

AGREEMENT STATE-FMO OF 16 NOVEMBER 1998

THE STATE OF THE NETHERLANDS, represented in this matter by the Minister of Finance and the Minister for Development Cooperation, hereinafter referred to as the "State"

and

NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V., having its registered office in The Hague, hereinafter referred to as "FMO"

WHEREAS:

(A) the State and FMO entered into an agreement (the "1991 Agreement") on 20 March 1991 relating to the restructuring of the methods by which the State funds FMO in respect of the investment projects financed by FMO and, in that context, to the revision of the corporate framework within which FMO conducts its business;

(B) the State and FMO entered into a supplementary agreement (the "Supplementary Agreement") on 27 November 1992, which updated the 1991 Agreement at several points;

(C) over the period 1991-1998, the State has made available to FMO a sum of NLG 862,000,000 in budget allocations and a sum of NLG 150,000,000 in capital market funds, in the form and subject to the terms set forth in the 1991 Agreement and the Supplementary Agreement;

(D) FMO must have adequate financial instruments at its disposal in order to conduct its business;

(E) the State has agreed to an extension to the scope of Article 15 of the 1991 Agreement to include a number of financial instruments and products and the parties have reached agreement on the conditions under which these financial instruments may be used, including the condition that FMO's policy relating to derivatives will seek to limit the risks associated with the conduct of its business;

(F) the State and FMO have reached agreement on (i) the build-up of the Development Fund over the period 2001-2005, (ii) adjustment of the wording of Article 15 of the 1991 Agreement to reflect the current method of funding of FMO, (iii) the partial repeal of the provision relating to the rights of the State to suspend its obligations under Article 18 of the 1991 Agreement and (iv) continuation of the 1991 Agreement and the Supplementary Agreement;

(G) in relation to the operation of Article 8.1 of this Agreement, the State and FMO have reached agreement on the supervision of FMO by the Minister of Finance;

(H) the State intends to retain its existing majority shareholding in FMO's share capital for as long as it considers that the functioning of FMO in the context of Netherlands government policy on development cooperation would be substantially impaired without that majority shareholding;

(I) in consideration of the foregoing, the State and FMO wish to enter into a new agreement to replace the 1991 Agreement and the Supplementary Agreement.

HEREBY AGREE AS FOLLOWS:

I GENERAL PROVISIONS

Article 1

1.1 FMO shall contribute to the advancement of productive enterprises in developing countries to the benefit of their economic and social development by rendering assistance, with due regard to the provisions of this Agreement, to natural persons and legal entities engaged in a business or profession in a developing country, by inter alia:

- a taking equity interests;
- b advancing loans and furnishing guarantees;
- c providing subsidies and appropriate forms of finance for technical assistance, training, investment promotion activities and other activities which may be conducive to the advancement of productive enterprises in developing countries;
- d executing programmes and/or projects commissioned by third parties within the constraints of its objects pursuant to the Articles of Association.

1.2 The State shall contribute to the funding of FMO in the form and subject to the conditions set forth in this Agreement.

II PROVISION OF FINANCE BY FMO

Article 2

Partly with a view to safeguarding FMO's continuity, the finance which FMO provides pursuant to Article 1.1, under a and b, shall be provided on normal terms and conditions as applied in the financial sector.

Article 3 Criteria Memorandum

3.1 FMO undertakes vis-à-vis the State to bindingly test all its proposals for financing investment projects against the criteria (the "Criteria") set forth in the criteria memorandum (the "Criteria Memorandum") attached to this Agreement as Appendix.

3.2 The State and FMO agree that a project shall be deemed to have satisfied the Criteria if it has been approved by the Supervisory Board of FMO.

III FUNDING

Article 4 General

To enable FMO to conduct its business in accordance with Article 1 of this Agreement and its objects as set forth in Article 2 of its Articles of Association, the State agrees to provide FMO with funds as hereinafter specified in Articles 5-8.

Article 5 Budget allocations. Development Fund

5.1 In its capacity as holder of A shares, the State shall, in addition to the budget allocations referred to under (C) of the preamble to this agreement which are carried by FMO on its balance sheet under the heading "Development Fund", make annual budget allocations to FMO which shall be added to the Development Fund, until the Development Fund built up by means of budget allocations referred to under (C) of the preamble to this Agreement and pursuant to the present Article 5 of this Agreement amounts to approximately one billion, four hundred and fifty million guilders, ultimately by the year 2005.

In order to achieve this target, the State will make budget allocations to FMO in the annual amounts stated in the table below:

1999:	NLG 120,000,000
2000:	NLG 65,000,000
2001:	NLG 82,110,800
2002:	NLG 82,110,800
2003:	NLG 82,110,800
2004:	NLG 82,110,800
2005:	NLG 82,110,800

5.2 The amounts stated in the table in Article 5.1 shall be paid by the State to FMO each time on the first business day of the year to which the amount relates. These amounts shall be made available by the State as holder of A shares and shall therefore be added to FMO's equity. In so far as the State is required in any year to make payments on its shares in FMO as a shareholder, the amount payable in respect of the relevant year shall be reduced by the amount which the State is to pay in that year on its shares in FMO.

Article 6 General Risks Reserve Fund

6.1 In accordance with generally accepted accounting principles and in conformity with Part 9 of Book 2 of the Netherlands Civil Code, FMO has charged and will in the future charge general and specific value adjustments to its profit and loss account in respect of (i) non-payment of amounts owed to FMO on loans which it has advanced pursuant to Article 1.1 under b of this Agreement and (ii) estimated diminutions in the value of its equity investments.

6.2 Each year, FMO shall appropriate to reserves a part of the profit (the "Annual Profit") shown by its financial statements drawn up for the relevant year in accordance with generally accepted accounting principles and in conformity with Part 9 of Book 2 of the Netherlands Civil Code and adopted by the competent corporate body. The amount to be allocated to reserves shall be calculated in accordance with the following guidelines: the profit shown by the duly adopted financial statements shall be multiplied by a fraction of which the numerator is FMO's equity (as at the last balance sheet date) less (i) the amount compulsorily paid up by the shareholders on all issued FMO shares, (ii) the General Reserve (as at the last balance sheet date) and (iii) the Share Premium Reserves of NLG 46,742,000 and NLG 17,764,000, and the denominator is FMO's equity (as at the last balance sheet date).

6.3 The sum of (i) the Share Premium Reserve of NLG 46,742,000, (ii) the aggregate of the general value adjustments charged and to be charged to the profit and loss account as referred to in Article 6.1 and (iii) the amount appropriated to reserves as referred to in Article 6.2 constitute a fund which shall be designated the "General Risk Reserve Fund" ("GRR Fund").

Article 7 Maintenance obligations in the event of depletion of GRR Fund and inadequate cover for exceptional operating risks

7.1 To determine whether FMO has grounds for invoking the maintenance obligation (the "State's Maintenance Obligation") as referred to in Article 7.2.1, the losses incurred by FMO as referred to in Article 7.2.2, as shown by the financial statements drawn up for the relevant year in accordance with generally accepted accounting principles and in conformity with Part 9 of Book 2 of the Netherlands Civil Code and duly adopted by the competent corporate body, shall first be charged to the GRR Fund.

7.2.1 The State undertakes vis-à-vis FMO to defray losses on its operations pursuant to Article 3.1 and 3.2 of this Agreement, as determined in accordance with Article 7.2.2, to the extent that such risks have not been covered by specific value adjustments and/or compensation and/or insurance benefits received or yet to be received, provided that:

- a** the amount of such losses exceeds the amount of the GRR Fund as at 31 December of the year in which these losses were incurred; and
- b** the inadequacy of the cover for general value adjustments under the GRR Fund is due to abnormal operating risks, such as unforeseen political difficulties in or transfer problems with particular countries or the collapse of the world economy or a regional economy.

7.2.2 The parties shall consult together to determine the magnitude of such losses. Should they fail to agree, FMO's auditors and an auditor designated by the State shall make a reasonable and equitable calculation of the losses in accordance with generally accepted accounting principles.

7.3 If circumstances arise as described in Article 7.2.1 under a and b and FMO requests the State to fulfil its obligation as referred to in Article 7.2, this shall give rise to a claim against the State, which shall be duly acknowledged by the State, on the first business day of the first financial year following the date of the request. Such request shall be made in writing.

Article 8 Other financial security obligations

8.1 Without prejudice to the other provisions of this Agreement, the State shall prevent situations arising in which FMO is unable to meet the following (comprehensively enumerated) commitments on time: FMO's commitments in respect of (i) loans raised on the capital markets; (ii) short-term funds raised on the money

market with maturities of two years or less; (iii) swap agreements involving the exchange of principal and interest; (iv) swap agreements not involving the exchange of principal but with interest payment; (v) foreign-exchange forward contracts and forward rate agreements (FRAs); (vi) options and futures contracts; (vii) combinations of the products referred to under (i) to (vi); and (viii) guarantees given by FMO to third parties in respect of the financing of private companies in developing countries and (ix) commitments relating to the maintenance of an adequate organization.

8.2 In connection with the State's obligations pursuant to Article 8.1, FMO shall provide the Minister of Finance with information pertaining to business economics relating to FMO, in a manner to be agreed upon between the State and FMO. This information shall enable the Minister to exercise effective supervision of FMO's policy.

IV REPORTING

Article 9 Reporting

9.1 Within one month of the end of each quarter, FMO shall provide the Minister of Finance and the Minister for Development Cooperation with a summary for the calendar year up to and including that quarter, including:

- the balance sheet as at the end of such quarter;
- the profit and loss account compared with the budget;
- the position relating to value adjustments.

As soon as possible after the end of each calendar year, FMO shall submit to the above-mentioned Ministers a synoptic analysis of the investment portfolio and a summary of the value adjustments.

9.2 FMO shall permit the State to submit the reporting referred to in Article 9.1 to the judgment of an independent auditor designated by the State and shall provide such auditor with the information needed to form a judgment.

V OTHER PROVISIONS

Article 10 Suspension of obligations

If the State has reasonable cause to suppose that FMO's financial situation is deteriorating to such an extent that FMO may reasonably be expected to invoke the provisions of Articles 7 and 8 of this Agreement, the Minister of Finance may issue reasonable instructions to FMO concerning the general direction of the financial and economic policy to be pursued by FMO. If FMO fails to comply with these instructions, the State shall be entitled to suspend its obligations under Article 7 of this Agreement.

Article 11 Evaluation of this Agreement

The State and FMO shall evaluate this Agreement or cause it to be evaluated each time with the lapse of five years from the date of signature of this Agreement. Any proposed changes to parts of this Agreement which may arise from such evaluations shall be taken into consideration by the State and FMO, but they shall be under no obligation to consent to them.

Article 12 Maturing of claims of the State

12.1 Claims of the State on FMO under this Agreement shall automatically become due and payable immediately in the following cases:

- in the event of bankruptcy of FMO or if FMO has presented to a court a petition for a moratorium of payments;
- in the event of this Agreement being rescinded by judgment of a court of law.

12.2 Such amounts shall also become due and payable immediately if FMO fails to comply with one or more provisions of this Agreement after having been served notice of default by letter and failing to rectify the omission within thirty days of the date of such notice of default.

Article 13 Inspection of FMO's financial administration

To facilitate supervision of the financial relationship between the State and FMO, FMO shall give members of the Audit Department of the Ministry of Foreign Affairs who have been designated for that

purpose by the Minister for Development Cooperation access to its offices and its accounting records and shall provide them with any other assistance they may require.

Article 14 Policy meeting

The State and FMO will meet at least twice each calendar year to enable policy consultation to take place between or on behalf of the Minister of Finance and the Minister for Development Cooperation on the one hand and FMO on the other, at which the policy to be pursued by FMO shall be discussed and the Criteria may if necessary be revised with the consent of the State and FMO.

VI FINAL PROVISIONS

Article 15 Force of the Agreement

15.1 This Agreement shall enter into force as from the date of signature of this Agreement and the rights and obligations of the parties each to the other shall accordingly apply with effect from that date, without prejudice to the validity of legal acts performed and decisions taken on the basis of the 1991 Agreement, the Supplementary Agreement and FMO's current Articles of Association.

15.2 This Agreement is entered into for an indefinite period, but either party may cancel the Agreement by giving 12 (twelve) years' notice commencing on 1 January 1999 or any 1 January of any year thereafter.

15.3 In the event of cancellation of this Agreement as referred to in Article 15.2, FMO shall continue, even after the expiry of the period of notice referred to in Article 15.2, to apply the Development Fund, the GRR Fund which has been built up thereby and the Share Premium Reserve of NLG 17,764,000 in accordance with the objectives applicable at the commencement date of the period of notice of cancellation, unless the State gives its approval to application for a different purpose. FMO shall also continue in that event to build up the GRR Fund in accordance with the provisions of Article 6.2 and Article 6.3, until such time as the State and FMO agree otherwise.

Article 16 Lapse of the 1991 Agreement and the Supplementary Agreement

The 1991 Agreement and the Supplementary Agreement shall lapse as from the date of signature of this Agreement by the State and FMO.

Signed in three copies in The Hague on 16 November 1998

The State of The Netherlands

The Minister of Finance
(was signed)

G. Zalm

**Nederlandse Financierings-Maatschappij
voor Ontwikkelingslanden N.V.**
(was signed)

L.B.M. Mennes

The Minister for Development Cooperation
(was signed)

E.L. Herfkens

Note: This is the authorized English translation of the Agreement made and signed in Dutch.

APPENDIX TO THE AGREEMENT STATE-FMO OF 16 NOVEMBER 1998

CRITERIA MEMORANDUM

Introduction Since FMO's object according to its Articles of Association is the basis of its financing policy, it is appropriate to restate that object in full here:

The object of the company is to contribute to the advancement of productive enterprises in developing countries, to the benefit of economic and social advancement of those countries, in accordance with the aims pursued by their governments and the policy of the Netherlands government on development cooperation, by:

- a providing finance to or on behalf of natural persons and legal entities engaged or intending to engage in a business or profession in a developing country by taking equity interests, advancing loans and providing subsidies;
- b acting as intermediary in raising finance on behalf of the natural persons and legal entities referred to under a above;
- c providing appropriate forms of finance for technical assistance, training, investment, promotion activities and other activities which may be conducive to the advancement of productive enterprises in developing countries;
- d engaging in any other activity, in the widest sense, which is conducive to the advancement of productive enterprises in developing countries.

To facilitate the identification and selection of projects and the implementation of appropriate financial services, a number of policy principles and criteria have been defined by the Board of Directors and approved by the Supervisory Board to serve as a guideline and ensure consistency with the current policy of the Netherlands government on development cooperation. These criteria are updated to reflect changing circumstances, partly on the basis of the regular semi-annual policy meetings between the State and FMO.

Policy principles The operational policy is based on the following principles:

- a catalysis: maximizing the flow of finance to FMO's target group. This requires FMO to maximize the growth in and utilization of its equity and the leverage provided by its financing activities;
- b additionality: only providing financial services which the market does not provide, or does not provide on an adequate scale or on reasonable terms;
- c good governance: adherence to the principles of good governance in the widest sense. FMO sets the standard in several areas of its operations, including social policy and environmental policy.

Choice of country "Developing countries" are countries which were classified by the World Bank in its recent World Development Report as low-income economies, lower middle-income economies or upper middle-income economies, or countries which were classified as such when the finance was approved and countries or regions expressly designated as such by the Netherlands government. If one of the countries as defined above fails to meet the political criteria against which they are tested from time to time by the Netherlands government, the government will notify FMO and FMO will refrain from any new business in that country. It should be noted that existing investments in countries which fall into political disfavour will not be withdrawn as a matter of course. FMO will, whenever possible, wind these investments down.

FMO also applies the following principles:

- a no finance is to be provided in a country which is in a state of war or armed conflict with another country;
- b it attempts to ensure that low-income and lower middle-income economies account for approximately 70% of investments, approximately half (35%) of which being accounted for by low-income economies;
- c where possible, additional manpower should be deployed and specific programmes and/or instruments should be developed and implemented for countries or groups of countries for which the Netherlands government from time to time requests FMO's particular attention, to the extent that this is consistent with the policy framework. Agreements in this regard will be recorded in "side letters" .

Choice of sector Activities qualifying for finance are commercial enterprises in agriculture and fisheries, mining, agribusiness, manufacturing industry, the service sector (including utilities) and banking and insurance in the widest sense. The emphasis is on development of the financial sector. Excluded are activities and institutions which are in conflict with statutory provisions or government regulations or measures or which offend against public morals in the Netherlands and/or the developing country or are in conflict with imperative rules of international law. Activities in the field of or relating to armaments and munitions are similarly excluded.

Other criteria

- a FMO's clients or counterparties are natural persons, partnerships and/or legal entities associated with or engaged in productive enterprises; proprietors and managers must be of irreproachable business integrity, having due regard for the standards and conventions of the country concerned;
- b the continuity of the client/counterparty should be assured by reasonable prospects of earning a positive return on investment;
- c the client/counterparty must have the support of one or more entrepreneurs of good financial standing, who are themselves able to assume a substantial financial risk, and must be headed by capable - preferably local - managers. Financial institutions must be adequately regulated. If the local regulatory regime is unsatisfactory, FMO will seek to make good this deficit itself. It should be possible to demonstrate on the basis of a thorough analysis of all potential risks that the risks can be managed and are therefore acceptable;
- d jobs created directly within the client/counterparty's operation should be sustainable. The terms of employment and social provisions should be of good standard relative to the local situation. Entrepreneurs and managers must demonstrate awareness of the importance of good terms of employment and social provisions;
- e where applicable, FMO's clients/counterparties must as a minimum comply with the local environmental legislation. If possible, they should also comply with international standards, taking the standards of the World Bank group as a benchmark;
- f the technology employed should be proven technology; innovative technologies are only considered if they are implemented by highly experienced clients/counterparties;
- g although the selection of clients/counterparties does not depend on whether Dutch interests are involved, Dutch interests will be promoted in so far as this is practical, feasible, effective and advantageous to the client/counterparty.

Conclusion Internal policy documents, guidelines and procedures have been prepared, based on these policy principles and criteria, which are updated from time to time to reflect the changes in FMO's sphere of operations and services.