

CONFORMED COPY

LOAN NUMBER 4391 UA

Loan Agreement

(Financial Sector Structural Adjustment Loan)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

Dated September 15, 1998

LOAN NUMBER 4391 UA

LOAN AGREEMENT

AGREEMENT, dated September 15, 1998, between UKRAINE (the Borrower) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received a letter dated February 24, 1998 from the Borrower describing a program of actions, objectives and policies designed to achieve structural adjustment of the Borrower's economy (hereinafter called the Program), declaring the Borrower's commitment to the execution of the Program, and requesting assistance from the Bank in support of the Program during the execution thereof;

(B) in addition to the Loan provided for in this Agreement, the following Loans are made or proposed to be made by the Bank to the Borrower in support of an integrated program of structural adjustment of the Borrower's economy: (i) Loan No. 4103-UA (Agriculture Sector Adjustment Loan) in the amount of \$300 million, provided for under loan agreement dated November 14, 1996; (ii) Loan No. 4118-UA (Coal Sector Adjustment Loan), provided for under loan agreement dated December 12, 1996; and (iii) proposed Loan in the amount of \$300 million for an

Enterprise Sector Adjustment Program;

(C) on the basis, inter alia, of the foregoing, the Bank has decided in support of the Program to provide such assistance to the Borrower by making the Loan in three tranches as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

#### ARTICLE I

##### General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995, as amended through December 2, 1997, with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 18, is modified to read:

"'Project' means the program, referred to in the Preamble to the Loan Agreement, in support of which the Loan is made.";

(b) Section 4.01 is modified to read:

"Except as the Bank and the Borrower shall otherwise agree, withdrawals from the Loan Account shall be made in the currency of the deposit account specified in Section 2.02 of the Loan Agreement.";

(c) Section 5.01 is modified to read:

"The Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in accordance with the provisions of the Loan Agreement and of these General Conditions";

(d) The last sentence of Section 5.03 is deleted;

(e) Section 9.07 (c) shall be modified to read:

"(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution of the program referred to in the Preamble to the Loan Agreement, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan."; and

(f) Section 9.05 is deleted and Sections 9.06, 9.07 (as modified above), 9.08 and 9.09 are renumbered, respectively, Sections 9.05, 9.06, 9.07 and 9.08.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Associated Loans" means the loans referred to in Recital (B) of the Preamble to this Agreement;

(b) "Deposit Account" means the account referred to in Section

2.02 (b) of this Agreement;

(c) "Hr" means Hryvnya, the currency of the Borrower.

(d) "NBU" means the National Bank of Ukraine;

(e) "NBU Regulation 38" means the revised regulation (formerly NBU Regulation 115) "On Enforcement Measures for Commercial Banks" approved by Resolution No. 38 of the NBU Board, on February 4, 1998;

(f) "NBU Regulation 323" means the Regulation "On the Procedure for Formation and Use of Reserves for Provisioning Possible Losses on Loans of Commercial Banks", approved by the Resolution No. 323 of the NBU Board, on September 29, 1997; and

(g) "Rada" means the Verkhovna Rada, the supreme legislative authority of the Borrower.

## ARTICLE II

### The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to three hundred million Dollars (\$300,000,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b), (c), (d) and (e) of this Section, the Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in support of the Program.

(b) The Borrower shall open, prior to furnishing to the Bank the first request for withdrawal from the Loan Account, and thereafter maintain in its central bank, a deposit account in Dollars on terms and conditions satisfactory to the Bank. All withdrawals from the Loan Account shall be deposited by the Bank into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Loan shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Bank shall have determined at any time that any proceeds of the Loan shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Bank: (i) deposit into the Deposit Account an amount equal to the amount of said payment; or (ii) if the Bank shall so request, refund such amount to the Bank. Amounts refunded to the Bank upon such request shall be credited to the Loan Account for cancellation.

(d) Unless the Bank shall otherwise agree, withdrawals from the Loan Account in any month during the execution of the Program, shall be permitted only up to the Maximum Withdrawal Amount as defined herein. For purposes of this sub-paragraph, the "Maximum Withdrawal Amount" shall be the amount of any withdrawal from the Loan Account which would, when added together with the amount of proceeds withdrawn during such month from the Loan Accounts for any of the Associated Loans, equal the Cumulative Withdrawal Ceiling for such month. The "Cumulative Withdrawal Ceiling" for any month shall be the Monthly Withdrawal Ceiling for such month (as defined herein), plus the cumulative amounts of any Monthly Withdrawal Ceiling for any previous months which remain undisbursed and are carried over to such month pursuant to the provisions of this paragraph. The Monthly Withdrawal Ceiling shall be, for the month of September 1998, equal to two hundred seventy million dollars (\$270,000,000); and for each month thereafter, beginning in November 1998, shall be equal to seventy million dollars (\$70,000,000). In the event that the aggregate amounts of loan proceeds actually disbursed from the Loan Accounts for the Associated Loans in any given month shall be less than the amount of the Monthly Withdrawal Ceiling for such month, the difference between such actual monthly disbursements and the Monthly

Withdrawal Ceiling shall be permitted to be carried over as an additional amount which shall be added to the Monthly Withdrawal Ceiling for the next succeeding month. Such carry-over shall continue from month to month as long as any portion of a Monthly Withdrawal Ceiling remains unwithdrawn.

(e) No withdrawals shall be made from the Loan Account:

(A) after the aggregate of the proceeds of the Loan withdrawn from the Loan Account shall have reached the equivalent of one hundred million Dollars (\$100,000,000), unless the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank: (i) that the macro-economic framework of the Borrower is consistent with the Program as determined on the basis of indicators agreed upon by the Borrower and the Bank; (ii) with the progress achieved by the Borrower in the carrying out of the Program; and (iii) that the actions described in Section I of Schedule 2 to this Agreement have been taken; and

(B) after the aggregate of the proceeds of the Loan withdrawn from the Loan Account shall have reached the equivalent of two hundred million Dollars (\$200,000,000), unless the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank: (i) that the macro-economic framework of the Borrower is consistent with the Program as determined on the basis of indicators agreed upon by the Borrower and the Bank; (ii) with the progress achieved by the Borrower in the carrying out of the Program; and (iii) that the actions described in Section II of Schedule 2 to this Agreement have been taken.

(f) If, after said exchange of views, the Bank shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Bank, then the Bank may, by notice to the Borrower, cancel the unwithdrawn amount of the Loan or any part thereof.

Section 2.03. The Closing Date shall be December 31, 1999, or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.05. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

(i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.

(ii) "Interest Payment Date" means any date specified in

Section 2.06 of this

Agreement.

(iii) "LIBOR Base Rate" means, for each Interest Period, the London interbank offered rate for six-month deposits in Dollars for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.

(iv) "LIBOR Total Spread" means, for each Interest Period: (A) one half of one percent (1/2 of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

(c) The Bank shall notify the Borrower of LIBOR Base Rate and LIBOR Total Spread for each Interest Period, promptly upon the determination thereof.

(d) Whenever, in light of changes in market practice affecting the determination of the interest rates referred to in this Section 2.05, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest rates applicable to the Loan upon not less than six (6) months' notice to the Borrower of the new basis. The basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.06. Interest and other charges shall be payable semiannually on January 15 and July 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

### ARTICLE III

#### Particular Covenants

Section 3.01. (a) The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 2 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Bank on any proposed action to be taken after the disbursement of the Loan which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedule 2 to this Agreement.

Section 3.02. Upon the Bank's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(b) furnish to the Bank as soon as available, but in any case not later than six months after the date of the Bank's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(c) furnish to the Bank such other information concerning the Deposit Account and the audit thereof as the Bank shall have reasonably requested.

#### ARTICLE IV

##### Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

#### ARTICLE V

##### Termination

Section 5.01. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

#### ARTICLE VI

##### Representative of the Borrower; Addresses

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance  
12/2 Hrushevsky  
Kiev, Ukraine 252008

Telex:

131450

For the Bank:

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

Cable address:

INDEVAS  
Washington, D.C.

Telex:

248423 (MCI) or  
64145 (MCI)

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.

UKRAINE

By /s/ Yuri Shcherbak  
Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Paul J. Siegelbaum  
Acting Regional Vice President  
Europe and Central Asia

SCHEDULE 1

Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Loan shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another loan or a credit;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Bank by notice to the Borrower:

Group	Subgroup	Description of Items
112	-	Alcoholic beverages
121 tobacco	-	Tobacco, unmanufactured, refuse
122 (whether or not substitutes)	-	Tobacco, manufactured containing tobacco
525 materials	-	Radioactive and associated

667 semiprecious	-	Pearls, precious and stones, unworked or worked
718 thereof; fuel non-irradiated, for	718.7	Nuclear reactors, and parts elements (cartridges), nuclear reactors
728 machinery	728.43	Tobacco processing
897 platinum watches and watch silversmiths'	897.3	Jewelry of gold, silver or group metals (except cases) and goldsmiths' or wares (including set gems)
971 (excluding gold)	-	Gold, non-monetary ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party);

6. expenditures: (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories; or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

7. expenditures under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation.

## SCHEDULE 2

Section I. Actions Referred to in Section 2.02 (e)(A) of this Agreement

### Legal Framework for Banking Activity

1. The Borrower has adopted legislation on the National Bank of Ukraine.

2. Draft legislation has been submitted to the Rada on banks and banking activity which, together with the law on the National Bank of Ukraine, includes appropriate provisions authorizing and describing in relevant detail all types of substantive interventions of the NBU in banks, as are currently envisaged (or authorized) by NBU Regulation 38 (formerly NBU Regulation 115).

### Loan Loss Provisioning



3. The Borrower has taken adequate measures to ensure:

(a) that commercial banks have provisioned in their books all loans which should be classified, under NBU Regulation 323 as "loss" (without regard to the tax treatment of such provisioning as a deductible item of expense); and

(b) that on-site examination of commercial banks has been carried out, resulting in reports being made available in respect of banks with assets having a value comprising, in the aggregate, at least 60% of the value of total bank assets (measured as of January 1, 1998).

#### Structural Issues

4. The Borrower has maintained a consistent enforcement policy with respect to the sanctions to be exercised by the NBU pursuant to the legislation on banks and banking activity, ensuring the revocation of licenses (or restriction of licenses, as appropriate) in respect of banks not meeting minimum statutory capital requirements introduced as of January 1, 1998;

5. The first stage of the program for the restructuring of the Oschadny Bank of Ukraine, has been implemented, including:

(a) the registration of Oschadny Bank as a joint stock company with 100 percent of the shares owned by the state;

(b) the strengthening of the credit function, including the establishment of appropriate loan approval ceilings for the branches of Oschadny Bank;

(c) the restructuring of its loan portfolio; and

(d) the finalization of a detailed plan for the creation of a treasury function.

6. The Borrower has assessed the performance of the bad loan workout units of the three former state banks (Prominvestbank, Bank Ukraina and Ukrsootsbank) and has taken appropriate measures to improve their recovery of bad loans.

7. The Borrower has:

(a) approved a liquidation manual covering the applicable administrative and other procedures for the liquidation of insolvent banks;

(b) initiated a program for the training of the relevant personnel who shall be responsible for the carrying out of the activities described in the manual; and

(c) initiated appropriate procedures for the liquidation of no less than three (3) insolvent banks as pilot liquidations.

8. The Borrower has taken appropriate measures to reduce the stock of government guaranteed loans on the books of the three former state banks (Prominvestbank, Bank Ukraina, and Ukrsootsbank), to ensure that the aggregate amount thereof does not exceed Hr 125 million. (For purposes of this paragraph, the term "government guaranteed loans" shall be understood to comprise all loans outstanding on the books of the former state banks which are guaranteed (whether under an explicit guarantee instrument or otherwise evidenced by written commitment) by the Borrower, the Cabinet of Ministers, or any other central executive agency; and the "stock" of such loans shall be understood to mean the aggregate, at any given point in time, of all amounts outstanding under any such loans (including any accrued interest, whether overdue or otherwise)).

Deposit Insurance

9. A detailed scheme for deposit insurance has been approved by the NBU Board (including exclusions, administrative arrangements, pay-out procedures), and a means of funding such scheme, and draft legislation thereon has been submitted to the Rada.

Section II. Actions Referred to in Section 2.02 (e)(B) of this Agreement  
Legal Framework for Banking Activity

1. The Borrower has adopted legislation on banks and banking activity, including a detailed arrangement for all substantive interventions in banks authorized by the applicable legislation of the Borrower, and as described in NBU Regulation 38.

2. The Borrower has adopted legislation allowing for the establishment of a properly funded deposit insurance scheme.

Informational and Regulatory Basis for Commercial Banking

3. The Borrower has fully instituted policies to ensure loan loss provisioning by commercial banks, in accordance with the timetable in NBU Regulation 323, and has confirmed commercial banks' compliance with the same through routine on-site inspections in accordance with the on-site inspection schedule of the NBU.

Structural Issues

4. The Borrower has initiated the relevant administrative and other procedures for the liquidation of no less than half the total number of insolvent banks.

5. The second stage program for the restructuring of Oschadny Bank has been implemented, including: (a) the initiation of the rationalization of the branch network as described in the concept paper on the strategic development of Oschadny Bank; (b) the operationalization of the treasury function; and (c) the finalization of an information technology strategy, a product development and marketing strategy and a human resource development policy.

6. The Borrower has taken appropriate measures to reduce the stock of government guaranteed loans on the books of the three former state banks (Prominvestment, Bank Ukraina, and Ukrsotsbank), to ensure that the aggregate amount thereof does not exceed Hr 100 million. (For purposes of this paragraph, the term "government guaranteed loans" shall be understood to comprise all loans outstanding on the books of the former state banks which are guaranteed (whether under an explicit guarantee instrument or otherwise evidenced by written commitment) by the Borrower, the Cabinet of Ministers, or any other central executive agency; and the "stock" of such loans shall be understood to mean the aggregate, at any given point in time, of all amounts outstanding under any such loans (including any accrued interest, whether overdue or otherwise).

SCHEDULE 3

Amortization Schedule

Date Payment Due Dollars)*	Payment of Principal (expressed in
January 15, 2004	6,310,000

July 15, 2004	6,500,000
January 15, 2005	6,695,000
July 15, 2005	6,895,000
January 15, 2006	7,100,000
July 15, 2006	7,315,000
January 15, 2007	7,535,000
July 15, 2007	7,760,000
January 15, 2008	7,990,000
July 15, 2008	8,230,000
January 15, 2009	8,475,000
July 15, 2009	8,730,000
January 15, 2010	8,995,000
July 15, 2010	9,260,000
January 15, 2011	9,540,000
July 15, 2011	9,825,000
January 15, 2012	10,120,000
July 15, 2012	10,420,000
January 15, 2013	10,735,000
July 15, 2013	11,055,000
January 15, 2014	11,385,000
July 15, 2014	11,730,000
January 15, 2015	12,080,000
July 15, 2015	12,440,000
January 15, 2016	12,815,000
July 15, 2016	13,200,000
January 15, 2017	13,595,000
July 15, 2017	14,000,000
January 15, 2018	14,420,000
July 15, 2018	14,850,000

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\* The figures in this column represent the amount in Dollars to be repaid, except as provided in Section 4.04 (d) of the General Conditions.

