation, the Gulf Cooperation Council. Moreover, development is the heart of this new institution, and the concept of development is a comprehensive one that includes the objectives of the Fund, such as technical assistance, grants and aid. Finally, the word "Fund" confirms its role as a financial institution.



## **Article 2**

To provide for the establishment of branches or agencies abroad is a very important goal and is one of the reasons justifying the establishment of this new Fund. By establishing branches and offices in the beneficiary countries the Fund will be able to achieve many targets, inter alia:

Firstly a branch in the recipient country will save much time for the development process.

- a) In studying projects the branch will be close to the site of the project and experts would have direct and daily contact with the local authorities.
- b) In suggesting projects the experts of the Fund or the beneficiary country will be able to participate in determining the priority of projects.
- c) In the stage of execution of the project the branch will be able to send progress reports, which are necessary for the disbursement of loans.
- d) As to the quality of performance, the branch will be able to make constructive suggestions regarding

equipment, experts or new sources of financing.

- e) In the repayment stage the branch will be able to recommend new grace periods or new loans in light of the progress of the project.

Secondly, the different branches, through reports to the Head Office, can evaluate the future needs of projects based on the priorities, or a comparative study, of their host countries. For instance, establishing sugar plants in Sudan may be preferable to establishing them in Somalia where serving North Africa is concerned, or build up a new power station along the border of Egypt may be more viable than building it in Kenya where industrial projects in the Nile valley are concerned.

Thirdly, the Fund branch would also serve as coordinator between the regional funds (Kuwait Fund, Abu Dhabi Fund and Saudi Fund) and the Headquarters in Kuwait in the follow up of projects being financed or co-financed by these Funds.

Fourthly, through these branches substantial research and studies could be prepared for future projects including data collection and use of new technologies.

Fifthly, each branch could engage the services or hire local engineers and researchers, thus contributing to teaching, training or creating local expertise to work on the projects of their countries. It is suggested that some branches be set up in the least developed countries, where they lack of expertise and specialised manpower is acute. Also, some branches may be opened in countries where the Arab Gulf funds are very active and finance bigger numbers of projects.

Sixthly, these branches can monitor conditions, changes in or obstacles to performance. (In some recipient countries there might be some misuse of funds or mismanagement or as many published reports contend, corruption. The branches, as long as they are close to the situation, can analyse and report on these problems and make suggestions to rectify the problems).

#### **Article 4**

The Fund has a wide scope of objectives and a broad mandate. In this context three key areas have been identified for priority action. The first is the financing of economic projects by means of loans granted on easy terms to governments and institutions in the Arab world and other developing countries. The second area is encouraging investment in such a manner as to

ensure the development and growth of the Arab economy. The third area is providing technical expertise and assistance in the various fields of economic development in developing countries. So the principal aims and objectives of the Fund concentrate on those activities it considers relevant to the needs of developing countries needs. To ensure the achievement of its aims and objectives the Fund will, in due course, expand its activities both within the Arab world and internationally.

## **Chapter II - The Functions of the Fund**

### **Article 5**

In order to achieve its aims and objectives, the Fund's Board of Governors shall have broad powers. The Board of Governors is the Fund's responsible authority, delegated to run the Fund in the manner they deem fit. This includes extending loans, choosing the recipient country or institutions to enter into agreements with, allocating grants and technical assistance, and conducting investments according to their discretion. Although there is no limitation to Fund functions, it is understood that these functions shall always fall within the strategic policy of the GCC Supreme Council. The

policy of the Supreme Council, as set down from time to time, includes where to give money, to which countries and how much. Here there are certain basic considerations. We believe that assistance to people should be the key consideration rather than assistance to Governments as such. That is why the political factor should be the sole basis for deciding the provision of loans to countries.

#### **Article 6**

The right to borrow, guarantee, buy or sell securities emphasises the Fund's freedom to act in these areas which are fundamental to Fund operations. In paragraph 5 of our Article the Fund is permitted to accept deposits from five sources.

**GCC Governments:** This allows the Fund to receive deposits from any member country and invest it as it deems fit. By doing so it serves three goals:

- a) It provides interest for the depositor;
- b) It brings more assets into the Fund enabling the Fund to provide greater, more effective loans;
- c) It increases the number and size of projects in developing countries.

**Public Establishments:** These include regional funds where they participate in certain projects. They also include governmental agencies such as investment authorities, pension funds and Islamic assistance institutions such as Al-Zakat Houses where many people contribute part of their income to beneficiaries.

**Public Corporations:** These include shareholding companies such as commercial banks. In encouraging banks to participate in some projects good returns and a guaranteed investment by the Fund itself may be achieved; the banks participate in development projects without taking the risk of entering into direct agreement with the beneficiaries. Their relations would be with the Fund only.

**Private Companies:** By accepting deposits from such companies the Fund will have more sources of cash flow. The private companies will have a guaranteed role of interest since the agreement would be with the Fund.

**Individuals:** This is completely a new concept. Its adoption implies a new source of finance for the Fund. According to Islamic Law, bank interest is usury (Haram). Banks in the Gulf countries have thousands of depositors who deposit their money and refuse to take

any interest whatsoever as these individuals have very strong religious beliefs. If we open the doors of the Fund for these individuals to deposit their money in our Fund, they will not hesitate to do so since they would achieve two aims:

1. They are sure of the beneficiary here, which is not the case when they deposit in banks.
2. Their deposits are secure from any risk of banking business where a bank could go bankrupt or insolvent. The Fund is a multigovernmental agency and one hundred per cent guaranteed. Furthermore, some individuals would like to altogether donate assistance to people in other Islamic countries. They would accept to finance some project (for instance, to build a university, motorway or dam) and have only the name of the contributor mentioned. The Fund will also find that many personal wills may get transferred to it to manage or spend in beneficiary countries for charity purposes.

#### **Article 7**

Whether the Fund deals with a government of a state

where a project is carried out or with non governmental projects, in both situations the government where the project is based should guarantee the loan. This provision is a fair and logical one, protecting Fund assets from bankruptcy or insolvency by non governmental institutions. It also eliminates unnecessary disputes.

#### **Article 8**

This provision sets forth the operational guidelines:

1. It is deemed necessary to secure the approval of the Government as to where the project is to be carried out. Here the development process differs from that of banks and investment companies in that the Fund can enter into agreements, in most cases, without any interference by government.
2. The stipulation that the proceeds of the loan be used for the purposes for which the loan was granted is in compliance with Fund objectives.

The implementation of Articles 7 and 8 always involves two kinds of agreements. First: The Loan Agreement between the Fund and the beneficiary government or institution. Second: A Guarantee Agreement between the Fund and Government of the recipient country. This Article also limits the Fund's role by dissociating it



from the management of any project. By this restriction it disclaims responsibility over management and remains safely away from project administration.

#### **Article 9**

This provision sets a limit to financing project cost. The 50 per cent figure is a general rule. However, exceptions are possible, and it is left to the discretion of the Board to approve financing exceeding 50 per cent. Some degree of responsibility should be placed on the beneficiary state to have been part of the burden and the risks.

#### **Article 10**

Many economic considerations should underlie the decision to finance a project, including feasibility studies, the conduciveness of the situation and whether the Fund will be able to recover the amount of the loan with interest. Paragraph (g) is a very important one. No doubt the Fund will not participate in any project that contradicts the economic and political interests of GCC members or any other Arab states. One cannot imagine that the Fund will finance a military base in Kenya, for instance, or participate in projects that

could destroy certain industries in an Arab country. It is also not imaginable to give assistance to a country which is in a state of war with another Arab country.

#### **Article 11 - Loan Agreements**

The Loan Agreement is a major document. The terms and conditions of such an Agreement should cover every point and issue. Generally, the Fund will use a standard loan agreement form to be applied in all cases. As suggested in Chapter 8 of this research, the agreement would expressly provide for clauses that protect the Fund's interests and guarantee repayment of loans. The Loan Agreement is the heart of the Fund's legal aspect.

#### **Legal Nature of Agreements with Recipients**

The Fund, admittedly, is not an international person. Its agreements with recipients deal with financial, not political matters. In both respects the Fund's agreements cannot be characterised as "treaties". On the other hand, the transnational character of the Fund's operation is beyond doubt both *ratione personae* and *ratione materiae*. Funds loans are either given to or guaranteed by a foreign state. Moreover, the subject matter of its agreements is regulated in such a manner as to exclude it from the application of any particular

municipal law contracts. To characterise the Fund's agreements one has therefore to weigh co-existing factors of localisation and internationalisation, bearing in mind that practical needs may necessitate innovations. The issue presents itself in the following respects:

**The Requirement of Ratification:**

The question of ascertaining the final authority for the approval of the Fund's agreements with beneficiaries or guarantors arises in relation to both parties, primarily as a problem of constitutional rather than international law. A classification of each agreement must therefore be given, both in GCC and in the borrowing or guaranteeing state, in order to determine the appropriate action under the respective laws of the parties.

**a) Characterisation of Fund's Agreements under GCC Laws:**

Only negative definitions are needed here to develop a satisfactory conclusion. If we follow up the findings of the KFAED on this issue, we find that the Fund's agreements, being concluded between two parties one of which at least is not an international person, are not treaties in the sense of Article 70 of the Kuwait Constitution. This is the Article which provides for

the conclusion of treaties by Amiri decrees and requires legislative action for the ratification of certain types of treaties including "treaties which entail additional expenditures not provided for in the (State) budget". The same agreements, being made with a foreign recipient by an entity other than the Kuwait Government, do not involve "public 'loans' or 'loans' granted by the Government" in the sense of Article 136 of the Constitution. This Article stipulates that public loans and loans granted or guaranteed by the Government shall be concluded by a law. Rather, the Fund's loan operations fall under Article 137, which simply states that public corporations may "grant or guarantee loans according to law". [28] The Fund's charter, through delegation by its law, empowers the Chairman of the Board to sign loan agreements after the Board's approval of each operation. No further procedure is thus followed in Kuwait for the ratification of the Fund's loan and guarantee agreements. The autonomy of the Fund in this respect was duly recognised by the National Assembly after a brief legal controversy over the matter in 1962/1963. The same findings will be reached regarding the new Fund Loan Agreements. The fund board is empowered to enter in such agreement with recipient countries and no further ratification is required by GCC Supreme Council or any other GCC Agency.

**b) Characterisation of Fund's Agreements under the  
Laws of the Recipient or Guarantor:**

From the viewpoint of a borrowing or guaranteeing state, its agreement with the Fund is a transaction which belongs to the foreign relations of the state and affects its credit. Requirements for the conclusion and entry into force of such agreements are therefore to be verified under the constitutional provisions related to these two topics. Under some of the constitutions involved, loans received by means of an agreement with a foreign source other than an international person need not be approved by legislative action (e.g., Sudan and Morocco). In other constitutions, public loans as such must receive parliamentary approval, whether or not they are given by means of treaties (e.g., Tunisia). In a third type of constitution, aside from the conditions relating to treaties, legislative action is required for loans affecting the state credit in future years (e.g., Egypt). As a result, the entry into force of agreements with the Fund are not always dependent, in principle, on parliamentary approval in the benefiting state.[29] Some provisions in the Fund's Loan and guarantee agreements may, however, necessitate legislative action

in the recipient state regardless of the characterisation given to the agreement as such. Here we refer to the provisions exempting the Fund from the application of domestic legislation related to taxation, exchange control, nationalisation, seizure, censorship, etc., as well as the provisions declaring the rights and obligations of the parties enforceable notwithstanding any local laws to the contrary, and the provisions for the settlement of disputes through international arbitration. Such exemptions and exclusions cannot be effective in most countries unless they are authorised by law or by an instrument of a higher rank in the given legal system. The Fund is, on the other hand, entitled by express provisions in its agreements, to satisfy itself that the borrower or guarantor, as the case may be, will be able under its own law to carry out its obligations. In the domestic legal systems of the Fund's borrowers, agreements concluded with the Fund do not per se prevail necessarily over conflicting domestic law. Hence, the Fund becomes justified in all cases to insist upon legislative approval of the agreement or at least of those portions of it which cannot otherwise be binding in the legal system of the other party. It remains for this other party, should it choose to do so, to satisfy the Fund that its obligations towards it can otherwise be duly performed under its law. In practice

the Fund has always required the borrowing or guaranteeing government to obtain legislative ratification. Only when legislative powers in the benefiting state were delegated de jure or de facto to the head of the executive, parliamentary approval was not sought by the receiving state.

**Applicable Law:**

If agreements concluded by the Fund are not "treaties" in the conventional sense of this term, this fact does not necessarily result in subjecting such agreements to the municipal law of either of the parties thereto or in excluding any application of international law to them. The opposite view, traditionally upheld in the past, is now giving way to the more convincing trend which allows the parties to mixed transactions of this kind to be free to borrow from either system of law suitable to regulate their relationship [30] or, if necessary, to refer to an autonomous legal system independent of both [31]. Even in the absence of a clear statement of intention by the parties, this conclusion has been widely advocated, as is well known, with regard to state contracts with public or private entities. The Fund's agreements are clear in denying any inference of submission to a municipal law. The practice followed by

some other lending agencies to refer in their loan agreements to the domestic law of their headquarters (e.g., Development Loan Fund; Export-Import Bank of Japan; Commonwealth Development Corporation) or to the law of their borrower (e.g., European Investment Bank), is completely unknown to the AGDF. On the contrary, there are as said above, provisions in every agreement with the Fund drafted specifically to exclude the application of certain municipal laws of the other party. Furthermore, all such agreements include a provision similar to that of section 7.01 and 7.02 of Loan Regulations No. 3 of the World Bank. The standard provision in the Fund's agreements reads as follows [32]:

"The rights and obligations of the Fund and the Borrower (or Guarantor) under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding any law to the contrary. Neither the Borrower (or Guarantor) nor the Fund shall be entitled under any circumstances to assert any claim that any provision of this agreement is invalid or unenforceable for any reason".



The obvious purpose of this provision is to ensure that the terms of the agreement shall not be frustrated by a conflicting domestic law. Should its effect be limited to this negative result, thus throwing the agreement into a legal vacuum outside the proper law of its own terms? Or must it be construed like the similar provision in the World Bank's Loan Regulations, i.e., to have also the positive effect of subjecting the agreement to international law [33]. We submit that both questions must be answered in the negative, for the following reasons:

The theory of a legal vacuum outside the contractual framework means in fact uncertainty of the law, the determination of which becomes a matter for each interpreter to decide according to his own standards. Application of international law is, on the other hand, obviously unjustified in case of agreements between the Fund and an entity other than a state and remains to be a controversial matter even when the other party is an international person. Fortunately, the provisions of the Fund's agreements do not leave us in the dark. In the context of settlement of disputes between the parties by means of arbitration the agreements uniformly provide that "the Arbitral Tribunal shall apply the general principles common under the current laws of the

Borrower (or Guarantor) and the GCC as well as the principles of equity". It is our contention that this provision, unique as it may be, sets the guideline for the legal system of each agreement with the Fund. Such an agreement is thus subject first to its own terms and conditions, second to the principles of equity. Theoretically, this means that each Fund's agreement has a legal system of its own, depending on the general principles common between GCC laws and the law of the other party. In practice, however, this may not be the case. There is a great deal of similarity between the legal systems of most Arab states. In general, they belong to the Civil Law System and are heavily influenced by French Law and partially by Islamic Law. Egyptian codes, themselves the product of European and Islamic legal thought, are in fact copied in many Arab countries. In such cases identical texts, not merely common principles, can easily be found. This practical convenience should not be over-estimated, however, the Republic of Sudan, a major borrower, follows, in large part, the common law system unknown to Kuwait. In Yemen, the law is still primarily of Islamic sources. The search for common principles in such circumstances may involve difficulties similar to those inherent in the much discussed concept of "the general principles recognised by civilised nations". In addition, the

problem is further complicated by the fact that the Fund's agreements use terms and legal concepts borrowed from the Loan Regulations of the World Bank which may differ from the terms and concepts known in the legal systems of Kuwait and other Arab countries. As a supplementary source, the principles of equity should, in my opinion, be taken here in their conventional meaning in the context of international arbitration (*ex aequo et bono*). This is justified, first, by the fact that resorting to this source comes after the exhaustive examination of domestic legal principles and, secondly, because it is applied by an arbitral tribunal which is certainly not a domestic forum.

If the above analysis is valid, the sources of the law applicable to the Fund's agreements are not actually very dissimilar to the sources applied by international tribunals in general. There are instances, however, where resorting to the details of the municipal law of the borrower or guarantor becomes necessary. A typical example of this relates to the borrower's execution of its standard "negative pledge", i.e., its pledge not to establish any lien on its assets as security for other creditors unless such lien secures the Fund's loan equally and ratably.

### **Conciliation and Arbitration:**

In keeping with the decolonisation of the Fund's loan agreements, jurisdictional clauses are inserted in them to provide for a special procedure for the settlement of disputes not solved by negotiation. The standard clause provides first for conciliation, then arbitration. Such procedure applies to all loan agreements regardless of the character of the borrower [34] and to guarantee agreements as well. It is also an exclusive procedure, "in lieu of any other procedure for the determination of controversies between the parties". The conciliation procedure is meant to allow for a simple method for the settlement of disputes, through the intermediary of a committee of three in which a conciliator is appointed by each party and the Chairman is appointed by the Secretary General of the Arab League. If the committee cannot forge a settlement in a period of three months from the date of its constitution, or, if either of the parties fail to appoint a member, the controversy or claim can then be submitted to arbitration by a tribunal. Detailed provisions of the arbitral procedure provide in each agreement for the composition of the tribunal, its procedures, the apportionment of the cost of the proceedings and applicable law. With the exception of the last topic (applicable law), such provisions

are usually identical to corresponding texts in the World Bank Loan Regulations. The arbitral procedure in the Fund's agreements may, however, be changed after the establishment of the projected Arab Court or Justice or of the proposed Arab Centre for the Settlement of Investment Disputes, in order to make use of the facilities of such agencies. No provision in the Fund's agreements deals, on the other hand, with the enforcement of arbitral awards. Awards rendered in accordance with the jurisdictional clauses are merely declared as binding. This would normally allow either party to enforce such awards by the most appropriate means including resorting to municipal courts having jurisdiction. Since, however, no waiver of sovereign immunity in connection with the enforcement of awards is made in the agreements with governments, the Fund may be unable to enforce an award made in its favour. Yet, courts in many Arab countries adopt the distinction between acts *jure imperii* and acts *jure gestionis* and may not normally be expected to admit the defence of sovereign immunity against enforcements of this type of awards.

### **Registration:**

Article 102 of the UN Charter speaks of registration of "every treaty and every international agreement". However, the UN Secretariat have not automatically accepted for registration any agreement presented to it by a member government [35]. "Agreements between states and certain governmental or semi-governmental agencies such as the Institute of Inter-American Affairs and the Export-Import Bank, were also considered (by the Secretariat) as not subject to registration after the consultation with the Governments concerned" [36]. This practice will no doubt influence the Fund's legal department in its attitude towards the question of registration of the Fund's agreements with the UN Secretariat. The Fund, by upholding the thesis that its agreements do not require governmental ratification in Kuwait, may not be consistent in asking the Kuwait Government to apply for registration of such agreements as "International Agreements" under Article 102 of the Charter. As to registration with the Arab League Secretariat, the Charter of the League, which speaks of deposit rather than "registration", is more explicit in confining such procedure to agreements between international persons, or more precisely between "States". Article 17 of this Charter provides that "States members of the League shall deposit in the

Secretariat General texts of all treaties and agreements which they have concluded or may conclude with any other State belonging to or outside the League". This Article was strictly observed by the League Secretariat. As a result, it is quite doubtful that the Fund's agreements can be deposited in the Arab League or registered with it. In all the aspects discussed above, the Fund's agreements form a type of international contracts subject to a legal system of their own, the details of which are mainly the product of the parties' choice [37].

#### **Article 12**

A charge of one half per cent is reasonable to meet part of the administrative expenses and costs of the loan agreement. This will cover part of the Fund budget.

#### **Article 13**

It is natural that Arabic be the language of the loan agreements. But this does not mean that English will not be used. The form of the agreements suggested, when the beneficiary country is non-Arab, is to use the Arabic and English languages both on the same page with

one half for Arabic and the other for English. This is the method of agreement we always suggest and have used in our books published in the years 1978-1980: **Legal and Practical Digest of point, Business in Kuwait, Volume I (Arbitration), Volume 11 (Business Laws), and Volume III (Banking)**. We followed the same rule in Volume IV, which is in the pipeline under the title **Construction Business**. However, when both languages are used, it is mandatory that an Article be added stipulating that in case of differences over interpretation, the Arabic text should prevail.

#### **Article 14**

The matter of currency should be agreed upon by both parties.

#### **Article 15**

This provision gives flexibility to the Fund to pay in any currency according to its discretion.

### **Chapter III : The Fund's Capital & Shares**



**Article 16**

It has been noted that each member country has an equal share in the Fund's capital. This is intended to give equal capacity to all member countries because, in the GCC Constitution all members are equal.

**Article 17**

A subscription of 20 per cent of the shares should be sufficient in the beginning. However, this is only an estimate, a flexible 10 per cent may also be adequate.

**Article 18**

The share certificate shall be in the name of the subscriber Government.

**Article 19**

Deeds representing shares will be designated on special forms carrying the particulars and describing the meaning of the shares.

**Article 20**

It is left to the discretion of each member state as shareholder to transfer up to 49 per cent of its shares to its citizens or the designated financial institution or company. It is an internal matter for each state to pursue though the overall relationship in ownership must

remain unchanged in the eyes of the Fund. In this situation there would be a relation between the new shareholder and its government but it would not affect that between the Fund and the member government. So the new shareholder cannot pierce the Fund and have any capacity with the Fund in all the cases an entity between members' countries only.

#### **Article 21**

This Article retains the supervisory power of the Board of Directors over the transfer of shares within the shareholding country. The provision keeps the Board aware of any changes in the holding of shares and prevents misuse of the previous Article. In certain situations the Board may deem it necessary to veto an institution having a bad reputation or one which they feel may hurt the Fund or GCC, thus placing the whole matter within the control of all members at all times.

#### **Article 22**

This is a reasonable and fair clause, enabling every member to know in advance the limit of its liability in all the circumstances.

**Article 23**

This is standard provision followed in cooperation articles.

**Article 24**

Also a familiar and standard provision included in shareholding companies.

**Article 25**

The record of the Fund is the evidence of ownership and the profits; this system is followed in all the shareholding companies.

**Article 26**

The capital of the Fund may be increased by approval of the General Assembly.

**Article 27**

The General Assembly may decide to issue other kinds of shares besides the ordinary one, subject to the same provisions mentioned in the previous articles.

## **Chapter IV - Organisation & Management**

### **Explanatory Note - From Article 28 to Article 48**

**The Structure of the Fund:** The fund shall be composed of the Board of Governors, the Chairman of the Board, the Vice-Chairman, the Executive Committee and the staff necessary to perform the duties determined by the Administration of the Fund.

The Board of Governors shall meet four times a year. It shall also meet whenever so requested by any six of its members.

The meeting of the Board shall be valid provided a quorum is present representing not less than eight members.

For voting purposes, at meetings of the Board of Governors each member shall hold one hundred votes.

Except as otherwise provided, all matters before the Board shall be decided by an absolute majority of votes.

The Board of Governors shall determine the remuneration to be paid to the members of the Board and their

Alternates, as well as the salaries and terms of contract and the Director General of the Fund.

The Board of Governors shall be considered as the General Assembly of the Fund and shall have all powers. These powers include laying down the organisation of the Fund, buying and selling, granting loans and borrowing.

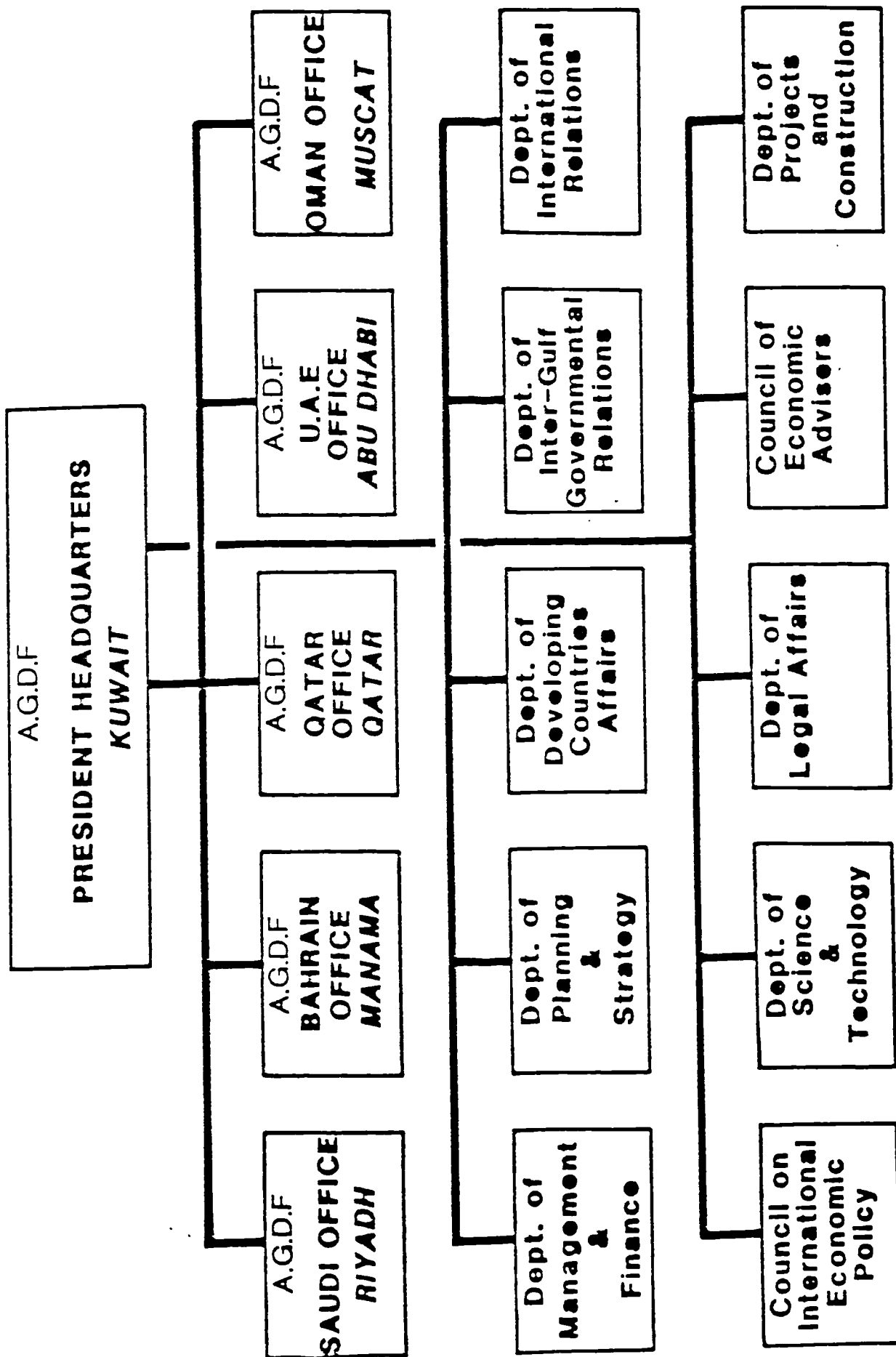
The General Assembly will meet once a year in an ordinary session to appoint the auditors and endorse the annual report. The General Assembly shall be in charge of all Fund matters.

The General Assembly shall hold extraordinary sessions upon an invitation by the Board of Directors or by written request addressed to the Board from two member countries.

The General Assembly, at its extraordinary session, may decide on the following:

1. Amendments to the Articles of Association
2. Dissolution of the Fund or its incorporation in another Fund or corporation
3. Reports for an increase or decrease in the capital of the Fund.

**ORGANISATION CHART OF PROPOSED ARAB GULF DEVELOPMENT FUND**



**Explanatory Note - From Article 49 to Article 532**

The Fund shall have and auditor(s) selected by the General Assembly.

The Auditor shall furnish the General Assembly with a report indicating that the balance sheet and profit-and-loss accounts are in conformity with the relevant facts and accepted rules.

**Explanatory Note - Article 54 to 58**

Article 54 establishes the manner of distribution of annual profit, of which 10 per cent shall be allocated to General Reserve as an obligatory reserve. Another 10 per cent should be allocated as supplementary reserve. The Article also provides for an emergency reserve and the manner of distribution of the profits. Article 55 specifies the place and date of paying dividends to shareholders. Article 56 provides that obligatory reserve shall be distributed as dividends. Article 57 empowers the Board of Directors to deposit the cash funds in one or more banks. Article 58 addresses the liquidation of the Fund, the decision over which should be kept in the hands of the General Assembly.

Liquidators appointed by the General Assembly may have wide powers to check Fund assets and liabilities. The balance of assets should be distributed among shareholders, each pro-rata his share.

## **Chapter V - Legal Status, Immunities & Privileges**

### **Article 59**

As an independent juridicial personality, the Fund will have the capacity to enter into contracts, to acquire properties and to institute legal action against other parties.

Any case brought against the Fund should be brought in Kuwait, the Head Office of the Fund.

The members may not bring any legal action against the Fund. As mentioned in Article 9 of the Agreement Establishing the Fund, any dispute arising with any of the contracted governments should be settled amicably or through negotiation. In case no settlement is reached amicably the matter shall be solved by arbitration according to the terms set in Article 9 of this Agreement.



All property and assets of the Fund, wherever located and by whomsoever held in the member countries, shall be immune to research, requisition, confiscation, expropriation or any other form of compulsory measures by executive or legislative authority. This provision is deemed necessary to protect the Fund's independence and keep its assets secure in all situations.

Recognition of the Secretary of Documents of the Fund is a necessary obligation binding on all members.

## FOOTNOTES

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01. According to the Kuwait constitution, the National Assembly will endorse the Agreement between Kuwait and other states and a law will be issued after the approval of the head of state.
02. These are the member states of the Gulf Cooperation Council.
03. There are three reasons behind choosing Kuwait as the location of this Fund.
  1. The first development fund to be established in the Arab world was the Kuwait Fund for Arab Economic Development which is considered the leader between Arab Development Funds.
  2. Kuwait has several other 'firsts' to its credit, including the hosting of the Gulf Investment Corporation - the first unified Gulf financial institution established following the implementation of the Unified Gulf Economic Agreement.
  3. Major regional institutions are based in Kuwait or have their headquarters there, such as the Arab Fund for Economic and Social Development (established in 1968) and the Organisation of Arab Petroleum Exporting Countries (OAPEC). It has also been recommended as the setting for the proposed Institute of Development Studies. In short, Kuwait can be considered the financial centre of the Gulf and Middle East, just as London is considered the financial centre of Europe and the world.
04. The capital of the Fund is similar to the capital of the Gulf Investment Corporation which was determined after taking into consideration the members approval.
05. This text is similar to Article 11 of the Gulf Investment Corporation establishing agreement.
06. This paragraph is based on Article No. 2 of the Law No. 25 (1974) for the reorganisation of the Kuwait Fund for Arab Economic Development.

07. This paragraph gives priority to Arab States and Islamic countries as provided in Article No. 1 (2) of Law No. 7 1974 amending some provisions of Law No. (3) of 1971 establishing the Abu Dhabi Fund for Arab Economic Development.
08. This paragraph is based on Article No. 2 of the Agreement dated May 16, 1968 establishing the Arab Fund for Economic and Social Development.
09. Similar text to Article 17 of the Charter of the Kuwait Fund made by Order of the Prime Minister of Kuwait issued on 22nd March, 1981.
10. Based on Article (3) of Law No. (7) of 1975 in respect of Amendments to Provisions of Law No. (3) of 1971 for the establishment of the Abu Dhabi Fund for Arab Economic Developments.
11. Based on Article No. 11 of the Agreement establishing the Arab Fund for Economic and Social Development.
12. Similar to Article 12 of the Agreement establishing the Arab Fund for Economic and Social Development.
13. Similar to Article No. 13 of the Agreement establishing the Arab Fund for Economic and Social Development.
14. Similar to Article No.18 of the Charter of the Kuwait Fund.
15. Similar to Article 20(g) of Abu Dhabi Fund Law and Regulations (Internal Regulations signed by the Head of U.A.E. state, 15 July 1971).  
  
Paragraph (g) of this Article is very significant and it is not included in any other charters.
16. Similar to Article 20 Order of Prime Minister Establishing the Charter of the Kuwait Fund (22 March 1981). It is the latest between other charters and includes all required stipulations.
17. Similar to Article 19 of the Charter of the Kuwait Fund.
18. Similar to Article 23 of the Charter of the Kuwait Fund.

19. Article 14 of Agreement Establishing Arab Fund.
20. *ibid*, Article 15.
21. Similar to Article 7 of the Articles of Association of Gulf Investment Corporation.
22. *ibid*
23. *ibid*, Article 10.
24. This provision keeps the door open for Banks and Investment Companies to cooperate and participate in the development programmes.
25. *ibid*, Article 18.
26. *ibid*, Article 23.
27. Chapters V and VI from this Agreement (Articles 56 - 64) is suggested to be included in this Agreement. When we compare this Agreement with the Agreement establishing Gulf Investment Corporation we find out that the agreement establishing Gulf Investment Corporation ignored these chapters. However, when we read the Agreement establishing the Arab Fund for Economic and Social Development we find out that these Articles are included.
28. "Accord the Explanatory Note of the Constitution of Kuwait", *Al Kuwait Al Youm* (the Official Gazette of Kuwait) special issue Nov. 12, 1962, p. 24 (in Arabic).
29. The Algerian Constitution may, however, present a controversial case as it requires consultation with parliament before ratification by the President, not only of treaties but also of all "conventions et accords internationaux" (Art. 42). It does not require, on the other hand, similar procedures in relation to public loans as such. The use of the term "accords internationaux" after mentioning treaties, might be justified by giving it a broad meaning to cover transnational public agreements which are not treaties proper such as agreements with the Fund.
30. See Delaume, *The Proper Law of Loans Concluded by International Persons a Restatement and a Forecast*, 56, *Am. J. Int'l* 63, 65 (1962)

31. See eg., McNair, **The General Principles of Law Recognised by Civilised Nations**, 33, Brit. yb. Int'l (1957); Verdross, **Protection of Private Property under Quasi-International Agreements**, 6, Nederlands Tijdschrift voor Int Rechi 355, 358 (1950); Jessup **Transnational Law** (1956).
32. The Standard Provisions of Loan and Guarantee Agreements were adopted by a Board decision and are heavily influenced by the World Bank's loan regulations. Though established for the sake of convenience and uniformity only, deviations from them must be justified to the Board in each case. The above quoted provision has consistently been applied.
33. For this interpretation of Sections 7.01 and 7.02 of Loan Regulations No.3 see Broches, **International Legal Aspects of the Operations of the World Bank**, 98 Hague Academy Recueil des Cours, 345 (1959); Delaume, op. cit., p.68.
34. Multiple jurisdiction clauses used by other lending agencies (eg., the World Bank) in loans to private borrowers secured by a pledge or mortgage have not been inserted in any of the Fund's agreements mainly because of the Fund's practice not to request real security for its loans (unless such security is given to other creditors).
35. See Broches and Boskey, **Theory and Practice of Treaty Registration**, Part II, 4 Nederlands Tijdschrift voor Int. Recht 277, 295 (1957).
36. 5 United Nations, **Repertory Practice**, 295, (1955).
37. See Broches and Boskey, **Theory and Practice of Treaty Registration**, Part II, 4 Nederlands Tijdschrift voor Int. Recht 277, 295 (1957).

## CHAPTER ELEVEN

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### CONCLUSIONS

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This study has examined three central issues. In Part One the Gulf Co-operation Council, (GCC), and its three of its national development funds were examined. In Part Two their legal structure and loan agreements were analysed, together with the legal issues which affect them. Having studied their past history and present situation, Part Three focused on the future of Arab development aid. Besides looking at the future in general it also proposed the formation of the new Arab Gulf Development Fund, (AGDF). It provided not only a possible legal framework for the AGDF but also the justification for its formation as well as its general strategy and organisational structure. In this final chapter some of the principal conclusions reached by this study are presented.

**11.1 The Gulf Co-operation Council**  
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Examining the past and current performance of the Gulf Co-operation Council, (GCC), and the three national development funds, a number of important conclusions can be drawn. The creation of the GCC was an important step on the road to regional Arab unity. It has already led to the evolution of a free trade common market amongst the member states. Besides trade, other barriers for individuals as well as companies have also been removed. The United Economic Agreement can therefore be seen as an important milestone in the region. It can now be expected that economic and political co-operation will increase as the GCC strengthens the ties between its member states.

**11.2 The Gulf development funds**  
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The study of the three national development funds, the KFAED, ADFAED and SFD, in addition to the AFESD, showed that during the past twenty five years the GCC states have become an important source of development finance. From their purely regional Arab role, they have all extended their assistance to a wide range of countries throughout the eastern hemisphere. The analysis showed that, besides being substantial donors in terms of the

volume of aid, the Gulf countries give a larger proportion of their gross national product in aid than any other group of donors. Despite the more recent fall in oil prices and revenues the funds have continued to finance projects in developing countries. They have, however, increased their co-operation with other international development institutions and banks since the fall in revenues. There is no doubt that they will continue to shoulder their responsibility in assisting developing countries in general and fellow Arab and Islamic countries in particular.

The legal structure of the development funds was analysed, together with the legal issues which affect them. It was seen that the World Bank and the Kuwait Fund have provided the principal models for the other development funds. Although the terms and conditions of the loans are not identical there are major similarities between the funds. With the increasing economic and political unity amongst the GCC states, the importance of a standard loan agreement for the funds is obvious. The one which was proposed in Chapter Seven incorporates the most important elements from the three national funds as well as the World Bank. It seeks to identify the various contractual relationships and responsibilities between the loan agreement's signatories.



I believe that the proposed AFDF would be qualified to adopt the strategy and future strategy for financing and technical assistance, especially on large projects. It could more easily interface with the major international aid agencies.

Moreover, AGFD could establish a consultancy company to undertake feasibility studies and even establish a construction company to execute the works on some of the smaller projects. These two companies could be assigned also to execute works of projects financed by each national development fund as well.

This does not mean that the new Fund, in any way, will replace the national Arab Funds, it is exactly the opposite. To use an analogy - the new fund will be big brother to these sisters. Co-ordination and co-operation will clearly be necessary.

### 11.3 The Arab Gulf Development Fund

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This study has shown that the future of the GCC lies in greater economic and political co-operation. One of the areas of co-operation which was encouraged by the GCC's inaugural charter was in the field of development assistance. A model for the establishment of a new fund, to be known as the Arab Gulf Development Fund or AGDF, has been provided. As it was seen in Chapter Ten, there are a number of important factors which justify the creation of the AGDF. Perhaps there are two which stand out as being the most important.

The new fund would be the vehicle for united and concerted action by the GCC, which would be responsible for its operations. It could currently be argued that, while supporting the principle of Gulf unity, the GCC's member states are naturally still more concerned with maintaining their individual national identity. Consequently the GCC is seen outside the region as being a somewhat empty and nebulous organisation. The creation of the AGDF would act as an international symbol of the GCC in action. Developing countries, which receive assistance from the fund, would no doubt come to recognise the importance of the GCC. In turn the GCC would probably also be seen as a model for greater economic

and political co-operation in other parts of the world. Instead of endless declarations, but often comparatively little action, for Arab unity the new fund would act as a so-called "goodwill ambassador" for the Arab and Islamic world in general and the Gulf states in particular. Even if this was its sole function, the creation of the AGDF would be worthwhile.

There is, however, a second major reason why the fund should be established. As the Brandt report explained so eloquently, we live in an inter-dependent world where no country or group of nations can stand in isolation. In order to overcome the crushing problems which face the developing countries today, it is essential that co-operation between international donor groups and institutions is strengthened. In the past the numerous national development agencies have acted as an extension of their country's foreign policy in its bilateral relations with the developing nations. This proved to be very useful for the donor, as well as highly beneficial for the recipients.

With the collapse in oil price and revenues, however, the situation has changed as the oil exporting countries have been forced to reduce their expenditure. While remaining very significant and generous donors, their

aid budgets have been amongst the first items to be trimmed. It is obvious that future development assistance will continue to be largely tied to the price of oil and the revenues which the donor countries receive from it. Consequently any move to reduce these fluctuations in the volume of aid would be very welcome for the donors and recipients alike. The formation of the AGDF would enable the GCC states to possibly reduce their individual aid budgets while ensuring that development assistance continued through this multilateral organisation. Consequently projects funded by the Gulf states would not be subject to short term economic fluctuations of individual economies.

This study has clearly shown that there is a need for greater co-operation between the GCC member states. It is obvious that the formation of the Arab Gulf Development Fund is one way in which this could be achieved in the important field of development assistance. It would make the GCC's aid programmes far more efficient and would reduce the overlap in operations which currently exists. Naturally this would reduce operational costs and thereby improve the performance of Arab aid. The Arab Gulf Development Fund could be an important focus for a stronger and more united Gulf Co-operation Council. Its creation and development should therefore be

considered as a major priority by the GCC Secretariat and the governments of its member states.

**11.4 The Arab Institute for Development (AID).**  
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The creation of the AGDF is one part of a dual strategy for improving the performance of Arab aid. The second is the formation of the Arab Institute for Development, (AID). It is proposed that the GCC should establish AID in order to train lawyers from both the Arab donor countries and the recipients in the developing nations. The intention is that they would be trained in the necessary skills to both draft and negotiate contracts and loans with other international institutions. At the present time the recipient countries are often at a disadvantage because their lawyers are inexperienced or have not received the necessary training. The result is that the recipient countries are sometimes not able to negotiate such beneficial loans agreements and contracts as might be possible. The institute would hopefully produce lawyers who were able to negotiate on equal terms with the lawyers from the US and Europe.

Formal standard legal training is often insufficient or somewhat irrelevant when negotiating development assistance agreements. What is required are specialised programmes in which experienced negotiators and lawyers are given the opportunity and means to train the best and most talented young lawyers from the developing countries. Besides the actual training it is proposed that AID should also be engaged in research programmes which study development aid in general and its legal aspects in particular. The research findings could then be widely disseminated for the benefit of all interested parties. By creating such an institute the GCC would be undertaking a very valuable service for the developing world in general and the Arab world in particular.

#### **11.5 The Future** \*\*\*\*\*

The importance of development assistance cannot be overestimated. Many countries in Africa and Asia are entirely dependent upon aid which is the overwhelming source of foreign exchange. Indeed, without assistance from the international community, many countries simply could not survive. Consequently any measures that the

be greatly appreciated by the recipient countries. Therefore the formation of both the Arab Gulf Development Fund and the Arab Institute for Development are logical and important steps which could and should be taken in the near future. There is no doubt that the Gulf Co-operation Council, as well as the developing countries, would derive substantial benefits from the formation and development of these two institutions.

#### The Future - The Need for Regional Integration

It is my view that Arab countries cannot hope to attain economic and social development on an individual basis.

The main problem is to resist nationalistic pressures for countries within a region to go their own way. Regional integration is a necessity. Trends in Europe - with the strengthening of the European Community - show that this is not an issue unique to the Gulf.

## APPENDIX A

### A PROFILE SUMMARY OF SELECTED AID AGENCIES \*\*\*\*\*

#### 1. DAC Development Agencies

##### 1. Agency for International Development (AID)

Established in 1961 under the Foreign Assistance Act. Acting as an Agency for the US Government's foreign economic aid activities.

##### 2. Overseas Development Administration (ODA)

A semi-autonomous unit within the Foreign and Commonwealth Office. Financial resources and administration costs are financed directly from the British budget.

##### 3. Commonwealth Development Corporation (CDC)

A public corporation established by Act of Parliament in 1948 as the Colonial Development Corporation originally to assist the economic development of the then British-dependent territories. The Minister may, by order made with the consent of the Treasury, increase the long and medium-term borrowing powers to £ 570 mn, of which not more than £550m comes from exchequer funds.



**4. Caisse Central de Co-operation Economique (CCCE)**

A Public Corporation with independent legal personality with a capital of F.Fr 200 mn since 1978. Capacity for financing is F.Fr 1,000 mn, mainly from long-term borrowing by issuing bonds.

**5. Deutsche Entwicklungsgesellschaft (DEG)**

Set up by the Federal German Government in 1962 for the purpose of encouraging and supporting private investment activities in developing countries. A non-profit making institution, but it operates on normal business principles to the extent that this is compatible with its general objectives.

**6. Kreditanstalt für Wiederaufbau (KfW)**

A Corporation under public law. It has no branch offices. Its capital amounts to DM 1,000 mn, with the Federal Republic providing DM 800 mn, and the individual states DM 200 mn. It can issue bonds, and take loans from the Federal Government, from Deutsche Bundesbank, and from foreign countries.

**7. Overseas Economic Co-operation Fund (OECF)**

Established on 16 March 1961 in accordance with the Overseas Economic Corporation Fund Law of 27

December 1960. It was established for the purpose of promoting overseas economic co-operation. It is considered to be Japan's principal organ for extending ODA to developing countries. Financial needs of OECF are met primarily by an annual subscription from the General Account of the Government, borrowing from the Trust Fund Bureau, and the OECF's own funds.

**8. Export-Import Bank of Japan (EXIM Bank)**

Established in December 1950 under the name of Export Bank of Japan, renamed in April 1952 as the Export-Import Bank of Japan. It is an independent governmental financial institution designed to supplement or encourage commercial banks in financing exports, imports and overseas investments in the field of trade between Japan and foreign countries. Operational funds consist of paid-up capital, borrowings and internal resources.

**9. Japan International Co-operation Agency (JICA)**

Established in August 1974, under the Japan International Co-operation Agency Law, (Law No. 62, 1974), as an executive organ of Japan's international Co-operation Services for the Socio-Economic progress of developing countries. The Funds required by the agency for carrying out its opera-

tional activities are budgeted by the Japanese Government under its Official Development Assistance (ODA).

**10. Netherlands Investment Bank for Developing Countries**

The Bank acts as the agent of the government in the matter of aid. Its function lies within the framework of the bilateral development aid provided by the government. Its financial resources are obtained, under government guarantee, by issuing loans in the public and private sectors of the capital market.

**11. Netherlands Finance Company for Developing Countries**

Formed in 1970 from cooperation between Dutch private business and industry and the State of the Netherlands for the purpose of stimulating economic and social progress in developing countries by promoting local business and industry. Funds for investment are obtained from state-guaranteed borrowings on the Dutch capital market and from state contributions in the form of interest-free loans and interest subsidies.

- 12. Swedish International Development Authority (SIDA)**  
Established in 1965 as a central government agency for the preparation and implementation of Swedish programmes for bilateral development cooperation. Policy guidelines are established by the government on the basis of decisions by Parliament. SIDA submits its annual budget proposals to the government.
- 13. European Development Fund (EDF)**  
The first EDF was established in 1959 as an implementing convention of the Treaty of Rome which governed the special relations between EEC and dependent overseas countries and territories. The fund is endowed for the whole lifetime of the convention (5 years). It is financed by fixed contributions from the member states.
- 14. European Investment Bank (EIB)**  
Created as a non-profit independent public institution by the Treaty of Rome, which came into force on 1 January 1958, establishing the European Economic Community. Members of the bank are the member states of the Community. For development finance outside the community, the bank uses both

its own resources collected in the market and budget resources provided by the EEC. The bulk of resources comes from borrowings, principally public or private bond issues in national capital markets inside and outside the Community and on the international market.

## **II. Regional Development Banks**

### **1. African Development Bank (AfDB)**

The agreement establishing the bank entered into force on 10 September 1964 and the bank commenced its operations on 1 July 1966. The purpose of the bank is to contribute to the economic development and social progress of its regional members, both individually and jointly. The authorised capital stock of the bank was initially fixed at UA 250 mn (\$ 250 mn) in 1964. At 31 December 1979, the authorised capital increased to UA 1,220 mn (\$ 1,607 mn). Capital stock is made up of a paid-up portion (25 per cent) and a portion (75 per cent). The new authorised capital stock is allocated for subscription to regional and non-regional members in such proportions that they result in regional

members holding two-thirds of the total voting power and non-regional members one-third. The bank's resources are made up of the subscriptions to its capital stock, reserves, borrowing and interest income.

**1.2.3.2: Asian Development Bank (AsDB)**

The Asian development Bank, AsDB, started operations on 19 December 1966 as an international regional development finance institution owned by its member governments. The purpose of the bank is for lending funds and providing technical assistance to developing member countries in the region of Asia and the Far East, including the South Pacific, and for promoting investment and generally fostering economic growth in the region. Membership of the bank is open to members and associate members of ESCAP and other regional and non-regional developed countries which are members of the UN or any of its specialised agencies. The bank (on 31 December 1980) has 29 regional members providing 65 per cent of its capital and 14 non-regional members providing 35 per cent. Subscriptions to capital stock (par value) reached \$ 8,800 mn, (31 December 1980). The financial

resources of the bank are of ordinary capital resources consisting of subscribed capital and funds raised through borrowing and reserves, and special funds resources, comprising contributions made by developed member countries and capital set aside by the bank for concessional lending to the poorest member countries. There is a technical assistance special fund consisting of contributions made by both developed and developing member countries for technical assistance activities.

**1.2.3.3: Caribbean Development Bank (CDB)**

The bank was established as a regional development organisation on 26 January 1970 to contribute to the harmonious economic growth and development of the member countries of the Caribbean (the region) and to promote economic co-operation and integration among them with special regard to the needs of the less developed members of the region. Authorised capital of the bank (September 1980) reached \$ 281.6 mn. Financial resources consist of ordinary capital resources, comprised mainly of subscribed capital and borrowing, special funds resources of the Special Development Fund, and resources

accepted by the bank for inclusion in other special funds established or administered by it. By the end of 1980 total financial resources of the bank reached \$ 402.576 mn. Membership of the bank is allowed for the states and territories of the region and non-regional states which are members of the UN or any of its specialised agencies or of the International Atomic Energy Agency. Non-regional members may hold not more than 40 per cent of the total shares of the bank and regional members not less than 60 per cent.

**1.2.3.4: Inter-American Development Bank (IDB)**

Established on 30 December 1959 as a regional development organisation, the purpose of the bank is to contribute to the acceleration of the process of economic and social development of the regional developing member countries, individually and collectively. The resources of the bank consist of the ordinary capital resources, the inter-regional capital resources, and the resources of the Fund for Special Operations. As of 31 December 1980, ordinary capital reached \$ 11,773 mn, intra-regional capital \$ 3,371 mn, and the Fund for Special Operations \$ 7,669 mn. The Fund for



Special Operations was established for the making of Loans on terms and conditions appropriate for dealing with special circumstances arising in specific countries or with respect to specific projects. The bank has been given responsibility for administering other special funds totalling \$ 1,176 mn, (31 December 1980), the two largest being the \$ 525 mn Social Progress Trust Fund placed under the bank's administration in 1961 by the United States and the \$ 500 mn Venezuelan Trust Fund established by the latter country in 1979. The bank has also administered special funds provided by Argentina, Canada, Germany, Norway, Sweden, Switzerland, the UK and the Vatican. These last funds were established before the donor countries became members of the bank.

## APPENDIX B

### THE KUWAIT FUND FOR ARAB ECONOMIC DEVELOPMENT

#### LAWS & CHARTER

#### Law No. 25 (1974) for the reorganisation of the Kuwait Fund For Arab Economic Development

We, Jaber Al-Ahmed Al-Jaber Al-Sabah, Deputy Emir and  
Crown Prince of the State of Kuwait,

Having considered Article 61 and Article 65 of the  
Constitution;

And Law No. 35 (1961) for the Establishment of the  
Kuwait Fund for Arab Economic Development, as amended by  
Law No. 9 (1963) and Law No. 64 (1966);

Hereby assent to and enact the Law passed by the  
National Assembly and set forth herein below:

#### Article 1

The Kuwait Fund for Arab Economic Development,  
hereinafter called the Fund, shall be a public  
corporation with an independent legal personality under  
the supervision of the Prime Minister who shall be the  
Chairman of its Board of Directors.

#### Article 2

The purpose of the Fund is to assist Arab States and  
Developing States in developing their economies and, in  
particular, to provide such States with loans for the  
implementation of their development programmes, in  
accordance with the provisions of a Charter to be made  
by Order of the Prime Minister.

**Article 3 [01]**

The capital of the Fund shall be 2,000,000,000 Dinars (two thousand million Kuwaiti Dinars), the unpaid portion of which shall be paid out of the State's public revenues. The Law enacting the Budget of the Ministries and Government Departments shall determine in each year the percentage fraction of annual public revenue to be appropriated for this purpose.

**Article 4**

The Fund may borrow and issue bonds subject to the limit of twice the amount of its capital and reserves in accordance with such terms and conditions as may be determined by the Prime Minister upon the recommendations of the Board of Directors.

**Article 5**

The Fund shall be administered by a Board of Directors in accordance with the Charter.

**Article 6**

The Prime Minister shall lay down the Charter of the Fund, which shall in particular, provide for the composition of the Board of Directors and its functions, regulate the technical and administrative work of the Fund and the manner of preparing its budget; and prescribe such other procedure as may be necessary for the proper conduct of the affairs of the Fund.

**Article 7**

The Prime Minister may delegate all or part of his powers under this Law to the Minister of Finance and Oil [02].

**Article 8**

Law No. 35 (961) for the Establishment of the Kuwait Fund for Arab Economic Development is hereby repealed. However, all Orders made for its implementation not in conflict with the provisions of this Law shall remain in force until superseded by new orders.

**Article 9**

The Prime Minister and the Minister of Finance and Oil shall implement this Law which shall take effect from the date of its publication in the Official Gazette.

Deputy Amir of the State of Kuwait  
Jaber Al-Ahmed Al-Jaber Al-Sabah

Given at Al-Sif Palace on 27 Jumada Al-Thani 1394 A.H.  
Corresponding to 17 July 1974 A.D.

**Order of the Prime Minister establishing the charter of the Kuwait Fund for Arab economic development**

The Prime Minister:

After perusal of Law No. 25 (1974) for the reorganisation of the Kuwait Fund for Arab Economic Development and of Decree No. 18 of 1981 amending the said Law.

And of the order of the Prime Minister for the implementation of the said Law No. 25 (1974).

And in view of the approval of the Board of Directors of the Kuwait Fund for Arab Economic Development.

And in pursuance of the submission of the Minister of Finance, the Chairman (by delegation) of the said Board of Directors.

Hereby makes the following order:

**Article 1**

The Kuwait Fund for Arab Economic Development shall discharge its functions in accordance with the provisions of the Charter hereto attached.

**Article 2**

The Order of the Council of Ministers dated 8th Dhal Hijjah, 1394 A.H. corresponding to 22nd December 1974 A.D., in connection with the implementation of the said Law No. 25 (1974) and the Charter appended to the said Order shall be repealed.

**Article 3**

This order shall come into force on the date of publication in the Official Gazette and the Board of Directors of the Kuwait Fund for Arab Economic Development shall implement its provisions.

Notwithstanding such repeal as above the present members of the said Board of Directors shall continue in office until expiry of their original term of membership.

Prime Minister

Saad Al-Abdullah Al-Salem Al-Sabah.

Issued on 16th Jumadal Ula 1401 A.H.  
22nd March, 1981 A.D.

## **Charter of the Kuwait Fund for Arab Economic Development**

### **Chapter I**

#### **Definitions**

##### **Article 1**

Unless the context otherwise requires the following terms shall have the respective meanings herebelow assigned to them:

- A. "The Fund" means the Kuwait Fund for Arab Economic Development.
- B. "The Board of Directors" or "The Board" means the Board of Directors of the Fund.
- C. "Director-General" means the Director-General of the Fund.
- D. "The Project" means the Project or Programme in the financing of which the Fund participates or is requested to participate.

### **Chapter II**

#### **General provisions**

##### **Article 2**

The Fund is a Kuwaiti Public Corporation with a juristic personality having financial, administrative and

technical autonomy under the supervision of the Prime Minister.

### **Article 3**

The object of the Fund is to assist Arab and other developing states in accordance with the provisions of this Charter in developing their economies, inter alia, by providing them with such loans as may be necessary to facilitate the implementation of their development programmes.

### **Article 4**

The authorised capital of the Fund shall be two thousand million (2,000,000,000) Kuwaiti Dinars.

### **Article 5**

The principal office of the Fund shall be situated in the city of Kuwait.

## **Chapter III**

### **The Administration of the Fund**

### **Article 6**

The Fund shall be administered by a Board of Directors consisting of the Prime Minister as Chairman and such other members, not being less than 4 or more than 8, as shall be appointed by Order of the Prime Minister for a period of 3 years from among competent Kuwaitis and who shall be eligible for reappointment. A member who is appointed in the course of a term of the Board shall continue in office until the end of such term.

The Director-General shall attend the meetings of the Board and participate in its deliberations but shall not have the right to vote.

The Chairman may designate a member of the Board to preside over a meeting of the Board in his absence.

#### **Article 7**

The Chairman shall have the power to sign on behalf of the Fund agreements for loans to, or borrowing from, third parties. Likewise, the Chairman shall have the power to sign bonds issued by the Fund. The Chairman may authorise the Director-General in that behalf.

#### **Article 8**

The Board being the highest authority of the Fund shall exercise such functions as shall be necessary for the realisation of the objects of the Fund. It shall, in particular, have the power to:

- (a) formulate the general policy of the Fund;
- (b) lay down, on the recommendations of the Director-General, the administrative and financial procedures and regulations of the Fund and assure that the same are observed;
- (c) consider and decide on the Director-General's recommendations concerning loans and other forms of assistance to be provided by the Fund;
- (d) consider and decide on the Director-General's recommendations concerning the participation of the Fund in the share capital of corporate entities of a developmental nature and of development finance institutions;
- (e) formulate the general policy of investments to be made by the Fund and may authorise the Director-General on that behalf;
- (f) propose the general terms and conditions for borrowing and issue of bonds by the Fund and consider and decide on the Director-General's recommendations in this respect;
- (g) approve the administrative budget and the year-end statement of accounts;



(h) appoint the auditors of the Fund and determine their remuneration.

#### **Article 9**

The board shall meet at least three times in every year on convocation by the Chairman or the Director-General.

A majority of members shall constitute a quorum. Resolutions shall be deemed to be passed if a majority of those present vote in favour thereof. On an equality of votes the motion in favour of which the Chairman voted shall be deemed carried.

In case of urgency the Chairman may, in lieu of convening a meeting, circulate among the members a memorandum explaining the matter to be resolved. In such case the resolution in favour of which a majority of members vote in writing shall be deemed to be passed.

#### **Article 10**

The Board may, where the need arises, set up committees to study any matters referred to them, and report thereon to the Board. Each such committee shall elect a Chairman from among its members.

#### **Article 11**

Resolutions of the Board shall, as soon as they are passed, come into force according to their tenor.

#### **Article 12**

The Chairman shall appoint the Director-General on the nomination of the Board.

### **Article 13**

The Director-General shall represent the Fund before the courts, and in its relations with third parties.

### **Article 14**

The Director-General shall assume charge of the administrative, financial and technical affairs of the Fund and, in particular, of the following matters;

- (a) the implementation of the resolutions of the Board;
- (b) considerations of, and submission to the Board of the appropriate recommendations on, applications for loans, financial and technical assistance and participation in the capital stock of corporate entities;
- (c) implementation of agreement relating to such loans, assistance and participation as above;
- (d) without affecting their material provisions, to introduce such amendments in loan agreements as shall be necessitated by the exigencies of the implementation of such agreements, including giving the Fund's consent in pursuance of any provision thereof;
- (e) preparation of the administrative budget and the year-end statement of accounts, and the presentation thereof to the Board;
- (f) to issue payment orders within the limits of the administrative budget;
- (h) to submit an annual report to the Board on the activities of the Fund which shall include its final statement of accounts as certified by its auditors, as well as a detailed statement of such activities.

### **Article 15**

The Chairman shall, on the recommendation of the

Director-General and the approval of the Board, appoint one or more deputies to the Director-General. Each deputy shall exercise such functions as may be specified by the Director-General.

#### **Article 16**

The staff of the Fund shall be appointed in accordance with the regulations issued by the Board.

### **Chapter IV**

#### **Operations of the Fund**

#### **Article 17**

The Fund shall exercise its functions in such manner as the Board may deem appropriate, and in particular by:

- (a) extending loans to Arab and other developing states, or to corporate bodies which are under the control, or have the nationality of any such state, or constitute a joint venture among such states. Provided that such corporate bodies contribute to the economic development of such states or any of them and that their objects are not restricted to the mere making of profit;
- (b) extending grants and technical assistance to such entities as are enumerated in paragraph (a) of this section;
- (c) providing guarantees in respect of obligations of such entities as are enumerated in paragraph (a) of this section;

- (d) contribution to the capital stock of corporate bodies which are under the control, or have the nationality of any Arab or other developing state or constitute a joint venture among such states, and which are of a developmental nature;
- (e) contributing to the capital stock of development finance institutions and other international and foreign development institutions whose object is to assist developing countries or any of them in developing their economies. The Fund may represent the State in such institutions.

#### **Article 18**

The Fund may provide loans covering all or part of the foreign exchange costs of a project provided that no loan shall exceed 50% of the total cost thereof.

The above provision notwithstanding, the Board may, for special considerations relating to the beneficiary state or to the project, approve financing of local costs or exceeding the said ratio of 50%.

#### **Article 19**

In addition to the rate of interest provided for in each loan agreement, there shall be payable on the amounts withdrawn from the loan and outstanding a charge of one half per cent (0.5%) per annum for the purpose of meeting administrative expenses and the costs incurred in the implementation of the loan agreement.

#### **Article 20**

Loan Agreements concluded between borrowers and the Fund shall provide, among other things, for the following:

- (a) the financial conditions including the dates and the terms of payment of principal and interest and other charges, provided that the Board may, where it deems necessary, approve the granting of a loan without interest;

- (b) an undertaking by the borrower to furnish the Fund with sufficient information relating to the progress of work on the project from the date of signature of the loan agreement until final settlement of the loan;
- (c) an undertaking by the borrower to extend to the Fund's representatives such facilities as may be necessary to enable them to acquire information about the progress of the projects financed by the Fund;
- (d) the measures necessary for ascertaining the use of the proceeds of the loan for the purpose of meeting expenditures on the project as and when they arise;
- (e) an undertaking that no other external debt will have priority over the Fund's loan or the interest or other charges thereon by means of a lien created on the assets of the borrower save to such extent as the Fund may approve;
- (f) an undertaking that all the transactions, assets and income of the Fund in the borrower's country will be exempt from all taxes, dues and other levies;
- (g) an undertaking to facilitate all financial transactions of the Fund and to lift all foreign exchange restrictions with regard to direct and indirect transfers arising from the loan agreement;
- (h) and undertaking to treat as confidential all documents, records and correspondence of the Fund such that the Fund shall, in this respect, be accorded full immunity;
- (i) an undertaking to exempt all assets and income of the Fund from nationalisation, confiscation and seizure.

In case the loan is made to a party other than the beneficiary state but under its guarantee the undertakings enumerated in paragraphs (f) to (i) of this Article shall be incorporated in the guarantee agreement.

#### **Article 21**

Where the circumstances so warrant, the Fund may, in addition to the guarantees specified in the preceding Article, require such further guarantees as it may deem necessary and may accept guarantees offered by third parties including financial institutions.

#### **Article 22**

In entertaining applications for loans, the Fund shall be guided by the considerations generally recognised in the field of development financing, and in particular

- (a) the degree of importance and priority of the project;
- (b) the adequacy of the technical, economical and financial evaluation of the project as may be required by the nature of the project;
- (c) the availability of complete and detailed cost estimates of the project;
- (d) the availability of funds, other than those provided by the Fund, necessary for the execution and completion of the project;
- (e) the financial soundness of applicant and the guarantor.

#### **Article 23**

Loan Agreements shall be in the Arabic language.

#### **Article 24**

Contribution to the capital stock of the corporate bodies referred to in paragraph (d) of Article 17 shall be in accordance with such rules as are laid down by the Board for that purpose. Such rules shall give due regard to the need for ascertaining the financial and administrative soundness of such bodies and the beneficial impact of their activities on the economic development of the respective countries as well as the need to safeguard the resources of the Fund and protect its interest.

#### **Article 25**

The Kuwaiti Dinar shall be the unit of account of the Fund.

### **Chapter V**

#### **Financial Provisions**

#### **Article 26**

The financial year of the Fund shall begin on 1st July and end on 30th June of the following year.

#### **Article 27**

The Fund shall have an administrative budget consisting of its revenues and current expenditures and shall prepare a year-end statement of accounts in respect thereof. The Director-General shall submit such budget to the Board at least two months before the end of each financial year.

#### **Article 28**

The Fund shall prepare a balance sheet, an income and expenditure account and a reserve account which shall be certified by the auditors of the Fund, and shall, together with the year-end statement of accounts and the annual report, be submitted to the Board not later than four months after the end of each financial year.

#### **Article 29**

The Fund shall keep proper books of accounts which shall reflect a true and fair view of the state of affairs of the Fund and explain its transactions. The auditors' report shall be submitted to the Board for consideration and approval.

**Article 30**

The net profits of the Fund shall be transferred to a reserve account.

**Chapter VI**

**Miscellaneous Provisions**

**Article 31**

The Prime Minister may authorise the Minister of Finance to exercise all or any of the powers and functions herein vested in him.

**Article 32**

This charter may be amended by an order made by the Prime Minister upon the recommendations of the Board.



### **Footnotes**

- 1) As modified by Decree-Law No. 18 for the year 1981 increasing the capital of the Kuwait Fund for Arab Economic Development.
- 2) Wherever reference is made to "The Minister of Finance and Oil" in the Fund's Law or Charter, it should read now "the Minister of Finance".

## APPENDIX C

### ABU DHABI FUND FOR ARAB ECONOMIC DEVELOPMENT

#### LAWS & REGULATIONS

##### Law No 3 (1971) establishing the Abu Dhabi Fund for Arab Economic Development, (ADFAED).

We, Zayed Bin Sultan Al Nahayan, Ruler of Abu Dhabi, in accordance with the proposal of the Prime Minister, as approved by the Council of Ministers, have issued the following Law.

##### Article 1

A public establishment of independent character, shall be formed in the name of "Abu Dhabi Fund for Arab Economic Development". Its headquarters shall be stationed in Abu Dhabi.

##### Article 2

The object of the Fund is to offer economic aid to Arab countries in support of their economic development. That is, in the form of loans or participation in projects or guarantees or in other forms that shall be defined by the regulations of the Fund.

##### Article 3

The capital of the Fund shall be limited by fifty million Bahraini Dinars to be paid by Abu Dhabi Government. The administrative Board of Directors of the Fund is authorised to apply to the Government to pay in, ten million dinars in the first year, and eight million dinars every following year, and that is, according to need, until the full amount of capital is paid in.

#### **Article 4**

The Fund may borrow additional money or issue bonds within the limit of double its capital amount and reserves and that is within the stipulations and conditions defined by the Board of Directors of the fund and with guarantee of Abu Dhabi Government.

#### **Article 5**

The Fund shall be administered by an Administrative Board presided by the Prime Minister, composed of seven members one of whom shall be Vice-President; and all shall be appointed by a decree, for a period of five years renewable.

#### **Article 6**

The Board of Directors of the Fund is the highest authority in administering actions of the Fund, drawing its policy and shall particularly perform the following:

- (a) set the regulations of the Fund;
- (b) set the organisational regulations of employment by the Fund;
- (c) decide on the applications submitted to the Fund for the obtainment of loans or participations or other than; and define the conditions for their completion;
- (d) determine ways of investment for the Fund's monies;
- (e) endorse the Fund's budget before the beginning of the fiscal year, and approve the annual balance sheet and final accounts. That is according to the dates and stipulations defined by the executive regulations;
- (f) appoint the auditor to the Fund.

The Board of Directors of the Fund is authorised to entrust part of its powers to the General Manager.

**Article 7**

The net profits that are realised annually as a result of the activities of the Fund, shall be added to the reserves within the ratios and the stipulations defined by the executive regulations.

**Article 8**

The Fund shall perform its functions in accordance to the provisions of the temporarily attached provisional regulations and until the Administrative Board of the Fund sets the final regulations.

**Article 9**

This law should be implemented from the date of its issuance and it shall be published in the official Gazette.

Zayed Bin Sultan AL Nehayan  
Ruler of Abu Dhabi

Khalifa Bin Zayed Al Nehayan  
Crown Prince and Prime Minister

Issued on: 22nd Jamad AL Awal 1391  
Accordant: July 15, 1971

**Internal Regulations of the Abu Dhabi Fund  
for Arab Economic Development**

We, Zayed Bin Sultan Al Nehayan, Ruler of Abu Dhabi,

In accordance with Article 8 of Law No. 3 of 1971,  
establishing Abu Dhabi Fund for Arab Economic  
Development

And in accordance with the proposal of the Prime  
Minister, approved by the Council of Ministers,

Order the promulgation of the following:

**Section One**

**Management of the Fund**

**Article 1**

The Fund shall be administered by a Board headed by the Prime Minister and composed of seven members, one of whom shall be the Vice Chairman. The members shall be appointed by Decree for a period of five years, renewable.

In case the membership of any member ceased, a replacement shall be appointed for the remaining period.

The Vice-Chairman shall replace the Chairman in his absence.

**Article 2**

Chairman of the Board of any one he authorised, shall be empowered to sign contracts of loans issued, participations, and bonds and contracts of loans raised by the Fund.

### Article 3

The Board of Directors of the Fund shall be the highest authority in administering the Fund, and drawing the policy for achieving its purposes. He shall in particular be empowered to undertake the following:

- (a) Considering and taking decisions concerning applications for loans, participations, and other forms of assistance offered by the Fund.
- (b) Fixing forms of participation in the projects of Arab States and countries.
- (c) Approving the volume of loans, participations, and other forms of assistance.
- (d) Fixing the conditions for participation in projects, within the provisions of these regulations.
- (e) Determining channels for the investment of monies of the Fund, including purchasing of bonds issued by the borrowers in favour of the Fund, or bonds guaranteed by the Fund, if this became necessary.
- (f) Fixing the size and conditions of loans raised by the Fund.
- (g) Drawing up the employment regulations and supervising the implementation thereof.
- (h) Endorsing the budget and final accounts of the Fund.
- (i) Delegating such powers to the General Manager as deemed suitable.

#### **Article 4**

The Board of Directors of the Fund shall hold six meetings per year, at least, called for by the chairman. The meeting shall form a quorum in presence of a clear majority of the members. Decisions shall be taken by clear majority of the present members.

The Chairman shall have a casting vote, if the votes are equal.

#### **Article 5**

The Board of Directors of the fund may form committees as needed for studying specific matters referred by the Board. Recommendations of the committees shall be forwarded to the Board. Each Committee shall elect a reporter of its own members.

#### **Article 6**

The General Manager and his deputy shall be appointed by Decree on the recommendation of the Board of Directors. In exception to that, the appointment of the first General Manager, his deputy and the experts, shall be decided by the Government of Abu Dhabi.

#### **Article 7**

The General Manager shall be directly responsible for all administrative, financial and technical matters of the Fund. He shall represent the Fund before the Courts and in all relations with other parties. He shall, in particular, be responsible for the following:

- (a) Carrying out decisions of the Board.
- (b) Preparing the draft budget for the following year, and forwarding it to the Board of Directors, at least two months before the expiration date of the current fiscal year.
- (c) Authorising expenditure in accordance with the budget allocations.
- (d) Appointing staff of the Fund, keeping provisions of

article six in view.

- (e) Receiving and studying applications for loans and economic assistance, and presentation of same to the Board of Directors.
- (f) Implementation of loan contracts.
- (g) Performing all other duties assigned to him by the Board of Directors in accordance with these regulations.

The Deputy General Manager shall assist the General Manager in performing his duties, and shall replace him in his absence.

#### **Article 8**

The General Manager shall submit the balance sheet and the final accounts to the Board of Directors not later than two months after the expiration of the fiscal year, together with a report of activities of the Fund, a financial report duly certified by the auditors, and detailed description of the Fund operations during the fiscal year.

#### **Article 9**

The General Manager shall attend meetings of the Board, take part in the discussions, but he shall not have a vote.

#### **Section Two**

#### **Operations of the Fund**

#### **Article 10**

The Fund shall participate in Arab projects in the form of loans, participations, guarantees, or any other form prescribed by the Board.



**Article 11**

Participation of the Fund in any project may not exceed 10% of the capital of the Fund.

**Article 12**

Participation of the Fund in any project in the form of direct loans, may not exceed 50% of the total cost of that project.

**Article 13**

In exceptional cases where the Board is convinced that the financing of a vital project cannot be secured on reasonable conditions, the Board, by majority of two thirds of the present members, may decide to forego the provisions of the preceding article.

**Article 14**

All transactions of the Fund shall be paid and collected in Sterling Pounds based on the old contents agreed upon with the International Monetary Fund at the date of each contract, or in any other currency prescribed by the Board of Directors.

**Article 15**

In those exceptional cases where severe difficulties arise in external payments, the Board, by majority of two thirds of members, may decide to temporarily forego the provisions of Article 14.

The Board, after perusal of a detailed report on the balance of external payments of the indebted party submitted by the General Manager, and keeping the

financial position of the Fund in view, also may, by majority of two-thirds of members, decide to terminate the duration of exclusion referred to hereabove, or to extend it up to a period of six years.

#### **Article 16**

The Fund may participate in Arab projects in currency other than Sterling, if so necessary, provided that the original amount, interest and other expenses are repaid in the same currency prescribed in the loan agreement, calculated on the basis of the gold contents prevalent at the date of signature of the contract.

In some exceptional cases, the Board may, by majority of two thirds of the present members, decide that the transfer to the borrower be affected in this local currency.

#### **Article 17**

As well as the interest prescribed in each contract, additional charges amounting to half per cent shall be collected in lieu of administrative expenses and expenses incurred in implementation of the contract.

#### **Article 18**

All contracts between the Fund and beneficiary states, shall include the following provisions:

- (a) Conditions and provisions of drawing the loan, repayment of capital, interest, other expenses.
- (b) An undertaking by the beneficiary to provide the Fund with adequate information on the progress of work from the date of signature of the contract until the final settlement of the loan.
- (c) An undertaking by the beneficiary to provide all facilities necessary for the Fund representatives to inspect and check records of the project, at any time, all duration of the loan.

- (d) Procedures to ensure that all amounts drawn on account of the loan are utilised for financing the project on account of which the loan had been approved.
- (e) Exemption of the Fund's assets, properties and income, related to the operations carried out by the Fund in the beneficiary state, from all taxes, and other similar liabilities.
- (f) An undertaking by the respective monetary authorities in the beneficiary states to facilitate all financial transactions of the Fund, and to exempt it from all restrictions on foreign exchange with regard to direct and indirect transfers relating to the implementation of the loan contract.
- (g) An undertaking by the beneficiary state to treat all documents, records and correspondences of the Fund, etc. as confidential, and to grant the Fund the right of immunity against control and inspection of its printed materials.
- (h) An undertaking by the beneficiary state to the effect that the capital and income of the Fund shall not be subject to nationalisation, confiscation or sequestration.

#### **Article 19**

The Fund may demand other guarantees in addition to those stated in the preceding article, including guarantees by international or regional organisations subject to the nature and circumstances of each operation.

#### **Article 20**

The Fund, when considering applications for loans, shall be guided by the following economics considerations:

- (a) The sound position of the borrower and the guarantor.
- (b) The soundness and adequacy of financial guarantee

submitted by a third party.

- (c) The relative importance and priority of the project to be financed.
- (d) Complete and thorough estimate of the cost of the project.
- (e) Through economic and technical study of the project, including feasibility study of implementation, if so necessary.
- (f) Verify that the money required for carrying out and completion of the project, over and above the proportion financed by the Fund, is available.
- (g) That the project in question does not contradict the economic interest of Abu Dhabi or any other Arab State.

### **Section Three**

#### **General Provisions**

##### **Article 21**

The Fund shall have a separate budget covering its income and expenditure.

##### **Article 22**

The fiscal year of the Fund shall commence on the first of January and expire on the end of December, each year.

The first year shall commence on the date of Law establishing the Fund, i.e., July 15, 1971, and shall expire at the end of December of the same year.

**Article 23**

The net profits of the Fund shall be added to its reserves fund until this forms 20% of the capital. Thereafter, the net profits shall be added to the capital, provided that the reserve fund shall always form 20% of the capital.

**Article 24**

The Fund may borrow money, issue bonds and give guarantees not exceeding twice the value of its capital and reserve fund under conditions and circumstances specified by the Board of Directors and with the guarantee of the Government of Abu Dhabi.

**Article 25**

These regulations shall come into effect as from the date of issue, and shall be published in the Official Gazette.

Signed :  
Zayed Bin Sultan Al Nahyan  
Ruler of Abu Dhabi

Signed :  
Crown Prince and Prime Minister  
Khalifa Bin Zayed Al Nahyan

Issued on: 22nd Jumad Al Awal 1391 H  
July 15, 1971 A.D.

**Amiri Decree No. 31 (1972)**

**Establishing the Board of Directors of Abu Dhabi Fund  
for Arab Economic Development, (ADFAED).**

We, Zayed Bin Sultan Al Nehayan, Ruler of Abu Dhabi,

After perusal of Law No. 3 (1971) establishing Abu Dhabi  
Fund for Arab Economic Development,

And, in accordance with the proposal of the Prime  
Minister, approved by the Council of Ministers,

Order the effect of the following:

**Article 1**

The Board of Directors of Abu Dhabi Fund for Arab  
Economic Development shall be formed as follows:

Sheikh Khalifa Bin Zayed AL Nehayan : (Chairman)  
Sheikh Tahnoun Bin Mohammed AL Nehayan  
Sheikh Surour Bin Mohammed AL Nehayan  
H.E. Ahmed Kahlifa Al-Suweidi  
H.E. Khalaf Bin Ahmed Al-Itaiba  
H.E. Mana's Bin Said Al-Itaiba  
H.E. Mohammed AL-Habroush  
Dr. Hassan Abbas Zaki

**Article 2**

Dr Hassan Abbas Zaki shall be appointed Deputy Chairman  
of the Board of Directors, and he shall practice powers  
of the General Manager of the Fund until such a General  
Manager has been appointed.

**Article 3**

This decree shall be effective from the date of its  
promulgation and shall be published in the Official  
Gazette.

Signed:

Zayed Bin Sultan Al Nehayan  
Ruler of Abu Dhabi

Khalifa Bin Zayed Al Nehayan  
Prime Minister and Minister  
of Defence and Finance

Issued in Abu Dhabi at: 26/6/1392 H  
July 8, 1972 A.D.

In the name of God, the Beneficent, the Merciful

**Amiri Decree No. 39 (1971)**

We Zayed Bin Sultan Al Nehayan, Ruler of Abu Dhabi, after perusal of Law No. 3 of 1971 establishing Abu Dhabi Fund for Arab Economic Development, and in accordance with the proposal of the Prime Minister, approved by the Council of Ministers.

Order the effect of the following:

**Article 1**

Dr. Hassan Abbas Zaki shall be appointed Adviser to the

Abu Dhabi Fund.

## **Article 2**

Adviser to the Fund, in agreement with the Chairman of the Administrative Board of the Fund, shall take necessary steps for the establishment of the Fund until the formation of an Administrative Board of the Fund. He shall in particular undertake the following:

- (a) Lay out rules and regulations governing the operations of the Fund.
- (b) Draw up the chart of organisation of the Fund, and employ staff for its main positions.
- (c) Hire and prepare suitable premises for the Fund to enable it to function in the required manner.
- (d) Establish necessary contacts with local and foreign parties according to circumstances, for the purpose of definition of the framework of the Fund, and its introduction to the appropriate international authorities.

## **Article 3**

This decree shall be effective from the date it is published, and shall be published in the Official Gazette.

Signed:

Zayed Bin Sultan Al Nahayan  
Ruler of Abu Dhabi

Date: 2/8/1391 H  
September 22, 1971 A.D.

**Law No. 7 (1974) Amending Some Provisions of Law No.3  
(1971), Establishing the Abu Dhabi Fund  
for Arab Economic Development**

We, Zayed Bin Sultan Al Nahayan, Ruler of Abu Dhabi,

After having perused the provisions of Law No. 1 (1974) concerning the reorganisation of the Government structure of the Emirate of Abu Dhabi,



And Law No. 2 (1971), concerning the National Advisory Council,

And Law No. 3 (1971), establishing the Abu Dhabi Fund for Arab Economic Development,

And in accordance with the proposal of the Chairman of the Executive Council of the Emirate of Abu Dhabi as approved by the said Council,

Promulgated the following Law:

### **Article 1**

Article 2 of the afore-mentioned Law No. 3 (1971), shall be replaced by the following provisions:

"The purpose of the Fund shall be:

1. to offer economic aid to the Arab Countries in support of their economic development, in the form of loans or participation in projects;
2. to offer aid to the African, Asian and other Islamic countries in support of their economic development in the form of loans or participation in projects;
3. to establish or participate in the establishment of financial institutions which complement the purposes of the Fund and help create and foster a financial market in Abu Dhabi;
4. to issue guarantees and other such undertaking specified in the executive regulations to compliment the purposes of the Fund;
5. to employ temporary available liquidity in the various remunerative types of investment;
6. to provide expertise and technical assistance in various fields of economic development;
7. to perform any other activities or services that may be necessary for the realisation of the purposes of the Fund".

## **Article 2**

Article 3 of Law No. 3 (1971) shall be replaced by the following provision:

"The authorised capital of the Fund is two thousand million Dirhams, totally subscribed for by the Government of Abu Dhabi, and divided into paid-in capital of one thousand million Dirhams, and capital on call of one thousand millions Dirhams.

Two hundred million of the paid-in capital shall be disbursed by the end of 1974, the balance shall be disbursed in four equal instalments.

The payment of an on call capital shall be made upon the demand of the Board of Directors and according to need".

The following new paragraph shall be added to Article 4 of Law No. 3 (1971):

"The Fund may also accept deposits from the Government and public organisations according to the terms and conditions determined by the Board of Directors".

## **Article 4**

This Law shall come into force as of the date of issue and shall be published in the Official Gazette,

Zayed Bin Sultan Al Nahyan  
Ruler of Abu Dhabi

Khalifa Bin Zayed Al Nahyan  
Crown Prince and President of  
the Executive Board

Issued in Abu Dhabi on:  
17th Jumada 2, 1394  
July 7, 1974.

**Law No. 7 (1975) in respect of amendments to provisions of Law No.3 (1971) for the establishment of the Abu Dhabi Fund for Arab Economic Development.**

We, Zayed Bin Sultan AL-Nehayan, Ruler of Abu Dhabi,

In consequence of our review to Law No. 1 (1974) in respect of the reorganisation of Government structure of the Emirate of Abu Dhabi.

And to Law No. 2 (1971) in respect of the National Advisory Council.

And to Law No. 3 (1971) in respect of the National Advisory Council,

And to Law No. 3 (1971) in respect of the establishment of the Abu Dhabi Fund for Arab Economic Development, and in consideration to the proposal of the Head of the Executive Council of the Emirate of Abu Dhabi as approved by the said Council, have issued the following Law:

#### **Article 1**

Article 2 of Law No. 3 (1971), the aforementioned, will be suspended by the following:

The object of the Fund will be confined to the following:

1. Offering economic aid to Arab Countries in support of its economic development, in the form of loans or of participation in projects.
2. Offering economic aid to the African, Asian and other Islamic countries in support of its economic development in the form of loans or, of participation in projects.
3. Organising, or participating in forming financial establishments which complement the purpose of the Fund and function to create and support a financial market in Abu Dhabi.
4. Issuing guarantees and other such undertakings as specified by the executive table, which complete the purpose of the Fund.

5. Employment of temporary available liquidity in the various rewarding means of investment.
6. Providing experience and technical aids within the various fields of economic development.
7. Performing any other activities or services that may be necessary for the realisation of the object of the Fund.

## **Article 2**

Article 3 of Law No. 3 (1971) will be superseded by the following:

"Capital allotment allowed to the Fund, will be limited to two thousand million Dirhams and a sum subscribed in whole by the Government of Abu Dhabi, and divided into two thousand million Dirhams, paid and one thousand million as on demand".

Out of the paid capital, 200 million dirhams, will be settled within a period extending to the end of the year 1974; the balance amount will be settled in four equal yearly instalments.

The settlement of the capital amount on demand will be liable to demand of the Board of Directors and according to necessity.

## **Article 3**

A new paragraph will be added to Article 4 of Law No. 3 (1974) as follows:

"The Fund may also accept deposits from the Government and public establishments in accordance with the stipulation and circumstances specified by the Board of Directors".

Execution of this Law will take effect from the date of its issue, and will be published in the Official Gazette.

Khalifah bin Zayed Al-Nehayran  
Crown Prince and President of the  
Board of Executives

Zayed bin Sultan Al-Nehayan  
Ruler of Abu Dhabi

Issued in Abu Dhabi  
on 17th Jamada 2, 1394  
July 7, 1974

## APPENDIX D

### THE CHARTER OF THE SAUDI FUND FOR DEVELOPMENT

Sanctioned by Royal Decree No. M/48, Dated 14/8/1394 AH  
(1/9/1974)

Bism Allah Ar-Rahman Ar-Raheem

ROYAL DECREE

No. M/48, dated 14/8/1394 (1/9/1974)

With the help of God Almighty,

We, Faisal Bin Abdul Aziz Al-Saud  
King of Saudi Arabia

After reviewing Articles 19 and 20 of the Regulation of Council of Ministers issued under Royal Decree No. 38, dated 22/10/1377 AH, and after reviewing the Resolution of Council of Ministers No. 1070, dated 9-10/8/1394 AH; 27-28/8/1974

DECREE THE FOLLOWING

First: Approving the Charter of the regulation of the Saudi Fund for Development in the attached text.

Second: Vice Premier of Council of Ministers and Minister of Finance and National Economy shall put this decree into effect.

ROYAL SIGNATURE

## **Charter of the Saudi Fund for Development**

### **Article 1**

In accordance with this charter, an autonomous organisation called the Saudi Fund for Development, shall be established. Its headquarters shall be located in Riyadh and it shall have legal entity and autonomous financial status. The Fund shall participate in the financing of developmental projects in developing countries through granting of loans to said countries.

### **Article 2**

The capital of the Fund shall be ten thousand million Riyals, half of which shall be paid-in during the coming three years in accordance with budget allocations; the remaining amount shall be covered afterwards according to what shall be specified in the annual general budget of the Government.

The capital of the Fund may be increased by a resolution of the Council of Ministers.

### **Article 3**

The Fund shall be administered by a Board of Directors chaired by the Minister of Finance and National Economy with membership as follows:

- (a) Vice-Chairman and Managing Director of the Board to be nominated by the Minister of Finance and National Economy and appointed by a resolution of the Council of Ministers, specifying his salary, his conditions of service and termination thereof.
- (b) Four other specialised and experienced members to be nominated by the Minister of Finance and National Economy and appointed by a resolution of the Council of Ministers. Term of membership of

each of these members shall be for three years, renewable for other terms.

The Chairman or the Vice-Chairman shall call for meetings of the Board of Directors as need occurs. The quorum of the meetings shall be the attendance of the majority of its members.

Without violation of other previous specific provisions, decisions of the Board become effective by an absolute majority vote of attending members. In case of a tie, the Chairman's vote shall carry.

#### **Article 4**

The Board of Directors of the Fund is the supreme authority that administers the Fund's affairs. To achieve this, the Board is empowered to:

1. Lay down principles and conditions of granting loans and repayments thereof in accordance with the provisions of this regulation;
2. Take decision concerning the granting of loans to finance projects that are deemed worthy of financing;
3. Take decisions concerning the investment of the Fund's unused reserves in various forms of investment;
4. Approve in consultation with the General Personnel Bureau by-laws relevant to appointment of Fund's employees;
5. Approve administrative as well as financial by-laws of the Fund;
6. Approve proposed administrative budget, general budget and the statement of final account of the Fund.

#### **Article 5**

Vice-Chairman and Managing Director assumes the



executive authorities of the Fund and represents it before the courts and in its relations with others. He shall also be responsible for the execution of decisions of the Board of Directors.

#### **Article 6**

Prior to granting a loan, the Fund has to investigate the productivity of such a loan for the borrowing country and the security of its repayment and taking the following factors into consideration:

- (a) Financial standing of the borrowing government with reference to size of loan and the adequacy of financial and economic resources that ensure its repayment.
- (b) Significance of the project for which a loan shall be made in terms of its priority over other projects and its integration with other economic activities of the borrowing country.
- (c) Effectiveness appraisal and analytical studies supporting the project from economic and technical points of view.
- (d) Availability to the borrowing country of funds required for execution of the project, in addition to the amount of the loan.

#### **Article 7**

The Fund grants loans after assuring fulfilment of the following conditions:

- (a) That the project to be financed contributes to the economic and social well-being of the borrowing country.
- (b) That the loan is paid and repaid in Saudi Riyals.
- (c) That amount of loan granted to any project does not exceed five per cent of the total capital of the Fund and fifty per cent of the total cost of the

project for which the loan shall be effected.

- (d) That total amount of loans granted to any country shall not exceed ten per cent of the Fund's capital at any one time.

If warranted, upon the recommendation of the Fund's Board of Directors and the proposal of the Minister of Finance and National Economy, the Council of Ministers may waive one of the aforementioned conditions.

#### **Article 8**

All loan agreements signed between the Fund and any borrowing country shall stipulate the following:

- (a) To allocate the whole value of loan for the project to which it is assigned, and to submit to the Fund a statement showing the applications and expenditures of the amount of loan, and to inform the Fund of procedures planned for coordination with other financial sources.
- (b) To provide all relevant information and whatever means as required by the Fund to ascertain progress of work on the project concerned from the date of signing of agreement until the loan is fully repaid.
- (c) To grant such facilities to the Fund's staff as required for the performance of their duties in the borrowing country, and to provide them with immunities identical to those granted to diplomatic missions.
- (d) To facilitate all the Fund's financial operations, including the exemption of the amount of loan and the Fund's assets in the borrowing country from direct or indirect control over the transfer of the Fund's currencies and financial instruments emanating directly or indirectly from the loan.
- (e) To exempt the Fund's transactions and revenues in the borrowing country from taxes, fees or any other official charges.
- (f) To exempt the Fund's assets of all kinds from expropriation, nationalisation, sequestration, custody or seizure.

- (g) To treat the Fund's documents, records, and correspondence as confidential, and to provide it with full immunity from censorship or inspection of printed matter.

#### **Article 9**

The Fund may require the provision of suitable guarantees from the borrowing country as deemed necessary.

#### **Article 10**

Without violation of the Fund's claims emanating from the loan agreement, or provided in the principles of public law or international convention, if the borrowing country violates any commitment relevant to the contract, the Fund may terminate payment of remaining instalments and consider the amount already paid as immediately due to be paid back after adding all expenses incurred by the contracting of the loan. This action may be taken without any prior notice or probation and without need for taking any judiciary action.

#### **Article 11**

The State's fiscal year shall be the financial year of the Fund. By the end of each fiscal year, the Minister of Finance and National Economy shall submit the following to the Council of Ministers:

- (a) A detailed annual report on the Fund's operations, incorporating a comprehensive survey of the Fund's activities completed by the end of the year and those planned to be executed in the ensuing year.
- (b) The Fund's budget and statement of final account.

**Article 12**

Without interference with the authority of the General Controller Bureau for financial auditing, the Board of Directors of the Fund may appoint one or more certified controllers and auditors.

## APPENDIX E

### UNIFIED ECONOMIC AGREEMENT AMONG GCC STATES

Governments of Member States in the Gulf Co-operation Council Countries endeavour to enhance stronger ties with the GCC with a desire to expansion and support economical ties between them for the optimum benefit of their people. Therefore in order to unify co-ordination of economical, financial, monetary, Commercial, Industrial and an applicable customs duty system, the GCC Member States have agreed on the following:

#### Section One

#### Exchange of trade and commerce

#### Article 1

- (a) GCC member states are permitted to import and export agricultural, animal wealth, industrial and natural resources of locally produced origin to other member states.
- (b) To treat all types of agricultural, animal wealth, industrial and natural resources of local origin as national products.

#### Article 2

- (a) All products of national origin to be exempted from custom duties.
- (b) Current or previous fixed service charges on national goods such as landing charges, demurrage, storage, transport are not to be included in this exemption.

### **Article 3**

- (a) As a condition - the final additional value of completed national industrial products should be not less than 40% from the initial period of production to final completion. Another conditions is that not less than 51 per cent of industrial plants should be owned by citizens of the member states.
- (b) All goods enjoying exemptions should, following this agreement be accompanied by a Certificate of Origin duly authenticated by their certified government authorities.

### **Article 4**

- (a) GCC Member States to formulate a unified minimum charge for customs tariff to be applied to the outside world.
- (b) One of the aims of unifying customs tariffs is to find a solution to protecting national products against competition from foreign products.
- (c) Customs tariffs to be put into practice gradually within a period of five years from the date this agreement is enforced and step should be taken to achieve application within a year of this mentioned period.

### **Article 5**

All GCC Member States will be granted every facility for freedom of passage for their products among themselves and will be exempted from all customs duties or fees whatever the type of product without contradicting stipulation in the 2nd clause of Article 2.

## **Article 6**

Prohibited goods specified in each of the GCC member states local regulations and customs authorities lists are forbidden passage accordingly.

## **Article 7**

GCC Members to co-ordinate policies and commercial relationships with other countries in the economical bloc - to enable them to find circumstances and conditions suitable for dealing with these countries. In order to achieve this goal member states to make the following necessary arrangements:

1. To co-ordinate policies and systems of import and export.
2. To co-ordinate strategic policies of construction for foodstuff storage.
3. To hold in conjunction an economical agreement which is beneficial to all member states.
4. To create negotiating power in support of their bargaining position with foreign parties in the fields of importing their basic needs and exporting their main products.

## **Section Two**

### **Article 8**

Member States have agreed on rules to be executed which guarantee to deal with all GCC country's citizens alike and to give the same treatment without discrimination on any of the following matters.

1. Freedom of individual migration, work and residence.
2. Freedom of property inheritance.
3. Freedom to practice economic activities.

4. Freedom to transfer funds and capital.

#### **Article 9**

GCC Member States to encourage the private sector to set up joint projects which will enhance the economical interests of citizens in various fields.

#### **Section Three**

#### **Article 10**

GCC Member States to work together to achieve coordination and similarity between development plans in order to further economic unity

#### **Article 11**

- (a) To coordinate policies in all stages of the oil industry including production, refining, marketing, manufacturing and pricing policies, the utilisation of natural gas and the development of energy resources.
- (b) To set forth a unified oil policy and assume a joint attitude towards the outside world and within specialised international organisations.

#### **Article 12**

To achieve the goals stated in this agreement member states should do the following:

1. Coordinate industrial activities and lay down policies and methods as a guideline to industrial development.
2. Unify legislature and industrial systems, direct local production departments and meet their increasing needs and requirements.
3. Proportionately distribute industries according to each others' economic interests. They would also set up and achieve completion of basic



industries among themselves.

#### **Article 13**

GCC member states should give priority to constructing and supporting joint projects among themselves in industrial, agricultural and utility services with either public or private capital or both. They should try to achieve economic success with more unified production and joint developments.

#### **Section 4**

#### **Technical Cooperation**

#### **Article 14**

GCC Member States to cooperate in the field of technical innovation, with the aim of forming a self sustaining base which can support and encourage technological and scientific research. To use imported technology to the best advantage of the region's goals of progress and development.

#### **Article 15**

GCC member states to prepare systems and conditions for and administrate the transfer of technology, select appropriate technology and tailor this according to their various requirements and have unified agreements to suit their requirements of each others governments, scientific, trading and foreign establishment's needs.

#### **Article 16**

Coordination of policies and the execution of programmes at every stage for training, technical qualification and professional handicrafts. To develop methods of education at all levels and to adjust technology and education to the development requirement of the GCC

member states.

## **Section 5**

### **Transport**

#### **Article 17**

GCC Member States in dealing with different types of transportation such as that of passengers or goods travelling to and from their lands should accord to them the same privileges and treatment as that given to their own citizens and exempt them from any customs charges although domestic transport is not included.

#### **Article 18**

- (a) Co-operation in the fields of overland transport, marine and communications by co-ordinating construction of major projects; namely ports, airports, water stations, power stations and roads in order to achieve further unified economic development.
- (b) Co-ordination of aviation and air transportation policies and development of standard work procedures for different types of work.

#### **Article 19**

The ships, boats, vessels and their cargo owned by GCC Member States are permitted to utilise all facilities at their ports and given similar treatment and privileges whether in transit or moored with respect to charges, guidance, services at docking, loading, surface unloading, maintenance, repairs, storage of goods and other similar services.

## **Section 6**

### **Article 20**

The GCC Member States endeavour to standardise their systems and laws pertaining to investments. To formulate a joint investment policy with an aim of directing domestic and foreign investments to serve their peoples' interests and aspirations in achieving progress and development.

### **Article 21**

Monetary and financial cooperation by endeavouring to unify systems and policies in respect to investment. Co-ordination of monetary, financial and banking. To increase co-operation in respect to investment. To increase co-operation among established funds and central banks and unify the currency.

### **Article 22**

GCC Member States to coordinate their external policies as a forerunner in the field of offering international and local aid development.

**Article 23**

The difference in growth levels among GCC Member states should be taken into consideration as these may cause temporary periods of delay in the time to forward and practise verdicts of some of the agreements.

Therefore a temporary exemption is granted in applying some of the verdicts for agreements. depending on the decision taken by the Higher Council of GCC countries this exemption may only be for a certain period.

**Article 24**

The GCC agreement does not grant any special privileges to one country or another other than those stipulated in the agreement.

**Article 25**

This agreement will be deemed valid four months after approval of the Higher Council.

**Article 26**

Application on verdicts mentioned in this agreement will be given priority when correspond to local rules and regulations of any of the GCC Members States.

**Article 27**

Verdicts mentioned in this agreement supersede similar verdicts in the second agreement issued in Riyadh on 8th June, 1981, [1].

## Footnotes

- 1) "Economic Encyclopaedia of the Gulf Co-operation Council", The Arab Information Centre, Page

(The original text of this agreement is in Arabic. The above is my unofficial translation into English).

APPENDIX F

STANDARD LOAN AGREEMENT

Original: Arabic

Loan Number.....

LOAN AGREEMENT

PHOSPHATE FERTILIZERS PROJECT

IN.....

BETWEEN

REPUBLIC OF.....

AND

KUWAIT FUND FOR ARAB ECONOMIC DEVELOPMENT

DATED.....

[1]

## **Loan Agreement**

Agreement, dated.....between Republic of.....(hereinafter referred to as the Borrower) of the one part, and the Kuwait Fund for Arab Economic Development (hereinafter referred to as the Fund) of the other part;

Whereas the Borrower has requested the Fund to assist in the financing of Phosphate Fertilizers Project in.....

Whereas Industries Chimiques du.....(hereinafter referred to as the Company) is entrusted with the execution of Part (A) of the Project;

Whereas, by an agreement of even date herewith between the Fund and the Company (hereinafter referred to as the Project Agreement), the Company has assured certain obligations to the Fund;

Whereas certain funds from various sources, as detailed in Schedule 3 to this Agreement (hereinafter referred to as the Specified Funds) have been secured for the Project;

Whereas the Borrower is in the process of securing for the Project a loan from European Development Fund (hereinafter referred to as European Fund Loan) in the amount of 10 million ECU;

Whereas, the Fund is convinced of the importance of the Project and its beneficial effects for the development of the Borrower's economy and;

Whereas, the Fund has agreed, in view of the foregoing, to grant the Borrower a loan (hereinafter referred to as Loan) on the terms and conditions set forth in this Agreement;

Now, therefore, the parties hereto agree as follows:

### **Article I**

**The loan; interest and other charges;**

**Repayment; place of payment;**

Section 1.01 The Fund agrees to lend to the Borrower, on the terms and conditions set forth in

this Agreement or referred to, an amount equivalent to six million Kuwaiti Dinars (KD 6.0 mn)

Section 1.02 The Borrower shall pay interest at the rate of three and one-half of one per cent (3.5 per cent) per annum on the principal amount of the Loan withdrawn and outstanding from time to time. Interest shall accrue from the respective dates on which amounts shall be so withdrawn.

Section 1.03 An additional charge of one-half of one per cent (1/2 of 1%) per annum on the amount of the Loan withdrawn and outstanding from time to time shall be paid to meet the administrative expenses and the expenses of implementing this Agreement.

Section 1.04 The charge payable for special commitments entered into by the Fund, at the request of the Borrower pursuant to Section 3.02 of this Agreement, shall be at the rate of one-half of one per cent (1/2 of 1%) per annum on the principal amount of any such special commitments outstanding from time to time.

Section 1.05 Interest and other charges shall be computed on the basis of a 360-day year of twelve 30-day months for any period less than a full one half of a year.

Section 1.06 The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule (1) to this Agreement.

Section 1.7 Interest and other charges shall be payable semi-annually on March 15 and September 15 of each year.

Section 1.08 The Borrower shall have the right, upon payment of all accrued interest and all other charges, and upon not less than 45 days notice to the Fund, to repay in advance of maturity: (a) all of the principal amount of the Loan at the time outstanding; or (b) all of the principal amount of any one or more maturities,



provided that on the date of such prepayment there shall not be outstanding any portion of the loan maturing after the portion to be prepaid.

Section 1.09 The principal of, and interest and other charges on, the Loan shall be paid at Kuwait or at such other places as the Fund shall reasonably request.

## Article II

### Currency provisions

Section 2.01 All accounts of the financial transactions made pursuant to this Agreement shall be, and all sums falling due thereunder shall be payable in Kuwaiti Dinars.

Section 2.02 The Fund will purchase, at the request of and acting as an agent for the Borrower, such currencies as may be required for payment of the cost of goods to be financed from the Loan under this Agreement, or for reimbursement of such cost in the currency in which it was actually incurred. The amount which shall be deemed to have been withdrawn from the Loan in any such case shall be equal to the amount of Kuwaiti Dinars required for the purchase of the respective amount of foreign currency.

Section 2.03 a) When prepayment of principal or payment of interest and other charges on the Loan is being made, the Fund may, at the request of and acting as an agent for the Borrower, purchase the amount of Kuwaiti Dinars required for such repayment or payment, as the case may be against payment by the Borrower of the amount required for such purchase in a currency or currencies as may be acceptable from time to time to the Fund.

- b) No payment to the Fund required under this Agreement shall be deemed to have been effected except from the time and to the extent that Kuwaiti Dinars have actually been received by the Fund.

Section 2.04 Whenever it shall be necessary for the purposes of this Agreement to determine the value of one currency in terms of another, such value shall be reasonably determined by the Fund.

### Article III

#### Withdrawal and use of proceeds of the Loan

- Section 3.01
- a) The Borrower shall be entitled to withdraw from the Loan amounts expended or to be expended for the project in accordance with the provisions of this Agreement.
  - b) Except as the Fund may otherwise agree, no amount shall be withdrawn from the Loan on account of expenses prior to June 1st, 1982, or to finance local costs of goods produced in the territories of the Borrower.

Section 3.02 Upon the Borrower's request and upon such terms and conditions as shall be agreed upon between the Borrower and the Fund, the Fund may enter into special commitments in writing to pay amounts to the Borrower or others in respect of the cost of goods to be financed under this Agreement notwithstanding any suspension or cancellation thereof.

Section 3.03 When the Borrower shall desire to withdraw any amount from the Loan or to request the Fund to enter into a special commitment pursuant to Section 3.02, the Borrower

shall deliver to the Fund a written application in such form, and containing such statements and agreements, as the Fund shall reasonably request. Applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall, except as the Borrower and the Fund shall otherwise agree, be made promptly in relation to expenditure for the Project.

Section 3.04 The Borrower shall furnish to the Fund such documents and other evidence in support of the application for withdrawal as the Fund shall reasonably request, whether before or after the Fund shall have permitted any withdrawal requested in the application.

Section 3.05 Each application for withdrawal and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Fund that the Borrower is entitled to withdraw from the Loan the amount applied for and that the amount to be withdrawn from the Loan is to be used only for the purposes specified in this Agreement.

Section 3.06 The Borrower shall apply the proceeds of the Loan exclusively to financing the reasonable cost of goods required to carry out the Project described in Schedule 2 to this Agreement. The specified goods to be financed out of the proceeds of the Loan and the methods and procedures for procurement of such goods shall be determined by agreement between the Borrower and the Fund, subject to modification by further agreement between them.

Section 3.07 The Borrower shall cause all goods financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.08 Payment by the Fund of amounts which the Borrower is entitled to withdraw from the Loan shall be made to or on the order of the Borrower.

Section 3.09 The right of the Borrower to make withdrawals from the Loan shall terminate on June 30, 1985 or such other date as may from time to time be agreed between the Borrower and the Fund.

#### **Article IV**

##### **Particular Covenants**

Section 4.01 The Borrower undertakes:

- a) that the Project shall be carried out, operated and maintained with due diligence and efficiency and in conformity with sound engineering, financial and administrative practices; and
- b) that the carrying out of the Project shall proceed in accordance with the agreed schedule of implementation (1981-1984).

Section 4.02 Without prejudice to the provisions of the preceding Section:

- a) the Borrower shall cause the Company to carry out, operate and maintain Part A of the Project, and cause SEFICS to carry out, operate and maintain Part B of the Project;
- b) the Borrower shall carry out Part C of the Project through its Ministry of Hydraulics; and
- c) the Borrower shall cause Societe Nationale d'Exploitation des Eaux

du..... (hereinafter referred to as SONEES), to operate and maintain Part C of the Project. To that end, the Borrower shall, not later than April 30, 1984 or such other date as the Fund may otherwise agree, take all governmental action necessary to regularise the legal situation of SONEES and in particular to duly finalise SONEES reestablishment as Societe Nationale and the approval of its statutes.

- Section 4.03
- a) In order to assist the Company in carrying out Part A of the Project, the Borrower shall relend the proceeds of the Loan to the Company under a Subsidiary Loan Agreement to be entered into between the Borrower and the Company upon such terms and conditions which shall at all times be satisfactory to the Fund.
  - b) Without restricting the generality of the provisions of the foregoing Sub-Section, the Company shall pay interest on the Subsidiary Loan at the rate of nine per cent (9%) per annum, and shall repay the principal and pay the interest thereof in accordance with the amortisation schedule set forth in Schedule 1 to this Agreement. The differential between the interest rate on the Loan provided for in this Agreement (including the service charge) referred to in Section 1.02 and Section 1.03 of this Agreement and the interest rate on the Subsidiary Loan shall be maintained in a special account at a Senegalese bank acceptable to the Fund. The said differential and its capitalised interest shall be used for economic development purposes in .....upon terms and conditions satisfactory to the Fund, and the Fund shall be furnished with annual statements of the said account.

- c) The borrower shall exercise his rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Fund and to accomplish the purposes of the Loan.
- d) The Subsidiary Loan Agreement or any provision thereof shall not, without the prior approval of the Fund, be assigned, amended, abrogated or waived.

Section 4.04 The Borrower shall take, promptly as needed, all steps necessary to secure, in addition to the Loan provided for in this Agreement, the Specified Funds and the European Fund Loan, all other sums which shall be required for the completion of the Project. All such sums are to be secured upon terms and conditions satisfactory to the Fund.

- Section 4.05
- a) The Borrower shall take all action which shall be necessary on its part to facilitate the execution of the Project and, in particular, to enable the Company to comply with all its obligations under this Agreement, the Project Agreement and the Subsidiary Loan Agreement.
  - b) The Borrower shall neither take nor permit to be taken any action which would prevent or interfere with the implementation or operation of the Project or the performance of any of the provisions of this Agreement, the Project Agreement and the Subsidiary Loan Agreement. The Borrower shall not in particular, without the prior approval of the Fund, take or permit to be taken (i) any action which would

amend, suspend, abrogate, repeal or waive the Statutes of the Company, SEFICS, or SENCHIM, or the "Convention d'Establissement" and the "Protocole d'Accord" concluded between the Borrower and the Company, or any provision thereof; and (ii) any action which would dissolve, disestablish or suspend the operations of the Company, SEFIC, SENCHIM or SONEES.

Section 4.06 In carrying out the Project the Borrower shall cause to be employed engineering consultants acceptable to, and upon terms and conditions satisfactory to, the Fund. The Borrower undertakes that the consultancy agreement or agreements or any provision thereof shall not, without the prior approval of the Fund, be amended suspended or terminated.

Section 4.07 The Borrower undertakes that all contracts for the execution of the Project shall be awarded through international competitive bidding; and except as the Fund shall otherwise agree, the awarding of such contracts which shall be financed out of the proceeds of the Loan and any modification, suspension or termination thereof shall be subject to the prior approval of the Fund.

Section 4.08 The Borrower shall furnish or cause to be furnished to the Fund, promptly upon their preparation, the studies of, and the plans and specification for, the Project, the schedule of its execution and any material modification subsequently made therein, in such detail as the Fund may from time to time request.

Section 4.09 The Borrower undertakes to ensure that the Company, SEFICS and SENCHIM shall not, without the prior approval of the Fund, amend, suspend, terminate, abrogate or

waive any of the following agreements or any provision thereof:

- a) the Agreement dated May 1st, 1982 between the Company and the Indian Consortium whereby the said consortium has undertaken to purchase a part of the Company's production of phosphoric acid;
- b) the Agreement dated June 26th, 1981 between the Company and SENCHIM for the marketing of the Company's entire production and the appointment of SENCHIM as the Company's sole sales agent;
- c) the Agreement dated June 26th, 1981 between SENCHIM and Societe Commerciale des Potasses et de l'Azote (SCPA) whereby SCPA has undertaken to provide complete marketing assistance to SENCHIM and in particular through SCPA's subsidiaries in Africa;
- d) the Agreement dated July 21, 1981 between the Company and EMC, whereby EMC has undertaken to provide technical management assistance to the Company for the operation of the Project;
- f) the Agreement dated May 17th, 1982 between the Company and Compagnie Senegalaise des Phosphates de Taiba (CSPT) for the supply to the Company, by priority over all other prospective buyers of its total requirement of phosphate rock;
- g) the "Project Funds Agreement" dated November 15, 1982 between the Company, International Finance Corporation (IFC) and certain shareholders of the Company for providing to the Company such funds as may be needed by it to complete the Project as well as working capital;
- h) the "share transfer Agreement" dated November 15, 1982 between International Finance Corporation (IFC) and certain shareholders of the Company, namely



EMC, the Indian Companies and CSPT, whereby the said shareholders have undertaken to retain and not to dispose of their shares in the Company without the prior approval of IFS;

- i) the Shareholder's Agreement, dated September 30, 1981, between the Company, Regie des Chemins de Fer du Senegal (RCFS) and the World Bank, whereby the Company and RCFS have undertaken certain obligations to SEFICS;
- j) the Transport Agreement dated June 1st, 1982 between SEFICS and RCFS for the usage by SEFICS' freight trains of RCFS' main-line track;
- k) the Financing Agreement dated June 1st, 1982 between SEFICS and RCFS for the carrying out of works by SEFICS on property of RCFS;
- l) the Tariff Agreement dated June 1st, 1982, between SEFICS and the Company with respect to tariff bases for the transport by SEFICS of the Company's raw materials and products.

Section 4.10 The Borrower shall take all steps necessary to secure for the Projects, as and when needed, all such land or rights in respect of land as shall be required for the execution, operation and maintenance of the Project. The Borrower shall, in particular, make arrangements satisfactory to the Fund providing for the lease by the Borrower to the Company of the land necessary for the plant in Dakar, Taiba and Mbaou.

Section 4.11 The Borrower undertakes to ensure that all necessary arrangements shall be made, to the satisfaction of the Fund, to merge Societe Industrielle d'Engrais au Senegal (SIES) into the Company, not later than September 30, 1983 or such other date as the Fund may otherwise agree.

Section 4.12 The Borrower undertakes to ensure that the share capital of the Company shall be increased to CFAF 25.75 billion, that all the new shares shall be subscribed by shareholders acceptable to the Fund, and that said capital shall, to the extent of not less than 90 per cent thereof, be paid-in not later than June 30, 1983 or such other date as the Fund may otherwise agree.

Section 4.13 The Borrower undertakes to ensure that any change in the Capital of the Company, SEFICS or SENCHIN shall be subject to the prior approval of the Fund.

Section 4.14 The Borrower shall take or cause to be taken all steps necessary to operate and maintain structures and other works and facilities not included in the Project but necessary for the proper and efficient operation thereof, in accordance with sound engineering, financial and administrative practices.

Section 4.15 The Borrower shall take all measures necessary to ensure that the execution and operation of the Project shall be carried out in accordance with sound health, safety, ecological and environmental practices.

Section 4.16 The Borrower undertakes to ensure that the Company SEFICS and SENCHIM shall at all times manage their affairs, carry out their operations and maintain their financial position in accordance with sound financial and business practices and under the supervision of experienced and competent management assisted by sufficient and competent staff.

Section 4.17 a) The Borrower undertakes to ensure that all water required for the Project shall, as and when needed, be supplied to the Company; and that arrangements satisfactory to the Fund, providing for the tariffs of such water supply shall be made prior to January 1st, 1983.

b) The Borrower undertakes to make arrangements satisfactory to the Fund for establishing a supervision committee of which the Ministry of Hydraulics and the Company shall, in particular, be members. Such Committee shall co-ordinate and monitor all steps required and supervise all works being performed in implementation of the water supply system in order to ensure its adequacy and timely completion.

Section 4.18 a) The Borrower shall maintain or cause to be maintained records adequate to record the progress of the Project, to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof and to reflect in accordance with consistently maintained sound accounting practices the operations and financial position of the Company SEFICS, and SENCHIM;

b) The Borrower shall afford all reasonable opportunity for accredited representatives of the Fund to make visits for purposes related to the Loan, and to inspect the Project, the goods and any relevant records and documents; and

c) The Borrower shall furnish or cause to be furnished to the Fund all such information as the Fund shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods and the operations and financial position of the Company, SEFICS and SENCHIM.

Section 4.19 The Borrower shall take out and maintain or cause to be taken out and maintained, with responsible insurers, insurance against risks related to the Project in such amounts as shall be consistent with sound commercial practices.

Section 4.20 The Borrower and the Fund shall cooperate fully to assure that the purpose of the Loan will be accomplished. To that end, the Borrower shall in particular:

- a) furnish or cause to be furnished to the Fund every four months progress reports on the implementation of the Project, in addition to a final report upon completion of the Project of such scope and in such detail as the Fund shall reasonably request;
- b) inform the Fund or cause it to be informed of any condition which interferes or threatens to interfere with the accomplishment of the purposes of the Loan (including substantial increases in the cost of the Project) or the maintenance of the service thereof; and
- c) inform the Fund or cause it to be informed of any proposed change in the nature or scope of the Project or business or operations of the Company, SEFICS, SENCHIM or SONEES, and of any event or condition which might materially and adversely affect the carrying out of the Project or the carrying on of the business of same.

Section 4.21 It is the mutual intention of the Borrower and the Fund that no other debt shall enjoy any priority over the Loan by way of lien hereafter created on the assets of the Borrower or the Company. To that end, the Borrower undertakes that, except as the Fund shall otherwise agree, if the Borrower shall create any lien on any assets of the Borrower as security for any external debt or if the Company shall create any lien on any assets of the

Company as security for any debt, such lien will ipso facto equally or ratably secure the payment of the principal of, and interest and other charges on, the Loan, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to:

- i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property;
- ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of the sale of such commercial goods; or
- iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term "assets of the Borrower" as used in this Section includes assets of the Borrower or of any political or administrative subdivision thereof or of any entity owned or controlled by the Borrower or by any other such subdivision, including the Central Bank of the Borrower or any other institutions performing the functions of a central bank; the term "assets of the Company" includes revenue and property of any kind, and the term "lien" includes mortgages, pledges, charges, privileges, nantissement due fonds de commerce, and priorities of any kind.

Section 4.22 The Principal of, and interest on the Loan and all other charges shall be paid

without deduction for, and free from any taxes or charges imposed under the laws of the Borrower or laws in effect in its territories, whether at present or in the future.

Section 4.23 This Agreement shall be free from any taxes, imposts, levies, fees and dues of any nature that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof, and the Borrower shall pay or cause to be paid all such taxes, imposts, levies and dues, if any, imposed under the laws of the country or countries in whose currency the Loan may be repaid or laws in effect in the territories of such country or countries.

Section 4.24 The principal of, and interest and other charges on the Loan shall be paid free from all restrictions, imposed under the laws of the Borrower or laws in effect in its territories, whether at present or in the future.

Section 4.25 All Fund documents, records, correspondence and similar material shall be considered by the Borrower as confidential matters, the Borrower shall accord the Fund all immunity from censorship and inspection.

Section 4.26 All Fund assets and income shall be exonerated from nationalisation, confiscation and seizure.

## Article V

### Cancellation and Suspension

Section 5.01 The Borrower may by notice to the Fund cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice, except that the Borrower may not so cancel any amount of the Loan in respect of which the Fund shall have entered into a special commitment pursuant to Section 3.02 of this Agreement.

Section 5.02 If any of the following events shall have happened and be continuing, the Fund may by notice to the Borrower suspend in whole or in part the right of Borrower to make withdrawals from the Loan.

- a) a default shall have occurred in the payment of principal or interest or any other payment required under this Agreement or any other Loan Agreement between the Borrower and the Fund;
- b) a default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under this Agreement;
- c) the Fund shall have suspended in whole or in part the right of the Borrower to make withdrawals under any other Loan Agreement between the Borrower and the Fund because of a default on the part of the Borrower;
- d) an extraordinary situation shall have arisen which shall make it improbable that the Borrower or the Company will be able to perform their obligations under this Agreement, the Subsidiary Loan Agreement or the Project Agreement;
- e) a default shall have occurred in the performance of any covenant or

agreement on the part of the Company under the Project Agreement or the Subsidiary Loan Agreement;

- f) the right of the Borrower or the Company to make withdrawals from any of the specified Funds or the European Fund Loan shall have been suspended, cancelled or terminated in whole or in part, and the Borrower or the Company shall have failed to have such right restored or to arrange, within a reasonable time, alternative financing satisfactory to the Fund;
- g) the share capital of the Company shall not have been increased, subscribed or paid-in in accordance with the provisions of Section 4.12 of this Agreement; and
- h) the participation in the share holding of the Company of a new shareholder unacceptable to the Fund.

Any event occurring after the date of this Agreement and prior to the effective date which would have entitled the Fund to suspend the Borrower's right to make withdrawals if this Agreement had been effective on the date such event occurred, will entitle the Fund to suspend withdrawals under the Loan exactly as if it had occurred after the effective date.

The right of the Borrower to make withdrawals under the Loan shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Fund shall have notified the Borrower that the right to make withdrawals has been restored; provided, however, that in the case of any such notice of restoration the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall effect or impart any right, power or remedy of the Fund in



respect of any other subsequent event described in this Section.

Section 5.03 If any event specified in paragraph a) of Section 5.02 shall occur and shall continue for a period of thirty days after notice thereof shall have been given by the Fund to the Borrower, or if any event specified in paragraphs b), c), d), e), f), g) and h) or Section 5.02 shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Fund to the Borrower, then at any subsequent time during the continuance thereof, the Fund at its option, may declare the principal of the Loan to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement to the contrary notwithstanding.

Section 5.04 If (a) the right of the Borrower to make withdrawals from the Loan shall have been suspended with respect to any amount of the Loan for a continuous period of thirty days, or (b) by the date specified in Section 3.09 as the Closing Date an amount of the Loan shall remain unwithdrawn, the Fund may by notice to the Borrower terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice, such amount of the Loan shall be cancelled.

Section 5.05 No cancellation or suspension by the Fund shall apply to amounts subject to any special commitment entered into by the Fund pursuant to Section 3.02 except as expressly provided in such commitment.

Section 5.06 Any cancellation shall be applied pro rata to the several maturities of the Principal amount of the Loan as set forth in the amortisation schedule to this Agreement.

Section 5.07 Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall be continued in full force and effect except as in this Article specifically provided.

## **Article VI**

### **Enforceability of this Agreement; failure to exercise rights; arbitration**

Section 6.01 The rights and obligations of the Fund and the Borrower under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding any local law to the contrary. Neither the Borrower nor the Fund shall be entitled under any circumstances to assert any claim that any provision of this Agreement is invalid or unenforceable for any reason.

Section 6.02 No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Agreement upon any default shall impair any such right, power or remedy, or be construed to be a waiver thereof or any acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 6.03 Any controversy between the parties to this Agreement and any claim by either

party against the other arising out of this Agreement shall be determined by agreement of the parties, and failing such agreement the controversy or claim shall be submitted to arbitration by an arbitral tribunal as provided in the following Section.

Section 6.04 The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Borrower, the second arbitrator shall be appointed by the Fund; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice at the request of either party. If either of the parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the President of the International Court of Justice upon the request of the other party. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed herein for the appointment of the original arbitrator and such successor shall have all the powers and duties of the original arbitrator.

Arbitration proceedings under this Section may be instituted by either party upon giving notice to the other. Such notice shall contain a statement setting out the nature of the controversy or claim to be submitted to arbitration, the nature and extent of the relief sought, and the name of the arbitrator appointed by the party instituting such proceedings. Within thirty days after the giving of such notice, the other party shall notify to the party instituting the proceedings of the name of the arbitrator appointed by such other party.

If within sixty days after the giving of the notice instituting the arbitration proceedings the parties shall not have agreed upon an umpire, either party may apply for the appointment of an umpire as provided in the first paragraph of this Section.

The arbitral tribunal shall convene at such time and place as shall be fixed by the umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority of vote. The Arbitral Tribunal shall afford all parties a fair hearing and shall render its award in writing. Such award may be rendered in default of appearance of one of the parties. An award signed by a majority of the Arbitral Tribunal shall constitute the award of the Tribunal. A signed copy of the award shall be delivered to each party. Any award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to this Agreement. Each party shall abide by and comply with the award rendered by the Arbitral Tribunal.

The parties shall fix the amount of the remuneration or fees of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amounts before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amounts as shall be reasonable under circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral

Tribunal shall be divided between and borne equally by the parties. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

The Arbitral Tribunal shall apply the principles common under the current laws of the Borrower and the State of Kuwait, as well as the principles of justice.

Section 6.05 The provisions for arbitration set forth in the previous section shall be in lieu of any other procedure for the determination of controversies between the parties to this Agreement and any claim by either party against the other party arising thereunder.

Section 6.06 Service of any notice or process in connection with any proceedings under this Article may be made in the matter provided in Section 7.01. The parties to this Agreement waive any and all other requirements for the service of any such notice or process.

## **Article VII**

### **Miscellaneous Provisions**

Section 7.01 Any notice or request required or permitted to be given or made under this Agreement shall be in writing. Except as

otherwise provided in Section 8.03, such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in this Agreement, or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 7.02 The Borrower shall furnish to the Fund sufficient evidence of the Authority of the person or persons who will sign the applications provided for in Article III or who will, on behalf of the Borrower, take any other action or execute any other documents required or permitted to be taken or executed by the Borrower under this Agreement, and the authenticated specimen signature of each such person.

Section 7.03 Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of the Borrower may be taken or executed by the Minister of Economy and Finance or any person thereunto authorised in writing by him. Any modification or amplification of the provisions of this Agreement may be agreed to on behalf of the Borrower by written instrument executed on behalf of the Borrower by his aforementioned representative or any person thereunto authorised in writing by him; provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under this Agreement. The Fund may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of this

Agreement affected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower hereunder.

## Article VIII

### Effective date; termination

Section 8.01 This Agreement shall not become effective until evidence satisfactory to the Fund shall have been furnished to the Fund that:

- a) the execution and delivery of this Agreement on behalf of the Borrower have been duly authorised or ratified by all necessary governmental action;
- b) the execution and delivery of the Project Agreement has been duly authorised or ratified by all necessary action on behalf of the Company; and
- c) the execution and delivery of the Subsidiary Loan Agreement in accordance with the provisions of Section 4.03 of this Agreement has been duly executed and authorised on behalf of the Borrower and the Company.

Section 8.02 As part of the evidence to be furnished pursuant to Section 8.01 the Borrower shall furnish to the Fund an opinion or opinions of competent authority showing: (a) that this Agreement has been duly authorised or ratified by, and executed and delivered on behalf of, the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms; (b) that the Project Agreement has been duly authorised and

executed and delivered on behalf of the Company and constitutes a valid and binding obligation of the Company in accordance with its terms; and (c) that the Subsidiary Loan Agreement has been duly authorized, and executed and delivered on behalf of the Borrower and the Company respectively, and constitutes a valid and binding obligation of the Borrower and the Company in accordance with its terms.

Section 8.03 Except as shall be otherwise agreed by the Fund and the Borrower, this Agreement shall come into force and effect on the date upon which the Fund dispatches by telex or cable to the Borrower notice of its acceptance of the evidence required by Section 8.01.

Section 8.04 If all acts required to be performed pursuant to Section 8.01 shall not have been performed before ninety days after the signature of this Agreement or such other date as shall be agreed upon by the Fund and the Borrower, the Fund may at any time thereafter at its option terminate this Agreement by notice to the Borrower. Upon the giving of such notice, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

Section 8.05 If and when the entire principal amount of the Loan and all interest and other charges which shall have accrued on the Loan shall have been paid, this Agreement and all obligations of the parties hereunder shall forthwith terminate.



## Article IV

### Definitions

Section 9.01 Except where the context otherwise requires, the following terms have the following meanings wherever used in this Agreement or any schedules hereto:

- a) the term "Project" means the Project for which the loan is granted, as described in Schedule 2 to this Agreement and as amended from time to time by Agreement between the Fund and the Borrower;
- b) the term "Goods" means equipment, supplies and services which are required for the Project and wherever reference is made to the cost of any goods, such cost shall be deemed to include the cost of importing such goods into the territories of the Borrower;
- c) the term "Company" means Industries Chimiques du Senegal (ICS), an Anonymous Company established under the laws of the Borrower, and governed in particular by its statutes dated November 25, 1976 and the "Convention d'Etblissement" and the "Protocole d'Accord" both concluded between the Borrower and Company on April 21, 1981, all as amended from time to time or any successor or assignee of the said Company acceptable to the Fund;
- d) the term "SEFICS" means Societe d'Exploitation Ferroviaire des Industries Chimiques du Senegal, a limited Company established under the laws of the Borrower and governed in particular by its statutes dated May 7, 1981 as amended from time to time; or any successor or assignee of SEFICS acceptable to the Fund;
- e) the term "SECHIM" means the Company established under the laws of the Borrower and governed in particular by

its statutes dated November 25, 1982 as amended from time to time, or any successor or assignee of SENCHIM acceptable to the Fund.

Section 9.02 The following addresses are specified for the purpose of Section 7.01:

For the Borrower:

Ministere de l'Economie et des Finances

Alternative address for cablegrams and radiograms:

Cable Telex

For the Fund:  
Kuwait Fund for Arab Economic Development  
P O Box 2921  
Kuwait, State of Kuwait.

Alternative address for cablegrams and radiograms:

Cable Telex

Alsunduk 22613 KFAED KT  
Kuwait 22025 AL SUNDUK

IN WITNESS WHEREOF the parties hereto acting through their representatives thereunto duly authorised, have caused this Agreement to be signed in their respective names and delivered in the State of Kuwait, in five copies, each considered an original and all to the same and one effect, as of the day and year first above written.

Republic of..... Kuwait Fund for Arab Economic Development

By \_\_\_\_\_ By \_\_\_\_\_

Authorised Representative Chairman

(by Delegation)

**Schedule 1**

**Amortisation schedule**

<u>Date</u> <u>Payment</u> <u>Due</u>	<u>Payment of Principal</u>
	(Expressed in Kuwaiti Dinars)
15.3.1986	175,000
15.9.1986	175,000
15.3.1987	175,000
15.9.1987	175,000
15.3.1988	175,000
15.9.1988	175,000
15.3.1989	175,000
15.9.1989	175,000
15.3.1990	175,000
15.9.1990	175,000
15.3.1991	175,000
15.9.1991	175,000
15.3.1992	175,000
15.9.1992	175,000
15.3.1993	175,000
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15.3.1995	175,000
15.9.1995	175,000
15.3.1996	175,000
15.9.1996	175,000
15.3.1997	175,000
15.9.1997	175,000
15.3.1998	175,000
15.9.1998	175,000
15.3.1999	175,000
15.9.1999	175,000
15.3.2000	175,000
15.9.2000	175,000
15.3.2001	175,000
15.9.2001	175,000
15.3.2002	200,000
15.9.2002	<u>200,000</u>
	TOTAL 6,000,000

## Schedule 2

### Description of the project

The Project involves the construction of new fertilizer production facilities capable of producing 257,400 tonnes of phosphoric acid annually about half of which would be sold to a group of Indian Companies. Most of the balance would be transformed into granulated diammonium phosphate and triple super-phosphate fertilizer intermediates for the West and Central African markets.

The proposed new fertilizer project consists of the following three main components:

- a)
  - i) Sulphuric acid and phosphoric acid plants adjacent to the phosphate mine at..... about 120 kilometers north east of.....
  - ii) Production and granulation plant next to existing compound fertilizer plant on the coast at....., about 20 kilometers south east of....., including storage and handling facilities of ammonia and sulphur;
  - iii) Port terminal within the port area of..... including handling facilities for imported raw materials and export products.
- b) Railway equipment for the transport of bulk raw materials, fertilizers and fuel. This included locomotives, various types of bulk wagons, railway sidings, renewal of main track, railway maintenance, workshop, etc...
- c) Water pipeline about 20 kilometers long to supply the phosphoric acid plant at.....with all its requirements of water. It also includes pumps and all other necessary equipment.

**Schedule 3**

**The specified funds**

Financing Source	Amount
1. African Development Bank	UC 13,000,000
2. Arab Bank for Economic Development in Africa	\$ 10,000,000
3. Caisse Centrale de Cooperation Economique	FF 120,000,000
4. European Bank of Investment	UCE 20,000,000
5. International Bank for Reconstruction and Development	\$ 19,300,000
6. International Finance Corporation	\$ 25,000,000
7. OPEC Fund	\$ 14,000,000
8. Buyer's Credit	FF 212,384,700

Side letter No. 1

REPUBLIC OF.....

Date:

Kuwait Fund for Arab Economic Development  
P. O. Box 2921  
Kuwait

Sirs:

With reference to the Loan Agreement related to the Phosphate Fertilizers Project in..... signed today between the Kuwait Fund for Arab Economic Development and the Republic of.....

we confirm that the proceeds of the Loan shall be allocated to financing the goods and services provided for in the attached list in the percentage and amounts therein mentioned, as the same may be amended from time to time with the approval of the Fund provided that such amendment shall not result in increasing the outstanding amount of the Loan.

We also confirm that no proceeds of the Loan shall be used for the payment of taxes or duties imposed by the laws in force in the Republic of.....

With respect to specified items financed from the proceeds of the Loan we shall submit to you all bidding documents for consideration and approval and we shall consult with you with respect to any substantial modification therein, should the need arise for such modification. After receipt and evaluation of the bids a detailed report on the evaluation and comparison of the bids received, together with the recommendation for award, will be presented to you for consideration and approval.

Please confirm your acceptance of the contents of this letter by signing the attached copy and returning it to us.

Republic of .....

By \_\_\_\_\_

Authorised Representative

Accepted:

Kuwait Fund for Arab Economic Development

By \_\_\_\_\_

Chairman (by Delegation)

**List of goods**

<u>Item</u>	<u>Amount in</u> <u>(Kuwaiti Dinars)</u>	<u>% of Foreign</u> <u>Cost</u>
1. Ammonia and Phosphoric acid sea lines (at.....)	1,915,000	100%
2. Quay side handling equipment (at..... .....harbour)	1,160,000	100%
3. Handling facilities:		
a) At.....	1,391,000	100%
b) At.....	786,000	100%
4. Phosphoric acid storage equipment at.....	158,000	100%
5. Unallocated	<u>590,000</u>	-
	TOTAL 6,000,000	

**Side letter no. 2**

Republic of.....  
Date:

Kuwait Fund for Arab Economic Development  
P. O. Box 2921  
Kuwait

Sirs:

With reference to the Loan Agreement related to the Phosphate Fertilizers Project in....., signed today between the Kuwait Fund for Arab Economic Development and the Republic of....., we confirm that we have been duly informed that in accordance with the regulations in force in the State of Kuwait the use of public funds in transactions involving firms boycotted by virtue of regulations of the competent organ of the league of Arab States is prohibited.

We therefore, undertake that the proceeds of the above mentioned Loan shall not be used in any manner to finance directly or indirectly goods and services produced by any country, firm or agency subject to boycott according to the regulations in force in the State of Kuwait.

Republic of.....

By \_\_\_\_\_  
Authorised Representative

Accepted:  
Kuwait Fund for Arab Economic Development

By \_\_\_\_\_  
Chairman (by Delegation)



**Footnote**

- 1) Source: **"Kuwait Fund Records"**, (Loan Number 242 dated 4.5.1983)

APPENDIX G

STANDARD LOAN AGREEMENT [1]

(International Bank for Reconstruction and Development)

Loan agreement

AGREEMENT, dated December 19, 1968, between International Bank for Reconstruction and Development (hereinafter called the Bank) and Hidronor SA Hidro-Eléctrica Norpatagonica Sociedad Anonima (hereinafter called the Borrower).

Article I

Loan regulations: definitions

Section 1.01 The parties to this Agreement accept all the provision of Loan Regulations No. 4 of the Bank dated February 15, 1961 as amended February 9, 1967, with the same force and effect as if they were fully set forth herein, subject, however, to the following modification thereof (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations): Section 4.01 is deleted.

Section 1.02 Unless the context otherwise requires, the following terms wherever used in the Loan Agreement shall have the following meanings:

- a) The term "Estatuto" means the estatuto of the Borrower, as approved by Resolution No. 1906 of the Secretary of Justice of the Guarantor, dated November 10, 1967.
- b) The term "Concession" means the concession regulating the activity of the Borrower to be granted by the Guarantor to the Borrower pursuant to

Law No. 17,574 dated December 21, 1967 and referred to in Section 7.01 b) of this Agreement.

- c) The term "surcharges" means the 5% surcharge payable on consumption of electricity and the 5% surcharge payable on crude petroleum the proceeds of which are to be made available by the Guarantor to the Borrower as provided in Article 2 of Law No. 17,574.
- d) The term "Segba" means Servicios Electricos del Gran Buenos Aires, S.A.
- e) The term "CCC Complex" means the El Chocon-Cerros Colorados complex as defined in Article 1 of Law No. 17,574 and in the Concession.

## **Article II**

### **The Loan**

Section 2.01 The Bank agrees to lend to the Borrower, on the terms and conditions in this Agreement set forth or referred to, an amount in various currencies equivalent to eighty-two million dollars (\$82,000,000).

- Section 2.02
- a) The Bank shall open a Loan Account on its books in the name of the Borrower and shall credit to such Account the amount of the Loan.
  - b) The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in this Agreement and the Loan Regulations and in accordance with the Allocation of the Proceeds of the Loan set forth in Schedule 1 to this Agreement, as such Allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement

between the Borrower and the Bank.

Section 2.03 a) The Borrower shall be entitled to withdraw from the Loan Account in respect of the reasonable cost of goods required for the Project and to be financed under the Loan Agreement:

- i) the equivalent of 48 per cent of such amounts as shall have been paid (or to the extent provided in Schedule 1 hereto, as shall be required to meet payments to be made) for civil works (Category 1 of such Allocation);
  - ii) such amounts as shall have been paid (or if the Bank shall so agree, as shall be required to meet payments to be made for gates, penstocks and miscellaneous steel (Category 11 of such allocation) and for expenditures in currencies other than currency of the Guarantor for consulting engineers' services (Category 111 of such Allocation); and
  - iii) such amounts as shall be required to meet payments to be made to the Bank for interest and other charges on the Loan during construction (Category IV of such Allocation);
- a) Provided, however, that if there shall be an increase in the estimate of expenditures for civil works (Category I of such Allocation) the Bank may, from time to time, by notice to the Borrower, adjust the percentage provided for in paragraph (i) above as required in order that withdrawals from the Loan Account of the amount of the Loan then allocated to such works, and not withdrawn, shall continue to be made pro rata with the expenditures then remaining to be made therefore.

b) Except as shall be otherwise agreed between the Borrower and the Bank, no withdrawals shall be made on account of expenditures prior to October 23, 1968; or (ii) expenditures made in the territories of any country which is not a member of the Bank (except Switzerland) or for goods produced in (including services supplied from) such territories.

Section 2.04 Withdrawals from the Loan Account pursuant to Section 2.03 (a) (i) of this Agreement or in respect of purchases in the currency of the Guarantor shall be in such currency or currencies as the Bank shall reasonably select.

Section 2.05 The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent, (0.75 per cent) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.06 The Borrower shall pay interest at the rate of six and one-half per cent (6.5 per cent) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

Section 2.07 Except as the Borrower and the Bank shall otherwise agree, the charge payable for special commitments entered into by the Bank at the request of the Borrower pursuant to Section 4.02 of the Loan Regulations shall be at the rate of one-half of one per cent (1/2 of 1%) per annum on the principal amount of any such special commitment outstanding from time to time.

Section 2.08 Interest and other charges shall be payable semi-annually on March 15 and

September 15 in each year.

Section 2.09 The Borrower shall repay the principal of the Loan in accordance with the amortisation schedule set forth in Schedule 2 to this Agreement.

### **Article III**

#### **Use of proceeds of the loan**

Section 3.01 The Borrower shall apply the proceeds of the Loan in accordance with the provisions of the Loan Agreement to expenditures on the Project described in Schedule 3 to this Agreement.

Section 3.02 Except as the Bank shall otherwise agree:

- a) the goods to be financed out of the proceeds of the Loan shall be procured on the basis of international competitive bidding in accordance with the Guidelines for Procurement under World Bank Loans and IDA Credits published by the Bank in February 1968, and in accordance with such other procedures supplementary thereto as are set forth in Schedule 4 to this Agreement; and
- b) contracts for the procurement of such goods shall be subject to the approval of the Bank.

Section 3.03 Except as the Bank shall otherwise agree, the Borrower shall cause all goods financed out of the proceeds of the Loan to be used exclusively in carrying out the Project.

## **Article IV**

### **Bonds**

Section 4.01 If and as the Bank shall from time to time request, the Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in Article VI of the Loan Regulations.

Section 4.02 The President of the Borrower is designated as authorised representative of the Borrower for the purposes of Section 6.12 of the Loan Regulations. The President of the Borrower may designate additional or other authorised representatives by appointment in writing notified to the Bank.

## **Article V**

### **Particular covenants**

Section 5.10 The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound engineering, financial and public utility practices.

Section 5.02 a) The Borrower covenants that, to assist it in the carrying out of the Project, the Borrower shall, except as the Bank shall otherwise agree, at all times employ competent and experienced consultants acceptable to, and upon terms and conditions satisfactory to, the Bank and the Borrower.

- b) Except as the Bank shall otherwise agree, the Borrower shall cause all works included in the Project to be constructed by contractors acceptable to the Bank and the Borrower.

- Section 5.03
- a) The Borrower shall at all times take all steps necessary to:
    - i) maintain its corporate existence and right to carry on its operations, and
    - ii) acquire, maintain and renew all rights, powers, privileges and franchises which are necessary or useful in the conduct of its business.

- b) The Borrower shall at all times operate and maintain its plants, equipment and property, and from time to time make all necessary renewals and repairs thereof, all in accordance with sound engineering and public utility practices.

- Section 5.04
- a) The Borrower shall at all times manage its affairs, plan its future investment and maintain its financial position, all in accordance with sound business, financial and public utility principles and practices.

- b) The Borrower shall at all times be managed by a qualified, experienced and competent committee executive entrusted with such executive functions and duties as are established in the statute.

- Section 5.05
- The Borrower shall take all possible action:



- a) to co-ordinate the operation and expansion of its generating and transmission facilities with Segba and other electric utility entities operating within the Great Buenos Aires area in order to prevent waste of energy, duplication of facilities and unnecessary investment; and
- b) to obtain such agreements with Segba and other electric utility entities in such areas as will permit the most economic operation of the Borrower and of the other generating plants supplying such area.

- Section 5.06
- a) Upon request from time to time by the Bank, the Borrower shall promptly furnish or cause to be furnished to the Bank the plans, specifications and work schedules for the Project and any material modifications subsequently made therein, in such detail as the Bank shall reasonably request.
  - b) The Borrower shall maintain records adequate to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Borrower.
  - c) The Borrower shall enable the Bank's representatives to inspect the Project, the goods, all other plans, works, properties and equipment of the Borrower and any relevant records and documents.
  - d) The Borrower shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods and the

administration, operations and financial condition of the Borrower.

- e) The Borrower shall have its financial statements (balance sheet and related statement of earnings and expenses) certified annually by an independent accountant or accounting firm acceptable to the Bank and shall promptly after their preparation and not later than four months later the close of the Borrower's fiscal year transmit to the Bank certified copies of such statements and a signed copy of the accountant's or accounting firm's report.

Section 5.07 a) The Bank and the Borrower shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, the Bank and the Borrower shall from time to time, at the request of either party, exchange views through their representatives with regard to the performance by the Borrower of its obligations under the Loan Agreement, the administration, operations and financial condition of the Borrower and other matters relating to the purposes of the Loan.

- b) The Borrower shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan, the maintenance of the service thereof or the performance by the Borrower of its obligations under the Loan Agreement.

Section 5.08 The Borrower shall pay or cause to be paid all taxes, if any, imposed under the laws of the Guarantor or laws in effect in the territories of the Guarantor on or in connection with the execution, issue, delivery or registration, of the Loan

Agreement, the Guarantee Agreement, the Bonds, or the protocolisation, recording and registration, if any, of the undertaking contained in Section 5.15 (a) of this Agreement, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.09 The Borrower shall pay or cause to be paid all taxes, if any, imposed under the laws of the country or countries in whose currency the Loan and the Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution, issue, delivery or registration of the Loan Agreement, the Guarantee Agreement or the Bonds, or the protocolisation, recording and registration, if any, of the undertaking contained in Section 5.15(a) of this agreement.

- Section 5.10 a) The Borrower shall take out and maintain with responsible insurers or make other provision satisfactory to the Bank for insurance against such risks and in such amounts as shall be consistent with sound practice.
- b) Without limiting the generality of the foregoing, the Borrower undertakes to insure the imported goods to be financed out of the proceeds of the Loan against marine, transit and other hazards incident to acquisition, transportation and delivery thereof to the place of use or installation and for such insurance any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such goods.

Section 5.11 During the period of construction of the CCC Complex, the Borrower shall not undertake, or permit to be undertaken on its behalf, any expansion project not included in the CCC Complex or make any addition to its plants and other property not included therein, if in the opinion of the Bank such project or addition would jeopardise the carrying out of the CCC Complex or impair the financial condition of the Borrower.

Section 5.12 Except as the Bank shall otherwise agree:

- a) the Borrower shall obtain title to all goods financed out of the proceeds of the Loan free and clear of all encumbrances; and
- b) the Borrower shall not, without the consent of the Bank, sell or otherwise dispose of any of its property or assets which shall be required for the efficient carrying on of its business and undertaking, including the Project, unless the Borrower shall first pay or redeem, or make adequate provision satisfactory to the Bank for payment or redemption of, all of the Loan and the Bonds which shall then be outstanding and unpaid.

Section 5.13 The Borrower shall from time to time take all steps which shall be necessary or desirable, as permitted under the Concession, to obtain rates for the sale of electricity or adjustments thereof as may be necessary to provide revenues sufficient to:

- a) cover all operating expenses including taxes and provide for adequate maintenance and depreciation of assets based on realistic valuations thereof;

and

- b) provide the return on the Borrower's investment authorised by the Concession.

Section 5.14 The Borrower covenants that:

- a) its debt shall not exceed twice its total capital and surplus; and
- b) except as the Bank shall otherwise agree, it shall not incur any debt if after the incurrence of any such debt the operating income of the Borrower for the fiscal year next preceding such incurrence or for a later consecutive twelve-month period, whichever is the greater, shall be less than one and one-half times the estimated maximum debt service requirement for any succeeding fiscal year on all debt, including debt proposed to be incurred.

For the purposes of this Section:

1. The term "capital and surplus" means capital and surplus determined in accordance with sound accounting practices;
2. The term "debt" means all debt of the Borrower maturing by its terms on demand or more than one year after the date of its incurrence;
3. Debt shall be deemed to be incurred on the date of execution and delivery of the Loan contract or agreement providing therefore or, in the case of guarantee of debt, on the date of execution and delivery of the contract providing such guarantee;
4. The term "debt service" means the aggregate amount of amortisation

(including sinking fund payments, if any), interest and other charges on debt;

5. The term "operating income" means gross income from all sources, adjusted to take account of electricity rates in effect at the time of the incurrence of debt even though such rates were not in effect during the fiscal year or twelve-month period to which such income relates, less all operating and administrative expenses, including provision for all taxes other than income taxes and for depreciation of assets but before provision for interest and other charges on debt and income taxes; and
6. Whenever for the purpose of this Section it shall be necessary to value in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt.

Section 5.15 a) Except at the Bank shall otherwise agree:

- i) the Borrower shall not voluntarily create or suffer to be created any mortgage, pledge or other right in rem on any of its assets in favour of third parties unless the Borrower shall at the same time create, in favour of the Bank, a mortgage, pledge or other right in rem, satisfactory to the Bank, which shall have priority and preference to, and shall rank ahead of, the mortgage, pledge or other right in rem first above mentioned, and, in the creation of any such mortgage, pledge or right in rem, the Borrower shall make express provision for the

submission thereof to the priority, preference and prior rank of the Bank's rights; and

ii) if any such mortgage, pledge or other right in rem shall be created by operation of law the Borrower shall create in favour of the Bank an equivalent mortgage, pledge or other right in rem satisfactory to the bank which shall secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds; provided, however, that the provisions of this Section shall not apply to:

1. any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or
2. any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

b) The Borrower shall pay all reasonable charges, fees and expenses in connection with the foregoing.

Section 5.16 Except as the Bank shall otherwise agree, the Borrower shall not directly or indirectly pay or otherwise settle for consideration, prior to maturity, any outstanding long-term debt of the Borrower. For the purposes of this Section "long-term debt" means debt maturing by its terms more than one year after the date of its incurrence.

Section 5.17 The Borrower shall make its best efforts to obtain credit for use in financing payments for goods not financed under the

Loan Agreement or out of the proceeds of the surcharges, such credit to be on such terms and conditions as shall be satisfactory to the Bank and the Borrower.

## Article VI

### Remedies of the bank

- Section 6.01
- i) If any event specified in paragraph (a), paragraph (e) or paragraph (f) of Section 5.02 of the Loan Regulation shall occur and shall continue for a period of thirty days, or
  
  - ii) if a default shall occur in the payment of principal or interest or any other payment required under any other loan agreement between the Bank and the Borrower or under any bond delivered pursuant thereto or under any credit agreement between the Association and the Borrower and such default shall continue for a period of thirty days, or
  
  - iii) if a default shall occur in the payment of principal or interest or any other payment required under any loan agreement or under any guarantee agreement between the Guarantor and the Bank or under any bond delivered pursuant to any such agreement or under any credit agreement between the Association and the Guarantor under circumstances which would make it unlikely that the Guarantor would meet its obligations under the Guarantee Agreement and such default shall continue for a period of thirty days, or
  
  - iv) if any event specified in paragraph (c) of Section 5.02 of the Loan Regulations or in Section 6.02 of



this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower, then at any subsequent time during the continuance of any such event of default, the Bank, at its opinion, may declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement or in the Bonds to the contrary notwithstanding.

Section 6.02 The following events are specified for the purposes of paragraph 1 of Section 5.02 of the Loan Regulations:

- a) a change shall have been made in the Borrower's statute without the Bank's consent which, in the Bank's judgement, shall be a substantial change;
- b) the Guarantor or the Borrower shall, without the agreement of the Bank, have modified, or terminated, or failed to enforce or comply with, any of the provisions of the Concession; and
- c) demand shall have been made for repayment in advance of maturity of any credit obtained pursuant to the provisions of Section 5.17 of this Agreement by reason of any default on the part of the Borrower as provided in the contract or agreement establishing such credit.

## Article VII

### Effective date; termination

Section 7.01 The following evens are specified as additional conditions to the effectiveness

of this Agreement within the meaning of Section 9.01 (c) of the Loan Regulations;

- a) The Tribunal de Cuentas of the Guarantor has examined the Loan Agreement in accordance with the laws of the Guarantor and has issued its opinion thereon without formulating any objection thereto;
- b) The Guarantor has granted to the Borrower, on terms and conditions satisfactory to the Bank, a concession providing, inter alia for electricity rates, which, in the opinion of the Bank, will enable the Borrower to meet its obligations under this Agreement, and the Concession has become effective;
- c) Arrangements satisfactory to the Bank have been made by the Borrower with Segba in respect of the purchase by Segba of electricity to be supplied by the Project to the Greater Buenos Aires area; and
- d) Arrangements satisfactory to the Bank have been made by the Guarantor for making available to the Borrower the proceeds of the surcharges as required by the Borrower to meet its obligations under this Agreement.

Section 7.02 The following are specified as additional matters within the meaning of Section 9.02 (c) of the Loan Regulations, to be included in the opinion or opinions to be furnished to the Bank:

- a) that the action provided for in paragraph (b) of Section 7.01 of this Agreement has been duly and validly taken, and the Concession has become fully effective in accordance with its terms;
- b) that the arrangements provided for in paragraph (c) of Section 7.01 of this

Agreement are valid and binding on the Borrower and Segba in accordance with their terms; and

- c) that the arrangements provided for in paragraph (d) of Section 7.01 of this Agreement are valid and binding on the Guarantor and have become effective.

Section 7.03 If this Agreement shall not have come into force and effect by March 21, 1969, this Agreement and all obligations of the parties hereunder shall terminate, unless the Bank, after consideration of the reasons for the delay, establishes a later date for purposes of this Agreement.

#### Article VIII

##### Miscellaneous

Section 8.01 The closing date shall be December 31, 1974 or such later date or dates as may be agreed by the Bank.

Section 8.02 The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations:

For the Borrower:

Hidronor S.A. Hidroelectrica Norpatagonica  
Sociedad Anonima  
L.N. ALem 1074  
Buenos Aires  
Argentina

Cable Address:  
Hidronor

Buenos Aires

In Witness Whereof, the parties hereto, acting through their representatives thereunto duly authorised, have caused this Agreement to be signed in their respective names and to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Bank for  
Reconstruction and Development

By /s/ Robert S Mcnamara  
President

Hidronor S.A. Hidroelectrica  
Norpatagonica Sociedad Anonima

By /s/ Manuel J Olascoaga  
Authorised Representative

**Schedule 1**

**Allocation of the proceeds of the loan**

Category		US Dollar Equivalent
1. Civil Works (estimated foreign exchange component):		
(a) Main contract, excluding construction equipment	27,600,000	
(b) Construction equipment	<u>10,000,000</u>	
		37,600,000
2. Gates, penstocks, miscellaneous steel		21,400,000
3. Consulting engineers' services		6,300,000
4. Interest and other charges on the Loan during Construction		<u>16,700,000</u>
	TOTAL	\$82,000,000

## Withdrawals under Category 1

The Borrower may, within one year after the date of the Loan Agreement, withdraw from the Loan Account up to 100% of amounts paid for the cost of construction equipment under part (b) of Category 1 above, but not in excess in the aggregate of the equivalent of \$10,000,000. Amounts so disbursed under part (b) of Category 1 in excess of 48% of such cost would be subsequently adjusted by the Bank by proportionately reducing, as determined by the Bank, disbursements under part (a) of such Category 1. If the total cost of such equipment amounts to less than \$10,000,000 the Bank will transfer the remaining balance to such part (a).

## Schedule 2

### Amortisation Schedule

Date Payment Due	Payment of Principal (expressed in Dollars) [2]
15.3.1975	1,075,000
15.9.1975	1,110,000
15.3.1976	1,145,000
15.9.1976	1,180,000
15.3.1977	1,220,000
15.9.1977	1,260,000
15.3.1978	1,300,000
15.9.1978	1,345,000
15.3.1979	1,390,000
15.9.1979	1,435,000
15.3.1980	1,480,000
15.9.1980	1,525,000
15.3.1981	1,575,000
15.9.1981	1,630,000
15.3.1982	1,680,000
15.9.1982	1,735,000
15.3.1983	1,790,000
15.9.1983	1,850,000
15.9.1984	1,910,000
15.9.1984	1,970,000
15.3.1985	2,035,000
15.9.1985	2,105,000
15.3.1986	2,170,000
15.9.1986	2,240,000
15.3.1987	2,315,000
15.9.1987	2,390,000
15.3.1988	2,465,000
15.9.1988	2,550,000
15.3.1989	2,630,000
15.9.1989	2,715,000
15.3.1990	2,805,000
15.9.1990	2,895,000
15.3.1991	2,990,000
15.9.1991	3,085,000
15.3.1992	3,185,000
15.9.1992	3,290,000
15.3.1993	3,395,000
15.9.1993	3,510,000
15.3.1994	3,625,000

## Premiums on prepayment and redemption

The following percentages are specified as the premiums payable on repayment in advance of maturity of any part of the principal amount of the Loan pursuant to Section 2.05(b) of the Loan Regulations or on the redemption of any Bond prior to its maturity pursuant to Section 6.16 of the Loan Regulations.

Time of Prepayment or Redemption	Premiums
Not more than three years before maturity	1/2 of 1%
More than three years but not more than six years before maturity	1 1/4%
More than six years but not more than eleven years before maturity	2 1/4%
More than eleven years but not more than sixteen years before maturity	3 3/4%
More than sixteen years but not more than twenty-one years before maturity	5%
More than twenty-one years but not more than twenty-three years before maturity	6%
More than twenty-three years before maturity	6 1/2%

### Schedule 3

#### Description of the project

The project is part of the El Chocon-Cerros Colarados Complex. The complex comprises an ultimate development of 1,200,000 kw at El Chocon, 450,000 kw at Planicie Bandertia, and 500 kv transmission facilities to provide power to the Greater Buenos Aires area. The Project consists of the following principal elements:

1. The El Chocon village, including housing, a church, a school, a rest house, commercial buildings, and a social and sports centre. The village will have paved streets, sidewalks, and drains; water supply and sewerage systems, and an electrical distribution network.
2. The El Chocon earthfill dam across the Rio Limay capable of storing water up to a normal maximum level of about 381 meters above sea level. A gated concrete spillway on the right bank and a gated concrete intake structure on the left bank.
3. The El Chocon powerhouse on the left bank downstream of the dam and three 200 Mw Francis-type turbine generators and ancillary equipment related thereto. Steel-lined penstock tunnels to connect the intake to the powerhouse. A tailrace channel to return the water discharged from the powerhouse to the river.
4. A 500kv transmission system consisting of two single circuit three-phase overhead lines about 1,080 kilometres long. A switchyard at the El Chocon power-house, intermediate switching stations near Puelches and Henderson, and step-down substation (s) near Buenos Aires.

The Project is expected to be in operation before June 1, 1973 and three generating units by December 31, 1973.



## Schedule 4

### Supplementary procedures for procurement

1. With respect to subcontracts for penstocks, gates, power-house superstructure etc., involving an amount of \$100,000 equivalent or more, the following procedures shall apply:
  - a) Before bids are invited the Borrower shall submit to the Bank for approval: the invitations to bid, specifications and all other tender documents, together with a description of advertising procedures.
  - b) After bids have been received and analysed, the bid analysis and recommendation for contract award, together with the reasons for such recommendation, shall be submitted by the Borrower to the Bank for approval prior to the contract award or the issuance of a letter of intent.
  - c) If the proposed final contract differs substantially from the terms and conditions previously approved by the Bank, the text of the proposed changes shall be submitted to the Bank for approval.
  - d) As soon as a contract is signed, the Borrower shall furnish to the Bank a signed copy thereof.
2. With respect to the main civil works contract and any contract involving an amount less than \$100,000 equivalent (excepting contracts for consulting engineers' services), the Borrower shall furnish to the Bank all bidding documents including the bid evaluation report before submission of the first application for withdrawal from the Loan Account on account of expenditures on the contract in question.
3. The Borrower intends to invite Argentine firms to participate in international competitive bidding for goods to be purchased under Category II of the Allocation of the Proceeds of the Loan. In the case of goods produced in Argentina, the Borrower may award the order to the lowest Argentine bidder

offering satisfactory terms and conditions, provided that his offered price less 15% does not exceed the offered price of the lowest acceptable foreign bidder. Comparison of bids will be made for goods delivered at Project site and without taking into account customs or other similar duties on importation. For firms in Argentina, the delivery at the site price will comprise the F.O.B. plant cost plus freight, insurance and other costs to the Project site. For non-Argentine firms, the delivery price will be based on C.I.F. landed cost, port of entry, before customs duties, plus inland freight, insurance and other costs to the Project site.

**Footnotes**

01. Source: IBRD Records

02. To the extent that any part of the Loan is repayable in a currency other than dollars (see Loan Regulations, Section 3.03) the figures in this column represent dollar equivalents determined as for purposes of withdrawal.

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