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PROTOTYPE STATUTES
FOR INDUSTRIAL FINANCING INSTITUTIONS 1/

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This document contains an advance text of the summary and conclusions of a study which is in process of preparation for publication in 1971/72. This paper is used as a background paper for the Training Workshop on the basis of a consultant study for UNIDO by Mr. A. Obégi (Lebanon). The aim is to present factual information describing prototype statutes as a basis for discussion of the subjects to be considered by participants. The views and opinions expressed in this paper are based on the consultant's original paper and do not necessarily reflect the views of the secretariat of UNIDO. This document has been reproduced without formal editing.

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INTRODUCTORY NOTE

1. UNIDO's activities in the field of industrial financing aim at assisting developing countries in mobilizing and channelling financial resources - both domestic and external - into industrial development, and at assisting in the application of modern banking techniques. This comprises also the proper utilisation of industrial financing institutions available to industrial enterprises.
2. As regards the first objective, previous work has concentrated on a general examination of domestic financing techniques and of the role of bilateral external assistance. With regard to the second objective a need was felt to strengthen industrial financing institutions and possibly establish new ones.
3. The Industrial Development Board of UNIDO at its third session (ID/B/44, para.388) stressed the importance of more comprehensive information on statutory provisions of industrial development finance institutions. However, UNIDO has always been concerned with this subject and has collected and analysed relevant material since its existence.
4. Prototypes of the statutes and related basic material for the incorporation and improvement of industrial finance institutions are being developed to assist in Special Fund projects either within already existing development banks or "under the roof" of other industrial finance corporations, no matter whether privately or publicly owned.

5. To allow some flexibility in adapting these prototypes to the specific needs of individual countries, alternative drafts for each section of this paper are being prepared on the basis of reference material received so far. However, the explanatory notes may also help to find those provisions which are considered to be most appropriate.

6. This report neither covers all aspects - legal, administrative, organisational, financing or banking - nor is it supposed to finalise once and for all any substantive discussion on the charter of banks. But it will certainly help to marshal the findings that have emerged from a broad collection of banking statutes in both developed and developing countries.

7. In conclusion, they should be studied and examined in the light of present conditions and, if it appears necessary, as a basis for the initiation of appropriate follow-up action. The improvement of a bank's charter and all banking operations is, of course, understood to be a never ending process.

PROTOTYPE STATUTES FOR INDUSTRIAL FINANCING INSTITUTIONS

OUTLINE

I. ESTABLISHMENT

II. PURPOSES

III. SCOPE OF ACTIVITIES AUTHORIZED

1. Financing
2. Financing, promotion and initiation
3. Financing, promotion, initiation and other activities

IV. FINANCIAL RESOURCES

1. Composition of capital
 - (a) Forms of subscription
 - (b) Distribution of property
 - (c) Rights, privileges and restrictions in connexion with preference shares
2. Dividends and reserve policies
 - (A) Authority to fix dividends
 - (B) Limits on payment of dividends:
 - Upper limits for dividends
 - Lower limits for dividends
 - Conditional limits for dividends
 - Reserves required
3. Borrowing powers
 - (A) Sources of financing which institutions are authorized to use in order to obtain funds
 - (B) Limits imposed regarding terms and conditions of loans contracted

4. Funds set aside by the Government for the use of institutions

V. ORGANIZATION

1. The shareholders
2. General meetings and extraordinary meetings
3. The Board of Management

VI. OPERATIONS

Financial transactions

- The granting of loans and participation
- Equity capital
- Liquidation

VII. EXEMPTIONS, PRIVILEGES AND ADVANTAGES

- Fiscal exemptions
- Financial support
- Other privileges and advantages

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The following code indicates, in all chapters, the type of institution to which the different variants of wording in the text apply. Thus, the text of each provision is followed by a code such as A, B, C, A1, B2, etc.; in addition, a reference to the Explanatory Note at the end of the document is inserted after each section or provision calling for special comment.

Code:

- A - State institution
- B - Private institutions
- C - Mixed institutions

- A1, B1, C1 - Activities limited to industrial financing
- A2, B2, C2 - Activities comprising financing and industrial promotion
- A3, B3, C3 - Activities simultaneously comprising financing, promotion and other activities

I. ESTABLISHMENT^{1/}

- (A) State institution
- (B) Private institutions
- (C) Mixed institutions

1. A banking institution is hereby established in the form of a joint-stock company of nationality, designated and subject to the legal provisions governing joint-stock companies and to the provisions of its organic statutes. It is hereinafter referred to as "the Bank".

The capital of the Bank shall be

The head office of the Bank shall be situated at and the Bank shall be authorized to have branches(B)

2. A banking institution is hereby established in the form of a joint-stock company of nationality, designated "the Industrial Bank of", operating with the guarantee of the State and under the supervision of the Ministry for Economic Affairs and Trade, and subject to the provisions of the present Act. It is hereinafter referred to as "the Bank".

The capital of the Bank shall be

It shall be mandatory for the State to hold 25 per cent of the shares of the Bank, and it shall purchase any shares not subscribed for by private persons within the time limits laid down in this regard. The State shall be at liberty either to keep those shares which it has purchased freely or to sell them on the free market as the public interest requires. (C)

3. A Bank designated "the Industrial Bank of" is established by the present Act. This Bank shall constitute a body corporate, its existence shall be of unlimited duration, it shall have a corporate seal and it shall be capable of suing and being sued under its business name.

^{1/} See the Explanatory Note at the end of this document.

The head office of the Bank shall be situated at The Board of Management shall have the power to establish branches or agencies and to have correspondents wherever it considers this necessary for the activities of the Bank.

The capital of the Bank shall be, divided into shares. The shares shall be open to subscription by the State, public institutions and private persons. (C)

4. Between the signatories of these statutes and the holders of shares to be issued in accordance with the provisions of the statutes reproduced hereafter, there shall be created a joint-stock company operating in accordance with the laws in force and the present statutes.

This Company, organized in accordance with the provisions of the Companies Law governing limited liability joint-stock companies, is established for the purpose of promoting the economy and assisting productive enterprises. (B)

5. A Company is hereby established with the designation of

The shall be a public institution, owned exclusively by the State, operating according to the principles of a private enterprise. It shall be a corporate body subject to private law.^{2/}

The Company shall be subject to the supervision of the Ministry of Industry. (A)

II. PURPOSES^{3/}

1. The Company shall limit itself to granting short-term, medium-term and long-term industrial loans for the purpose of helping to improve existing industry and fostering new industrial enterprises. (A1, B1, C1)^{4/}

2. The Bank shall have the objective of developing and promoting national private and public industry within the framework of the economic policies of the State, by the following means:

^{2/} See the Explanatory Note at the end of this document.

^{3/} See the Explanatory Note at the end of this document.

^{4/} See the Explanatory Note at the end of this document.

- (a) The granting of medium-term and long-term loans;
 - (b) The granting of seasonal short-term loans;
 - (c) Participation in the creation of national industrial development companies;
 - (d) The provision of technical assistance to industrial enterprises already in operation or in process of establishment, in the form of any advice, studies, documentation and statistics that may be required. (A2, B2, C2)
3. The purposes of the Institution shall be:
- (a) To contribute towards the setting up of industrial establishments and the development and improvement of these establishments;
 - (b) To encourage the investment of domestic and foreign capital in the industrial enterprises of the country.

The Institution shall carry out the operations mentioned above within the framework of the industrial development plan of the State. (A2, B2)

4. The Institution shall have the objective of contributing towards the establishment, expansion and modernization of national industrial enterprises and encouraging and promoting the participation of domestic and foreign capital in such enterprises. It shall make use of the following means to achieve these objectives:

- (a) Financing industrial enterprises through loans of all types, particularly medium-term and long-term loans which they cannot obtain from ordinary banks and from the capital market;
- (b) Participation in the share capital of these enterprises;
- (c) Reinvestment in new enterprises of funds made available by the realisation of shares or bonds;^{5/}
- (d) Technical and administrative assistance to industrial enterprises;

^{5/} See the Explanatory Note at the end of this document.

- (e) Subscription on its own behalf or on behalf of third parties for shares or bonds issued by these enterprises;
 - (f) Guaranteeing loans contracted by these enterprises with other credit institutions or bonds issued by them for the purpose of obtaining funds;
 - (g) Co-operation with the State or with public institutions in research, studies and the promotion of new enterprises, and in obtaining the necessary capital for the latter. (A2, B2, C2)
5. The purposes of the Institution shall be:
- (a) To promote the introduction of new processes by industrial enterprises;
 - (b) To establish, develop and encourage a securities market;
 - (c) To promote the establishment of private development banks in the country;
 - (d) To grant medium-term and long-term loans, and to guarantee loans contracted with local, foreign or international institutions. ^{6/}
(A3, C3)

III. SCOPE OF ACTIVITIES AUTHORIZED

- 1. Financing (A1, B1, C1)
 - 2. Financing, promotion and initiation (A2, B2, C2)
 - 3. Financing, promotion, initiation and other activities (A3, B3, C3)
1. The Institution shall carry out its activities within the framework of the industrial development plan and in conformity with the provisions of its own organic statute. These activities shall be limited to industrial financing operations, and shall take such forms as the following:
- (a) Medium-term and long-term loans and advances intended for the equipment, starting up and development of nationalized or private industries.

^{6/} See the Explanatory Note at the end of this document.

- (b) Short-term loans for seasonal industrial financing;
- (c) Subscription for shares and bonds issued by an industrial enterprise seeking funds for the expansion of its operations. The institution's subscription for shares and bonds issued by the industrial enterprise shall in no case result in active participation by the institution in the management of the enterprise.
- (d) Provision of a guarantee for the industrial enterprise in respect of transactions with other domestic or foreign credit institutions.
- (e) Mobilization of the loans and advances granted to the enterprise by other credit institutions.
- (f) Any other banking operations, but particularly those which are not generally undertaken by ordinary banks.

Advances are made by the institution either out of its resources and on its own behalf, out of its own funds but on behalf of the State, or out of resources placed at its disposal by the Treasury. ✓ (A1)

1.2 The institution shall operate within the framework of the provisions of its Organic Statutes. Its activities, which shall be limited to industrial financing, shall take the form notably of the granting of medium-term loans for:

- (a) The acquisition and development of industrial production equipment, the introduction and application of new processes, and capital development in general.
- (b) The promotion of the export of industrial goods by the endorsement or discounting of accepted drafts which can be mobilized on application to specialized bodies. ✓

The institution shall also be authorized to endorse industrial loans granted by another credit establishment.

The duration of loans granted by the institution shall not exceed 5 years. (B1)

✓ See the Explanatory Note at the end of this document.

✓ See the Explanatory Note at the end of this document.

1.1 The function of the Co-operative Credit Fund is to provide financial aid to workers' productive co-operative societies, to artisans' co-operatives, and to other co-operatives. The borrowing enterprises must be shareholders in the Fund.

The Fund grants credits for not more than five years and loans for periods from five to fifteen years.

The Fund is authorized to act as a guarantor for medium-term loans granted to co-operative societies or branches of such societies.

The granting of loans and credits is authorized by a special committee called the Credit Board, which is made up of representatives of the private and public sectors. (C1)^{2/}

2. Apart from the provision of finance, the activities of the Institution may also include:

- (a) Active participation in the administration, management or control of any industrial enterprise financed by it.
- (b) Provision of technical and management assistance to the industrial enterprise, execution on behalf of the enterprise of economic and technical research and studies (feasibility studies) in respect of the project envisaged, and organization of technical and management cadres.
- (c) Taking the initiative in the establishment of new enterprises to be financed and run by the Institution itself. (A3, B3, C3).

3. In addition to its activities involving the financing, promotion and institution of industrial enterprises, the Institution may:

- (a) Acquire, sell, exchange or rent any movable or immovable property needed for the carrying out of its activities as laid down in its organic statutes.
- (b) Establish contact and hold discussions with the public economic and monetary authorities or other bodies (such as chambers of industry) in order to secure rights, concessions and privileges which may encourage and promote industrial activities.

^{2/} See the Explanatory Note at the end of this document.

- (c) Establish contact and hold discussions with international banking and financial institutions regarding loans for industrial financing. ^{10/}
- (d) Carry on any other activity which may promote and develop the industrial sector within the framework of current law and statutory provisions. (A), (B), (C)

IV. FINANCIAL RESOURCES

- State institutions: (A)
- Private institutions: (B)
- Mixed institutions: (C)

- 1. Composition of capital
- 2. Dividends and reserve policies
- 3. Borrowing powers
- 4. Funds set aside by the Government for the use of institutions

1.1 The capital of the Institution shall be It shall be subscribed entirely by the State. (A)

1.2 The capital of the Institution shall be Half of the capital shall be subscribed by the Treasury (the Ministry of Finance) and half by the Bank of Issue. (A)

1.3 The capital of the Institution shall be It shall be subscribed initially entirely by the State, which reserves the right to offer for public subscription, after the Institution has been set up, all or part of the shares representing the capital, on terms and conditions to be laid down by the Board of Management (or in a decree issued by the Ministry of Finance). ^{11/}

1.4 The capital of the Bank shall be, made up of registered shares (bearer shares). It shall be offered for public subscription in accordance with the terms of the law of on limited companies. (B)

^{10/} See the Explanatory Note at the end of this document.

^{11/} See the Explanatory Note at the end of this document.

1.5 The capital of the Bank shall be It shall be open to public subscription. The number, nature and various categories of shares shall be laid down in the organic statutes of the Bank. (B)

1.6 The capital of the Institution shall be, made up of registered shares. It can be subscribed up to the following limits:

- Up to 60 per cent by private banks of the country where the Institution is located;
- Up to 40 per cent by foreign banks carrying on business in that country.

The various categories of shares and the rights attached to each category shall be laid down in the statutes of the Institution.^{12/} (B)

1.7 The authorized capital of the Institution shall be, made up of shares each of It shall be subscribed as follows:

- 25 per cent by the State (the National Debt office) on a compulsory basis;
- 10 per cent by the Bank of Issue on a compulsory basis;
- 10 per cent by the nationalised banks on a compulsory basis;
- 55 per cent by the public.

The State shall undertake to purchase the unsubscribed shares, within the limits of the funds which have been set aside or are to be set aside for this purpose.

It shall be the responsibility of the State (the National Debt office) to decide, in accordance with the public interest, whether to retain such freely-acquired shares or to offer them for sale on the free market. (C)

1.8 The authorized capital of the Institution shall be, made up of shares each of

^{12/} See the Explanatory Note at the end of this document.

Shares may be subscribed for by the State, State financial institutions, and by the public.

Subject to the legal provisions governing the rights and obligations of shareholders, the Institution may, at such time as its Board of Management considers favourable, offer for public subscription all or part of the capital which has been authorized but not yet paid up.

The Government shall subscribe, on a compulsory and irreducible basis, for shares of the Institution's capital and shall undertake to purchase the shares not subscribed for by the public, while reserving the right to offer such freely-acquired shares for sale on the free market at such time as it considers suitable. (C)

1.9 The capital of the Institution shall be, made up of registered shares each of

Subscription shall be subject to the following limits:

- Up to 60 per cent by private banks transacting business in the country where the Institution is located;
- Up to 20 per cent by the Bank of Issue;
- Up to 20 per cent by the International Finance Corporation.^{13/}

At least one-third of the Institution's capital shall always, whatever the circumstances, remain the property of shareholders (physical persons or bodies corporate) who have the nationality of the country where the Institution is located. The Board of Management shall refuse to authorize any subscription by or transfer of shares to non-nationals of the country which might reduce this proportion.

Twenty-five per cent of the capital shall be paid up at the time of subscription and the balance at date to be laid down by the Board of Management. (C)

2.1 The net profits accruing to the State shall be deposited in a special reserve account in order to build up the Institution's own funds. (A)

^{13/} See the Explanatory Note at the end of this document.

2.2 The net profit of the Institution accruing to the State and to the Bank of Issue shall be used to build up a reserve fund, up to a maximum amount equal to the initial capital. The surplus shall be paid to the Treasury and to the Bank of Issue in proportion to their respective participation in the capital of the Institution. (A)

2.3 The Board of Management of the Institution shall decide on the allocation of the net profit. (A)

2.4 The General Meeting shall decide, on the motion of the Board of Management, how the profits shall be allocated and what dividends shall be distributed to the shareholders, in accordance with the provisions of the organic statutes. (B)

2.5 The General Meeting shall decide, on the motion of the Board of Management, how the net profits shall be allocated in accordance with the provisions of the organic statutes of the Institution. When dividends are distributed, holders of preference shares must receive double the dividend paid to holders of ordinary shares. (B)

2.6 The State (the Minister of Finance) undertakes to pay all shareholders, other than the State and the Bank of Issue, a dividend of 5 per cent of the nominal value of the shares.

The Minister of Finance will pay out the sums required in order to guarantee this 5 per cent dividend. Sums paid out under this item remain to the debit of the Institution under a special heading called "Guarantee of profits of the Institution" until they are repaid in subsequent years from profits exceeding 5 per cent made by the Institution.

If the profits of the Institution exceed 5 per cent of the paid-up capital, after payments made in order to build up the legal and statutory reserves and after apportionment of sums to meet the obligations assumed by the State in respect of the "Guarantee of profits of the Institution", these profits are distributed among the shareholders in proportion to their respective participation in the capital. (C)

2.7 No dividend shall be paid on shares held by the State or by any other public body until a net dividend is declared and paid to the other shareholders. (C)

2.8 The net profit shall be allocated as follows:

25 per cent to a reserve fund, up to a maximum of 50 per cent of the initial share capital;

5 per cent to the remuneration of the members of the Board of Management;

5 per cent to the employees of the Institution.

The remainder shall be distributed as dividends among the shareholders, in proportion to their holdings of shares. (C)

3.1 In addition to its capital and reserves, the Institution can obtain necessary resources:

(a) From the proceeds of loans contracted by it on the financial market in the form of bonds and debentures;

(b) Through loans granted to it by the Treasury;

(c) By rediscounting its holdings.

The Institution can only contract such loans within the limits, periods and conditions laid down in its organic statutes. (A, C)

3.2 The resources of the Institution comprise:

(a) An endowment fund of granted by the Treasury;

(b) The reserves accumulated by the Institution itself;

(c) Loans made as an exceptional measure by the State within the limit fixed each year by the law on special Treasury accounts. (A)

3.3 Apart from its capital and reserves, and apart from the mobilization of its holdings, the Institution can obtain additional resources, subject to the provisions of its own Statutes and within the general conditions laid down in the current laws and conventions, by issuing short-term bills or medium- or long-term bonds or debentures.^{14/} (A, B, C)

^{14/} See the Explanatory Note at the end of this document.

3.4 The Institution can obtain resources in addition to its capital:

- (a) Through loans granted by the Bank of Issue;
- (b) Through State-guaranteed loans granted by the International Bank for Reconstruction and Development (IBRD).^{15/} (A)

3.5 The Institution is not allowed to accept money on current account, but in order to secure the resources needed for its activities, which consist mainly of medium- and long-term industrial financing, the Institution can:

- (a) Accept deposits for a minimum term of two years against the issue of certificates of deposit made out to order or bearer;
- (b) Issue bonds to a total value of not more than three times its capital;
- (c) Contract loans or receive deposits for a minimum of one year from banks, financial establishments or insurance companies;
- (d) Obtain loans from the International Finance Corporation, with or without participation by the Corporation in the Institution's capital.^{16/} (B)

4.1 Part of the Institution's resources comes from the "Fund for Modernization and Capital Development". (A)

4.2 Part of the Institution's resources comes from funds placed at its disposal by the "Social Security Fund" under State guarantee. (A)

4.3 The Institution may also be entrusted with money from savings banks, national old age pension funds, accident insurance funds, etc.

^{15/} See the Explanatory Note at the end of this document.

^{16/} See the Explanatory Note at the end of this document.

V. ORGANIZATION^{17/}

State institutions: (A)
Private institutions: (B)
Mixed institutions: (C)

1. The shareholders
2. General meetings and extraordinary meetings
3. The Board of management

1.1 The rights and responsibilities of shareholders are laid down in the organic statutes of the Institution. (B)

1.2 A share entitles its holder to the rights laid down in the law and in the organic statutes of the Institution, including (subject to the provisions of those statutes) the right to vote at the General Meeting, the right to transfer shares to another person, the right of pre-emption in the event of an increase in the share capital, etc.

The rights and obligations inherent in a share pass with it to whoever its new owner may be.

A shareholder's responsibility is limited to the shares which he possesses, and a shareholder is only responsible for the debts of the Institution up to the total amount of the shares which he owns.

The subscription for and taking up of a share entail de jure acceptance of the statutes of the Institution and the decisions taken at its General Meetings. (B, C)

2.1 Validly held Ordinary or Extraordinary General Meetings represent all the shareholders of the Institution without exception, whether present or absent.

The rules regarding arrangements for calling meetings, the quorum needed for meetings to be valid, and the competence and all other aspects of General Meetings are laid down in the law on limited companies and in the statutes of the Institution. (B)

^{17/} See the Explanatory Note at the end of this document.

2.2 The competence of Ordinary and Extraordinary General Meetings and the conditions for holding such meetings are laid down in the statutes of the Institution.

General Meetings are only valid when attended by representatives of the participating State bodies. (C)

3.1 The Institution is managed by a Board presided over by a Managing Director. The members of the Board are appointed by the Council of Ministers and include:

- 1 representative of the Ministry of Finance;
- 1 representative of the Ministry of Industry;
- 1 representative of the Bank of Issue.

The competence of the Board of Management are laid down in the Statutes of the Institution. (A)

3.2 The Institution is run by the Board of Management, the members of which are elected at the General Meeting.

The number of members on the Board of Management and the qualifications and competence of such members are laid down in the Statutes of the Institution. (B)

3.3 The Institution is run by a Board of Management consisting of a maximum of members. The members representing the shareholders and the private institutions are elected at the General Meeting on a proportional basis laid down in the Statutes of the Institution. The State is represented by one member each from the Treasury, the Ministry of the Economy and Trade, the Ministry of Planning and the Bank of Issue.

The representatives of the Treasury and the ministries are appointed by ministerial decree; the representative of the Bank of Issue is appointed by the Currency and Credit Board.

It is the responsibility of the representative of the Ministry of the Economy and Trade to stop the implementation of any decision which he considers contrary to the current laws and regulations or to the industrial policy of the State.

The Chairman of the Board of Management must automatically bring such decisions to the attention of the Minister of the Economy and Trade, by the mere fact of their being opposed. Such decisions enter into force if the Minister has not settled the matter within eight days following the day on which the decision was brought to his notice.

The competence of the Board of Management is defined in the Statutes of the Institution. (C)

VI. OPERATIONS^{18/}

State institutions: (A)

Private institutions: (B)

Mixed institutions: (C)

FINANCIAL TRANSACTIONS:

The granting of loans and participation

Equity capital

Liquidation

1. The financial transactions that the institution is authorized to carry out shall be defined in the "Operating rules" prepared for this purpose by the management committee set up by a ministerial decree.

The operating rules shall inter alia take the following considerations into account:

- (a) Loan and participation operations should be oriented towards industrial enterprises that fall within the framework of the industrial development and promotion plan prepared by the Ministry of Planning;
- (b) Activities should be confined to operations that are not normally carried out by the ordinary deposit banks;

^{18/} See the Explanatory Note at the end of this document.

(c) A technical and economic study of the project should be made before a loan is granted or participation in the project is undertaken;

2. The Institution's shares cannot be the subject of any financial transaction. However, at the proposal of the management committee, approved by the Minister of Finance, they may be the subject of a transfer in favour of the Bank of Issue or a public financial institution.

3. The Institution may not be dissolved without the consent of the Minister of Finance, who shall decide on a suitable time and procedure for such dissolution. (A)

1. The various financial transactions that the Institution is authorized to carry out shall be determined in its organic statute.

The loans and credit granted by the Institution referred to under this law as well as participation by the Institution are subject to the following rules:

- (a) They may be granted only against real securities or bank guarantees. The amount of the loan may in no case exceed half of the value of the real securities given as collateral;
- (b) The amount of the loans and credits granted to one and the same enterprise may not exceed 25 per cent of the Institution's own funds (capital and reserves);
- (c) The total of loans and credits granted to one and the same enterprise, as well as the partners' shares and the participation in this enterprise, may not exceed the equivalent of 30 per cent of the Institution's own funds;
- (d) The total of the partners' shares and participation of any form whatsoever taken by the Institution may not exceed 75 per cent of its own funds. However, the Institution may invest up to 25 per cent of the total of its deposits whose term is more than five years in company shares and participation, without any restriction on the relevant ratio to its own funds.

2. The procedures for issue, subscription, transfer, placing in pawn and all other transactions regarding the Institution's shares shall be determined in its statutes.

3. The Institution may not be liquidated except under the terms and conditions fixed by the statutes and in the cases provided for by the law on joint stock companies. (B)

1. The operations of all kinds that the Institution is authorized to carry out shall be the subject of regulations prepared for that purpose in conformity with statutory provisions.

The operations for medium-term loans and advances granted by the Institution to an industrial enterprise shall inter alia be subject to the following conditions:

- (a) Loans and advances shall be granted for a minimum period of two years and a maximum period of five years;
- (b) Loans, advances and guarantees granted to an enterprise must be intended for the promotion or expansion of the enterprise and not for the repayment of prior commitments resulting from accumulated losses;
- (c) Any loan or guarantee operation in favour of an enterprise must be the subject of a previous economic study to verify the possibility of repayment by means of appropriations from the profits that the enterprise is capable of realizing, without risk of a decrease in its assets;
- (d) Loans, advances and guarantees must be accompanied by a mortgage or other real security, unless they are the subject of a guarantee by the State, an approved bank or a financial establishment.

2. The shares of the Institution may be the subject of any transaction provided for in the statutes and the law on joint stock companies. However, shares representing the holding of the State or the Bank of Iasuo may not be the subject of a transfer or any other transaction without the authorization of the Minister of Finance.

3. The Institution may not be liquidated except by a decree decided on by the Council of Ministers. The State reserves the right of pre-emption of the shares belonging to the private sector in the event that the latter should manifest a desire to relinquish all or part of its shares. The procedure and conditions for repurchase shall be determined in the Statutes.

In the case of the liquidation of the Institution, when the latter is benefiting by a medium- or long-term loan granted by the State and not yet repaid, repayment of such loan shall be postponed for the benefit of the private shareholders; it shall be payable only after the private shareholders have been completely satisfied with regard to the rights and claims inherent in the shares held by them. (C)

VII. EXEMPTIONS, PRIVILEGES AND ADVANTAGES^{19/}

State institutions: (A)
Private institutions: (B)
Mixed institutions: (C)

Fiscal exemptions

Financial support

Other privileges and advantages

With regard to all the operations concluded by the Institution in the framework of its activity, as defined in this law and in the Institution's statutes, the Institution shall benefit by the exemptions, privileges and other advantages enumerated below:

(a) During the entire period of its activity (or for years after its establishment), it shall be exempt from all taxes, stamp duty and fiscal and municipal charges of any nature whatsoever levied on capital, reserves, income, turnover or the Institution's real estate and all its movable and immovable property in general; (A, B, C)

^{19/} See the Explanatory Note at the end of this document.

- (b) All deposits and savings accounts received by the Institution, as well as loans granted to the Institution by local public and private banking and financial establishments for a period longer than two years, shall be exempt from all taxes or charges of any nature whatsoever; (A, B, C)
- (c) Loans granted to the Institution by the IHD (World Bank), the IFC (International Finance Corporation) or any other international financial institution, as well as loans granted by any foreign financial or banking institution, whether public or private, shall be repaid free of all taxes, commissions or any other charges whatsoever. Furthermore, the transfer of the sum necessary for the repayment of the loan shall not be subject to any restriction under exchange control or any other regulations; (A, B, C)
- (d) The State (or the Bank of Issue) shall advance to the Institution the sum of as an interest-free loan repayable in equal six-monthly instalments, the first instalment to be paid years after the payment of the loan to the Institution; (A, C)
- (e) The State (or public institution) may guarantee loans granted by the IHD or loan bonds issued by the Institution, when the amount of the loan or that of the bonds issued does not exceed three times the fully paid up company capital; (A, C)
- (f) The State shall bear any losses, and similarly reserves the right to any profits, resulting from a change in the parity of the local currency with relation to the currency referred to in the loan granted by the IHD; (A)
- (g) The State may place at the disposal of the Institution the real estate necessary for the exercise of its activities, without requiring the payment of rent or other charges; (A)
- (h) The Institution's property and rights of any origin or type whatsoever shall enjoy the privileged status of amounts due to the public treasury and shall for this purpose benefit from the summary procedure established for the collection of public money. (A, C)

EXPLANATORY NOTE

The purpose of this explanatory note is to clarify certain provisions in the foregoing statutes which bear numbers referring the reader to this note.

Since the introduction already includes the answers to most questions that might arise on a reading of the text, we have confined references to this Note to the following points, with which we were not able to deal at length in the introduction:

- (1) In Chapter I "Establishment", the various alternative provisions are formulated only in the light of the Institution's legal status (public or semi-public, private, mixed), without taking into account its nature or aims, which are mentioned in the subsequent chapters dealing with "Purposes" and "Scope of activities".
- (2) The same chapter mentions a public institution owned exclusively by the State and operating under private law. In this respect we wish to draw attention to the pronounced tendency to grant private law status to public institutions whose purpose is commercial activity (banking, financing or other) in order, on the one hand, to give them the necessary flexibility and, on the other hand, to avoid an imbalance between public and private institutions operating simultaneously in similar branches of activity. It is true that, notwithstanding their private law status, the legislator has granted financial institutions of public importance and of a social nature special privileges and advantages that often transcend the framework of private law; however, these privileges have been granted on the basis of the institution's objectives, without discrimination between public and private institutions, the only criterion being the objective in view.
- (3, 4 and 5) Since many provisions may be common to State, private and mixed institutions, the alternatives given in Chapter II, "Purposes" and Chapter III "Activities"... relate rather to the nature of the activity and the range of operations of the institution in question (A1, B1, C1, A2, etc. ...).

(b) and (c) refer to the guarantees given by the local financial institutions for medium and long-term loans obtained from abroad, in particular from international agencies such as the World Bank or the International Finance Corporation, it is necessary to point out:

(a) The predominant role played by the financial institutions in obtaining loans from abroad intended for local industrial or other enterprises, while the organization and technical details of the cadres of such institutions often make them the only valid negotiators insofar as the foreign lending agency is concerned.

(b) While the IMF, an agency affiliated to the I.M.B., grants loans without a guarantee from the borrower's State, the I.M.B. itself demands State guarantees for its loans.

(c) This is the case in particular with the "Credite National" in France, the "Credite National" a financial and capital-mobilization agency which was established after World War I in order to finance the repair of war damage, extended its activities to taking over a large sector of the financing of business, by granting or raising medium-term advances intended inter alia to facilitate the establishment, development or revival of industrial ventures.

It is a normal activity of a financing agency to grant advances out of its own resources and on its own account. However, its intervention as a State agent and source of credit, granting advances out of its own funds but for the account of the State, or merely as an agent for studies and an executive agency granting advances on the resources that are placed at its disposal by the Treasury, represents a special activity that we have considered it valuable to explain briefly below, owing to the interest that it might have for the developing countries.

The shortage during World War II made it desirable for industry to turn to the manufacture of substitute products. Such manufacturing activity was expected to disappear when the situation returned to normal, and the industries in question could not find the necessary capital to finance a transient and uncertain activity. By a law dated 23 March 1941, the French State intervened to grant a guarantee for capital invested in such enterprises; later, it became clear that such provisions could be used in order to promote certain

industrial activities that were valuable for the country but whose establishment might possibly involve such large risks that private capital would have been reluctant to come forward. The law of 23 March 1941 was consequently validated by the order of 1 September 1945. Since the granting of a State guarantee obviously implied a study of the loan and the utilization of an appropriate technique, the "Crédit National", was applied to for this purpose; in such cases it worked as an agent of the State and as a source of credit guaranteed by the State.

During World War II, the French State began a policy of advances to certain branches of industry. These so-called "economic advances" were granted on the recommendation of special committees that consisted mainly of representatives of the State. The Crédit National intervened only as a study and executive agency, for the distribution of some advances from the modernisation and capital equipment fund.

(8) This is true of banks specializing in foreign trade. As an example, we shall quote the "Banque Française de Commerce Ex-Étranger". Although it is established in the form of a joint stock company, this bank lies within the orbit of the public authorities. Only the Banque de France, the Caisse des Dépôts et Consignations, the Crédit National, the Caisse Nationale de Crédit Agricole and the four nationalized banks may become shareholders of this bank. Its board of management and its chairman, who is also the director-general, are appointed by decree at the proposal of the board of management. It is a semi-public establishment with [special] legal status and its purpose is to promote foreign trade. The special risks affecting export operations and the delay in the payment of the exporter for the goods he delivers, which is often inevitably very long, explain why it was set up as a specialized establishment working with the indirect support and under the aegis of the State. Its intervention in the financing of industry comprises the following three phases:

- (a) Financing for the constitution of stocks before obtaining an order;

- (b) Financier during the operational phase (materials, labour and expenses of every type);
- (c) Financing after exportation by rediscounting the bill representing the exporter's claim or by guaranteeing the bill in order to permit its mobilization with the institute of issue (conditional guarantee).

(11) To meet urgent economic needs, the State takes the initiative in a sphere that is normally the province of the private sector, reserving the right to offer for public subscription later, at an expedient moment, all or part of the shares of the institution in whose establishment it took the initiative.

(12) The various types of shares in France are as follows:

- (a) The action de capital or share proper;
- (b) The action de liquidation, that is to say, the type of share given by the company to shareholders who have been repaid through the redemption of actions de capital. It constitutes a kind of premium that is negotiable on the same basis as the actions de capital and gives entitlement to dividends but no claim on the company capital.
- (c) Actions d'apport or actions de fondation (venders' shares) are those given to founding members. They correspond to the contributions in kind made to the company by its founders. If these contributions are neither movable nor immovable property whose value can be assessed under the law but consist of imperishable assets (know-how, reputation, goodwill), the bond received in exchange is referred to as an action industrielle; the action d'apport enjoys the same rights as the action de capital, but the action de liquidation gives entitlement only to a dividend.
- (d) The part de fondateur (founder's share), also referred to as a part bénéficiaire, gives certain persons a share of the profits made during the business year in return for services rendered to the company by the aforesaid persons either at the time of establishment of the company or during the period of operations. There is some

analogy between such shares and the actions industrielles. Like actions d'apport, founder's shares may not be issued until the capital has been fully paid up. They are negotiable on the same basis as the actions de capital but only after the company has been finally constituted. They bear no entitlement to the company capital. They are statutorily remunerated. The bearers are not represented at general meetings.

- (e) The actions de prime (promotion shares) constitute a remuneration to third parties or founders for services rendered to the company. There is an analogy between promotion shares and founder's shares. However, the promotion share gives its bearer the right to attend general meetings and to share in the distribution of the company's capital in the event of its dissolution.
- (f) The actions privilégiées (preference shares) give privileged status in the distribution of the company's profits or capital. Sometimes, this privilege consists of granting the shareholder a fixed rate of interest over and above the dividend and sometimes of granting interest at a fixed rate, payable before any distribution of monies.

(13 and 16) The International Finance Corporation (IFC) often acts in two ways, first, financing by granting advances and, secondly, through participation in the enterprise financed.

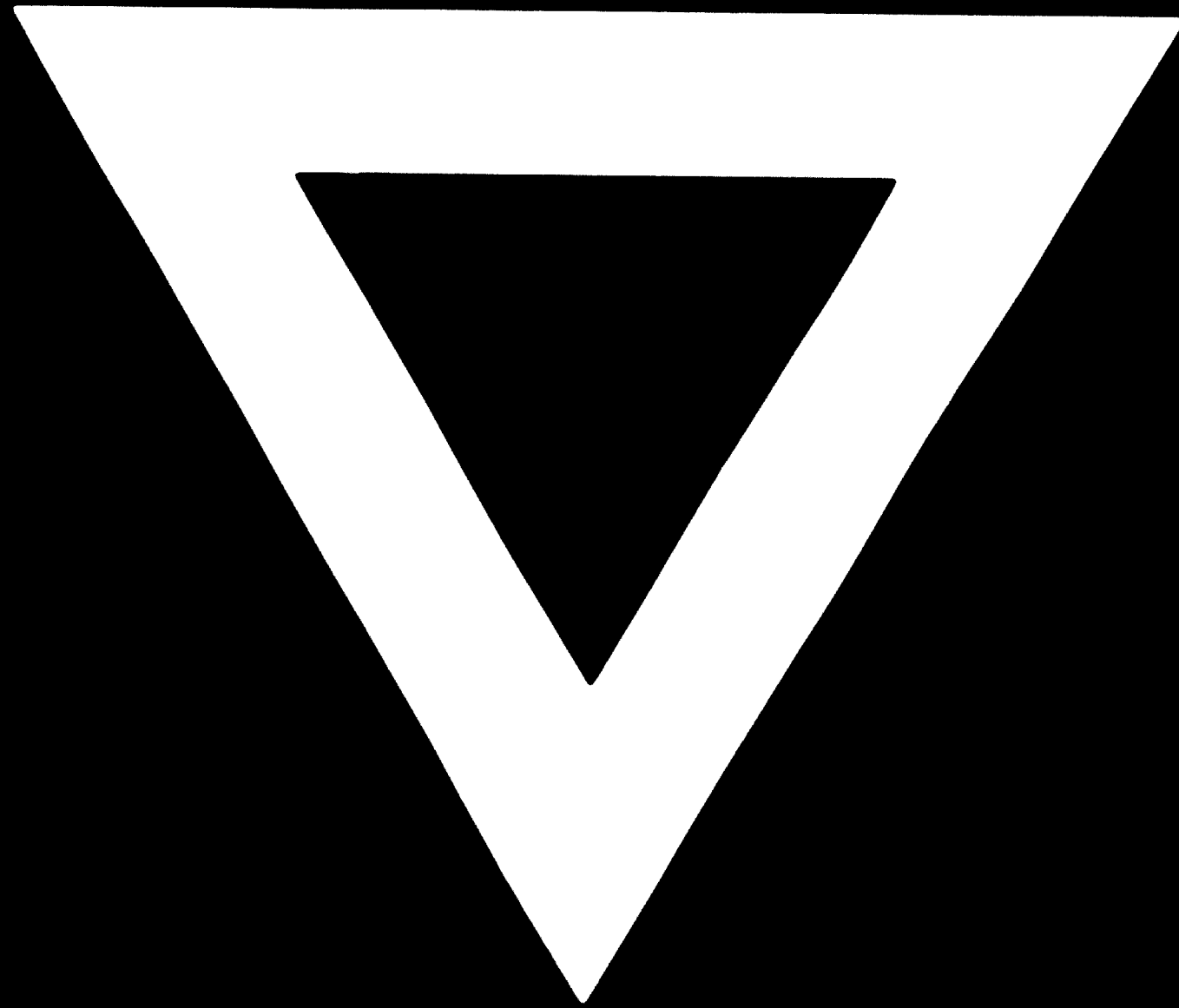
(14) Since most financial companies practice the system of medium and long-term credit, they have either no right, or only a limited right, to accept sight or short-term deposits from private individuals. Generally, only fixed-term deposits (two or three years) are authorized. This explains the fact that they generally apply to the financial market to obtain the necessary funds.

(15) As mentioned above, a State guarantee must accompany loans by the IFC; however, the IFC grants loans without such guarantee.

(18) Since we are dealing with the documents establishing industrial finance institutions, we have mentioned in the chapter on "Operations" only the broad outlines of the operations carried out; such operations will have to be enlarged upon in the organic statutes or, above all, in the "Operating rules".

(19) In this chapter ("Exemptions, privileges and advantages") it will be noted that in general private institutions enjoy exemptions, privileges and advantages on the same basis as public institutions. As explained in the introduction, these privileges, of every type, are granted on the basis of the social nature and obligations of such institutions, irrespective of whether they are publicly or privately owned.





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