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# NOTE ON THE INTERNATIONAL INVESTMENT GUARANTEE CORPORATION

by

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In his letter WB/560/65 from Washington, dated 23 December 1965, Mr. Mohamed Nassim Kochman, Administrator of the International Bank for Reconstruction and Development (IBRD) sent to Mr. Elimane Kane, Minister of Development, Governor of the IBRD, a document concerning the main points to be investigated with regard to multilateral investment guarantees. This letter, a copy of which was sent to the Minister of Finance, was accompanied not only by the above-mentioned document, reference R 65 - 187/Fr, but also by a covering letter from Mr. George D. Woods, President of the World Bank, dated 6 December 1965.

Letter WB/560/65 sketches the origin of the International Investment Guarantee Corporation and mentions the various stages of its development from March 1962 to June 1965, which led to the proposals contained in document R 65 - 187/Fr, which has been submitted to all the Governors of the IBRD for consideration.

## THE MAIN POINTS TO BE INVESTIGATED WITH REGARD TO MULTILATERAL INVESTMENT GUARANTEES

A) Organizational questions:

Membership: First of all it should be remembered that the document submitted to us for consideration is a report prepared by OECD. It suggests that all (developed) capital-exporting countries as well as the (developing) capital-importing countries should participate in the proposed system as members of an "International Investment Guarantee Corporation". Membership of the Corporation would not be confined to members of the Bank. Members of the Bank and "all other Governments invited by the Bank" that had agreed to join by a specified date would become foundation members of the Corporation, after which membership would be open to any Government proposed by a majority of the members of its Administrative Board and accepted by its Council.

This part of the report raises the following questions:

Questions: Should the Corporation be open to Governments that are not members of the Bank? If so, on what conditions? (It is suggested that examination of questions related to the procedure for the admission of members other than foundation members should be deferred until after discussion on the structure of the plan).

Answers: The Corporation should be open to Governments that are not members of the Bank. In that case, they should be sponsored by Governments Members of the Bank or should pay some contribution that would enable them to enjoy the privileges of Member Governments. It is also conceivable that all Governments should be eligible for the benefits provided by the Corporation on special conditions that would be worked out simultaneously with decisions on procedural questions. On the psychological and political level, this opening up of the Corporation would constitute a guarantee for the defence of all interests at stake. Moreover, the Corporation would be all the more powerful if it had a large number of members.

Membership categories: The OECD report proposes three membership categories: contributing members, developing country members, and consultant members. After defining each of these categories and their responsibilities and privileges, this part of the OECD report raises the following questions:

Question: Should there be a category of "consultant members" for capital-exporting countries that are not prepared to enter into commitments regarding loss-sharing?

Answer: It all depends on the capital market and the conditions under which the proposed International Investment Guarantee Corporation would operate. If the "contributing members" are numberous enough and are prepared to provide all the capital necessary for the "developing country members", they will be the dominant factor, so that "consultant members" wishing to invest their capital in the developing countries will be forced to fall in line with the contributing members, by undertaking commitments concerning loss-sharing.

If, on the other hand, it is essential to call on the consultant members in order to obtain all the capital needed by the developing countries, the Corporation will have to be more flexible and admit a category of "consultant members" comprising capital-exporting countries that are not prepared to enter into commitments regarding loss-sharing. This problem should be approached with the pragmatic attitude of businessmen, to whom advantage and profit are the determining factors in any action, even if it is apparently philanthropic. The precise conditions for the relevant commitments could be worked out during the first years of the Corporation's life.

In the first phase, the proposed structures should be fairly flexible.

Structure: The OECD report proposes that the system should be managed by an International Investment Guarantee Corporation that would be set up in the framework of the institutions in the World Bank Group. This document suggests the constitution of a small Administrative Board that would have "exclusive competence" for the conduct and financing of guarantee operations. The proposals in this part of the report seem to be acceptable on the whole, but an attempt will be made here to reply to the various questions that they raise.

Questions: a) Is the general structure outlined in the previous paragraphs satisfactory?

b) Is the voting system proposed for the Board acceptable?

c) Should the voting rights vested in a member through the election to the Administrative Board depend on the commitments he has undertaken with regard to loss-sharing? If not, how should voting rights be determined?

d) Should all members of the Administrative Board have the same voting rights? Or, on the contrary, should voting rights of the Board members be related to the loss-sharing commitments entered into by the members who have elected them?

e) Should recipient countries which do not participate in loss-sharing be represented on the Administrative Board?

f) If the Bank is associated in a guarantee system, is there not a risk that it will be involved in serious difficulties, the prospect of which would compel it to refuse to manage such a system? For example, could such participation possibly embarrass the Bank in its relationships with its capital-importing members in the event that the acts of a host country might lead to a claim in which a guarantee would be invoked? Would the answer to that question be affected by the nature and extent of affiliation to the Bank, the form it would take and the provisions for the settlement of claims?

Answers: a) Yes. This point should be further clarified once the articles of association have been worked out and approved.

b) Yes. It seems realistic and just to take into account, by means of a weighting system, the commitments undertaken by each country with regard to loss-sharing. Such a system would be likely to encourage emulation and even competition.

c) Yes, and the answer to question b) above is on the same lines. Otherwise, a way would have to be found of having the losses covered by a financial agency independent of the "contributing members", which would place all categories of members on an equal footing, as, for example, in the United Nations, where the voting rights of the members do not depend on their contributions but solely on the fact of their being members of the Organization. However, the United Nations is a non-profit organization, which puts the matter in a different light.

d) The answers are practically the same as in the case of question c). The same criteria should be applied in deciding on the position to be adopted.

e) Yes, since in any case, capital is invested in these countries and they have some responsibilities, if not financially at least legally and morally. It even seems essential that they should be members of the Board.

f) It is clear that, if the Bank is associated in a guarantee system, there is a risk of exposing it to serious difficulties. But that prospect should be discussed and accepted in advance, and there is no question that the Bank would enter into a course of action without knowledge of the consequences. Furthermore, it is clear that, in the event of a claim, the Bank might be exposed to embarrassment in its relationships with its capital-importing members, but that again is a question on which agreement should be reached beforehand. Therefore, it is conceivable that, before the guarantee system is worked out in its final form, the investment codes of the member countries should be ascertained, compared and harmonized, and that a round-table meeting should be organized with the various categories of members in order to consider to what extent the Bank could be associated with this system. As far as Mauritania is concerned, which is already a member of the Bank, it could make reference to the relevant provisions of its investment code.

Moreover, the view could be taken that the reply to this question depends not only on the considerations mentioned above but also, and as a consequence, on the nature and extent of affiliation to the Bank, the form that it takes and provisions for the settlement of claims.

## B) Questions concerning the activities of the Corporation:

The scope of protection: The OECD report proposes that the Corporation should be authorized to issue guarantees against all political risks. Commercial risks and losses due to fluctuations of exchange rates would not be covered. The report enumerates the various eventualities that might arise, for which solutions should be found through specific provisions in the articles. Hence. the following questions readily come to mind regarding the scope of protection:

Questions:

a) Should the articles authorize the provision of guarantees giving complete coverage against all political risks? Or, on the other hand, should they exclude certain risks, such as that of "indirect" or "masked" expropriation?

b) Are guarantees against the risk of devaluation admissible?

c) Should the articles specify quantitative or qualitative limits? For example, should they require the contributor to take out his own insurance for a specific portion of any loss? Should they lay down the duration of guarantees?

d) Should the articles exclude any particular category of enterprises, for example, mining and quarrying, from eligibility for guarantees? If not, should such power be granted to the Corporation?

<u>Answers</u>: a) It all depends on the relationships between the Bank and the members of the Guarantee Corporation. Also, everything depends on the results of the round-table meeting advocated in the previous replies, whose purpose is to ascertain the views of both sides (capital-importers and exporters).

In fact, expropriation measures and other forms of dispossession vary from one country to another. They cover many forms of dispossession for which the terminology is far from uniform, partly because of the diversity of legal systems.

It would take too long to dwell here on the different legal and constitutional provisions, so that only provisions explicitly affecting foreigners (and therefore capital exporters) will be summarized here:

When constitutional provisions regarding the general problem of dispossession are aimed explicitly at foreign nationals or foreign companies, their purpose is usually to prohibit foreigners from claiming any right or special compensation to which the nationals of the country in question would not be entitled. In most Latin American countries, these provisions also include the "Calvo clause", which deprives foreign nationals of the right to invoke diplomatic protection.

In some cases, the constitution may specify the length of the non-residence period after which the ownership rights of a foreign national or a foreign country may lapse, for example, in Haiti, where this period is fixed at two years.

Under these conditions, it will readily be understood why the capital-exporting countries wish to have guarantees against political risks, and it can be agreed that, in order to encourage investment, the articles should authorize the granting of guarantees to cover political risks in full. The whole question is to ascertain the importance of the International Investment Guarantee Corporation in the general framework of international intervention for the encouragement of the economic and social development of the young countries. The answer to the question raised therefore essentially depends on the climate of confidence created by the capital importers and the domestic legal provisions of the exporting countries with regard to guarantees for foreign investment.

b) On this point, a qualified answer should also be given, in the light of a number of considerations.

The first consideration is that of the capital market. If the importing countries are sufficiently numerous and competitive with regard to the investment of capital, each should be allowed to take its chance and, in this event, the International Corporation will need no guarantees against the risk of devaluation.

On the other hand, certain countries have domestic laws providing guarantees for the capital of their nationals abroad (e.g. the Federal Republic of Germany) and, under these conditions, it does not seem necessary to add to the responsibilities of the International Corporation. However, a comparison of various constitutional or legislative points of view of contributing members of the International Investment Guarantee Corporation would help to determine the general position that should be adopted with regard to the covering of devaluation risks by the International Corporation.

c) In view of the considerations analysed in paragraph b) above, question c) can be answered in the affirmative.

d) In international agreements on the working of mines, States are prepared rather to agree to some restriction of their territorial integrity than to grant positive rights.

For example, the frontier agreement between Norway and the USSR provides that prospecting and mining in the vicinity of the frontier should be carried out in such a manner as not to cause damage to the territory of the other party and that, in a zone of a given width on each side of the frontier, such work will be prohibited in principle and can only be carried out in exceptional circumstances and after agreement between the competent authorities of the contracting parties.

States desirous of facilitating the working of mineral deposits lying on their frontiers have sometimes concluded definite agreements regarding underground workings, the limits of which differ from the surface frontier line. The legal effects resulting from the relationships between ownership of the mine and ownership of the land as well as the real rights encumbering the latter, particularly claims for compensation arising out of damage through mining, lie within the jurisdiction of the State in which the land is situated.

Under these conditions, it will be understood why the OECD report raises the question whether the articles of the International Investment Guarantee Corporation should exclude any particular category of enterprises, for example, mining and quarrying, from the guarantee. In fact, if direct bilateral agreements can settle and guarantee the conditions for investment in any particular sector, it becomes useless to burden the International Corporation with that task. The answer will be conditioned by the capital markets and the political systems in the three categories of "members" of the Corporation.

If the investors could not obtain such guarantees by means of bilateral agreements, it would become necessary, in order to encourage "contributing members", that the articles should give the International Corporation the right to rule on the advisability of excluding, or not excluding, any particular type of enterprises from the guarantee, according to criteria that would be defined and drawn up in advance.

Eligible investments: new investments:

The OECD report proposes that only "new" investments should be guaranteed. Those granted to modernize, expand or develop an existing enterprise or an on-going project would be considered as "new". The profits or interest reinvested could be guaranteed by decision of the Administrative Board. Chronologically, an investment would be considered as new if it dated from a period after the granting of a guarantee. Nevertheless, an investment originally in the hands of a public development finance institution, such as the International Finance Corporation or a regional development bank, could be guaranteed as a "new" investment if it were later purchased by a private investor.

The main questions arising regarding the criteria of "newness" are as follows:

<u>Questions</u>: a) Should the guarantees be restricted to new investments? Or should existing investments also be eligible for guarantees? (It is tentatively suggested in the report that the draft articles should give a definition of "new" investments that would cover those authorized for the above-mentioned purposes).

b) Should investments authorized for the purpose of moderni ing, expanding or developing existing enterprises be eligible for guarantees? (It is tentatively suggested in the report that the draft articles should give a definition of "new" investments that would include those authorized for the above-mentioned purposes).

c) Would the purchase of shares of an existing enterprise belonging to nationals of the host country be eligible for guarantees? If that were not to be the case as a general rule, should an exception be made in cases in which the shares are purchased in relation with an investment made for the purpose of modernizing or expanding the enterprise in question? In that context, would the fact that the holding that was acquired constituted a majority alter the situation?

<u>Answers</u>: a) It is considered that guarantees should be restricted to "new" investments as defined by the draft articles. Any investment, even an old one, can become a "new" one when it is intended for modernizing, expanding, or developing an enterprise. This restriction would lead to emulation and competition between the "contributing members" for the benefit of the capital-importing countries.

b) Yes, for the reasons stated in paragraph a) above.

c) Before answering this question, it would perhaps be advisable to examine rapidly the complex of measures applicable both to national and foreign investment in a number of countries.

The criteria for the encouragement of investments in some sectors of the economy help to clarify our thinking regarding the choice of solutions to be adopted.

In fact, in a number of cases, laws aimed at encouraging investment offer a way of ensuring the development of some particular industrial or economic sectors.

For example

In Chile, under legislative decree 258 of 30 March 1960 regarding foreign investments, some of the guarantees provided for can be granted only to enterprises that devote themselves exclusively to the production of goods for export, or in favour of foreign capital exclusively intended for the establishment of basic industries that did not previously exist in Chile (article 8). The guarantees in question can also be granted to new enterprises created under law 11.828 (the "copper" law - article 14).

In Ghana, the Minister of Finance is authorized to rule whether an investment envisaged by a company that is constituted and domiciled in the country and wishes to create a "pioneer" industry is in the public interest. If so, he must certify that it is a "pioneer" company and therefore meets the conditions for eligibility for the special advantages provided under the law.

In Jordan, pursuant to law 27 of 2 April 1955, for the encouragement and orientation of industries, establishments engaged in certain types of activity are entitled to special privileges and exemptions provided that they meet certain conditions. The activities in question include in particular the refining of cane sugar and the mining of potash and other chemicals in the Dead Sea area.

Moreover, the Council of Ministers, at the suggestion of the Economic Development Commission, may extend the grant of these privileges to enterprises that engage in "major economic development projects" or to industries different from those that existed at the time of the promulgation of the law.

In the Islamic Republic of Mauritania, law 61.122 laying down the code for private investment has established special types of status in order to encourage "priority" enterprises. Article 5 of that law is worded as follows: "To benefit from priority enterprise status, enterprises already established on the date of promulgation of this law must carry out a measure of expansion involving a minimum investment equal to that defined in article 3; moreover, the expansion envisaged must permit a 50 per cent expansion of the enterprise's production potential".

All these examples refer to measures applicable both to foreign enterprises and those owned by the nationals of the host country. The criteria for the guarantee of investments are almost all based on the need for these investments for the purpose of modernizing or expanding enterprises that either already exist or are to be set up and that are all aimed at the economic and social development of the host countries. Under these conditions, it would also be justifiable to stipulate that the purchase of shares of an existing enterprise belonging to nationals of the host country should also be guaranteed, provided that the transaction met certain conditions such as those studied above. If that were not to be the general rule, exceptions might be agreed to if the shares were purchased in relation with an investment made for the purpose of modernizing or expanding the enterprise in question.

In certain countries, such as the Islamic Republic of Mauritania, the investment code lays down certain standards with regard to the proportion of holdings or a minimum of capital invested on the basis of which the enterprises in question are granted the benefits of priority status (50 per cent increase in the production potential of the enterprise or an investment of at least FCFA 50 million on the date of promulgation of the abovementioned law 61-122). That is tantamount to agreeing that, in the case in point, the fact that the holding acquired is a majority one alters the terms of the problem in a manner favourable to the guarantee of shares bought from the nationals of the host country.

<u>Questions</u>: d) Should reinvested interest and profits be considered as new investments?

e) Should investments authorized by the International Finance Corporation and the other public development financing agencies be eligible for guarantees when they are ceded to private investors?

<u>Answers</u>: d) Yes. That would help to encourage the local reinvestment of profits and interest in order to expand or modernize the enter-

prises in question.

e) Yes, if these investments meet the guarantee criteria examined above.

The form of the investment:

The OECD report suggests that the articles should define the investment in a fairly broad manner, so as to include not only loans and the subscription of capital but also any other assets with economic value. Thus the guarantee would not be limited to direct investments but would also cover loans (for at least five years), portfolio investments and non-monetary investments (for example, patent rights and contractual rights). The authors propose that investments in the form of bonds issued by the State (or public institutions) and launched by developing countries on the capital markets of the industrialized countries should also, in principle, be considered as eligible for guarantees. According to the authors, the Corporation would in practice apply a more restrictive policy and, at least at the beginning, the guarantees would be accorded first of all to direct investment and non-commercial loans. Supplier credits and operations for the refinancing of debts would be excluded from the guarantee.

The main questions arising regarding the form of the investment are as follows:

Questions: a) Should all forms of foreign private investment be eligible for guarantees? Or, should the articles exclude some of them, such as supplier credits, loans for less than five years or patents and contractual rights?

b) Should the purchase of bonds issued by States or public institutions be eligible for guarantees? Or should the guarantees be restricted to private enterprise investments? If the subscription of a public loan can be guaranteed, what would be the extent of protection to be granted for such an investment?

Answers: a) Legislative measures protecting foreign property are divided into two main categories:

1) Measures taken by the State of origin of the investor in order to guarantee investments abroad; and

2) Measures taken by the various countries to guarantee foreign proprietors against risks.

The latter tend to deal mainly with compensation in the event of nationalization and particularly with the transferability of the compensation paid. Measures in the first category, if one considers the way in which they are applied in the country that promulgates them, are quite analogous to commercial insurance, which gives a guarantee against a certain risk or a certain complex of risks, compensation being payable by the insurer when the eventuality materializes.

But there are also international agreements that guarantee various forms of foreign investment, the general principle of which could be summed up as follows:

In some agreements concerning free trade and economic integration concluded between various Latin American countries, for example, each of the contracting States undertakes to extend equitable treatment to investments of capital made by nationals of the other State and consequently to refrain from adopting discriminatory measures that might be prejudicial to the rights legally acquired by such nationals. Furthermore, within the limits of their constitutions, each of the parties grants the nationals of the other parties the benefit of national treatment with regard to the investment of capital.

Therefore, some investments protected either by measures of the State of origin of the investor or under international agreements could be excluded from the International Corporation's guarantees, either because they are short or medium-term loans or because they are related to patents or contractual rights whose protection is largely assured by domestic banking legislation.

b) We have examined above the domestic measures that Governments take in order to guarantee certain investments. We have also noted that there are international agreements mainly guaranteeing foreign securities. In principle, under certain legislation, host countries join with the foreign enterprises in order to monitor or harmonize the activities of enterprises to which Governments give their full protection and guarantees (that is the case with mixed economy companies). In these cases, it seems to be superfluous for the Corporation to guarantee the purchase of securities issued by States or public institutions unless there is no guarantee system existing in the countries in question, which would be surprising.

<u>The origin and purpose of the investment</u>:

The OECD report proposes that guarantees should be confined to investments whose "country of origin" is a capital-exporting member country and that are made in a developing member country (including territories dependent on capital-exporting member countries).

This part of the report raises the following questions:

<u>Questions</u>: a) Should guarantees be restricted to investments originating in the developed countries? Or should they be applicable to investments originating in a developing country? If so, what provisions should be made regarding loss-sharing?

b) Should guarantees be authorized on investments made in developed countries in which the flow of capital is hampered by political risks. (It is tentatively suggested in the report that the draft articles should permit a guarantee only for investments made in developing countries and in territories dependent on capital-exporting countries).

<u>Answers</u>: a) It is considered that guarantees should be applicable to all investments including those originating in a developing country and carried out in another developing country. Under these conditions, the sharing of losses should be directly proportional to the volume of capital invested. In fact, it is probable that the volume of capital originating in developed countries would be greater than that invested by developing countries, and in that case an equal sharing of losses among all exporters of capital

would not be equitable and would even discourage initiative on the part of young States.

b) The purpose of the International Guarantee Corporation is to encourage the inflow of capital into the developing countries. Under these conditions and taking into account the point of view of the draft articles, it is not desirable to authorize guarantees by the Corporation on investments carried out in developed countries in which the flow of capital is hampered by political risks. Moreover, it should be emphasized - as has been mentioned above - that on the whole the developed countries have worked out guarantee systems for capital exported into other countries.

Government approval:

The OECD report suggests that a prior condition for the guarantee should be approval of the investment both by the country whose nationals make that investment (hereinafter referred to as the promoting member countries) and by the host country. Each country would be free to decide on the form, procedure and conditions under which its approval would be given.

The report envisages that the host country would give its approval case by case. Approval by the promoting member country would entail for the latter a contingent loss-sharing commitment corresponding to the arrangement proposed by the authors of the report. They expressed the hope that the contributing members would agree in advance to commitments that would follow, for them, from the application of this formula to any investment which, in the opinion of the Administrative Board, satisfied the general criteria of eligibility for the guarantee that were adopted by common consent by the contributing members; in that way, these members would delegate to the Board the power of approving the investment in question. As will be seen below, it would be stipulated that every contributing member would specify the ceiling of loss-sharing that he was prepared or authorized to accept.

This part of the report raises the following questions:

Questions: Is it desirable to draw up a provision that the contributing members would agree in advance on commitments regarding loss-sharing by them -

up to a ceiling to be fixed for each country on its own account - with regard to investments which, in the opinion of the Administrative Board, satisfy the eligibility criteria jointly established by those members?

Or should it be stipulated that, as far as the guarantee is concerned, each investment should be the subject of explicit approval on the part of the capital-exporting country concerned?

Answers: The first system would be likely to standardize and facilitate guarantee procedures. For the developing countries, it would encourage confidence in the will of the contributing countries to participate effectively in their economic and social development. This system would hardly be acceptable to all contributing countries unless they were really certain that political risks of dispossession were ruled out and that in any case the investments that they agreed to were profitable.

On the other hand, the second arrangement seems to be more realistic. In most international agreements the guarantees given by the host countries to investors depend on the nature of the investment and on economic, geographical and even psychological considerations. Under these conditions, the two contracting parties may negotiate with full knowledge of the facts the guarantee conditions as well as the form that should be given to them. I support this second system which, incidentally, is that adopted in the French-speaking countries and the EEC member countries.

The economic development criterion:

The OECD report proposes that no guarantee should be issued "except when it appears that the investment will make a significant contribution to the economic development of the host country". In the opinion of its authors, that would not imply the adoption of quantitative criteria, and normally the Corporation would not have to rule on the economic value of investments approved by the host country and by the promoter member country.

In this context, the following questions arise:

Questions: a) Should the articles enunciate a criterion for "economic development"? Should approval by the host country and the promoter country be taken as sufficient proof that the investment is economically significant or should the Corporation itself make an independent assessment? In the latter case, would it have to assess the value of the investment proposed, that is to say whether it was judicious from the economic point of view, whether the arrangements made for its management were sound, etc. If not, what matters should normally be studied by the Corporation?

b) Should the management have the right to reject requests for guarantees related to projects that seem somewhat frivolous or rather injudicious from the technical or economic point of view, without referring the matter to the Administrative Board?

Answers: a) The articles should state an "economic development" criterion that would serve as a reference for all investments. Consideration should be given to defining this criterion in a manner that took into account all the possible factors and all the aspects of "economic development", in particular as far as the young States in the Third World are concerned.

Approval by the host country and the promoter country could be taken not so much as sufficient proof but rather as necessary proof that the investment is economically significant. On the basis of this approval the Corporation should make, if not an independent assessment of the investment, at least one that took into account the criterion defined in the articles, and also assess the integration of the investment in the whole body of investments capable of being adopted by all members of the Corporation. The Corporation, taking into account the above considerations, would therefore have to assess the value of the proposed investment by placing it in a more general framework. That procedure would constitute a higher-level selection measure for all operations eligible for guarantees by the International Corporation. Furthermore, it would make possible a kind of classification and planning of the various investments proposed.

b) The management could be given the right to reject guarantee requests in relation with projects that seem somewhat frivolous or rather injudicious from the technical or economic point of view, without referring the matter to the Administrative Board. However, arrangements might be made for possible appeal, in the case of dispute, to arbitration by the Administrative Board, whose decision would be final. That provision would protect the interests of bona fide investors and would encourage them.

Treatment of the foreign investor:

In this part the OECD report does not make any explicit link between the guarantee system and the rules applicable to foreign private investment. It merely suggests that the articles should stipulate that in determining the scope and nature of guarantee operations, the Administrative Board should take into account any commitment that developing countries had assumed through international agreements or that they had made with investors related disputes: the authors of the report consider the various legal aspects that might be raised, and the following questions arise:

Questions: Should a link be established between the multilateral guarantee system and rules concerning the treatment of foreign private investments? Should such rules be incorporated in the articles of the Corporation? If not, should the articles restrict the investment guarantee to countries which (i) have either adopted similar rules including those referring to the settlement of disputes by virtue of an international agreement, domestic law or agreements made with investors, or (ii) that have the reputation, which is justified in the eyes of the Corporation, of treating private investment equitably? Failing such stipulations in the articles, should that nevertheless be the policy of the Corporation? Should the articles (or the policy of the Corporation) favour the acceptance of rules concerning the treatment of foreign private investment? For example would it be desirable to reduce the rate of premiums demanded in the case of investments intended for a country that has accepted such obligations either explicitly or in practice?

Answers: It has been pointed out above that investment guarantee measures can be divided into two major categories: those taken by the countries whose nationals are investors and those worked out by the capital-importing countries. Both types are intended to protect capital, and to promote the flow of resources either by facilitating transfers or by applying to foreigners the same treatment as to national investors. Moreover, it has been pointed out that constitutional or legislative measures regarding nationalization or the expropriation of foreign property vary from one country to another and from one economic activity to another. In conclusion it can be stated that at the international level there are not yet any measures capable of providing an absolute and total guarantee for the property of foreigners and that Governments can always take refuge behind arguments of "public utility", "social" welfare, etc. in order to take possession of the property of national or foreign private enterprises. In view of the frail protection of their capital, investors hesitate to invest in countries whose political stability is not assured or that have no legislation likely to encourage such operations. Incidentally, that explains the need for establishing an International Corporation capable of guaranteeing the capital of its members.

In view of the diversity of constitutional or legislative provisions and regulations one can understand the temptation to create a link between the multilateral guarantee system and rules concerning the treatment of foreign private investment. If such rules were incorporated in the articles of the Corporation, there would be a possibility that capital would be attracted only towards those developing countries that had legislation capable of ensuring the protection of capital or of facilitating the transfer of profits. Moreover, only those capital-exporting countries that had legislation guaranteeing foreign investment by their nationals could provide capital.

As a result an affirmative reply is given regarding the establishment of the link between the multilateral guarantee system and rules concerning the treatment of foreign private investment.

If this arrangement is not adopted it would then be necessary for the articles to restrict the investment guarantee to countries that meet the conditions mentioned in (i) and (ii).

Failing similar stipulations in the articles, that should nevertheless be the policy of the Corporation.

It would be desirable to reduce the rate of premiums demanded in the case of investments intended for a country that had accepted such obligations, either expressly or in practice.

The settlement of disputes:

In theory the Corporation might have a dispute either (a) with an investor holding a guarantee, (b) with a contributing member or (c) with a host country.

Except in relation with disputes that could arise between the Corporation and the contributing members, the OECD report contains no proposal regarding the settlement of such disputes. The report considers the solutions that might be proposed in various disputes. The main questions raised in this part of the report are as follows.

Questions: a) Should the articles make it compulsory for the host countries to recognize the Corporation as the assignee or the subrogate of an investor who receives compensation by virtue of a guarantee?

b) Should the articles compel the host country to submit claims raised by the Corporation (in the capacity of assignee of the investor) to arbitration?

c) Should the Corporation be authorized to request the investor or a promoter member country to sue on its behalf for the recovery of a debt that it has acquired by subrogation? Or should it pursue this type of recovery action itself?

d) Should the Corporation be authorized to cede to contributing members that have shared a particular loss a debt that it has acquired by subrogation, leaving it to the members to sue for its recovery against the host country in question?

e) When the investor who holds a guarantee is able to sue a host country before a court set up by virtue of an international agreement, in respect of a dept arising from expropriation, should the right be conferred on the Corporation to waive or not avail itself of any agreement that it might have with that country regarding the procedure applicable to the settlement of disputes?

<u>Answers</u>: a) It is known that constitutional or legislative provisions regarding guarantees vary from one country to another, particularly with regard to the guarantees that countries give to their nationals against investment risks. For example, France gives no investment guarantees, since the export credit insurance agency (COFACE) covers only sales of capital goods and not investments located in foreign countries. Guarantees against political risks and the non-transfer of royalties and even dividends, and facilities extended to o erations related in particular to local loans for the financing of sales operations are all guaranteed by the United States in South America in the framework of the Alliance for Progress. This disparity of the conditions for and the nature of guarantees among contributing States would hinder the process of standardizing the articles of the Corporation so that it would be difficult to mention in them that the host country would be obliged to recognize the Corporation as the assignee or the subrogate of an investor who had been compensated by virtue of a guarantee. The two examples just quoted (France, United States) are sufficient illustration of the problem to show that subrogation by the Corporation will be envisaged only in certain exceptional cases, unless the latter assumes the guarantee for all investments, whatever they may be, within the countries of which the contributing members are nationals.

b) Yes, and for the reasons just mentioned in the above reply.

c) It is considered that it will be preferable to leave it to the Corporation to sue for the recovery of its debt with the host country itself. In reply (d) below, this answer will be further clarified and qualified.

d) It seems necessary and even essential that there should be prior agreement between the Corporation and the members in the three categories envisaged regarding the stipulation, as a <u>sine qua non</u> for the granting of a guarantee, that the Government of the host country should have declared its willingness to recognize the

International Guarantee Corporation as the legitimate subrogate of the investor with respect to all or part of the rights or debts that the latter may transfer to the Corporation after he has been compensated under the guarantee policy. Once this principle is agreed on, the Corporation has the option to cede to the contributing members who have shared a given loss a debt that it has acquired through subrogation, leaving it to those members to recover it from the host country in question.

e) In any international agreement for economic and financial co-operation, special provisions are included for the settlement of disputes. Sometimes the host countries demand that their domestic law should be applied as far as expropriation is concerned, thus according foreigners the same rights as their own nationals. However, in most cases, the clauses concerning law-suits or disputes between the high contracting parties include appeal to an arbitration court set up by international agreement (in this case, the OECD report assumes that this court would probably be the International Centre for the Settlement of Investment Disputes).

If the host country should have agreed to the option on the part of the investor to sue him in an international arbitration court, it would no longer be necessary for the host country to demand the application of its domestic law.

Reinsurance:

The OECD report proposes that the Corporation should be empowered to reinsure all or part of the risks covered by the national guarantees issued for the member countries.

Such reinsurance should, in the opinion of the authors of the report, be considered as a direct guarantee for the purpose of loss-sharing. In order to be eligible for reinsurance, the investment should "satisfy the standards fixed" for direct guarantees by the Corporation, including the element of newness.

This proposal raises the following questions:

Questions: a) Should the Corporation be authorized to engage in reinsurance? If so, should the articles stipulate the special criteria applicable to eligibility for reinsurance or provisions concerning the procedure to which reinsurance would be subjected? Should the articles specify that reinsurance must be requested within a given time from the date of granting the national guarantee? Or else, in the case of an investment which was "new" at the time of the issue of the national guarantee, should it be specified that the insurance should remain in effect if no loss has been suffered?

b) Should the same loss-sharing arrangements be applied to reinsurance as to direct guarantees?

Answers: a) In order to understand the necessity for a possible use of reinsurance, we shall study how, in certain capital-exporting countries, nationals are guaranteed against risks, or certain risks, that they may incur. It will be seen later to what extent the Corporation can be authorized to engage in reinsurance if necessary, and what procedures could be adopted.

In France, for example, whatever the nature of the loan, the financing of debts, whether originating from the prefinancing of orders or transactions for long-term loans, the risks may be limited by the conclusion of insurance contracts for foreign trade.

The Compagnie française d'assurance pour le commerce extérieur (French Foreign Trade Insurance Company) has under the law of 2 December 1945 a veritable monopoly of loan insurance with regard to transactions with foreign countries. It is controlled by the State, which in many cases backs it up with its own guarantee and strictly monitors its operations through the Commission des garanties et du crédit pour le commerce extérieur (Foreign Trade Credit and Guarantee Commission).

The Compagnie française d'assurance pour le commerce extérieur insures importers and exporters against risks arising out of relations with foreign countries. Its intervention has a certain advantage for importers, in particular when they have paid for goods in advance and fear that unforeseen events may prevent their delivery. It is much more often requested by exporters who are exposed to losses owing to their position as creditors.

The guarantee against commercial risks may be supplemented by a guarantee against risks of natural catastrophes, political unrest, and prohibition of the transfer of sums paid by the purchaser.

Catastrophes are taken to mean such natural disasters as cyclones, floods, tidal waves, earthquakes, and volcanic eruptions, which may occur abroad and lead to defaulting in payment by the purchaser who is the victim thereof.

"Political risks" covered by insurance are civil war or foreign wars, revolutions and insurrections that may occur in the country of residence of the debtor, as well as moratoria that may be decreed by the government authorities of that country.

The political events, economic difficulties or legislative measures that may prevent or delay the transfer of sums paid by the debt constitute the "monetary" risk of transfer.

Guarantees against political risks, catastrophe risks and transfer risks are never absolute but are always limited to a certain percentage of the risk.

The premiums are determined according to the debtor country and the duration of the loans. They are levied at the same time as those related to the risk of insolvency, since they constitute additional insurance.

In the case of losses resulting from the actual occurence of political, catastrophe, or transfer risks, the compensation is paid to the insured party six months after receipt of the declaration of the loss, if the loss still persists.

In the case of sales to foreign public services or government departments, it would be impossible to base the distinction between the risk of insolvency and the political risk on precise data, and in such cases the Compagnie française d'assurance pour le commerce extérieur offers exporters a special policy guaranteeing the successful conclusion of transactions under the guarantee against political, catastrophe, and monetary transfer risks. Insolvency of the debtor is thus treated similarly to a political risk.

No over-all policy regarding the whole turnover of a company is issued, but only special insurance covering one or more transactions.

The rate of the premiums varies according to the country and duration of the loans.

It would have been possible to review arrangements concerning the risk of fluctuations in rates of exchange, or "prospecting" insurance, which is a very modern system, under which the Company bears the risk for part of the expenditure of an industrialist in prospecting a foreign market. I shall confine myself to those examples that highlight the conditions under which certain exporting countries may guarantee exports by their nationals.

It can be pointed out that the Compagnie française d'assurance pour le commerce extérieur can in this way give very effective assistance to exporters. But as it usually intervenes with a State guarantee, the latter assumes fairly heavy commitments. Thus, the Commission des garanties et du crédit au commerce extérieur is compelled to display great prudence in order to keep risks within reasonable limits, and in fact the application of the boldest arrangements is still very limited. Experience alone will make it possible to assess what the possible development of these operations will be.

In order not to confine ourselves entirely to the French system, let us recall what was said above regarding guarantees given by the United States of America. In addition to guarantees against political risks and the risk of the non-transfer of royalties and even dividends, it was mentioned that the United States gave facilities for related operations, in particular for loans made locally in order to finance sales. All these guarantees provided by the United States of America in South America are related to the Alliance for Progress.

This long and detailed exposition of national insurance systems will help us to see more clearly and to answer with full knowledge of the facts the various parts of question (a) that we shall now take up.

Since with a few rare exceptions all investments are not uniformly guaranteed by the countries of which the exporters are nationals, it is natural that, in its statutes, the Corporation should be authorized, to engage in reinsurance under certain circumstances. In the light of the above exposition, the articles should state the special criteria applicable to eligibility for reinsurance, and should even specify the arrangements under which reinsurance would be provided.

However, some of the procedure could be made flexible, for example, the time limit, since the investment in question is "new" within the meaning of the articles.

Thus, a member country should be able to request reinsurance as long as the national guarantee is in effect and no loss has been incurred.

b) Since the purpose of reinsurance is essentially to cover the risks that the national companies could not guarantee against, loss-sharing should be arranged in the framework of this reinsurance, in proportion to the risks covered.

Nationality:

The OECD report provides that only nationals of contributing members should be eligible for guarantees, without explaining precisely who would be competent in cases of doubt to decide on the nationality of the investor in the event of a request for a guarantee.

The main question raised by this part of the report is as follows:

Question: a) Should the articles rule out the possibility that contributing members should approve investments for the purpose of a guarantee when the investing company in fact belongs to nationals of the host country?

Answer: a) In most host countries, the constitutional or legislative measures applicable to foreign investments are modelled on those applied to national companies in the host country. Moreover, the definition of the notion of "newness" adopted in the articles of the Corporation seems to treat national and foreign companies in a similar way as far as the purpose of investment is concerned (economic development, modernization, etc.). Under these conditions, it seems that the articles of the Corporation should provide, failing adequate national measures, that the same guarantees as are granted to foreign companies should be extended to those that have their origin in the host country; in this case the answer to question (a) would be in the affirmative.

The OECD report is concerned only with the nationality of an investor at the time when the investment to be guaranteed is made. It leaves entirely on one side the possibility of a later change of nationality resulting, for example, from the take-over of the original business by a company domiciled in another contributing member country, or of the fact that what used to be the real property of the original investor passes into the hands of nationals of another contributing member (it has been suggested that the services of the Bank should draft proposals regarding the way to deal with this problem in the articles and that the discussion of the point in question should be adjourned until the committee has examined those proposals).

Loss-sharing:

As has been pointed out, the OECD report proposes that normally only the capital-exporting countries would participate in loss-sharing. Loss-sharing should not be confused with the commitments towards the Company that follow for the host country from the subrogation mentioned above.

Nevertheless, the report contains the suggestion that a provision should be included in the articles that would be applicable to cases in which host countries, acting individually or in groups, offered to participate in loss-sharing. Capital-exporting contributing members would in the final analysis remain bound if a host country, after having agreed to participate in loss-sharing, did not meet its commitments.

Wishing to spread risks widely, the authors of the report propose that the first half of the loan, whatever its amount, should normally be shared among the members who had approved at least one investment for guarantee, irrespective of where the investment has been made.

Each of the members would participate in the first tranche of the loss in a proportion identical to that represented by the total of guarantees that he had approved to the total guarantees issued and current at the time of the loss. The second tranche would be shared, still proportionally, among only those members who had approved investments carried out in the country in which the loss occurred.

If the investment in question had been guaranteed against more than one risk, the amount of coverage relative to each risk should be taken into consideration in the sharing of the loss. Contributing members participating in investments covering several countries would have the option of agreeing on special arrangements for loss-sharing.

If a member considered the risk attached to any particular developing country to be too high, he would have the option of refusing his approval for guarantee on any investment projected in this country by its nationals. Nevertheless, the authors of the report suggest that a contributing country should also have the option of declaring that it would not take part in loss-sharing resulting from future guarantees relative to investments made in any particular host country by nationals of other members. It is expected that this privilege would be used only in exceptional cases; a member who made use of it too often would expose himself to the danger of suspension.

The main questions arising regarding loss-sharing are as follows:

Questions: a) Should the host country be compelled rather than allowed to participate in loss-sharing? If so, what arrangements would be made?

b) If the host countries are not compelled to participate in loss-sharing, would the distribution formula proposed in the report give satisfaction? If not, what changes should be made to it?

c) Should contributing members be allowed to refuse to participate in loss-sharing resulting from future investment guarantees in specific host countries?

Answers: a) Compelling the host countries to participate in loss-sharing would also entail the acceptance of their nationals for guarantees by the Corporation, and not possible authorization. If this measure were to be accepted by the host countries, it would constitute additional security for foreign investors and would place their capital on the same footing as national capital. In some respects it would be tantamount to giving foreign investment the same status as national investment. Possible use of the "Calvo" clause concerning the diplomatic protection of foreign property might follow from this arrangement. However, provisions under the legislation of various countries and international agreements regarding foreign property have been examined above and I shall not dwell on the topic further here. In the light of this explanation it seems that, instead of compelling the host countries to participate in loss-sharing schemes, it would be wiser to enable them to do so, and the necessary conditions should be studied and mentioned in the articles of the International Corporation.

b) An affirmative answer could be given to the effect that the distribution arrangement proposed in the report would be satisfactory if the host country were not to be compelled to participate in loss-sharing.

c) It would not be desirable to allow contributing members to refuse participation in losses resulting from future investment guarantees in specific host countries, since that would involve the danger of imposing heavier burdens on the Guarantee Corporation and would remove the justification for its existence. Moreover, since any financial operation entails risks, countries that agreed to participate in them should normally accept them in advance, if not in full then at least in part.

Finally, the contributing members should submit to a minimum of discipline and not indulge in a kind of anarchy, which would immediately rob the institution of its raison d'être. A minimum of sacrifice on both sides is necessary.

The financing of losses:

In view of the uncertain nature of commitments regarding loss-sharing, the authors of the OECD report do not consider it necessary to set up a fund to which members would subscribe and out of which compensation for losses would be paid; it would be sufficient for the Corporation to obtain from its members the proposed commitment to meet these possible losses when they arose.

Nevertheless, the report provides for a guarantee fund to settle claims formulated by virtue of guarantees granted. This fund would be maintained out of (a) the premiums paid, (b) sums received on the occasion of guarantee operations, including funds recovered by the Corporation as a subrogate and (c) payments made by the contributing members to meet present or potential claims.

In this context, the various arrangements envisaged raise the following questions regarding the financing of losses:

<u>Questions</u>: a) Should the articles include a provision regarding advance payments by contributing members? If so, should such payments, if they are not intended to reconstitute the special account, be differentiated by the application of some criterion, for example, that of the commitment undertaken for loss-sharing?

b) Should the articles fix a ceiling for advance payments or should the amount of such payments be left to the judgement of the management? If there is to be a ceiling fixed in the articles, is it considered that the figure of US$ 1 million mentioned in the report is satisfactory, or should it be higher or lower?

c) Should the articles stipulate the full restitution of advance payments that are not used within a given time limit for the settlement of claims?

d) Should the Corporation be authorized, if a loss is expected, to reinforce the guarantee fund by making appeals beyond the stipulated ceilings which the members would have to honour in the form of non-negotiable sight bills to be cashed by the Corporation when it needed them to settle a claim? (If the Corporation is to receive this authorization, it is considered that it would be desirable to stipulate in the articles that appeals in question would be proportional to the commitments binding on each member in the eventuality that the loss expected actually materialized).

Answers:

a) Yes, the articles should include a provision regarding advance payments by contributing members so as to enable the Corporation to meet losses rapidly at any time. In principle, apart from payments serving to reconstitute the special account, other payments can be made according to the commitments undertaken by each contributing member. One might endorse the suggestion made by the authors of the OECD report that a special account should be opened for each contributing member, to which advance payments as well as premiums paid under guarantees issued for investments approved by the holder would be credited.

b) It could be agreed that the articles should fix a ceiling, but in view of the large number of developing countries concerned and their needs as well as the risks related to their general policies, it would be desirable that the ceiling should be higher than US$ 1 million. It would be better to fix a minimum level and to permit investors to exceed it if they can. That would be more realistic.

c) Partial and not complete restitution of advance payments not used in a given time limit for settling claims would perhaps be more indicated. The time limit should be at least three years, and the interest on the money thus frozen could be distributed among contributing members in the proportion of their respective contributions rather than having to call up money in cases of emergency. This last solution can be envisaged in addition to the previous one and in case of need according to the process indicated by the authors of the report in the part related to the financing of losses.

d) Yes, on all the points covered by the question.

Entry into force:

The OECD report proposes that the articles should enter into force only after they have been ratified by (a) a number of capital-exporting countries joining the Corporation as contributing members and (b) by a certain number of developing countries.

(In the absence of any objections, the draft articles would be drawn up accordingly).

The report proposes, as another prior condition for the entry into force of the articles, that the contributing members should have been authorized to enter into commitments for loss-sharing reaching a certain over-all minimum (the report does not contain any suggestions as to a minimum for loss-sharing commitments.)

The main questions raised by this part of the report are as follows:

Questions: a) What should the articles stipulate as prior conditions for their entry into force regarding (i) the minimum number of capital-exporting countries ratifying the instrument as contributing members; and (ii) the minimum number of ratifications from developing countries?

b) Should it be stipulated as the condition for the entry into force of the articles that countries that become contributing members should have the power to undertake for all of these countries a minimum figure of commitments regarding loss-sharing? If so, what should that figure be?

Answers: a) Since this Corporation is international in character and is in principle open to participation by many countries, the entry into force of its articles of association should be dependent on their ratification by the largest possible number of exporting members and developing countries. Throughout this study, we have seen how many and varied are the legislative measures regarding investments, and guarantees against the risk of expropriation. One of the aims of this Corporation would in my view be an attempt to standardize regulations in force, both in the capital-exporting developed countries and in the developing countries, whose political instability is one of the major fears of the investors.

Under these conditions, in my view, it would be more realistic to compare and contrast seriously the points of view of the investors and those of the host countries.

Symposia, such as those envisaged by the United Nations in order to encourage the developed countries to invest capital for the industrialization of the young States would be useful in order to encourage the statutory measures that have just been studied, which deserve wide dissemination in all countries, particularly developing countries.

I therefore suggest that there at least twenty exporting countries and twenty developing countries should ratify the articles before they come into force. In my view, this condition would constitute a sound moral guarantee for the future of the Corporation.

b) Yes, it should be stipulated as a condition for the entry into force of the articles that countries becoming contributing members should be empowered to undertake for all of these countries a minimum figure for a loss-sharing commitment. The sum of US$ 1 million mentioned by the authors of the OECD report might be adopted. Although this is a modest participation, it would open the way for a larger possible number of investors.

## Other provisions

It is suggested that consideration of the other clauses, which are mainly formal in nature - withdrawal and suspension, privileges and penalties, amendments and interpretation - be deferred until a draft of the articles of association is available.

I support those proposals.

## Conclusion

After having replied to the various questions raised in the IBRD document, it seems necessary to place the problem of investment, including the granting of guarantees, in the African framework and particularly that of a country in the West African Customs Union.

It is known in fact that various States or groups of States have drawn up investment codes, or are preparing them. These texts provide for various benefits, mainly of a fiscal and customs nature, which can be granted, after authorization, to enterprises fulfilling certain conditions.

The differences between existing and future texts in this field may have unfortunate consequences owing to the kind of auction that they will lead to among States, each of which will be incited to grant more advantages in the hope of attracting industries to its territory, even to the detriment of neighbouring countries. These advantages are granted in three fields:

a) Financial

These neutralize part of the fiscal resources or impose a burden of excessive financial assistance on the budget;

b) The establishment of new industries occurs in very great disorder, without taking into account the genuine absorption capacity of the market or its extent. There is the temptation to subsidize directly or indirectly, with exorbitant benefits, enterprises that are not viable in normal conditions but that manage to establish themselves and to exist thanks to exemption from obligations and to assistance from the State. Costs of production are artificially reduced and the new enterprises that benefit from these abnormal advantages may ruin enterprises in the same zone, although the latter are operating in better technical conditions. If they are situated in countries belonging to one and the same customs union, the enterprises existing beforehand cannot be protected, in the absence of internal customs frontiers, by means of quota systems or protective tariffs and may be condemned to ruin.

The diversity of the conditions provided in the various codes therefore brings about consequences that are quite out of keeping with the co-operation that should exist between the States. It leads to disorderly and unjustified competition in the economic field.

c) Political

The private interest groups may use this lack of co-ordination between the African States to indulge in a kind of auction among themselves and exercise pressure on Governments. Thus, the Governments lose the initiative to private groups.

It therefore seems to be eminently desirable that there should be harmonization in this field.

Nevertheless, one should not blind oneself to the fact that the systematic standardization of the attitude of States with regard to capital willing to invest in them would have some disadvantages.

- The physical and technical conditions for the establishment and operation of enterprises in the various States are different (distances, infrastructure, etc.). It is natural that, to a certain extent, differences in benefits should correspond to these factual differences;

- The acceptance of a common code would reduce the liberty of action enjoyed by each State.

These various considerations lead us to suggest the adoption of an outline code that would define the provisions that would be common to all and those that would be left to the discretion of the States.

The first category would include:

- The categories of enterprises eligible for particular benefits;

- The rules for transferability from the monetary zone to which the country belongs;

- The fiscal and customs benefits under the various types of status; and

- The rules concerning arbitration.

The second category should include:

- The formal aspects of the authorization procedure for enterprises;

- Possible participation by each State in the capital of the enterprises;

- The financial benefits granted, such as loans or interest bonuses, provided that they did not have the effect of basically changing the common character of the conditions for establishment resulting from the outline code;

- The various advantages, such as the infrastructure of industrial zones, preferential tariffs for energy or transport, etc.

Among the most delicate problems that will arise are:

- Exchange and transferability problems. Since these questions are at the moment within the competence of the central authorities of the monetary zones to which the countries belong, what value can the present commitment of the State have in this matter? Would any guarantee of free transferability be limited to income or would it extend to amortization and depreciation or even capital payments? Would it apply to one or more monetary zones or would it be general?

- The definition of the various types of status. One could imagine, for example, the following types of status:

- Normal status;

- The status of enterprises that are merely authorized;

- The status of enterprises established under a special agreement;

- A long-term tax status.

These different types of status would correspond to different conditions, particularly with regard to fiscal matters. In this field, exemption, especially with regard to raw materials, should not be general in nature: while it is possible to exempt raw materials that are imported or produced in the States from taxes or levies, it is out of the question to extend such exemption to imported raw materials that compete with domestic products of the States.

Although it is rather detailed, the study presented here on the document submitted to the Mauritanian Government by the International Bank for Reconstruction and Development regarding the International Investment Guarantee Corporation does not claim to be complete. It should be supplemented, not only by a presentation of the points of view of our colleagues who specialize in economic, financial or fiscal questions, but also by those of the Government, who alone have the power of decision through the choice of options, the criteria for which are not confined to considerations of a technical nature.

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