

CONFORMED COPY

LOAN NUMBER 3342 POL

(Privatization and Restructuring Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

POLISH DEVELOPMENT BANK

Dated July 10, 1991

LOAN NUMBER 3342 POL

PROJECT AGREEMENT

AGREEMENT, dated July 10, 1991, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and POLISH DEVELOPMENT BANK (PDB).

WHEREAS (A) by the Loan Agreement of even date herewith between Republic of Poland (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to two hundred eighty million dollars (\$280,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that PDB agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and PDB, part of the proceeds of the loan provided for under the Loan Agreement will be relent to PDB on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS PDB, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Sub-loan" means a loan made or proposed to be made, out of the equivalent of the proceeds of the Loan made available to PDB under the Subsidiary Loan Agreement, by PDB or by a Participating Bank to a Beneficiary for a Sub-project;

(b) "Participating Bank" means any banking institution with which PDB has entered into a Subsidiary Financing Agreement;

(c) "Subsidiary Financing Agreement" means any agreement to be entered into between PDB and a Participating Bank pursuant to paragraph 3 (a) of the Schedule to this Agreement, and "Subsidiary Finance" means any loan provided under a Subsidiary Financing Agreement;

(d) "Beneficiary" means any enterprise to which PDB or a Participating Bank proposes to make or has made a Sub-loan; and

(e) "Sub-project" means a specific project to be carried out by a Beneficiary utilizing the proceeds of a Sub-loan.

ARTICLE II

Execution of Part D of the Project

Section 2.01. (a) PDB declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out Part D of the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and personnel, and in accordance with the Charter and the Statement of Policy, and shall provide, promptly as needed, the funds, facilities, services, staff and other resources required for the purpose.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and PDB shall otherwise agree, PDB shall carry out Part D of the Project in accordance with the Implementation Program set forth in the Schedule to this Agreement.

ARTICLE III

Financial Covenants

Section 3.01. (a) PDB shall maintain procedures and records adequate to monitor and record the progress of Part D of the Project and of each Sub-project (including its cost and the benefits to be derived from it) and to reflect in accordance with sound accounting practices the operations and financial condition of PDB.

(b) PDB shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) and the records and accounts for the separate accounts referred to in Section 3.02 of this Agreement for each fiscal year audited, in accordance with appropriate auditing principles consistently

applied, by independent auditors acceptable to the Bank;

- (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 3.02. Except as the Bank shall otherwise agree, PDB shall, in respect of repayments in dollars and, separately, in respect of repayments in Deutsche Mark, to PDB under the Subsidiary Financing Agreements and under the Sub-loans made directly by PDB:

(a) open, by the date on which it shall receive the first repayment of principal under any such Subsidiary Financing Agreement or in respect of any such Sub-loan, and, thereafter, maintain a separate account on its books in accordance with the provisions of Section 3.01 (a) of this Agreement; and

(b) upon receipt of each such repayment, credit the same to the said separate account. All amounts to be so credited shall be utilized by PDB, to the extent they are not yet required to meet PDB's repayment obligations to the Borrower under the Subsidiary Loan Agreement, exclusively to finance, directly or through the Participating Banks, specific projects similar to the Sub-projects on terms and conditions similar to those applicable to the Sub-loans.

Section 3.03. PDB shall take such steps satisfactory to the Bank as shall be necessary to protect itself against risk of loss resulting from changes in the rates of exchange between the various currencies used in its operations.

ARTICLE IV

Effective Date; Termination;
Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. This Agreement and all obligations of the Bank and of PDB thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify PDB thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, telefax, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA),
82987 (FTCC),
64145 (WUI) or
197688 (TRT)

For PDB:

Polish Development Bank
00-680 Warsaw
Zurawia Str. 47/9
Poland

Telex:

812698

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of PDB may be taken or executed by the President of PDB or such other person or persons as the President of PDB shall designate in writing, and PDB shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Kemal Dervis
Acting Regional Vice President
Europe, Middle East and North Africa

POLISH DEVELOPMENT BANK

By /s/ Jacek Tomorowicz
Authorized Representative

SCHEDULE
Implementation Program
for Part C of the Project

The provisions of this Schedule shall apply for the purposes of Section 2.01 (b) of this Agreement,

1. PDB shall: (a) duly perform all its obligations under the Subsidiary Loan Agreement, and, except as the Bank shall otherwise agree, not take or concur in any action which would have the effect of assigning, amending, abrogating or waiving the Subsidiary Loan Agreement or any provision thereof; (b) at the request of the Bank, exchange views with the Bank with regard to the progress of Part D

of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement and other matters relating to the purposes of Part D of the Project; and (c) promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Part D of the Project, the accomplishment of the purposes thereof, or the performance by PDB of its obligations under this Agreement and under the Subsidiary Loan Agreement.

2. PDB shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and Part D of the Project.

3. PDB undertakes that, unless the Bank shall otherwise agree, Sub-loans will be made to Beneficiaries, either:

(a) through the Participating Banks under Subsidiary Financing Agreements to be entered into between PDB and each such Participating Bank on terms and conditions which shall have been approved by the Bank and which shall include, without limitation, those set forth or referred to in Annex A to this Schedule; or

(b) directly by PDB on the terms and conditions set forth or referred to in Annex B to this Schedule.

4. PDB shall exercise its rights under the Subsidiary Financing Agreements and under its agreements providing for Sub-loans in such manner as to protect its interests and the interests of the Borrower and the Bank and to achieve the purposes of Part D of the Project, and, except as the Bank shall otherwise agree, not assign, amend, abrogate or waive any such agreement.

5. PDB shall: (a) coordinate and monitor the overall execution of Part D of the Project, appraise Sub-projects financed through Sub-loans made by it and supervise the carrying out thereof and the carrying out by the Participating Banks of their obligations pursuant to their respective Subsidiary Financing Agreements in accordance with policies and procedures satisfactory to the Bank; and (b) take all measures to ensure that, except as the Bank shall otherwise agree (i) the aggregate amount of all Sub-loans, or any one Sub-loan, to any one Beneficiary shall not exceed the equivalent of \$10,000,000, and (ii) the aggregate amount of all Sub-loans made directly by it shall not exceed the equivalent of 15% of the amount of the Subsidiary Loan.

ANNEX A TO SCHEDULE

Terms and Conditions of Subsidiary Financing Agreements

Further to the provisions of paragraph 5 (b) (i) of the Schedule to this Agreement and except as the Bank shall otherwise agree, the principal terms and conditions set forth or referred to in this Annex shall apply for the purposes of paragraph 3 (a) of said Schedule.

A. Terms:

1. The principal amount of a Subsidiary Finance to be made available by PDB to a Participating Bank under its respective Subsidiary Financing Agreement shall be:

(a) the equivalent of the aggregate amount of (i) principal of all Sub-loans made out of the proceeds thereof, and (ii) interest payments on such Sub-loans capitalized as provided in paragraph 3 of this Part; and

(b) denominated in dollars and Deutsche Mark, with the portion thereof denominated in dollars being the sum total of the Sub-loans made out of its proceeds and denominated in dollars, and

with the portion thereof denominated in Deutsche Mark being made out of its proceeds and denominated in Deutsche Mark.

2. The portion of the Subsidiary Finance denominated in: (a) dollars shall be charged, on the principal amount thereof withdrawn and outstanding from time to time, interest, during each six-month period commencing on January 1 and July 1 of each calendar year, at a rate equal to LIBOR plus a margin, as shall be calculated by PDB on the basis of guidelines acceptable to the Bank; and (b) Deutsche Mark shall be charged, on the principal amount thereof withdrawn and outstanding from time to time, interest, during each six-month period commencing on January 1 and July 1 of each calendar year, at a rate equal to FIBOR, plus a margin, as shall be calculated by PDB on the basis of guidelines acceptable to the Bank.

3. Interest payments on the Subsidiary Finance shall be capitalized to the extent that interest payments on Sub-loans made out of the proceeds thereof are capitalized as provided in paragraph 3 of Part A of Annex B to the Schedule to this Agreement.

4. The Subsidiary Finance shall be repaid in accordance with an amortization schedule pursuant to which each portion thereof utilized in the making of a Sub-loan shall have a maturity calculated to conform to the amortization schedule applicable to such Sub-loan.

5. The right of each Participating Bank to the use of its respective Subsidiary Finance shall be: (a) suspended upon failure by such Participating Bank to perform any of its obligations under its respective Subsidiary Loan Agreement; and (b) terminated if such right shall have been suspended pursuant to subparagraph (a) hereof for a continuous period of sixty days.

B. Conditions

1. A Subsidiary Loan Agreement may be entered into with a bank duly established and operating under the laws of the Borrower, which PDB shall have determined, and the Bank shall have agreed, that such bank:

(a) is in compliance with all legal and regulatory requirements applicable to its operations;

(b) is operating pursuant to lending policies and procedures which the Bank and PDB shall have judged acceptable, and has undertaken to maintain said policies and procedures;

(c) has a sound financial structure and satisfactory financial policies and performance, and the organization, management, staff and other resources required for the efficient carrying out of its operations, including the activities proposed to be undertaken under Part D of the Project; and

(d) has established a credit committee and a technical unit in accordance with and for the purposes set forth in paragraph 2 (c) of this Part.

2. Each respective Subsidiary Financing Agreement shall contain provisions pursuant to which each respective Participating Bank shall undertake to:

(a) carry out its activities under Part D of the Project and conduct its operations and affairs in accordance with appropriate financial standards and practices, with qualified management and staff, and in conformity with the lending policies and procedures referred to in paragraph 1 (b) of this Part, and provide, promptly as needed, the funds, facilities, services and other resources required for the purpose;

(b) (i) make Sub-loans to Beneficiaries on the terms and conditions set forth or referred to in Annex B to the Schedule to this Agreement; (ii) exercise its rights in relation each such Sub-

loan in such manner as to protect its interest and the interests of the Bank and PDB, comply with its obligations under its respective Subsidiary Financing Agreement and achieve the purposes of Part D of the Project; (iii) not assign, amend, abrogate or waive any of its agreements providing for Sub-loans, or any provision thereof, without prior approval of PDB; and (iv) appraise Sub-projects and supervise, monitor and report on the carrying out by Beneficiaries of Sub-projects, in accordance with procedures satisfactory to the Bank and PDB;

(c) maintain, with staff and other resources and terms of reference, satisfactory to the Bank and PDB: (i) a credit committee to be responsible for the provision of assistance and advice to its management on all matters relating to its lending operations, including the evaluation of Sub-loan applications; and (ii) a technical unit to be responsible for appraising and supervising the carrying out of development projects financed by it, including the Sub-projects;

(d) (i) exchange views with, and furnish all such information to, PDB, as may be reasonably requested by PDB or the Bank, in coordination with PDB, with regard to the progress of its activities under Part D of the Project, the performance of its obligations under its respective Subsidiary Financing Agreement, and other matters relating to the purposes of Part D of the Project; and (ii) promptly inform PDB and the Bank, through PDB, of any condition which interferes or threatens to interfere with the progress of its activities under its respective Subsidiary Financing Agreement; and

(e) (i) maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial conditions; (ii) have its financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank; (iii) furnish to the Bank and PDB, as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of said financial statements and accounts for such year as so audited; (B) the report of such audit by said auditors in such scope and detail as the Bank or PDB shall have reasonably requested; and (iv) furnish to the Bank or PDB such other information concerning said records, accounts and financial statements as well as the audit thereof as the Bank or PDB shall from time to time reasonably request.

ANNEX B TO SCHEDULE

Terms and Conditions of the Sub-loans

The principal terms and conditions set forth or referred to in this Annex shall apply for the purposes of paragraph 3 (b) of the Schedule to this Agreement and paragraph 2 (b) (i) of Part B of Annex A to said Schedule.

A. Terms

1. The principal amount of each Sub-loan shall be: (a) denominated in dollars or Deutsche Marky at the option of the Beneficiary; and (b) the sum total of (i) the equivalent in the currency of denomination (determined as of the date or respective dates of withdrawal from the Loan Account or payment out of the Special Account) of the value of the currency or currencies so withdrawn or paid out on account of the cost of goods and services financed out of the proceeds of the Loan for the Sub-project; and (ii) the amount of interest payments on such Sub-loan capitalized as provided in paragraph (3) of this Part.

2. Each Sub-loan shall be charged interest, on the principal amount thereof withdrawn and outstanding from time to time, at the rate of interest applicable to loans made, respectively, by the PDB pursuant to the Statement of Policy, and the Participating Bank making the Sub-loan pursuant to its investment lending policies and

procedures referred to in paragraph 1 (b) of Part B of Annex A to the Schedule to this Agreement.

3. Interest payments on Sub-loans accrued and payable during the execution of the Sub-projects financed thereunder may be capitalized and paid out of the proceeds of such Sub-loans in accordance with guidelines satisfactory to the Bank.

4. Sub-loans shall each be made for a period not exceeding 12 years, inclusive of a grace period not exceeding four years.

5. Sub-loans shall be made on terms whereby PDB or the Participating Bank making the Sub-loan, as the case may be, shall obtain, by written contract or other appropriate legal means, rights adequate to protect its interests and those of the Bank, including the right to:

(a) suspend or terminate the right of the Beneficiary to the use of the proceeds of a Sub-loan upon failure by such Beneficiary to perform its obligations under its contract providing for the Sub-loan;

(b) require that each Beneficiary shall undertake to: (i) implement its restructuring program, referred to in paragraph 1 of Part B of this Annex, and carry out and operate the Sub-project with due diligence and efficiency and in accordance with sound technical, financial and managerial standards and practices and appropriate health, safety and environmental standards satisfactory to the Bank, and provide, promptly as needed, the funds, facilities and other resources required for the purpose, (ii) procure the goods and to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement, and use such goods and services exclusively in the carrying out of Sub-project, (iii) enable the Bank, PDB and the Participating Bank making the Sub-loan to inspect such goods and the sites and works included in the Sub-project, the operation thereof, and any relevant records and documents, (iv) take out and maintain such insurance, against such risks and in such amounts as shall be consistent with sound business practice, including, without limitation, such insurance to cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Loan to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Beneficiary to replace or repair such goods, (v) maintain records and accounts adequate to reflect in accordance with consistently maintained sound accounting practices its operations and financial conditions, and (vi) prepare and furnish to PDB and the Participating Bank, for forwarding to the Bank as may be requested by the Bank, all such information as the Bank, PDB or the Participating Bank shall reasonably request relating to the foregoing, to the Beneficiary's administration, operations and financial condition and to the benefits to be derived from the Sub-project; and

(c) require that each Beneficiary, (i) have its financial statements (balance sheets, income statements and cash flow statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank, and (ii) furnish to PDB and the Participating Bank, for forwarding to the Bank as may be requested by the Bank (A) as soon as available, but in any case not later than six months after the end of each such year certified copies of its financial statements for such year as so audited, and the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested, and (B) such other information concerning the accounts and records, referred to in paragraph (b) (v) hereof, and said financial statements, as well as the audit thereof, as the Bank, PDB or the Participating Bank shall from time to time reasonably request.

B. Conditions

1. Sub-loans shall be made to Beneficiaries which: (a) are

enterprises duly established and operating under the laws of the Borrower, excluding enterprises established under the Borrower's Law on State Enterprises; (b) each shall have, in accordance with guidelines satisfactory to the Bank, carried out an environment impact assessment of its operations and prepared and agreed to implement a restructuring program designed to provide for its long-term financial and operational success, to ensure its efficient transformation into a private sector enterprise if it is not already such an enterprise, and to solve any outstanding environmental problems associated with its operations as identified by the environment impact assessment referred to above; and (c) each shall have established to the satisfaction of PDB or the Participating Bank making the Sub-loan, on the basis of guidelines satisfactory to the Bank, that (i) it is creditworthy, and has a sound financial structure and the organization, management, staff and other resources required for the efficient carrying out of its operations, including the Sub-project, and (ii) its projected internal cash generation or equity increases and the provision of other financing obtained by it shall be sufficient to enable it to meet the estimated expenditures required for the carrying out of the Sub-project.

2. Sub-loans shall be made for Sub-projects which are each: (a) determined to be technically feasible and financially viable and designed with appropriate health, safety and environmental standards; and (b) calculated to have a financial rate of return and an economic rate of return of at least 15% each, all as shall be determined and calculated by PDB or the Participating Bank making the Sub-loan on the basis of guidelines satisfactory to the Bank.

3. Expenditures for goods and services required for a Sub-project shall be eligible for financing out of the proceeds of the Loan:

(a) if such expenditures shall have been made not earlier than ninety days prior to the date on which the Bank or PDB, as the case may be, shall have received the information required under subparagraphs (b) or (c) hereof;

(b) if the Sub-loan for such Sub-project shall have been (i) made for a principal amount equivalent to \$2,000,000 or more, or (ii) one of the first three Sub-loans to be made by each Participating Bank, and such Sub-loan shall have been approved by the Bank on the basis of information furnished to the Bank comprising an application, in form satisfactory to the Bank, together with a description of the Beneficiary and an appraisal of the Sub-project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan, the proposed terms and conditions of the Sub-loan, including the schedule of amortization thereof, and such other information as the bank shall reasonably request; and

(c) if the Sub-loan shall have been a Sub-loan other than a Sub-loan referred to in subparagraph (b) hereof, and such Sub-loan shall have been approved by PDB on the basis of information furnished to PDB comprising a summary description of the Beneficiary and the Sub-project, including a description of the expenditures to be financed out of the proceeds of the Loan and terms and conditions of the Sub-loan, including the schedule of amortization therefor, provided, however, that such information shall contain, in addition, for each Sub-loan made for a principal amount equivalent to \$1,000,000 or more, the appraisal report of the Sub-project.