International Finance Agreements Amendment Act 2007

Public Act 2007 No 87
Date of assent 19 September 2007

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Schedule 4
New Schedule 7 added

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the International Finance Agreements Amendment Act 2007.

2 Commencement
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended
This Act amends the International Finance Agreements Act 1961.

Part 1
Preliminary provisions

4 Long Title repealed
The Long Title is repealed.

5 New section 1A inserted
The following section is inserted after section 1:

"**1A Purpose**

"(1) The purpose of this Act, as it was enacted in 1961, is to enable the Government of New Zealand to be a member of the International Monetary Fund, the International Bank for Reconstruction and Development, and the International Finance Corporation.

"(2) A further purpose, implemented by the International Finance Agreements Amendment Act 1966, is to enable the Government of New Zealand to be a member of the Asian Bank and the International Development Association.

"(3) A further purpose, implemented by the International Finance Agreements Amendment Act 1975, is to enable the Govern-

ment of New Zealand to fulfil its obligations, as a member of the Organisation for Economic Co-operation and Development, to the Financial Support Fund of the Organisation for Economic Co-operation and Development.

"(4) A further purpose, implemented by the International Finance Agreements Amendment Act 2007, is to enable the Government of New Zealand to be a member of the Multilateral Investment Guarantee Agency."

Part 2
Membership of Agency

6 Interpretation

Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

"**Agency** means the Multilateral Investment Guarantee Agency established under the Convention

"**Convention** means the Convention Establishing the Multilateral Investment Guarantee Agency, the text of which is set out in Schedule 7".

7 Membership of the Fund, the Bank, and the Corporation

(1) Section 3 is amended by omitting the heading and substituting the following heading: "**Membership of Fund, Bank, Corporation, and Agency**".

(2) Section 3 is amended by adding the following subsection as subsection (2):

"(2) Approval is also given for the New Zealand Government to become a member of the Agency in accordance with the Convention."

8 Reserve Bank of New Zealand to be depository

Section 4(1) is amended by omitting "and the Corporation" and substituting "the Corporation, and the Agency".

9 Payments under Agreements

(1) The heading to section 5 is amended by adding "**and Convention**".

(2) Section 5 is amended by adding the following paragraph:

"(d) all payments required to be made from time to time to the Agency under the terms of the Convention."

10 Issue of securities

Section 7 is amended by adding the following subsection as subsection (2):

"(2) The Minister is authorised by this subsection to create, and to issue to the Agency, non-negotiable, non-interest-bearing promissory notes or similar obligations, in conformity with Article 7 of the Convention."

11 Application of certain Articles

The heading to section 8 is amended by adding "**of Agreements**".

12 New section 9 inserted

The following section is inserted after section 8:

"**9 Application of certain Articles of Convention**

Articles 44 to 48 and 50 of the Convention (which relate to privileges and immunities) have the force of law in New Zealand."

13 New Schedule 7 added

The Schedule 7 set out in the Schedule of this Act is added.

Schedule

s 13

New Schedule 7 added

Schedule 7

s 2

Convention Establishing the Multilateral Investment Guarantee Agency

Division and Calls of Subscribed Capital

PREAMBLE

The Contracting States

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*

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

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

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

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

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

Have Agreed as follows:

I
Establishment, Status, Purposes and Definitions

Article 1. Establishment and Status of the Agency

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

(b) The Agency shall possess full juridical personality and, in particular, the capacity to:
  (i) contract;
  (ii) acquire and dispose of movable and immovable property; and
  (iii) institute legal proceedings.

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
I—*continued*

Article 2. Objective and Purposes

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

To serve its objective, the Agency shall:

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

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

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

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

Article 3. Definitions

For the purposes of this Convention:

(a) **Member** means a State with respect to which this Convention has entered into force in accordance with Article 61.

(b) **Host country** or **host government** means a member, its government, or any public authority of a member in whose territories, as defined in Article 66, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located.

(c) A **developing member country** means a member which is listed as such in Schedule A hereto as this Schedule may be amended from time to time by the

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
I—*continued*

Council of Governors referred to in Article 30 (hereinafter called the Council).

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

(e) A **freely usable currency** means (i) any currency designated as such by the International Monetary Fund from time to time and (ii) any other freely available and effectively usable currency which the Board of Directors referred to in Article 30 (hereinafter called the Board) may designate for the purposes of this Convention after consultation with the International Monetary Fund and with the approval of the country of such currency.

II
Membership and Capital

Article 4. Membership

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

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

Article 5. Capital

(a) The authorized capital stock of the Agency shall be one billion Special Drawing Rights (SDR 1,000,000,000). The capital stock shall be divided into 100,000 shares having a par value of SDR 10,000 each, which shall be available for subscription by members. All payment obligations of members with respect to capital stock shall be settled on the basis of the average value of the SDR in terms of United States dollars for the period January 1, 1981 to June 30, 1985, such value being 1.082 United States dollars per SDR.

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
II—*continued*

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

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

Article 6. Subscription of Shares

Each original member of the Agency shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A hereto. Each other member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Council, but in not event at an issue price of less than par. No member shall subscribe to less that fifty shares. The Council may prescribe rules by which members may subscribe to additional shares of the authorized capital stock.

Article 7. Division and Calls of Subscribed Capital

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

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

(ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

Article 8. Payment of Subscription of Shares

(a) Payments of subscriptions shall be made in freely usable currencies except that payments by developing

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
II—*continued*

member countries may be made in their own currencies up to twenty-five percent of the paid-in cash portion of their subscriptions payable under Article 7 (i).

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

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

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

Article 9. Valuation of Currencies

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

Article 10. Refunds

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

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
II—*continued*

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

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

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

III
Operations

Article 11. Covered Risks

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

(i) *Currency Transfer*

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

(ii) *Expropriation and Similar Measures*

any legislative action or administrative action or omission attributable to the host government which has the effect of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

the exception of non-discriminatory measures of general application which the governments normally take for the purpose of regulating economic activity in their territories;

(iii) *Breach of Contract*

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

(iv) *War and Civil Disturbance*

any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 66.

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

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

(i) any host government action or omission to which the holder of the guarantee has agreed or for which he has been responsible; and

(ii) any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

Article 12. Eligible Investments

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

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

(c) Guarantees shall be restricted to investments the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency. Such investments may include:

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

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

(d) In guaranteeing an investment, the Agency shall satisfy itself as to:

(i) the economic soundness of the investment and its contribution to the development of the host country;

(ii) compliance of the investment with the host country's laws and regulations;

(iii) consistency of the investment with the declared development objectives and priorities of the host country; and

(iv) the investment conditions in the host country, including the availability of fair and equitable treatment and legal protection for the investment.

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

Article 13. Eligible Investors

(a) Any natural person and any juridical person may be eligible to receive the Agency's guarantee provided that:
  (i) such natural person is a national of a member other than the host country;
  (ii) such juridical person is incorporated and has its principal place of business in a member or the majority of its capital is owned by a member or members or nationals thereof, provided that such member is not the host country in any of the above cases; and
  (iii) such juridical person, whether or not it is privately owned, operates on a commercial basis.

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

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

Article 14. Eligible Host Countries

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

Article 15. Host Country Approval

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

Article 16. Terms and Conditions

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

Article 17. Payment of Claims

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

Article 18. Subrogation

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

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

(c) Amounts in the currency of the host country acquired by the Agency as subrogee pursuant to Section (a) above shall be accorded, with respect to use and conversion, treatment by the host country as favorable as the treatment to which such funds would be entitled in

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

the hands of the holder of the guarantee. In any case, such amounts may be used by the Agency for the payment of its administrative expenditures and other costs. The Agency shall also seek to enter into arrangements with host countries on other uses of such currencies to the extent that they are not freely usable.

Article 19. Relationship to National and Regional Entities

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

Article 20. Reinsurance of National and Regional Entities

(a) The Agency may issue reinsurance in respect of a specific investment against a loss resulting from one or more of the non-commercial risks underwritten by a member or agency thereof or by a regional investment guarantee agency the majority of whose capital is owned by members. The Board, by special majority, shall from time to time prescribe maximum amounts of contingent liability which may be assumed by the Agency with respect to reinsurance contracts. In respect of specific investments which have been completed more than twelve months prior to receipt of the application for reinsurance by the Agency, the maximum amount shall initially be set at ten percent of the aggregate contingent liability of the Agency under this Chapter. The conditions of eligibility spe-

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

cified in Articles 11 and 14 shall apply to reinsurance operations, except that the reinsured investments need not be implemented subsequent to the application for reinsurance.

(b) The mutual rights and obligations of the Agency and a reinsured member or agency shall be stated in contracts of reinsurance subject to such rules and regulations as the Board shall issue. The Board shall approve each contract for reinsurance covering an investment which has been made prior to receipt of the application for reinsurance by the Agency, with a view to minimizing risks, assuring that the Agency receives premiums commensurate with its risk, and assuring that the reinsured entity is appropriately committed toward promoting new investment in developing member countries.

(c) The Agency shall, to the extent possible, assure that it or the reinsured entity shall have the rights of subrogation and arbitration equivalent to those the Agency would have if it were the primary guarantor. The terms and conditions of reinsurance shall require that administrative remedies are sought in accordance with Article 17 before a payment is made by the Agency. Subrogation shall be effective with respect to the host country concerned only after its approval of the reinsurance by the Agency. The Agency shall include in the contracts of reinsurance provisions requiring the reinsured to pursue with due diligence the rights or claims related to the reinsured investment.

Article 21. Cooperation with Private Insurers and with Reinsurers

(a) The Agency may enter into arrangements with private insurers in member countries to enhance its own operations and encourage such insurers to provide coverage of non-commercial risks in developing member coun-

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

tries on conditions similar to those applied by the Agency. Such arrangements may include the provision of reinsurance by the Agency under the conditions and procedures specified in Article 20.

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

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

Article 22. Limits of Guarantee

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

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

(i) maximum aggregate amounts of contingent liability which may be assumed by the Agency

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

under this Chapter for Guarantees issued to investors of each individual member. In determining such maximum amounts, the Board shall give due consideration to the share of the respective member in the capital of the Agency and the need to apply more liberal limitations in respect of investments originating in developing member countries; and

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

Article 23. Investment Promotion

(a) The Agency shall carry out research, undertake activities to promote investment flows and disseminate information on investment opportunities in developing member countries, with a view to improving the environment for foreign investment flows to such countries. The Agency may, upon the request of a member, provide technical advice and assistance to improve the investment conditions in the territories of that member. In performing these activities, the Agency shall:

(i) be guided by relevant investment agreements among member countries;

(ii) seek to remove impediments, in both developed and developing member countries, to the flow of investment to developing member countries; and

(iii) coordinate with other agencies concerned with the promotion of foreign investment, and in particular the International Finance Corporation.

(b) The Agency also shall:

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
III—*continued*

(ii) endeavor to conclude agreements with developing member countries, and in particular with prospective host countries, which will assure that the Agency, with respect to investment guaranteed by it, has treatment at least as favorable as that agreed by the member concerned for the most favored investment guarantee agency or State in an agreement relating to investment, such agreements to be approved by special majority of the Board; and

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

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

Article 24. Guarantees of Sponsored Investments

In addition to the guarantee operations undertaken by the Agency under this Chapter, the Agency may guarantee investments under the sponsorship arrangements provided for in Annex I to this Convention.

IV
Financial Provisions

Article 25. Financial Management

The Agency shall carry out its activities in accordance with sound business and prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
IV—*continued*

Article 26. Premium and Fees

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

Article 27. Allocation of Net Income

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

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

Article 28. Budget

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

Article 29. Accounts

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*

V
Organization and Management

Article 30. Structure of the Agency

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

Article 31. The Council

(a) All the powers of the Agency shall be vested in the Council, except such powers as are, by the terms of this Convention, specifically conferred upon another organ of the Agency. The Council may delegate to the Board the exercise of any of its powers, except the power to:
  (i) admit new members and determine the conditions of their admission;
  (ii) suspend a member;
  (iii) decide on any increase or decrease in capital;
  (iv) increase the limit of the aggregate amount of contingent liabilities pursuant to Section (a) of Article 22;
  (v) designate a member as a developing member country pursuant to Section (c) of Article 3;
  (vi) classify a new member as belonging to Category One or Category Two for voting purposes pursuant to Section (a) of Article 39 or reclassify an existing member for the same purposes;
  (vii) determine the compensation of Directors and their Alternates;
  (viii) cease operations and liquidate the Agency;
  (ix) distribute assets to members upon liquidation; and
  (x) amend this Convention, its Annexes and Schedules.

(b) The council shall be composed of one Governor and one Alternate appointed by each member in such manner as it may determine. No Alternate may vote except in the

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
V—*continued*

absence of his principal. The Council shall select one of the Governors as Chairman.

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

Article 32. The Board

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

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

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

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
V—*continued*

Directors and Alternates shall receive such remuneration as may be determined by the Council.

Article 33. President and Staff

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

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

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

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

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

Article 34. Political Activity Prohibited

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
V—*continued*

weighed impartially in order to achieve the purposes states in Article 2.

Article 35. Relations with International Organizations

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

Article 36. Location of Principal Office

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

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

Article 37. Depositories for Assets

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

Article 38. Channel of Communication

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

(b) Whenever the approval of any member is required before any act may be done by the Agency, approval shall

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
V—*continued*

be deemed to have been given unless the member presents an objection within such reasonable period as the Agency may fix in notifying the member of the proposed act.

VI
Voting, Adjustments of Subscriptions and Representation

Article 39. Voting and Adjustments of Subscriptions

(a) In order to provide for voting arrangements that reflect the equal interest in the Agency of the two Categories of States listed in Schedule A of this Convention, as well as the importance of each member's financial participation, each member shall have 177 membership votes plus one subscription vote for each share of stock held by that member.

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

(c) During the third year following the entry into force of this Convention, the Council shall review the allocation

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VI—*continued*

of shares and shall be guided in its decision by the following principles:

(i) the votes of members shall reflect actual subscriptions to the Agency's capital and the membership votes as set out in Section (a) of this Article;

(ii) shares allocated to countries which shall not have signed the Convention shall be made available for reallocation to such members and in such manner as to make possible voting parity between the above mentioned Categories; and

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

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

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

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

Article 40. Voting in the Council

(a) Each Governor shall be entitled to cast the votes of the member he represents. Except as otherwise specified in

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VI—*continued*

this Convention, decisions of the Council shall be taken by a majority of the votes cast.

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

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

Article 41. Election of Directors

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

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

Article 42. Voting in the Board

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VI—*continued*

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

VII
Privileges and Immunities

Article 43. Purposes of Chapter

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

Article 44. Legal Process

Actions other than those within the scope of Articles 57 and 58 may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Agency shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Agency shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Agency.

Article 45. Assets

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

(b) To the extent necessary to carry out its operations under this Convention, all property and assets of the Agency shall be free from restrictions, regulations, controls and

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VII—*continued*

moratoria of any nature; provided that property and assets acquired by the Agency as successor to or subrogee of a holder of a guarantee, a reinsured entity or an investor insured by a reinsured entity shall be free from applicable foreign exchange restrictions, regulations and controls in force in the territories of the member concerned to the extent that the holder, entity or investor to whom the Agency was subrogated was entitled to such treatment.

(c) For purposes of this Chapter, the term **assets** shall include the assets of the Sponsorship Trust Fund referred to in Annex I to this Convention and other assets administered by the Agency in furtherance of its objective.

Article 46. Archives and Communications

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

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

Article 47. Taxes

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VII—*continued*

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

Article 48. Officials of the Agency

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

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

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

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

Article 49. Application of the Chapter

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VII—*continued*

Article 50. Waiver

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

VIII
Withdrawal, Suspension of Membership and Cessation of Operations

Article 51. Withdrawal

Any member may, after the expiration of three years following the date upon which this Convention has entered into force with respect to such member, withdraw from the Agency at any time by giving notice in writing to the Agency at its principal office. The Agency shall notify the Bank, as depository of this Convention, of the receipt of such notice. Any withdrawal shall become effective ninety days following the date of the receipt of such notice by the Agency. A member may revoke such notice as long as it has not become effective.

Article 52. Suspension of Membership

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VIII—*continued*

(c) For purposes of determining eligibility for a guarantee or reinsurance to be issued under Chapter III or Annex I to this Convention, a suspended member shall not be treated as a member of the Agency.

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

Article 53. Rights and Duties of States Ceasing to be Members

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

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

Article 54. Suspension of Operations

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

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
VIII—*continued*

Article 55. Liquidation

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

(b) No distribution of assets shall be made to members until all liabilities to holders of guarantees and other creditors shall have been discharged or provided for and until the Council shall be decided to make such distribution.

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

IX
Settlement of Disputes

Article 56. Interpretation and Application of the Convention

(a) Any question of interpretation or application of the provisions of this Convention arising between any member of the Agency and the Agency or among members of

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
IX—*continued*

the Agency shall be submitted to the Board for its decision. Any member which is particularly affected by the question and which is not otherwise represented by a national in the Board may send a representative to attend any meeting of the Board at which such question is considered.

(b) In any case where the Board has given a decision under Section (a) above, any member may require that the question be referred to the Council, whose decision shall be final. Pending the result of the referral to the Council, the Agency may, so far as it deems necessary, act on the basis of the decision of the Board.

Article 57. Disputes between the Agency and Members

(a) Without prejudice to the provisions of Article 56 and of Section (b) of this Article, any dispute between the Agency and a member or an agency thereof and any dispute between the Agency and a country (or agency thereof) which has ceased to be a member, shall be settled in accordance with the procedure set out in Annex II to this Convention.

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
IX—*continued*

Article 58. Disputes Involving Holders of a Guarantee or Reinsurance

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

X
Amendments

Article 59. Amendment by Council

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

(i) any amendment modifying the right to withdraw from the Agency provided in Article 51 or the limitation on liability provided in Section (d) of Article 8 shall require the affirmative vote of all Governors; and

(ii) any amendment modifying the loss-sharing arrangement provided in Articles 1 and 3 of Annex I to this Convention which will result in an increase in any member's liability thereunder shall require the affirmative vote of the Governor of each such member.

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

(c) If an amendment affects any provision of Annex I to this Convention, total votes shall include the additional votes allotted under Article 7 of such Annex to sponsoring members and countries hosting sponsored investments.

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
X—*continued*

Article 60. Procedure

Any proposal to amend this Convention, whether emanating from a member or a Governor or a Director, shall be communicated to the Chairman of the Board who shall bring the proposal before the Board. If the proposed amendment is recommended by the Board, it shall be submitted to the Council for approval in accordance with Article 59. When an amendment has been duly approved by the Council, the Agency shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Council shall specify a different date.

XI
Final Provisions

Article 61. Entry into Force

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

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

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

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
XI—*continued*

(d) If this Convention shall not have entered into force within two years after its opening for signature, the President of the Bank shall convene a conference of interested countries to determine the future course of action

Article 62. Inaugural Meeting

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

Article 63. Depository

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

Article 64. Registration

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

Article 65. Notification

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

(a) signatures of this Convention;
(b) deposits of instruments of ratification, acceptance and approval in accordance with Article 63;
(c) the date on which this Convention enters into force in accordance with Article 61;

Schedule 7—*continued*
Division and Calls of Subscribed Capital—*continued*
XI—*continued*

(d) exclusions from territorial application pursuant to Article 66; and

(e) withdrawal of a member from the Agency pursuant to Article 51.

Article 66. Territorial Application

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

Article 67. Periodic Reviews

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

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

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

Annex I
Guarantees of Sponsored Investments Under Article 24

Article 1. Sponsorship

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

(b) Subject to the provisions of Sections (b) and (c) of Article 3 of this Annex, each sponsoring member shall share with the other sponsoring members in losses under guarantees of sponsored investments, when and to the extent that such losses cannot be covered out of the Sponsorship Trust Fund referred to in Article 2 of this Annex, in the proportion which the amount of maximum contingent liability under the guarantees of investments sponsored by it bears to the total amount of maximum contingent liability under the guarantees of investments sponsored by all members.

(c) In its decisions on the issuance of guarantees under this Annex, the Agency shall pay due regard to the prospects that the sponsoring member will be in a position to meet its obligations under this Annex and shall give priority to investments which are co-sponsored by the host countries concerned.

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

Article 2. Sponsorship Trust Fund

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

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

(c) The assets of the Sponsorship Trust Fund shall be held and administered for the joint account of sponsoring

Annex I—*continued*

members and shall be kept separate and apart from the assets of the Agency.

Article 3. Calls on Sponsoring Members

(a) To the extent that any amount is payable by the Agency on account of a loss under a sponsored guarantee and such amount cannot be paid out of assets of the Sponsorship Trust Fund, the Agency shall call on each sponsoring member to pay into such Fund its share of such amount as shall be determined in accordance with Section (b) of Article 1 of this Annex.

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

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

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

Annex I—*continued*

Article 4. Valuation of Currencies and Refunds

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

Article 5. Reinsurance

(a) The Agency may, under the conditions set forth in Article 1 of this Annex, provide reinsurance to a member, an agency thereof, a regional agency as defined in Section (a) of Article 20 of this Convention or a private insurer in a member country. The provisions of this Annex concerning guarantees and of Article 20 and 21 of this Convention shall be applied *mutatis mutandis* to reinsurance provided under this Section.

(b) The Agency may obtain reinsurance for investments guaranteed by it under this Annex and shall meet the cost of such reinsurance out of the Sponsorship Trust Fund. The Board may decide whether and to what extent the loss-sharing obligation of sponsoring members referred to in Section (b) of Article 1 of this Annex may be reduced on account of the reinsurance cover obtained.

Article 6. Operational Principles

Without prejudice to the provisions of this Annex, the provisions with respect to guarantee operations under Chapter III of this Convention and to financial management under Chapter IV of this Convention shall be applied *mutatis mutandis* to guarantees of sponsored investments except that (i) such investments shall qualify for sponsorship if made in the territories of any member, and in particular of any developing member, by an investor or investors eligible under Section (a) of Article 1 of this Annex, and (ii) the Agency shall not be liable with respect to its own assets for any guarantee or reinsurance issued under this Annex and each contract of guarantee or

Annex I—*continued*

reinsurance concluded pursuant to this Annex shall expressly so provide.

Article 7. Voting

For decisions relating to sponsored investments, each sponsoring member shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured on the basis of its sponsorship, and each member hosting a sponsored investment shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured with respect to any sponsored investment hosted by it. Such additional votes shall be cast only for decisions related to sponsored investments and shall otherwise be disregarded in determining the voting power of members.

Annex II
Settlement of Disputes Between A Member and the Agency Under Article 57

Article 1. Application of the Annex

All disputes within the Scope of Article 57 of this Convention shall be settled in accordance with the procedure set out in this Annex, except in the cases where the Agency has entered into an agreement with a member pursuant to Section (b)(ii) of Article 57.

Article 2. Negotiation

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

Annex II—*continued*

Article 3. Conciliation

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

(b) The agreement for recourse to conciliation shall specify the matter in dispute, the claims of the parties in respect thereof and, if available, the name of the conciliator agreed upon by the parties. In the absence of agreement on the conciliator, the parties may jointly request either the Secretary-General of the International Centre of Settlement of Investment Disputes (hereinafter called ICSID) or the President of the International Court of Justice to appoint a conciliator. The conciliation procedure shall terminate if the conciliator has not been appointed within ninety days after the agreement for recourse to conciliation.

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

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

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

Annex II—*continued*

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

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

(i) the conciliator shall have failed to submit his report within the period established in Section (e) above; or

(ii) the parties shall have failed to accept all of the proposals contained in the report within sixty days after its receipt; or

(iii) the parties, after an exchange of views on the report, shall have failed to agree on a settlement of all controversial issues within sixty days after receipt of the conciliator's report; or

(iv) a party shall have failed to express its views on the report as prescribed in Section (f) above.

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

Article 4. Arbitration

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

Annex II—*continued*

(b) If the Tribunal shall not have been constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President not yet selected shall be appointed, at the joint request of the parties, by the Secretary-General of ICSID. If there is not such joint request, of if the Secretary-General shall fail to make the appointment within thirty days of the request, either party may request the President of the International Court of Justice to make the appointment.

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

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

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

(f) The Tribunal shall be the judge of its own competence except that, if any objection is raised before the Tribunal to the effect that the dispute falls within the jurisdiction of the Board or the Council under Article 56 or within the jurisdiction of a judicial or arbitral body designated in an agreement under Article 1 of this Annex and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board or the Council or the designated body, as the case may be, and the arbitration proceedings shall be stayed until

Annex II—*continued*

a decision has been reached on the matter, which shall be binding upon the Tribunal.

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

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

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

(j) Each member shall recognize and award rendered pursuant to this Article as binding and enforceable within its territories as if it were a final judgment of a court in

Annex II—*continued*

that member. Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought and shall not derogate from the law in force relating to immunity from execution.

(k) Unless the parties shall agree otherwise, the fees and remuneration payable to the arbitrators shall be determined on the basis of the rates applicable to ICSID arbitration. Each party shall defray its own costs associated with the arbitration proceedings. The costs of the Tribunal shall be borne by the parties in equal proportion unless the Tribunal decides otherwise. Any question concerning the division of the Cost of the Tribunal or the procedure for payment of such costs shall be decided by the Tribunal.

Article 5. Service of Process

Service of any notice or process in connection with any proceeding under this Annex shall be made in writing. It shall be made by the Agency upon the authority designated by the member concerned pursuant to Article 38 of this Convention and by that member at the principal office of the Agency.

Schedule A
Membership and Subscriptions (original list as per Convention booklet)

Category One

Country	Number of Shares	Subscription (millions of SDR)
Australia	1,713	17.13
Austria	775	7.75
Belgium	2,030	20.30

Schedule A—*continued*

Canada	2,965	29.65
Denmark	718	7.18
Finland	600	6.00
France	4,860	48.60
Germany, Federal Republic of	5,071	50.71
Iceland	90	0.90
Ireland	369	3.69
Italy	2,820	28.20
Japan	5,095	50.95
Luxembourg	116	1.16
Netherlands	2,169	21.69
New Zealand	513	5.13
Norway	699	6.99
South Africa	943	9.43
Sweden	1,049	10.49
Switzerland	1,500	15.00
United Kingdom	4,860	48.60
United States	20,519	205.19
TOTAL	**59,473**	**594.73**

Schedule A—*continued*

Category 2*

Country	Number of Shares	Subscription (millions of SDR)
Afghanistan	118	1.18
Algeria	649	6.49
Antigua and Barbuda	50	0.50
Argentina	1,254	12.54
Bahamas	100	1.00
Bahrain	77	0.77
Bangladesh	340	3.40
Barbados	68	0.68
Belize	50	0.50
Benin	61	0.61
Bhutan	50	0.50
Bolivia	125	1.25
Botswana	50	0.50
Brazil	1,479	14.79
Burkina Faso	61	0.61
Burma	178	1.78
Burundi	74	0.74
Cameroon	107	1.07
Cape Verde	50	0.50

Schedule A—*continued*

Country	Number of Shares	Subscription (millions of SDR)
Central African Republic	60	0.60
Chad	60	0.60
Chile	485	4.85
China	3,138	31.38
Colombia	437	4.37
Comoros	50	0.50
Congo, People's Rep. of the	65	0.65
Costa Rica	117	1.17
Cyprus	104	1.04
Djibouti	50	0.50
Dominica	50	0.50
Dominican Republic	147	1.47
Ecuador	182	1.82
Egypt, Arab Republic of El	459	4.59
Salvador	122	1.22
Equatorial Guinea	50	0.50
Ethiopia	70	0.70
Fiji	71	0.71

Schedule A—*continued*

Country	Number of Shares	Subscription (millions of SDR)
Gabon	96	0.96
Gambia, The	50	0.50
Ghana	245	2.45
Greece	280	2.80
Grenada	50	0.50
Guatemala	140	1.40
Guinea	91	0.91
Guinea-Bissau	50	0.50
Guyana	84	0.84
Haiti	75	0.75
Honduras	101	1.01
Hungary	564	5.64
India	3,048	30.48
Indonesia	1,049	10.49
Iran, Islamic Republic of	1,659	16.59
Iraq	350	3.50
Israel	474	4.74
Ivory Coast	176	1.76
Jamaica	181	1.81
Jordan	97	0.97

Schedule A—*continued*

Country	Number of Shares	Subscription (millions of SDR)
Kampuchea, Democratic	93	0.93
Kenya	172	1.72
Korea, Republic of	449	4.49
Kuwait	930	9.30
Lao People's Dem. Rep.	60	0.60
Lebanon	142	1.42
Lesotho	50	0.50
Liberia	84	0.84
Libyan Arab Jamahiriya	549	5.49
Madagascar	100	1.00
Malawi	77	0.77
Malaysia	579	5.79
Maldives	50	0.50
Mali	81	0.81
Malta	75	0.75
Mauritania	63	0.63
Mauritius	87	0.87
Mexico	1,192	11.92
Morocco	348	3.48

Schedule A—*continued*

Country	Number of Shares	Subscription (millions of SDR)
Mozambique	97	0.97
Nepal	69	0.69
Nicaragua	102	1.02
Niger	62	0.62
Nigeria	844	8.44
Oman	94	0.94
Pakistan	660	6.60
Panama	131	1.31
Papua New Guinea	96	0.96
Paraguay	80	0.80
Peru	373	3.73
Philippines	484	4.84
Portugal	382	3.82
Qatar	137	1.37
Romania	555	5.55
Rwanda	75	0.75
St. Christopher and Nevis	50	0.50
St. Lucia	50	0.50
St. Vincent	50	0.50
São Tome and Principe	50	0.50

Schedule A—*continued*

Country	Number of Shares	Subscription (millions of SDR)
Saudi Arabia	3,137	31.37
Senegal	145	1.45
Seychelles	50	0.50
Sierra Leone	75	0.75
Singapore	154	1.54
Solomon Islands	50	0.50
Somalia	78	0.78
Spain	1,285	12.85
Sri Lanka	271	2.71
Sudan	206	2.06
Suriname	82	0.82
Syrian Arab Republic	168	1.68
Swaziland	58	0.58
Tanzania	141	1.41
Thailand	421	4.21
Togo	77	0.77
Trinidad and Tobago	203	2.03
Tunisia	156	1.56
Turkey	462	4.62
United Arab Emirates	372	3.72

Schedule A—*continued*

Country	Number of Shares	Subscription (millions of SDR)
Uganda	132	1.32
Uruguay	202	2.02
Vanuatu	50	0.50
Venezuela	1,427	14.27
Viet Nam	220	2.20
Western Samoa	50	0.50
Yemen Arab Republic	67	0.67
Yemen, People's Dem. Rep. of	115	1.15
Yugoslavia	635	6.35
Zaire	338	3.38
Zambia	318	3.18
Zimbabwe	236	2.36
TOTAL	**40,527**	**405.27**
TOTAL: Categories One and Two	**100,000**	**1,000.00**

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

Schedule B
Election of Directors

1 Candidates for the office of Director shall be nominated by the Governors, provided that a Governor may nominate only one person.

2 The election of Directors shall be by ballot of the Governors.

3 In balloting for the Directors, every Governor shall cast for one candidate all the votes which the member represented by him is entitled to cast under Section (a) of Article 40.

4 One-fourth of the number of Directors shall be elected separately, one by each of the Governors of members having the largest number of shares. If the total number of Directors is not divisible by four, the number of Directors so elected shall be one-fourth of the next lower number that is divisible by four.

5 The remaining Directors shall be elected by the other Governors in accordance with the provisions of paragraphs 6 and 11 of this Schedule.

6 If the number of candidates nominated equals the number of such remaining Directors to be elected, all the candidates shall be elected in the first ballot; except that a candidate or candidates having received less than the minimum percentage of total votes determined by the Council for such election shall not be elected if any candidate shall have received more than the maximum percentage of total votes determined by the Council.

7 If the number of candidates nominated exceeds the number of such remaining Directors to be elected, the candidates receiving the largest number of votes shall be elected with the exception of any candidate who has received less than the minimum percentage of the total votes determined by the Council.

Schedule B—*continued*

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

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

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

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

Legislative history

2 May 2007	Introduction (Bill 113-1)
9 May 2007	First reading and referral to Foreign Affairs, Defence and Trade Committee
24 August 2007	Reported from Foreign Affairs, Defence and Trade Committee
11 September 2007	Second reading
12 September 2007	Committee of the whole House
13 September 2007	Third reading