

Agreement on German External Debts

(London, 27 February 1953)

Entry into force generally: 16 September 1953

AGREEMENT ON GERMAN EXTERNAL DEBTS

[1]

THE GOVERNMENTS of Belgium, Canada, Ceylon, Denmark, the French Republic, Greece, Iran, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Pakistan, Spain, Sweden, Switzerland, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Yugoslavia of the one part, and

THE GOVERNMENT of the Federal Republic of Germany of the other part,

DESIRING to remove obstacles to normal economic relations between the Federal Republic of Germany and other countries and thereby to make a contribution to the development of a prosperous community of nations;

CONSIDERING that, for about twenty years, payments on German external debts have not, in general, conformed to the contractual terms; that from 1939 to 1945 the existence of a state of war prevented any payments from being made with respect to many of such debts; that since 1945 such payments have been generally suspended; and that the Federal Republic of Germany desires to put an end to this situation;

CONSIDERING that France, the United Kingdom of Great Britain and Northern Ireland and the United States of America have, since 8 May 1945, furnished to Germany economic assistance, which has substantially contributed to the rebuilding of the German economy, with the effect of facilitating a resumption of payments on the German external debts;

CONSIDERING that on 6 March 1951, an exchange of letters (copies of which are contained in Appendix A to the present Agreement) took place between the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Government of the Federal Republic of Germany, which constitutes the basis on which have been established the present Agreement for the settlement of German external debts (with its Annexes) and the agreements for the settlement of the debts arising out of the economic assistance furnished to Germany;

CONSIDERING that the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America set up a Commission entitled the Tripartite Commission on German Debts for the purpose of preparing for and working out, with the Government of the Federal Republic of Germany, with other interested Governments and with representatives of creditor and debtor interests, a plan for the orderly overall settlement of Germany external debts;

CONSIDERING that this Commission informed the representatives of the Government of the Federal Republic of Germany that the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America were prepared to make important concessions with respect to the priority of their claims for post-war economic assistance over all other foreign claims against Germany and German nationals and with respect to the total amount of these claims, on condition that a satisfactory and equitable settlement of Germany's pre-war external debts was achieved;

CONSIDERING that such a settlement of German external debts could be achieved only by a single overall plan which would take into account the relative positions of the various creditor interests, the nature of various categories of claims and the general situation of the Federal Republic of Germany;

CONSIDERING that, in order to achieve this purpose, an International Conference on German External Debts, which was attended by representatives of interested Governments and of creditor and debtor interests, was held in London from 28 February 1952 to 8 August 1952;

CONSIDERING that these representatives made agreed recommendations as to the terms and procedures of settlement (the texts of which are reproduced as Annexes I to VI, inclusive, to the present Agreement); that these recommendations were appended to the Report of the Conference on German External Debts (the text of

which is reproduced as Appendix B to the present Agreement); and that the present Agreement has been inspired by the principles and objectives set forth in the abovementioned Report;

CONSIDERING that the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, having found that these recommendations provide a satisfactory and equitable plan for the settlement of German external debts, have this day signed with the Government of the Federal Republic of Germany bilateral agreements for the settlement of debts arising from the post-war economic assistance^[2] furnished by these three Governments which set forth their modified rights and priorities in respect thereto;

HAVE AGREED as follows:

Article 1 Approval of settlement terms and procedures

The Parties to the present Agreement regard the provisions thereof and of the Annexes thereto as reasonable in the light of the general situation of the Federal Republic of Germany and as satisfactory and equitable to the interests concerned. They approve the settlement terms and procedures contained in the said Annexes.

Article 2 Implementation by the Federal Republic of Germany

The Federal Republic of Germany will enact such legislation and take such administrative action as may be necessary to give effect to the present Agreement and the Annexes thereto and will modify or repeal such legislation and administrative measures as are inconsistent therewith.

Article 3 Definitions

For the purposes of the present Agreement and of Annexes IX and X thereto only, unless the context requires otherwise-

(a) "creditor" means a person, other than the Government of the Federal Republic of Germany, to whom a debt is owing;

(b) "creditor country" means a country, other than the Federal Republic of Germany, the Government of which becomes a party to the present Agreement and includes any territories to which the present Agreement is extended under Article 37;

(c) "currency option" means a term of a contract under which a creditor has the right to require payment in any one of two or more currencies;

(d) "debt" means a debt as qualified in Article 4;

(e) "fixed", in relation to the amount of a debt, means established by agreement, by final judgment or order of a court or final decision of an arbitral body, or by operation of law;

(f) "marketable securities" means stocks, shares, bonds and debentures which were issued for public subscription or form part of an issue which is or has been dealt in on a recognized stock market;

(g) "offer of settlement", as used in relation to a bonded debt, means an offer by the debtor of terms of payment and other conditions which have been established for such debt in accordance with the present Agreement and

the Annexes thereto, by negotiation between the debtor and the appropriate creditors' representative, by final judgment or order of a court or final decision of an arbitral body;

(h) "Party to the present Agreement" means any Government as to which the present Agreement has entered into force in accordance with the provisions of Article 35 or Article 36 thereof;

(i) "person" means any natural, collective or juridical person under public or private law, and any Government, including all political subdivisions, corporations under public law, including agencies and instrumentalities thereof and individuals acting on their behalf;

(j) "resides in" or "residing in" means having his ordinary residence in; a juridical person or a partnership shall be deemed to reside in the country under the laws of which it is organized or, if its head office is not in that country, in the country in which its head office is registered;

(k) "settled", in relation to a debt, means that terms of payment and other conditions have been established for such debt in accordance with the provisions of the present Agreement and the Annexes thereto, by agreement between the creditor and debtor, or, in proceedings between the creditor and debtor, by final judgment or order of a court or by final decision of an arbitral body;

(l) "settlement", in relation to a debt, means the establishment of terms of payment and other conditions in accordance with paragraph (k).

Article 4 Debts to be settled

(1) The debts to be settled under the present Agreement and the Annexes thereto are:

(a) non-contractual pecuniary obligations the amount of which was fixed and due before 8 May 1945;

(b) pecuniary obligations arising out of loan or credit contracts entered into before 8 May 1945;

(c) pecuniary obligations arising out of contracts other than loan or credit contracts and due before 8 May 1945;

(2) Provided that such debts:

(a) are covered by Annex I to the present Agreement, or

(b) are owed by a person, whether as principal or otherwise, and whether as original debtor or as successor, who, whenever a proposal for settlement is made by the debtor or a request for settlement is made by the creditor or, where appropriate in the case of a bonded debt, a request for settlement is made by the creditors' representative under the present Agreement and the Annexes thereto, resides in the currency area of all Deutschemark West;

(3) Provided also that such debts:

(a) are owed to the Government of a creditor country; or

(b) are owed to a person who, whenever a proposal for settlement is made by the debtor or a request for settlement is made by the creditor under the present Agreement and the Annexes thereto, resides in or is a national of a creditor country; or

(c) arise out of marketable securities payable in a creditor country.

Article 5

Claims excluded from the Agreement

(1) Consideration of governmental claims against Germany arising out of the first World War shall be deferred until a final general settlement of this matter.

(2) Consideration of claims arising out of the second World War by countries which were at war with or were occupied by Germany during that war, and by nationals of such countries, against the Reich and agencies of the Reich, including costs of German occupation, credits acquired during occupation on clearing accounts and claims against the Reichskreditkassen shall be deferred until the final settlement of the problem of reparation.

(3) Consideration of claims, arising during the second World War, by countries which were not at war with or occupied by Germany during that war, and by nationals of such countries, against the Reich and agencies of the Reich, including credits acquired on clearing accounts, shall be deferred until the settlement of these claims can be considered in conjunction with the settlement of the claims specified in paragraph (2) of this Article (except in so far as they may be settled on the basis of, or in connexion with, agreements which have been signed by the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the Government of any such country).

(4) Claims against Germany or German nationals by countries which were, before 1 September 1939, incorporated in, or which were, on or after 1 September 1939, allied to, the Reich, and of nationals of such countries, arising out of obligations undertaken or rights acquired between the date of incorporation (or, in the case of countries allied to the Reich, 1 September 1939) and 8 May 1945, shall be dealt with in accordance with the provisions made or to be made in the relevant treaties. To the extent that, under the terms of such treaties, any such debts may be settled, the terms of the present Agreement shall apply.

(5) The settlement of debts owed by the City of Berlin and by public utility enterprises owned or controlled by Berlin, and situated in Berlin, shall be deferred until such time as negotiations on the settlement of these debts are considered by the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America and by the Government of the Federal Republic of Germany and the Senat of Berlin to be practicable.

Article 6

Payment and transfer under the Agreement

The Federal Republic of Germany will:

(a) make payments and transfers, in accordance with the provisions of the present Agreement and of the Annexes thereto, on the debts for which it is liable thereunder;

(b) permit the settlement and payment, in accordance with the provisions of the present Agreement and the Annexes thereto, of debts for which any person other than the Federal Republic of Germany is liable, and make provision for the transfer of payments on such debts as are settled, under the provisions of this Agreement and the Annexes thereto.

Article 7

Payment and transfer with respect to certain obligations due after 1945

The Federal Republic of Germany will authorize payment of obligations outstanding at the date of the entry into force of the present Agreement, and authorize transfer within a reasonable time in respect of such obligations where appropriate in the light of the relevant provisions of the present Agreement and the Annexes thereto, provided that such obligations-

(a) are non-contractual pecuniary obligations which originated before 8 May 1945, and the amount of which was not fixed and due before that date, or

(b) are pecuniary obligations which arose out of contracts other than loan or credit contracts and which originated before 8 May 1945, and became due on or after that day,

and provided that such obligations fulfil the conditions laid down in paragraphs (2) and (3) of Article 4.

Article 8 Prohibition of discriminatory treatment

The Federal Republic of Germany will not permit, nor will the creditor countries seek from the Federal Republic of Germany, either in the fulfilment of terms of settlement in accordance with the present Agreement and the Annexes thereto or otherwise, any discrimination or preferential treatment among the different categories of debts or as regards the currencies in which debts are to be paid or in any other respect. Differences in the treatment of different categories of debts resulting from settlement in accordance with the provisions of the present Agreement and the Annexes thereto shall not be considered discrimination or preferential treatment.

Article 9 Treatment of transfers as payments for current transactions

Transfers of interest and amortisation payments made under the present Agreement shall be treated as payments for current transactions and, where appropriate, provided for in any bilateral or multilateral arrangements relating to trade or payments between the Federal Republic of Germany and the creditor countries.

Article 10 Limitations on payment

The Federal Republic of Germany will, until the discharge or extinction of all obligations under the present Agreement and the Annexes thereto, ensure that payments will not be made in respect of obligations which, while covered by paragraphs (1) and (2) of Article 4, are owed to a Government other than that of a creditor country or to any person not residing in or a national of a creditor country and which are or were payable in a non-German currency. This provision does not apply to debts arising from marketable securities payable in a creditor country.

Article 11 Currency of payment

(1) (a) Except as otherwise provided in the Annexes to the present Agreement, debts without a currency option shall be paid in the currency in which they are payable under the terms of the obligation. If such debts are denominated in German currency and, under the provisions of the Annexes to the present Agreement, are to be paid in a non-German currency, they shall be paid in the currency of the country in which the creditor resides.

(b) Notwithstanding the provisions of the preceding sub-paragraph, any payments agreements from time to time in force between the Government of the Federal Republic of Germany and the Government of a creditor country shall apply to debts which, under that sub-paragraph, are to be paid to persons residing in that country in a non-German currency. However, any such payments agreements shall apply to payments on bonded debts payable in a non-German currency other than the currency of the country party to the payments agreement only if the Government of such country agrees that such payments to persons residing in its territory may be made in its own currency.

(2) (a) The question whether payment on debts with a currency option may continue to be required in a currency other than the currency of the country in which the loan was raised or from which credit was advanced shall be determined in a manner to be agreed upon among the Government of the Federal Republic of Germany and of the countries the currencies of which are concerned.

(b) If a currency option provides for payment of a fixed amount of an alternative currency, the creditor shall be

entitled to receive, in the currency of the country in which the loan was raised or from which credit was advanced, the equivalent, at the rate of exchange current on the date payment shall fall due, of such amount of the alternative currency as would have been payable if the option had been exercised.

(c) Payments on debts with a currency option made, prior to the determination provided for in sub-paragraph (a) of this paragraph, in the currency of the country in which the loan was raised or from which the credit was advanced, shall not be affected by such determination.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to debts covered by paragraphs 2 and 3 of Annex I to the present Agreement.

(4) Any payments agreements from time to time in force between the Government of the Federal Republic of Germany and the Government of a creditor country shall apply to payments on debts which are subject to the provisions of paragraphs (2) and (3) of this Article provided that these payments are due in the currency of the creditor country.

(5) In the case of debts originating in business transactions of a registered branch office of a creditor, a condition of which was that payment should be made to the country where the branch office is located, such country shall be deemed to be the creditor country within the meaning of this Article.

Article 12

Treatment of gold clauses

In the settlement and discharge of any debt denominated in a non-German currency on a gold basis or with a gold clause, the amount to be paid shall, except as specifically provided otherwise in the Annexes to the present Agreement, be computed as below:

(a) The amount to be paid on a debt which, under the terms of the obligation existing at the time of the settlement, is denominated or payable in United States dollars or Swiss francs on a gold basis or with a gold clause, shall be determined without regard to such gold basis or gold clause. Any new contract entered into by the creditor and the debtor respecting such debt shall be denominated in United States dollars or in Swiss francs without reference to the value in terms of gold of such currency and shall not contain a gold clause.

(b) The amount to be paid on a debt which, under the terms of the obligation existing at the time of the settlement, is denominated or payable in any other non-German currency on a gold basis or with a gold clause, shall be determined as follows:

(i) the equivalent in United States dollars of the nominal amount due shall be calculated at the rate of exchange on the date when the obligation was contracted or, in the case of a bonded debt, when the bonds were issued;

(ii) the dollar figure so calculated shall be converted into the currency in which the obligation is to be paid in accordance with Article 11 at the rate of exchange between the United States dollar and such currency on the date when the amount payable is due, except that if such rate of exchange is less favourable for the creditor than the rate of exchange between the United States dollar and such currency on 1 August 1952, the conversion shall be made on the basis of the rate of exchange on 1 August 1952.

Article 13

Rates of exchange

Wherever it is provided in the present Agreement and the Annexes thereto that an amount shall be calculated on the basis of a rate of exchange, such rate shall, except in the cases provided for in Annex III and in Article 8 of Annex IV of the present Agreement, be-

(a) determined by the par values of the currencies concerned in force on the appropriate date as agreed with the International Monetary Fund under Article IV, Section 1, of the Articles of Agreement of the International Monetary Fund, or

(b) if no such par values are or were in force on the appropriate date, the rate of exchange agreed for current payments in a bilateral payments agreement between the Governments concerned or their monetary authorities; or

(c) if neither par values nor rates in bilateral payments agreements are or were in force on the appropriate date, the middle rate of exchange generally applicable for transactions ruling for cable transfers in the currency of the country in which payment is to be made in the principal exchange market of the other country on that date, or on the last date before that date on which such rate was ruling; or

(d) if there is or was no rate of exchange as specified under (a), (b) or (c) at the appropriate date, the cross-rate of exchange resulting from the middle rates of exchange ruling for the currencies in question in the principal exchange market of a third country dealing in those currencies on that date or the last date before the said date upon which such rates were ruling.

Article 14

Certain debts expressed in German currency

(1) The Federal Republic of Germany will take similar action to that provided for in paragraph 6 of Annex I to the present Agreement with respect to any Reichsmark debts for which it has assumed or may assume liability and which are not covered by that paragraph.

(2) In application of the principle of national treatment, the Federal Republic of Germany will further ensure that debts arising from Reichsmark bonds, which are not Goldmark debts with a specific foreign character, and which were owed on 21 June 1948, to persons who on that date were nationals of or residents in a creditor country, and payment on which under legislation in the currency area of the Deutschemark West can be enforced only for a proportionate part, will be met in the same manner as similar liabilities towards persons residing in the currency area of the Deutschemark West.

(3) In the settlement of other debts payable in German currency and owed to nationals of creditor countries residing in the currency area of the Deutschemark West, the terms shall not be less favourable than those accorded to similar liabilities owed to any other persons residing in the said area.

Article 15

Acceptance by creditors

(1) Only such creditors shall be entitled to benefit under any provision of the present agreement and the Annexes thereto, including payment thereunder, as, in the case of bonded debts for which an offer of settlement is the appropriate procedure, accept the offer, or, in the case of other debts, assent to the establishment in accordance with such provisions of terms of payment and other conditions in respect of such debts.

(2) (a) In the case of bonded debts for which an offer of settlement is the appropriate procedure, the acceptance of the offer of settlement, within the meaning of paragraph (1) of this Article, shall be effected by submitting the old bonds or coupons-

(i) for exchange, if new bonds or coupons are issued, or

(ii) for enfacement, if the settlement terms are to be enfaced on the old bonds or coupons.

(b) The holder of a bond covered by Annex II of the present Agreement, in respect of which an offer of settlement is made, shall have a period of at least five years from the date when such offer is made to accept such offer. The debtor shall extend this period for a reasonable cause.

(3) In the case of debts, other than those referred to in paragraph 2(a) of this Article, the assent of the creditor to the establishment of terms of payment and other conditions within the meaning of paragraph (1) of this Article

shall, where no definite requirement is laid down in any Annex to the present Agreement, be considered as effected if the creditor clearly indicates his assent in any manner.

(4) A debtor shall be subject to the application of the procedures for settlement prescribed in the present Agreement and the relevant Annexes thereto in respect of a debt only when he has made a proposal for settlement, a notification of adherence or a declaration of participation in respect of such debt under the provisions of the relevant Annex to the present Agreement. Nothing in this paragraph shall, however, be deemed to affect the provisions of Article 17 of the present Agreement.

(5) In giving effect to the provisions of Article 2 of the present Agreement, the Federal Republic of Germany shall be entitled to take into account the provisions of the foregoing paragraphs of this Article.

Article 16 Discharge of debtors

Whenever a debtor has discharged his debt as settled under the terms of the present Agreement and the Annexes thereto, he shall be deemed to have thereby also discharged all his obligations in respect of such debt as it existed before the settlement, unless such obligations have been previously extinguished by agreement.

Article 17 Enforcement of creditors' rights

(1) The Federal Republic of Germany will afford the creditor the right, within the limits of the present Agreement and the Annexes thereto, to enforce through German courts and authorities-

(a) his rights with respect to a debt as they exist at the time when action is taken under this Article if the creditor and debtor do not agree on terms of settlement and the creditor declares his assent to the establishment by such courts of terms of payment and other conditions for his debt in accordance with the provisions of the present Agreement and the Annexes thereto:

(b) his rights under the terms of settlement of the debt if the debtor fails to discharge his obligations in accordance with such terms (including such rights as under the provisions of the present Agreement and the Annexes thereto may be exercised by the creditor upon the failure of the debtor to discharge such obligations), except that the creditor shall not be entitled to the transfer in non-German currency of a principal sum which becomes due as a result of such failure sooner than would have been the case if the debtor had not failed to discharge such obligations.

(2) The creditor shall not be afforded the right provided under paragraph (1) of this Article if, under the provisions of the relevant contract or the present Agreement and the Annexes thereto, the dispute is, at the time that the right provided for under paragraph (1) of this Article is sought to be exercised, exclusively cognisable by an arbitral body or by a court in a creditor country. When such exclusive jurisdiction is provided by the terms of the relevant contract, the debtor and creditor may by agreement waive such a provision and the creditor shall, thereupon, be entitled to such right.

(3) (a) Irrespective of whether there is reciprocity between the country in which the decision is rendered and the Federal Republic of Germany, the Federal Republic of Germany will afford the creditor the right, subject to the relevant qualifications contained in paragraph (1) and to the provisions of paragraph (4) of this Article, to enforce through German courts and authorities final decisions concerning a debt rendered by courts and arbitral bodies-

(i) in a creditor country after the entry into force of the present Agreement;

(ii) in a creditor country prior to the entry into force of the present Agreement, if the debtor does not contest the debt as established by such decision.

(b) A German court, in any other proceeding respecting a debt which has been the subject of a final decision rendered by a court or arbitral body in a creditor country prior to the entry into force of the present Agreement,

shall accept as proved the facts upon which such decision was based, unless the debtor introduces evidence of the contrary. In that case the creditor shall be entitled to introduce rebutting evidence including the transcript of evidence in the former proceeding. The amount of a non-contractual pecuniary obligation established by a decision of a German court in a proceeding under this paragraph shall, for the purpose of paragraph 1(a) of Article 4 of the present Agreement, be deemed to have been fixed at the date of the final decision of the court or arbitral body in a creditor country.

(c) The Federal Republic of Germany will afford the creditor the right, subject to the relevant qualifications contained in paragraph (1) of this Article, to enforce through German courts and authorities final decisions concerning a debt rendered by courts and arbitral bodies within Germany before 8 May 1945, or within the territory of the currency area of the Deutschemark West after 8 May 1945.

(4) German courts may refuse to enforce a decision of a foreign court or of an arbitral body (except an arbitral body established under the provisions of the present Agreement and the Annexes thereto) under the provisions of paragraph (3) of this Article in any case in which-

(a) the court which gave the decision had no jurisdiction or the jurisdiction of the arbitral body which gave the decision was not based on the agreement of the parties concerned; or

(b) the debtor, in the proceedings in the original court or arbitral body, was not afforded an opportunity to defend the proceedings; or

(c) the enforcement of the decision would be contrary to public policy in the Federal Republic of Germany; provided that the fact that a judgment is not in harmony with the provisions of the present Agreement and the Annexes thereto shall not be deemed to make its enforcement, within the limits of the present Agreement and the Annexes thereto, contrary to public policy within the meaning of this provision.

(5) The Federal Republic of Germany will afford Bondholders' Councils or analogous bodies referred to in Annex I and creditors' representatives referred to in Article VIII of Annex II to the present Agreement the right to have established through German courts and authorities the terms of the offer of settlement in the event of the debtor (other than the Federal Republic of Germany) failing to make a proposal for settlement on his existing bonded debt in accordance with the relevant provisions of Annexes I and II to the present Agreement.

(6) (a) A debtor who fails to make a proposal for settlement under Annex I or II to the present Agreement shall not, in any proceeding in a German court brought under paragraph (1), (3) or (5) of this Article, be entitled to the benefit of the provisions respecting hardship contained in paragraph 7(1)(e) of Annex I or paragraph 11 of Article V of Annex II to the present Agreement. When establishing the terms of the offer of settlement or the terms of settlement for the debt, the court shall prescribe the earliest date of maturity which, under the provisions of the relevant Annex, may be applied in settling the debt. The court shall in its judgment award to the plaintiff the expenses referred to in paragraph 7(h) of Annex I to the present Agreement or paragraph 2 of Article X of Annex II to the present Agreement, to be paid by the debtor; such expenses shall be immediately due and payable. The court shall also provide for payment by the debtor of the costs of the proceeding and of all reasonable costs and expenses incurred in such proceeding either by the creditor of a non-bonded debt or by the Bondholders' Council or analogous body, or by the creditors' representative concerned in the case of a bonded debt.

(b) If a debtor fails to effect adherence in accordance with Clause 22 of Annex III to the present Agreement, the creditor concerned shall, in any proceeding brought under paragraph (1) or (3) of this Article, be entitled to enforce his rights in accordance with the provisions of the said Annex, but, in the case of a debt owed by a German Commercial or Industrial Debtor within the meaning of the said Annex (whose debt is direct to the creditor), only after the expiration of thirty days after the first meeting of the Consultative Committee provided for in Clause 17 of the said Annex. When ordering payment of the debt in accordance with the said Annex, the court shall award to the creditor the costs of the proceeding and all reasonable costs and expenses incurred by him in such proceeding, to be paid by the debtor.

(c) A debtor who fails to make a declaration of participation required under Article 14 of Annex IV to the present Agreement shall not, in any proceeding in a German court brought under paragraph (1) or (3) of this Article, be entitled to the benefit of the provisions respecting hardship contained in Article 11 of that Annex. A failure based solely upon a denial of the existence of the debt shall not deprive the debtor of such benefit; provided, however, that if the Court of Law or Court of Arbitration referred to in Article 15 of Annex IV finds that such debt exists, the debtor shall not be entitled to benefit from such clause if he fails to make the required declaration within thirty days from the date of the service of the final decision of such court. In a proceeding under this sub-

paragraph in which the debtor is not entitled to benefit from the hardship clause the court shall order the payment by the debtor of court costs and all reasonable fees of the plaintiff's counsel.

(7) The Federal Republic of Germany will afford the creditor the right, within the limits of the present Agreement and the Annexes thereto, to enforce through German courts and authorities his claims against a person residing in the currency area of the Deutschemark East out of property owned by such person in the currency area of the Deutschemark West if the claims arise out of obligations which meet the requirements of Article 4 of the present Agreement except as to the residence of the debtor. The right to transfer in foreign currency any sums received by the creditor shall be subject to the foreign exchange regulations from time to time in force in the currency area of the Deutschemark West.

Article 18 Periods of prescription

(1) No debtor shall be entitled to invoke against the establishment of an offer of settlement or against the settlement of a debt the expiration of a period of prescription or of a preclusive period of limitation for the assertion of any claim respecting such debt, which has not expired before 1 June 1933, earlier than a date determined by treating the running of such respective periods as suspended from 1 June 1933, until the expiration of eighteen months from the date on which the present Agreement and the relevant Annex thereto become applicable to such debt.

(2) Without prejudice to the provisions of paragraph (1) of this Article, periods of prescription and preclusive periods of limitation referred to in paragraph (1) which are applicable to the bonded debts specified in Sections A and B of Annex I and to those covered by Annex II to the present Agreement shall not, for the purpose of a settlement, be deemed to have expired before the respective dates on which the offer of a settlement made by the debtor ceases to be open for acceptance in accordance with the provisions of paragraph 8(b) of Annex I and of Article 15 of the present Agreement.

(3) The acceptance of an offer of settlement or an assent to a settlement by the creditor in respect of a debt in accordance with the provisions of Article 15 of the present Agreement shall effect an interruption of periods of prescription and preclusive periods of limitation for the assertion of a claim respecting such debt.

(4) The periods referred to in paragraphs (1), (2) and (3) of this Article shall not include periods for the lodging of an appeal against the decision of a court, arbitral body or an administrative authority, periods covered by Section 12, paragraph 3, of the German Law on Insurance Contracts, or periods provided by the German Laws on the Validation of Bonds.

(5) The above provisions shall apply whether the periods have been established by German or other law, by order of a court, of an arbitral body or of an administrative authority, by contract or other legal act. The Federal Republic of Germany will ensure that they are applied in German courts even though the obligation is one which, as to its content, is governed by foreign law.

Article 19 Subsidiary Agreements

(1) Agreements resulting from the negotiations provided for in-

(a) Paragraph 11 of Annex I to the present Agreement (Græco-German Mixed Arbitral Tribunal Claims); [3]

(b) Paragraph 15 of Annex I to the present Agreement (Liability in respect of Austrian Governmental Debts);

(c) Article 10 of Annex IV to the present Agreement (Payments into the Deutsche Verrechnungskasse);

(d) Sub-Annex to Annex IV to the present Agreement (Swiss Franc Land Charges);

shall be submitted by the Government of the Federal Republic of Germany (after its approval, where appropriate) for the approval of the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

(2) Each such agreement shall enter into force, and shall be treated for all purposes as an Annex to the present Agreement, when it is approved by these Governments. A notification to this effect shall be communicated to all the Parties to the present Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland.

Article 20 Reich debts owing under multilateral agreements

Payments in respect of debts of the Reich or of an agency of the Reich arising out of unpaid contributions or services rendered under the terms of multilateral international agreements or of the statutes of an international organization are not prohibited by the terms of the present Agreement. The Government of the Federal Republic of Germany will, at the request of the interested creditors, enter into direct negotiations with regard to these debts.

Article 21 Renewal of Annex III Agreement

Annex III to the present Agreement shall be treated as including any agreement or agreements which may be entered into after the date of the present Agreement for the purpose of renewing the agreement contained in that Annex. Any such agreement may contain modifications of the provisions of Annex III but shall be designed to establish means for the restoration of normal conditions for financing the foreign trade of the Federal Republic of Germany in accordance with the general purposes of the present Agreement.

Article 22 Social insurance claims

(1) The Government of the Federal Republic of Germany will enter into negotiations with the Governments of the creditor countries concerned, with a view to the settlement of social insurance claims arising under the German laws and regulations in force prior to 8 May 1945, in respect of any period prior to 8 May 1945, in so far as such claims are to be considered, under the legislation of, or in accordance with undertakings given by, the Federal Republic of Germany, as its liabilities or as liabilities of social insurance institutions in the Federal territory and have not already been dealt with in an agreement with the Government of the creditor country concerned. Nothing in this paragraph is to prevent the inclusion in such agreements of provisions to the effect that any laws or regulations in force in the Federal Republic of Germany with respect to social insurance, which provide for less favourable treatment for the nationals of other countries than for German nationals, shall not be applied.

(2) The Federal Republic of Germany will provide for the settlement of, and for the transfer in respect of, claims referred to in the preceding paragraph but not covered by agreements with Governments of creditor countries, provided such claims are due to persons who are nationals of, or reside in, a creditor country from which payments on similar claims are transferable to persons who are nationals of, or reside in, the Federal Republic of Germany. Any laws or regulations in force in the Federal Republic of Germany with respect to social insurance, which provide for less favourable treatment for the nationals of other countries than for German nationals, shall not be applied if the creditor country concerned does not discriminate in respect of social insurance payments between its nationals and German nationals or between persons residing in that country and persons residing in the Federal Republic of Germany.

(3) Claims referred to in paragraph (1) of this Article arising from social insurance services which are due to persons who are nationals of, or reside in, a creditor country and are not settled under paragraph (1) or in accordance with paragraph (2) of this Article shall be settled pursuant to the provisions of Article 28 of Annex IV to the present Agreement.

Article 23
Insurance debts

(1) Where, in bilateral arrangements concluded in implementation of Article 30, paragraph (1) of Annex IV to the present Agreement, provision is made for the transfer of payments or for payment in Deutschemarks of debts arising out of insurance or reinsurance contracts or agreements of any kind, or in connexion with such contracts or agreements, such provision shall be consistent with the provisions governing the settlement of other types of debts.

(2) Where no bilateral arrangements have been concluded by 30 June 1953, debts arising out of insurance and reinsurance contracts shall be settled pursuant to the provisions of Article 30, paragraph (2), and Article 31 respectively of Annex IV to the present Agreement. The time-limit of 30 June 1953 may by mutual agreement be extended. The most favourable terms contained in any of the bilateral arrangements concluded under paragraph (1) of this Article for the transfer of payments or for payment in Deutschemarks of any category of debt shall be applicable to debts in the same category owed to creditors resident in countries with which bilateral arrangements will not have been concluded.

Article 24
Application of Agreement to Berlin

(1) Subject to the provisions of paragraph (2)(b) of Article 4 and of paragraph (5) of Article 5, the present Agreement shall apply to Berlin which shall, within the limits of its jurisdiction, implement undertakings corresponding to those of the Federal Republic of Germany under the present Agreement and the Annexes thereto.

(2) The present Agreement shall enter into force as to Berlin, on or after its entry into force in accordance with paragraph (2) of Article 35, when the Government of the Federal Republic of Germany deposits with the Government of the United Kingdom of Great Britain and Northern Ireland a statement that all legal procedures in Berlin necessary for the application of the present Agreement to Berlin have been complied with.

Article 25
Action on reunification of Germany

The parties to the present Agreement will review the present Agreement on the reunification of Germany exclusively for the purpose of-

(a) implementing the provisions of the Annexes to the present Agreement regarding adjustments to be made in respect of specific debts upon such reunification, except in so far as such provisions are to become automatically operative upon that event; and

(b) making the provisions of the present Agreement applicable to the debts of persons residing in the area reunited with the Federal Republic of Germany; and

(c) making equitable adjustments in respect of debts in the settlement of which consideration is given to the loss of or inability to use assets located in the area reunited with the Federal Republic of Germany.

Article 26
Prior agreements

Nothing in the present Agreement shall be deemed to affect the validity of any Agreement, respecting the settlement of obligations, entered into by the Government of the Federal Republic of Germany before the entry into force of the present Agreement.

Article 27
Text of Agreement to prevail

In the event of any inconsistency between the provisions of the present Agreement and the provisions of any of the Annexes thereto, the provisions of the Agreement shall prevail.

Article 28
Arbitral Tribunal

(1) The Arbitral Tribunal for the Agreement on German External Debts (hereinafter referred to as "the Tribunal") shall be established for the purposes hereinafter specified. The composition and organisation of the Tribunal and the rules for the exercise of its jurisdiction are contained in the Charter which is appended hereto as Annex IX.

(2) Subject to the provisions of paragraph (5) of this Article, the Tribunal shall have exclusive jurisdiction in all disputes between two or more of the Parties to the present Agreement regarding the interpretation or application of the Agreement, or the Annexes thereto, which the Parties are not able to settle by negotiation, except that any dispute respecting the interpretation or application of Article 34 of the present Agreement shall not be within the jurisdiction of the Tribunal or of any other court or tribunal. In any proceeding before the Tribunal concerning a dispute between Parties to the present Agreement, other than the Government of the Federal Republic of Germany, the said Government shall, at the request of any party to the dispute, become a party to such proceeding.

(3) The Tribunal shall have exclusive jurisdiction in proceedings concerning questions of fundamental importance for the interpretation of Annex IV to the present Agreement, referred to in the second paragraph of Article 16 of that Annex, which are submitted to it by any Party to the present Agreement. The provisions of this paragraph shall not affect the jurisdiction of the Mixed Commission as laid down in paragraph (2) of Article 31 of the present Agreement.

(4) The Tribunal shall have exclusive jurisdiction in appeals which are brought under the provisions of paragraph (7) of Article 31 of the present Agreement.

(5) Without prejudice to the provisions of paragraphs (3) and (4) of this Article, the Tribunal shall not have jurisdiction in any dispute which is concerned solely with the interpretation or application of an Annex to the present Agreement if an arbitral body established pursuant to such Annex is competent to decide the question of interpretation or application concerned. The foregoing provision shall not be deemed to limit the jurisdiction of the Tribunal in any dispute as to whether a decision of such an arbitral body is in conflict with any of the provisions of the present Agreement.

(6) Any Party to the present Agreement which is concerned in the subject-matter of a proceeding before the Tribunal shall be entitled to become a party to such proceeding.

(7) The Tribunal shall have power to decide questions as to its jurisdiction under the foregoing provisions of this Article.

(8) A decision of the Tribunal-

(a) in a proceeding under paragraph (2) of this Article shall be final and binding upon the parties to the dispute and upon any other Party to the present Agreement which becomes a party to the proceeding;

(b) in a proceeding under paragraph (3) of this Article shall be final and binding upon the party which submitted the question to the Tribunal and upon any other party which becomes a party to the proceeding;

(c) in an appeal under paragraph (4) of this Article shall be final and binding upon the party or parties to such appeal.

(9) The jurisdiction of the Tribunal shall not be affected by the failure of any party to a dispute to enter an appearance in the proceeding before the Tribunal.

(10) Any arbitral body, other than the Tribunal, established under the present Agreement or the Annexes thereto, shall, in reaching decisions respecting the interpretation or application of the present Agreement or the Annexes thereto, be bound by any relevant decision of the Tribunal.

(11) If any Party to the present Agreement so requests, the Tribunal shall render an advisory opinion regarding the interpretation or application of the present Agreement (except with respect to the interpretation or application of Article 34). Such advisory opinion shall not have binding effect.

Article 29

Arbitration of certain disputes under Annex I

(1) Only Bondholders' Councils or analogues bodies, recognized by the Governments of the countries in which they are organised as representing the bondholders of such countries (hereinafter referred to as "creditors' representatives"), on the one hand, and debtors, on the other hand, shall be entitled to be parties to proceedings before a Court of Arbitration provided for the decision of disputes falling under Section 7(1)(g) of Annex I to the present Agreement.

(2) A Court of Arbitration described in the preceding paragraph shall, except as otherwise agreed between the parties, consist of three members appointed as follows:

(a) one member to be appointed by the debtor;

(b) one member to be appointed by the creditors' representative concerned and, if more than one, by such creditors' representatives jointly;

(c) a third member, to act as Chairman, to be chosen by the arbitrators appointed in accordance with subparagraphs (a) and (b) of this paragraph. The Chairman shall be neither a German national nor a national of a country in which a creditors' representative, party to the proceeding, is organised.

(3) Within ninety days of the date on which one of the parties to the proceeding notifies the other party of the appointment of its arbitrator, such other party shall appoint its arbitrator. If such other party fails to appoint its arbitrator within the time prescribed, such arbitrator shall, upon the application of the party which has given notice as aforesaid, be appointed by the International Chamber of Commerce.

(4) If the two arbitrators fail, within thirty days of the date of the appointment of the arbitrator last appointed, to agree upon a Chairman, he shall, at the request of either of the two arbitrators, be appointed by the International Chamber of Commerce. The qualification as to nationality provided in paragraph (2)(c) of this Article shall apply to such appointment.

(5) In the event of any vacancy caused by the death, illness, withdrawal or failure of a member of a Court of Arbitration to carry out his duties, such vacancy shall be filled, in the same manner as the original appointment, within thirty days of the occurrence of such vacancy.

(6) A Court of Arbitration shall determine its own rules of procedure. In the absence of such determination, or in respect of matters not covered by such determination, the Arbitration Code of the International Chamber of Commerce shall apply.

(7) The decision of a Court of Arbitration as to the conversion which is the subject of the arbitration proceeding shall be binding on the parties to the proceeding as to the terms of the offer of settlement and the creditors' representative shall recommend to the bondholders the acceptance of the offer, provided that such offer meets the other requirements laid down in Annex I to the present Agreement.

Article 30

Trustees' position in relation to Annex II and arbitration thereunder

(1) The Arbitration and Mediation Committee established pursuant to Article IX of Annex II to the present Agreement shall serve notice upon the trustee of a bonded debt to which the said Annex applies of any proceeding concerning the settlement of such debt which is pending before it. The trustee may, within twenty days after the service of such notice, become a party to such proceeding.

(2) In order to assist the trustee of a bonded debt in the discharge of any responsibilities which such trustee may have to holders of such debt, the debtor, at the time it submits to the creditors' representative any proposed offer of settlement pursuant to Article VII of Annex II to the present Agreement shall likewise submit a copy thereof to the trustee of such debt. The trustee may communicate to the debtor and to the creditors' representative any objection which it may have to the terms of the offer under negotiation, which objection shall be submitted for consideration in such negotiations.

(3) Prior to entering into any definitive agreement with the creditors' representative on the terms of the offer of settlement the debtor shall notify the trustee in writing of the terms of such offer of settlement. Within ten days after receipt of such notice the trustee shall have the right to refer to the Arbitration and Mediation Committee any objection which such trustee may have to the terms of the offer of settlement regarding any matter in respect of which, under the terms of the existing indenture, the trustee shall determine, in the exercise of its discretion, that it has responsibility to holders of such bonded debt. The Arbitration and Mediation Committee shall serve notice upon the creditors' representative and the debtor of the institution of such proceeding. The creditors' representative and the debtor may also become parties to the proceeding by entering an appearance within twenty days after the service of such notice. The jurisdiction of the Arbitration and Mediation Committee with respect to such proceeding shall not be affected by the failure of the creditors' representative or of the debtor to enter an appearance in such proceeding. If there is no reference to arbitration within the ten-day period provided for above, the debtor may enter into the proposed agreement with the creditors' representative.

(4) A decision of the Arbitration and Mediation Committee in a proceeding pursuant to paragraph (3) of this Article shall be binding upon the creditors' representative and the debtor to the same extent as is provided in the second sub-paragraph of paragraph 1 of Article IX of Annex II to the present Agreement. In any proceeding to which a trustee becomes a party pursuant to paragraph (1) or (3) of this Article, such trustee shall have the same rights as any other party thereto.

Article 31

Mixed Commission for questions respecting Annex IV

(1) The composition and organisation of the Mixed Commission provided for in Article 16 of Annex IV to the present Agreement and the rules for the exercise of its jurisdiction are contained in the Charter which is appended hereto as Annex X.

(2) The Mixed Commission shall have jurisdiction in-

(a) differences between a creditor and a debtor as to the interpretation of Annex IV to the present Agreement, referred to it either by a creditor and a debtor jointly, or by a creditor or a debtor whose Government states that in its opinion the question at issue is of general importance for the interpretation of the said Annex;

(b) cases referred to it under Article 16 of Annex IV to the present Agreement from a Court of Arbitration established pursuant to Article 17 of the Annex, by a Party to the present Agreement or by the said Court of Arbitration, on the ground that such cases are of fundamental importance to the interpretation of Annex IV, provided that in any case before the said Court of Arbitration which is an appeal under Article 11 of Annex IV, only the question in such case which is of fundamental importance to the interpretation of that Annex shall be referred to the Mixed Commission for decision.

(3) Any Party to the present Agreement which is concerned in the subject-matter of a proceeding before the Mixed Commission shall be entitled to become a party to such proceeding.

(4) The jurisdiction of the Mixed Commission shall not be affected by the failure of any party to a dispute to enter an appearance in the proceeding before the Mixed Commission.

(5) The Mixed Commission shall have power to decide questions as to its jurisdiction under the foregoing provisions of this Article.

(6) Subject to the provisions of paragraph (7) of this Article a decision of the Mixed Commission shall be final and binding-

(a) upon the parties to any proceeding before it;

(b) upon any party to a dispute referred to the Mixed Commission under paragraph (2)(a) of this Article;

(c) upon a Party to the present Agreement which submits a case or question for decision under paragraph (2)(b) of this Article;

(d) upon a Court of Arbitration by or from which a question is referred under paragraph (2)(b) of this Article;

(e) if a term of settlement of a debt was the subject of the proceeding, in respect of such term of settlement.

(7) A Party to the present Agreement shall be entitled to appeal from a decision of the Mixed Commission to the Tribunal within thirty days of the date of the delivery of the decision on the ground that such decision concerns a matter of general or fundamental importance. The appeal shall be brought only with respect to any matter in such decision which is asserted by the appellant to be of general or fundamental importance. When the Tribunal has rendered its decision with respect to any such matter the Mixed Commission shall take any action in connexion with the proceeding giving rise to the appeal which may be necessary to give effect to such decision.

Article 32 Courts of Arbitration for disputes under Annex IV

(1) A creditor and a debtor who, pursuant to the fifth paragraph of Article 17 of Annex IV to the present Agreement, have agreed to refer a dispute to a Court of Arbitration shall each appoint an arbitrator within thirty days of the date of such agreement. If there is more than one creditor or more than one debtor the arbitrator shall be appointed by such creditors or debtors jointly. If an arbitrator is not appointed within the above time-limit, the other parties to the dispute shall be entitled to request the International Chamber of Commerce to appoint such arbitrator. The two arbitrators shall, within thirty days from the date of the appointment of the arbitrator last appointed, choose a third arbitrator to act as Chairman. If a Chairman is not chosen within such time, each party may request the International Chamber of Commerce to make the appointment.

(2) (a) A creditor who, pursuant to the second paragraph of Article 11 of Annex IV to the present Agreement, appeals to a Court of Arbitration, shall within thirty days of service of the decision of the German court-

(i) notify the German Court which rendered the decision of such appeal;

(ii) notify the debtor of the name of the arbitrator he has appointed to sit on the Court of Arbitration.

(b) The receipt of the notice provided in sub-paragraph (a)(i) of this paragraph shall put an end to all proceedings in German courts in respect of the decision, in so far as it relates to the debt which is the subject of the appeal and such decision to this extent shall have no effect.

(c) Within thirty days of the receipt of the notice provided in sub-paragraph (a)(ii) of this paragraph, the debtor shall notify the creditor of the name of the arbitrator he has appointed to sit on the Court of Arbitration. If the debtor does not make such notification within the time prescribed the creditor shall be entitled to request the International Chamber of Commerce to appoint such arbitrator. A third arbitrator, to act as Chairman, shall be chosen in accordance with the procedure provided in paragraph (1) of this Article.

(d) A Court of Arbitration, which is hearing an appeal under the provisions of the second paragraph of Article 11 of Annex IV to the present Agreement, shall-

(i) sit at a place within the Federal Republic of Germany, unless the parties to the proceedings agree otherwise;

(ii) apply the principles laid down in the first paragraph of Article 11 of Annex IV to the present Agreement;

(iii) conduct such proceedings as a new trial.

(e) If, in the course of any appeal to a Court of Arbitration under the provisions of the second paragraph of Article 11 of Annex IV to the present Agreement, a question is referred to the Mixed Commission under paragraph (2)(b) of Article 31 of the present Agreement, the Court of Arbitration shall forthwith suspend the proceeding in such appeal until the final decision of the Mixed Commission respecting such question has been rendered. When such decision is rendered the Court of Arbitration shall resume the proceeding and shall take any action which may be necessary to give effect to such decision.

(3) A Court of Arbitration shall, in reaching decisions respecting the interpretation of Annex IV to the present Agreement, be bound by any relevant decision of the Mixed Commission.

(4) In the event of any vacancy caused by the death, illness, withdrawal or failure of a member of a Court of Arbitration to carry out his duties, such vacancy shall be filled, in the same manner as the original appointment, within thirty days of the occurrence of such vacancy.

(5) A Court of Arbitration may determine the manner in which the costs of the proceeding, including counsel's fees, are to be borne and, in an appeal under paragraph (2) of this Article, which party shall bear the costs of the proceeding in the German Court or how such costs should be apportioned between the parties. In the absence of such determination each party to the proceeding shall bear its own costs; the costs in the Court of Arbitration and, if applicable, the costs in the German Court, shall be borne as to the one half by the creditor or creditors and as to the other half by the debtor or debtors.

(6) A proceeding pending before a Court of Arbitration may be withdrawn only with the consent of all parties thereto.

(7) Subject to the provisions of this Article and of Article 17 of Annex IV to the present Agreement, a Court of Arbitration shall determine its own rules of procedure. In the absence of such determination, or in respect of matters not covered by such determination, the Arbitration Code of the International Chamber of Commerce shall apply.

(8) The decision of a Court of Arbitration in any proceeding shall be final and binding upon the parties thereto.

Article 33

Matters arising in deconcentration proceedings

Matters of which disposition is specifically made in a plan approved, or an order or regulation issued, by the Allied High Commission or any of its subordinate agencies designated by it to act with respect to such matters, or any agency succeeding to the powers of the Allied High Commission with respect thereto, under Allied High Commission Laws No. 27 (Reorganization of German Coal and Iron and Steel Industries) and No. 35 (Dispersion of Assets of I.G. Farbenindustrie A.G.) shall not be heard by the Tribunal or by any other arbitral body established under the present Agreement and the Annexes thereto. In any such disposition the creditor and debtor, the Allied authorities and the Board of Review shall apply the provisions of the present Agreement and the Annexes thereto. Before any plan can be approved or any order or regulation issued disposing of any matter which is in dispute by reason of a question of interpretation or application of the provisions of the present Agreement or the Annexes thereto, such dispute shall be referred to and be decided by the Tribunal or other arbitral body which is competent under the present Agreement or the Annexes thereto. The competence of the Tribunal or of any other arbitral body established under the present Agreement or the Annexes thereto with respect to matters which are not specifically disposed of under a plan, order or regulation as aforesaid or which

arise by reason of events subsequent to the entry into effect of such plan, order or regulation shall not be affected by the preceding provisions of this Article.

Article 34 Consultation

In the interest of the continuing and effectual carrying out of the present Agreement and the Annexes thereto to the satisfaction of all parties concerned, and without derogating from the obligations which the Federal Republic of Germany has assumed-

(a) consultations will be held between the Parties to the present Agreement principally concerned, if the Government of the Federal Republic of Germany or the Government of any of the creditor countries holding a substantial share of the debts covered by this Agreement so requests. Any Party to the present Agreement shall have the right to participate in these consultations, and if it participates it may invite representatives of the interested creditors or debtors of its country to attend;

(b) if the consultations are concerned with a situation in which the Federal Republic of Germany finds that it is faced with difficulties in carrying out its external obligations, attention shall be given to all relevant economic, financial and monetary considerations which relate to the ability to transfer of the Federal Republic of Germany, as influenced by both internal and external factors, and which relate to the continuing fulfilment by the Federal Republic of its obligations under the present Agreement and the Annexes thereto and under the Agreements concerning post-war economic assistance. Due regard will be paid to the principles by which the Conference on German External Debts was guided, to the objectives at which it aimed and to the undertaking of the Government of the Federal Republic of Germany to do everything in its power to ensure the fulfilment of these obligations. Advice shall, if the principal consulting Parties to the present Agreement so decide, be sought from appropriate international organisations or other independent experts. A request for such advice may be made by the Federal Republic of Germany or by any of the Parties to the present Agreement principally concerned.

Article 35 Entry into force

(1) Each of the Governments signatory to the present Agreement shall, after having ratified or approved the Agreement in accordance with its constitutional requirements, deposit with the Government of the United Kingdom of Great Britain and Northern Ireland an instrument of ratification or a notification that the Agreement has been approved.

(2) The present Agreement shall enter into force immediately upon the deposit by the Government of the Federal Republic of Germany and the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America with the Government of the United Kingdom of Great Britain and Northern Ireland of the instrument of ratification or of the notification required under paragraph (1) of this Article. [4] Such entry into force shall be effective as to all Governments signatory to the Agreement which have at that time deposited the required instrument of ratification or notification. The Government of the United Kingdom of Great Britain and Northern Ireland shall notify each of the Governments signatory to the Agreement of the date of its entry into force and of the Governments in respect of which it enters into force.

(3) The date of the entry into force of the present Agreement in respect of any signatory Government which deposits the required instrument or ratification or notification after the entry into force of the Agreement under the preceding paragraph shall be the date of such deposit. The Government of the United Kingdom of Great Britain and Northern Ireland shall notify the other signatory Governments, and any Government which has acceded to the present Agreement under Article 36, of such deposit and the date thereof.

Article 36 Accession

(1) Any Government which has been invited by the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, or by any of them, and by the Government of the Federal Republic of Germany to sign the present Agreement may either sign or accede thereto in accordance with the terms of its invitation. Any other Government which may, after the entry into force of the

present Agreement, establish diplomatic relations with the Federal Republic of Germany, may accede thereto. Accession shall be accomplished by the deposit of an instrument of accession with the Government of the United Kingdom of Great Britain and Northern Ireland, which shall notify the other signatory and acceding Governments of such deposit and the date thereof.[5]

(2) The present Agreement shall come into force for any acceding Government on the deposit of its instrument of accession, but not before it comes into force in accordance with Article 35.[6]

Article 37

Extension of Agreement to certain territories

(1) Any Government may, at the time of its signature or accession or at any time thereafter, declare by notification given to the Government of the United Kingdom of Great Britain and Northern Ireland that the present Agreement shall, as from the date specified in such notification, extend to all or any of the territories for whose international relations it is responsible.[7]

(2) The Government of the United Kingdom of Great Britain and Northern Ireland shall inform all signatory and acceding Governments of any notification received by it under this Article.

Article 38

Reservations and qualifications

(1) Any Government which deposits an instrument of ratification or a notification of approval or an instrument of accession to the present Agreement other than in accordance with the terms of its invitation or subject to any other reservation or qualification shall not be deemed to be a Party to the Agreement until such reservation or qualification has been withdrawn or has been accepted by all the Parties thereto.

(2) Any notification given under Article 37 subject to a reservation or qualification shall not take effect until such qualification or reservation has been withdrawn or has been accepted by all the Parties to the present Agreement.

IN WITNESS WHEREOF the undersigned, having been duly authorized thereto by their respective Governments, have signed the present Agreement, to which are attached Annexes I to X inclusive.

DONE at London this twenty-seventh day of February, nineteen hundred and fifty-three, in three original texts, in the English, French and German languages respectively, all three texts being equally authoritative, which shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland which shall transmit certified copies thereof to each signatory and acceding Government.

[Signatures not reproduced here.]

ANNEX I [8]

AGREED RECOMMENDATIONS FOR THE SETTLEMENT OF REICH DEBTS AND DEBTS OF OTHER PUBLIC AUTHORITIES

A. DEBTS OF THE REICH

The Government of the Federal Republic of Germany (hereafter referred to as the Federal Government) will undertake to offer to the Bondholders to pay and transfer the following amounts:

1. The 7 percent External (Dawes) Loan 1924

(a) As on the first coupon date following 31 March 1953, interest at 5 1/2 percent per annum on the American Issue and 5 percent per annum on the other Issues.

(b) As on the first coupon date following 31 March 1958, a sinking fund of 3 percent per annum on the American Issue and 2 percent per annum on the other Issues shall be added to the above interest payments and constitute with them a cumulative annuity.

(c) The maturity date shall be extended to the year 1969.

(d) Arrears of interest outstanding shall be recalculated at 5 percent simple interest, and in respect of the resulting total the Federal Government will issue 20-year Bonds carrying 3 percent per annum interest and after 5 years 2 percent sinking fund. On Bonds for so much as represents arrears due to 31 December 1944, payment will be made as from 15 April 1953: Bonds for the balance will not be issued until the unification of Germany when payment on these Bonds will begin.

(e) In all respects other than those indicated above, the terms of the original Loan contracts shall be maintained.

(f) All expenses incidental to carrying out the above modifications of the original contracts shall be borne by the Government of the Federal Republic.

2. The 5 1/2 percent International (Young) Loan 1930

(a) As on the first coupon date following 31 March 1953, interest at 5 percent per annum on the American Issue and 4 1/2 percent per annum on the other Issues.

(b) As on the coupon date following 31 March 1958, a sinking fund of 1 percent per annum shall be added to the above interest payments and constitute with them a cumulative annuity.

(c) The maturity date shall be extended to the year 1980.

(d) Arrears of interest outstanding shall be recalculated at 4 1/2 percent simple interest and in respect of the resulting total the Federal Government will issue 20-year Bonds carrying 3 percent per annum interest and after 5 years 1 percent sinking fund. On Bonds for so much as represents arrears due to 31 December 1944, payment will be made as from 15 April 1953. [9] Bonds for the balance will not be issued until the unification of Germany, when payment on these Bonds will begin.

(e) The amounts due in respect of the various issues of the 5 1/2 percent International Loan 1930 are payable only in the currency of the country in which the issue was made. In view of the present economic and financial position in Germany, it is agreed that the basis for calculating the amount of currency so payable shall be the amount in US dollars to which the payment due in the currency of the country in which the issue was made would have been equivalent at the rates of exchange ruling when the Loan was issued. The nominal amount in US dollars so arrived at will then be reconverted into the respective currencies at the rate of exchange current on 1 August 1952.

Should the rates of exchange ruling any of the currencies of issue on 1 August 1952 alter thereafter by 5 percent or more, the instalments due after that date, while still being made in the currency of the country of issue, shall be calculated on the basis of the least depreciated currency (in relation to the rate of exchange current on 1 August 1952) reconverted into the currency of issue at the rate of exchange current when the payment in question becomes due.

(f) In all respects other than those indicated above, the terms of the original Loan contracts shall be maintained.

(g) All expenses incidental to carrying out the above modifications of the original contracts shall be borne by the Government of the Federal Republic.

3. The 6 percent External (Match) Loan 1930

(a) As on the first coupon date following 31 March 1953, interest at 4 percent per annum.

(b) As on the first coupon date following 31 March 1958, a sinking fund of 11/4 percent shall be added to the above interest payments and constitute with them a cumulative annuity.

(c) Arrears of interest to be recalculated at 4 percent simple interest but otherwise to receive the same treatment as the arrears in respect of the Young Loan.

(d) The maturity date shall be extended to the year 1994.

(e) As long as the service of the Match Loan is effected according to the provisions of this Settlement Plan, the payment for interest and amortisation of the Loan will be made at the office of the Skandinaviska Banken in Stockholm, Sweden, in Swedish Kronor equivalent to the amount due in US dollars at the rate of exchange on the due date.

(f) In all other respects other than collateral the Match Loan shall have the same treatment as the Young Loan.

4. Konversionskasse Bonds

The Federal Government will undertake to make the following payments in respect of Konversionskasse Bonds and Scrip:

(a) As on the first coupon or interest date following after 31 March 1953, interest at the original contractual rates;

(b) as on the first coupon date following after 31 March 1958, a sinking fund of 2 percent per annum shall be added to the above interest payments and constitute with them a cumulative annuity;

(c) the maturity dates of these bonds shall be extended by 17 years from the existing maturity dates;

(d) two-thirds of the arrears of interest calculated at the contractual rates shall be waived. The remaining one-third shall be funded and carry the same interest and sinking fund as the original Bonds;

(e) in all other respects the original contracts of these Bonds shall be maintained;

(f) all expenses incidental to carrying out the above modifications of the original contracts will be borne by the Federal Government;

(g) Reichsmark Bonds and Scrip will be converted into Deutsche Mark at the rate of 10:1.

5. Certain small liabilities of the Reichsbahn and the Reichspost in foreign currencies other than those covered by Annex IV will be the subject of negotiation between the Federal Government and the creditors.

6. Debts in Reichsmarks of the Reich, the Reichsbahn, the Reichspost and the State of Prussia

In response to the request of the creditors' representatives the Federal Government will undertake-

(a) to extend at their request and in application of the principle of national treatment to foreign creditors the benefit of the advantages and compensations which have been or may ultimately be granted in connection with the monetary reform to German creditors;

(b) to extend to foreign creditors at the time of the enactment of any future German law relative to the conversion and settlement of debts the benefit of the most favourable treatment provided by this law for German creditors;

(c) if the law mentioned in paragraph (b) above is not promulgated before 1 January 1954, or does not cover all categories of debts, to open before 1 April 1954, negotiations with the foreign creditors' representatives in course of which these representatives reserve the right to ask for a special settlement of these debts.

The present undertaking applies to all Reichsmark debts of the Reich, the Reichsbahn and the Reichspost whether represented by Bonds (Treasury Bills, obligations of the Ablösungsanleihen, etc.) or not so represented;

(d) the Federal Government further undertakes to extend the same treatment to the future service of the Reichsmark liabilities of the State of Prussia.

B. EXTERNAL BONDS ISSUED OR GUARANTEED BY THE STATES (LÄNDER), MUNICIPALITIES AND SIMILAR PUBLIC BODIES WITHIN THE TERRITORY OF THE FEDERAL REPUBLIC OF GERMANY

7. The respective debtors shall pay to be transferred by the Federal Government the following amounts:

(1) Bonds other than those of the State of Prussia

(a) As on the first coupon date following after 31 March 1953, 75 percent of the original contractual interest (subject to a minimum of 4 percent per annum and a maximum of 5 1/4 percent per annum) or the rate specified in the original contract if less than 4 percent per annum;

(b) interest at the same rates on two-thirds of any arrears of interest (other than interest already covered by Konversionskasse Bonds or similar agreed arrangements); these arrears shall be funded;

(c) as on the first coupon dates following after 31 March 1958, a sinking fund of 1 percent per annum, to be increased on 31 March 1963 to 2 percent in the case of loans maturing in 1968 or after shall be added to the above interest payments and constitute with them a cumulative annuity;

(d) the maturity dates of these Loans shall be extended by 20 years from the existing maturity dates;

(e) in respects other than those indicated above, the terms of the original loan contracts shall be maintained unless otherwise agreed by the creditor in special circumstances. Where exceptional circumstances peculiar to a particular debtor are such as to satisfy the creditors' representatives that it is impracticable for that debtor to conform to the general arrangement, such adjustment as may seem necessary shall be made by agreement between the debtor and the creditors' representatives.

(f) Bonds issued and payable outside of the territory of the Federal Republic denominated in Reichsmark shall be converted, at the rate of 10:1, into Deutsche Mark. They will carry interest at the original contractual rate. Arrears of interest shall be funded on the same basis and shall carry the same rate of interest. The bonds shall be extended for a period of 15 years after the maturity date, and will be redeemable in equal annuities, the first being due on the first coupon maturity date in 1958. Interest and redemption moneys will be transferred in the currency of the country where the bondholder has his residence.

(g) Reference to an "original contract" or to an "original contractual interest" shall be read as reference to the contract or the relative contractual interest subsisting between creditor and debtor at the time when the borrowing was first made or the obligation was first incurred, unless a conversion (herein called an "effective conversion") was made before 9 June 1933, or was made on or after that date on account of the insolvency or threatened insolvency of the debtor or as a result of free negotiation; provided that-

(i) in disputed cases the decision shall lie with a Court of Arbitration where the burden shall be on the debtor to prove that the arrangement was freely negotiated, and

(ii) arrangements made where the German Custodian of Enemy Property or a person appointed by a German authority in an occupied territory represented the creditors or resulting from mere acceptance by the creditor of a unilateral offer made by the debtor shall be presumed not to have been freely negotiated.

In calculating future interest and arrears of interest under the general formula, the original contractual rate shall apply. Where, however, an effective conversion has taken place the converted rate of interest shall apply; provided that in such case the converted rate shall not be subject to any reduction either as to arrears of interest or as to future interest, unless the debtor prefers calculation on the basis of the original contractual rate under the general formula.

(h) All expenses incidental to carrying out the above modifications of the original contracts shall be borne by the debtors.

(i) Where the remaining capital amount of the total of all bond issues in foreign currency of a particular debtor is small, the debtor may offer an earlier repayment and final settlement of the entire amount of such indebtedness and arrears of interest without regard to the limitations and provisions under (d) above relative to the prolongation of the indebtedness.

(j) All corporate obligations guaranteed by a State, city, municipality or other governmental body shall be settled in accordance with "Agreed Recommendations for the Settlement of Medium and Long-Term German Debts resulting from private capital transactions" (Annex II) provided that such guarantees shall continue in force in accordance with its terms.[10]

(2) Bonds of the State of Prussia

The Federal Government, on behalf of the several Länder which succeeded to territory and assets formerly belonging to the State of Prussia, shall make payments as follows:

(a) As to External Sinking Fund 6 1/2 percent Dollar Bonds of 15 September 1926, due 15 September 1951, and External Sinking Fund 6 percent Dollar Bonds of 15 October 1927, due 15 October 1952:

(i) The Federal Government will issue new dollar bonds bearing first coupon dated 1 April 1953, and maturing in twenty years, in the same denominations as the outstanding bonds of the above issues bearing interest at the rate of 4 percent, payable semi-annually on 1 April and 1 October. On 1 April 1958, a sinking fund of 1 percent per annum shall be added to the above interest rate and constitute with it a cumulative annuity. The debtor may call bonds by lot at par or may purchase bonds in the open market or otherwise and may provide additional amortisation as long as the service is maintained in accordance with the Contract.

(ii) Outstanding coupons on the old issues bearing dates from 15 March 1933 to 31 December 1936, will be extended for a period of twenty years, and upon such extended maturity 50 percent of the amount thereof shall be paid in United States dollars on the corresponding dates in 1953, 1954, 1955 and 1956.

(iii) Coupons maturing on or after 1 January 1937 shall receive no payment until such time as territories formerly belonging to the State of Prussia and now outside the territory of the Federal Republic shall be joined to the Federal Republic, at which time payment shall be the subject of negotiation.

(iv) All expenses incidental to carrying out the above shall be borne by the Federal Government.

(b) As to the 4 1/2 percent Swedish Crown Bonds of the Lübeck State Loan of 1923, taken over by the State of Prussia in 1938:

The outstanding bonds of this loan, for which notice of repayment was given for 1 May-1 November 1944, will be

redeemed upon presentation at the current rate of exchange, subject to a discount of 50 percent of the nominal amount and without payment of any arrears of interest.

(3) Non-bonded indebtedness (other than that covered by Annex IV)

The terms of paragraph 7(1) will apply, mutatis mutandis, service starting from 1 January 1953. In the settlement of Mark claims regard will be had to the relevant provisions of Annex IV to the Agreement on German External Debts.

C. GENERAL PROVISIONS

8. Procedure for carrying out these proposals

(a) The terms of the proposals may be enforced on existing bonds or new bonds issued in exchange for existing bonds, and new bonds or fractional scrip issued for arrears of interest, depending upon the convenience and custom prevailing in the several markets in which the bonds were originally issued. Such enforced bonds or new bonds will conform to prevailing market practice. The debtors at their own expense will employ suitable banking institutions for the purposes of carrying out the details of the proposal. The debtors at their own expense will meet all requirements of governmental authorities and securities markets in order to ensure maximum marketability.

Term of offer

(b) The offer will be made in the respective countries as may be agreed with Bondholders' Councils or analogous bodies and shall remain open for acceptance by the bondholders for at least five years. The debtors shall extend the offer for a further period for a reasonable cause.

Reservation of rights

(c) If any debtor fails to fulfil the obligation undertaken under the present Agreement the creditors shall be entitled to revert to their original contractual rights.

Paying agents' and trustees' expenses

(d) Paying Agents' commissions and expenses and Trustees' fees and expenses for the future will be paid and transferred.

Other expenses

(e) The creditors' representatives reserve the right to obtain payment from the respective debtors of all expenses incurred by them in connection with the London Conference, and the making of an offer hereunder shall be deemed an acceptance by the debtor of this Clause. Nothing herein contained shall preclude any creditors' representative from making and collecting such reasonable additional charge as it may deem appropriate from the bondholders or creditors in accordance with established practice or otherwise.

Validation

(f) The Federal Government undertakes to do all in its power in order to establish, on the basis of the German Validation Law passed by its Parliament and about to be enacted, an appropriate procedure for the validation of German foreign currency bonds, which procedure shall be effective in the several creditor countries as soon as possible but not later than on 1 February 1953.

Payment on bonds or coupons which require validation under the German validation procedure shall not be made until such bonds or coupons shall have been validated pursuant thereto.

9. The Bondholders' Councils concerned or analogous bodies will recommend these terms to the acceptance of their Bondholders.

D. CLAIMS ARISING OUT OF AWARDS OF MIXED CLAIMS TRIBUNALS

10. Mixed claims bonds

The German Delegation on External Debts, on the one hand, and the representatives of the American Awardholder Committee concerning Mixed Claims Bonds on the other hand, have agreed as follows:

The Federal Republic of Germany will propose to the Government of the United States of America and the Awardholders' Committee will recommend to the Government of the United States and to the individual awardholders the settlement on the following terms of the obligation of the Federal Republic of Germany to the United States on behalf of private United States nationals for whose benefit Mixed Claims Bonds were issued by Germany in 1930 and which bonds are in default;

(1) The payment by the Federal Republic on 1 April 1953, and on 1 April of each succeeding year during the periods described of the following amounts:

\$

For each of the first five years 3,000,000

For each of the next five years 3,700,000

For each of the next sixteen years 4,000,000

Payment will be made in United States currency dollars to the United States for distribution to the awardholders.

(2) Any instalment not paid when due will bear interest at 33/4 percent from due date to date of payment.

(3) Bonds denominated in dollars and maturing in the amounts and on the dates of the payments will be issued in evidence of the obligations of the Federal Republic, and upon issuance a proportionate number of old Mixed Claims Bonds will be cancelled and returned to the Federal Republic.

(4) The terms of the settlement will be embodied in a bilateral agreement between the Federal Republic and the United States.

(5) Full performance of this Agreement by the Federal Republic and by any successor Government and payment of the amounts due under this Agreement shall constitute fulfilment by the Federal Republic and by any successor Government and full discharge of each of them of their respective obligations under the Agreement of 23 June 1930, [11] and Bonds issued pursuant thereto in respect of awards of the Mixed Claims Commission, United States and Germany made on behalf of nationals of the United States, anything in the exchange of letters of 23 October 1950 and 6 March 1951, between Chancellor Adenauer and the Allied High Commissioners for Germany or in the memorandum of December 1951 prepared by the Tripartite Commission to the contrary notwithstanding.

11. Græco-German Arbitral Tribunal claims

A preliminary exchange of views has taken place between the Greek and German Delegations in regard to claims held by private persons arising out of decisions of the Mixed Græco-German Arbitral Tribunal established after the First World War. This will be followed by further discussions, the result of which, if approved, should be covered in the Intergovernmental Agreement.

E. MISCELLANEOUS

The following settlements are recommended:

12. Lee Higginson credit

(a) Participants to receive new two-year Notes of the Federal Government for full principal amount of their respective participations. (Two-year Notes, as original period of the credit when granted in 1930 was two years.)

(b) No back interest.

(c) No Gold clause.

(d) New Notes to bear interest from effective date of agreement at rate of 3 1/2 percent per annum payable in advance monthly.

(e) Collateral fund to be reconstituted in form of a Deutsche Mark deposit in the Bank deutscher Länder, in the name of the German Federal Debt Administration as Trustee; such fund to be calculated to be the equivalent of the notes in Deutsche Marks at official rates of exchange, and to be built up by the Federal Republic in 24 equal monthly instalments from date of the Notes.

(f) Participants to be entitled to receive prepayment of the whole or part of their notes, if they wish, in Deutsche Marks converted at official rate and to constitute full discharge of dollar or sterling obligation pro tanto; such payment to be made at participants' option as and when German laws and regulations so permit. Any such payment to be made out of the collateral fund to the extent the participants' proportionate interest in the collateral so permits, any balance to be paid in Deutsche Marks directly by the Federal Government.

13. Bank for International Settlements credits

(a) The Federal Government will pay to the Bank for International Settlements as from 1 January 1953, in respect of current interest on the claims of the Bank an annual sum of 5,600,000 Swiss francs.

(b) In consideration of the payment of this annuity the Bank has agreed to maintain its credits at their present level until 31 March 1966. It has also agreed to postpone until that date the settlement of arrears of interest.

For the full text of this Arrangement see Sub-Annex A.

14. Konversionskasse receipts

(a) The Federal Government agrees to assume liability for full payment in the due currencies to the foreign creditors of the sums paid into the Konversionskasse by debtors in the Saar in respect of which the foreign creditors have not received foreign exchange payments or been otherwise satisfied.

(b) The Federal Government agrees to assume liability for payment in the due currencies to the foreign creditors of 60 percent of the sums paid into the Konversionskasse by debtors in Austria, France, Belgium and Luxemburg in respect of which the foreign creditors have not received foreign exchange payments or been otherwise satisfied.

(c) The Federal Government will negotiate with the foreign creditors' representatives before the end of December 1952 as regards the implementation of these undertakings.

15. Liability in respect of Austrian Governmental debts

The creditors have been unable to arrive at a settlement on this question, which will be the subject of further negotiations at an early date.

16. Agreement between Belgium and the Federal Republic of Germany[12]

A draft Agreement between Belgium and the Federal Republic of Germany was reached on 4 August 1952.

SUB-ANNEX A TO ANNEX I

ARRANGEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE BANK FOR INTERNATIONAL SETTLEMENTS

[13]

The Government of the Federal Republic of Germany, represented by the Federal Ministers of Finance and for Economy, these latter being represented by Herr Hermann J Abs, and the Bank for International Settlements, Basle, represented by Monsieur Roger Auboin, General Manager and Alternate of the President,

make the following contract with regard to the present investments of the Bank for International Settlements in Germany:

1. The Government of the Federal Republic of Germany will pay to the Bank for International Settlements as from 1 January 1953 to 31 March 1966, an annual sum of Swiss francs 5,600,000 by quarterly payments falling due at the expiration of each quarter on 1 April, 1 July, 1 October and 2 January.

2. These payments will satisfy all claims to current interest, including interest on arrears of interest, which the Bank for International Settlements possesses as a result of its present investments in Germany.

3. The payments will be made for account of those concerned. If and in so far as the Bank for International Settlements possesses claims to interest arising out of its present investments in Germany against persons or entities other than the Federal Republic of Germany, these claims to interest will pass to the Federal Republic of Germany at the time of the payments made under paragraph 1 above.

4. Subject to the above-mentioned provisions, the existing legal position will in no way be changed by the present provisional settlement. In particular, the rights and obligations of the Federal Republic of Germany with regard to the investments of the Bank for International Settlements in Germany will not thereby be extended.

5. In consideration of the payments provided for in paragraph 1, the Bank for International Settlements will not, prior to 1 April 1966, demand the reimbursement of the principal of its investments in Germany or the payment of arrears of interest.

6. It is mutually recognised that this contract shall form an integral part of the London Agreement on German External Debts and the Annexes thereto and shall come into force at the same time as that Agreement.

7. This contract has been done in two original copies, of which one will be held by the Federal Ministry of Finance in Bonn and the other by the Bank for International Settlements in Basle.

Basle, 9 January 1953.

[Signed:] [Signed:]

ABS R AUBOIN

General Manager, Alternate of the President

SUB-ANNEX B TO ANNEX I

AGREEMENT BETWEEN BELGIUM AND THE FEDERAL REPUBLIC OF GERMANY

[14]

AGREEMENT between Belgium and the Federal Republic of Germany on the Settlement of Belgian Claims arising out of the Annuities provided for in the German/Belgian Agreement of 13 July 1929. [15]

Belgium, of the one part, and the Federal Republic of Germany, of the other part, have agreed, as a result of negotiations which took place at London during the International Conference on German External Debts, to conclude the following Agreement:

Article 1

RM

The Government of the Federal Republic of Germany recognises that a sum amounting to was on 10 May 1940 placed to the credit of the Belgian Government in respect of the annuities provided for in the German/Belgian Agreement of 13 July 1929, and paid into the Konversionskasse up to 15 November 1939.

107,856,835.65

On the other hand, the following were not paid into the Konversionskasse and are still owing to the Belgian Government:

(a) the monthly portions of annuities due between 15 December 1939 and 10 May 1940, namely
10,833,333.33

(b) the monthly portions of annuities due between 10 May 1940 and 8 May 1945, namely
105,908,333.34

TOTAL

224,598,502.32

Article 2

Being willing to compromise on the settlement of the abovementioned debt, the Government of the Federal Republic undertakes to pay, and the Belgian Government undertakes to accept, a lump sum equal to forty (40) million Deutsche Mark, payable in fifteen (15) annual instalments falling due on 1 July of each of the years 1953 to 1967, namely:

5 annuities, from 1953 to 1957, amounting to DM. 2 million each;

10 annuities, from 1958 to 1967, amounting to DM. 3 million each.

The Belgian Government agrees to accept the above payments in final and definitive settlement of the Belgian claims concerned up to 8 May 1945.

Article 3

Each of the above-mentioned annuities shall be represented by a bond of the Federal Republic, expressed in Deutsche Mark, and shall be transferred in Belgian currency at the mean official rate of the Bank deutscher Länder in operation on the day before the bond becomes due.

The bonds shall be delivered to the Belgian Government on 1 April 1953, at the latest.

Article 4

Any bond not paid at the date when it becomes due shall bear interest at the rate of 3 percent per annum for the benefit of the Belgian Government.

Article 5

The present Agreement will be ratified. The instruments of ratification will be exchanged at Brussels.

The Agreement will enter into force upon the exchange of the instruments of ratification.

Article 6

The present Agreement is drawn up in the French and German languages, the two texts being equally authoritative.

IN WITNESS WHEREOF the undersigned plenipotentiaries, having been duly authorised thereto, have appended their signatures to the present Agreement.

DONE at Bonn on the 23rd day of December, 1952, in two original texts in the French and German languages.

FOR BELGIUM: FOR THE FEDERAL REPUBLIC OF GERMANY:

[Signed:] [Signed:]

F MUULS ABS

SUB-ANNEX C TO ANNEX I

EXCHANGE OF BONDS OF THE PRUSSIAN EXTERNAL LOANS OF 1926 AND 1927

German Delegation for External Debts

London

20 November 1952

243-18 Del. 38-2151/52

The Chairman of the Tripartite Commission on German Debts

29 Chesham Place

LONDON SW1

Mr Chairman

EXCHANGE OF BONDS OF THE PRUSSIAN EXTERNAL LOANS OF 1926 AND 1927

With reference to the exchange of letters between the Federal Chancellor and the Allied High Commissioners for Germany of 6 March 1951, I confirm that the declaration of the German Delegation made at the London Debt Conference on 12 March 1952 concerning the readiness of the Federal Republic of Germany to assume

responsibility towards the creditors for the 6 1/2 percent Prussian External Loan of 1926 and the 6 percent Prussian External Loan of 1927 has the meaning and effect that the Prussian Loan debts are to be treated as liabilities of the German Reich within the meaning of the exchange of letters of 6 March 1951, for which the Federal Republic is responsible. With regard to this declaration of the German Delegation, the legislative body of the Federal Republic of Germany has included the following provision in the Validation Law for German External Bonds of 25 August 1952 - Bundesgesetzblatt I No. 35, page 553:

"Paragraph 74

Foreign currency bonds of the German Reich and of the former Land Prussia

(1) For the purpose of this Law, the German Federal Republic shall be deemed to be the issuer of the foreign currency bonds issued by the former Land Prussia, as long as no other provision is made."

Please accept, Mr Chairman, the expression of my highest esteem,

[Signed:]

HERMANN J ABS

SUB-ANNEX D TO ANNEX I

AGREEMENT ON THE CONVERSION AND SETTLEMENT OF THE FOREIGN GOLDMARK BONDS OF GERMAN MUNICIPALITIES

London

19 November 1952

The Chairman

Tripartite Commission for German External Debts

29 Chesham Place

LONDON SW1

Mr Chairman

We have the honour to inform you that the German Delegation for Foreign Debts and the British Committee of Long-term and Medium-term Creditors of Germany have agreed on the conversion and settlement of the foreign goldmark bonds of German Municipalities in the following terms:

(1) It is agreed that the conversion and settlement of the service of the Reichsmark bonds issued and payable abroad, provided in paragraph 7(1)(f) of Appendix 3 of the Report of the Debt Conference, do not refer to the loans of Municipalities in Federal Germany expressed in goldmarks or in Reichsmarks with a gold clause.

(2) The principle is agreed that bonds of those goldmark loans or Reichsmark loans with a gold clause of German Municipalities in Federal Germany, which have a specific foreign character, shall be converted into Deutschemarks on the basis of 1 goldmark or 1 Reichsmark with a gold clause = 1 Deutschemark. The determination of the characteristics which denote a specific foreign character of such bonds shall comply with the regulations resulting from the discussions which are foreseen in the reservations contained in Article V, paragraph 3, of Appendix 4, and in Article 6 of Appendix 6, of the Report of the Debt Conference.

(3) The liabilities of the German Municipalities in Federal Germany arising out of such goldmark bonds or Reichsmark bonds with a gold clause which have a specific foreign character, shall be settled in accordance with the recommendations of paragraph 7, section (1), (a) to (e) and (g) to (j) of Appendix 3 of the Report of the

Conference referring to external bonds issued or guaranteed by the States (Länder), Municipalities and similar public bodies, within the territory of the Federal Republic of Germany.

We would ask you to approve our agreement as set forth above, and to attach the text of this letter as Sub-Annex to Annex No. I of the Debt Agreement.

Accept, Mr Chairman, the assurance of our highest esteem,

[Signed:] [Signed:]

HERMANN J ABS O NIEMEYER

Head of the German Delegation Chairman of Negotiating Committee "A"

for External Debts at the Conference on German External Debts

SUB-ANNEX E TO ANNEX I

AGREEMENT ON THE SETTLEMENT OF THE LIABILITIES OF THE "KONVERSIONSKASSE FÜR DEUTSCHE AUSLANDSSCHULDEN" RESULTING FROM PAYMENTS MADE BY DEBTORS IN THE SAAR TERRITORY AND IN AUSTRIA, FRANCE, LUXEMBOURG AND BELGIUM

German Delegation for External Debts

London

14 November 1952

243-18 Del. 38-1934/52

Sir Otto Niemeyer

c/o Council of Foreign Bondholders

17 Moorgate

LONDON EC2

Dear Sir Otto

I have the honour to summarise the agreement reached in our discussions on 20 October and 14 November 1952 as follows:

With regard to the implementation of the obligation assumed under the terms of paragraph 14 of Appendix 3 to the Final Report of the Conference, the Government of the Federal Republic of Germany is prepared to settle the liabilities of the Konversionskasse für Deutsche Auslandsschulden resulting from payments made by debtors in the Saar territory and in Austria, France, Luxembourg and Belgium to the extent that the creditors have neither received payments in non-German currency nor been otherwise satisfied, in the following manner:

I. BONDED DEBTS

1. Arrears of interest

Redemption of the coupons to be presented will be made with respect to payments effected by debtors-

(a) from the Saar territory, in full; and from France, Luxembourg and Belgium, at the rate of 60 percent of the debtors' payments; redemption to be made in the years 1953 to 1957 by paying-

coupons matured until the end of 1941, on the first coupon date following 31 March 1953;

coupons matured in 1942, on the first coupon date following 31 March 1954;

coupons matured in 1943, on the first coupon date following 31 March 1955;

coupons matured in 1944, on the first coupon date following 31 March 1956;

coupons matured in 1945, on the first coupon date following 31 March 1957;

(b) from Austria, at the rate of 60 percent of the debtors' payment; redemption to be made in the years 1953 to 1957 by paying-

coupons matured in 1938, on the first coupon date following 31 March 1953;

coupons matured between 1 January 1939 and 30 June 1940, on the first coupon date following 31 March 1954;

coupons matured between 1 July 1940 and 31 December 1941, on the first coupon date following 31 March 1955;

coupons matured between 1 January 1942 and 30 June 1943, on the first coupon date following 31 March 1956;

coupons matured between 1 July 1943 and 8 May 1945, on the first coupon date following 31 March 1957.

2. Amortisations

Amortisation of the total amount to be established will be made either by acquisition of bonds or by payment in cash with respect to payments effected by debtors-

(a) from the Saar territory, in full;

(b) from Austria, France, Luxembourg and Belgium at the rate of 60 percent of the debtors' payments;

in five equal annual instalments, starting on 1 July 1953, and thereafter on 1 July of each of the following four years.

Should the Government of the Federal Republic of Germany be unable to obtain by 1 July 1953, an overall survey of the total amount of amortisations to be made, it may begin payments not later than three months after that date.

II. OTHER DEBTS

Payment to be made in cash, the principles of Part I above applying mutatis mutandis, in five equal instalments, starting on 1 July 1953, and thereafter on 1 July of each of the following four years.

Should the Government of the Federal Republic of Germany be unable to obtain by 1 July 1953 an overall survey of the total amount to be paid, it may begin payments not later than six months after that date.

For the purpose of ascertaining the total amount of liabilities in question, the Government of the Federal Republic of Germany will by public notice request the creditors and the debtors to notify the Konversionskasse für Deutsche Auslandsschulden of any claims not settled and of any payments made to the Konversionskasse respectively, and to submit to the Konversionskasse any existing documents substantiating such notification. The Konversionskasse für Deutsche Auslandsschulden in Berlin will be instructed to register liabilities due for consideration.

III. SMALL AMOUNTS

The Government of the Federal Republic of Germany may at its discretion effect payments for very small amounts in respect of bonded debts or other debts within a shorter period.

I should be much obliged if you would confirm that the foregoing proposal is a correct statement of the agreement reached by us and can, therefore, form the subject of the envisaged exchange of letters.

Please accept, Sir, the expression of my highest esteem.

Yours very sincerely

[Signed:]

ABS

Council of Foreign Bondholders

17 Moorgate

London EC2

18 November 1952

Mr Hermann J Abs

Dear Mr Abs

I have to thank you for your letter of the 14 November with regard to the settlement of the Konversionskasse Receipts referred to in paragraph 14(c) of the Report of the Committee A.[16]

It is my understanding that the words at the top of page 2[17] should read "bis zum Ende des Jahres 1941" and that "am ersten auf den 31. März folgenden Kupontermin" means the first coupon date following 31 March.

Subject to this, I am in agreement with the terms of your letter.

Yours sincerely

[Signed:]

O E NIEMEYER

Chairman of Negotiating Committee A at the Conference on German External Debts

ANNEX II
[18]

AGREED RECOMMENDATIONS FOR THE SETTLEMENT OF MEDIUM AND LONG-TERM GERMAN DEBTS RESULTING FROM PRIVATE CAPITAL TRANSACTIONS

Article I
Introductory

This Agreement establishes terms and procedures which are to govern the settlement of the debts described in Article III below. The Agreement does not in itself modify the terms of the debts to which it applies. Rather, it is contemplated that new contracts will be entered into between each debtor and his creditors pursuant to the provisions of this Agreement. The new contracts shall retain the terms of the existing contracts unless modified by arrangements between creditor and debtor within the framework of this Agreement.

Article II
Definitions

Wherever used in this Agreement, the following terms shall, unless the context requires otherwise, have the meanings indicated below:

Original contract - the contract entered into at the time the loan was first made.

Existing contract - the original contract, except in the case of a contract which has been the subject of an effective conversion or conversions, in which case the existing contract is the contract resulting from the last effective conversion.

Effective conversion - a change made in the terms of a loan contract before 9 June 1933, or made on or after that date on account of the insolvency or threatened insolvency of the debtor or as a result of free negotiation; provided that

(a) in any dispute as to whether or not a change was freely negotiated it shall be presumed that any arrangement made where the German Custodian of Enemy Property represented the creditor, or which resulted from the mere acceptance by the creditor of a unilateral offer made by the debtor, was not freely negotiated;

(b) in any disputed case the burden shall be on the debtor to prove that the conversion was an effective conversion;

(c) in the case of Church loans, any conversion shall be considered effective.

Creditor - includes any creditors' representative designated pursuant to the provisions of Article VIII of this Agreement.

Germany - all territory within the German Reich on 1 January 1937.

Resident in - having ordinary residence (mit gewöhnlichem Aufenthalt oder Sitz) in; a juridical person shall be deemed to have its ordinary residence in the Federal Republic of Germany or Berlin (West) if it is entered in the Commercial Register in that territory.

Article III
Debts covered

1. The present Agreement applies to every bonded loan and to every non-bonded loan issued or raised outside Germany, if-

(a) the loan was made prior to 8 May 1945; and

(b) under the original contract the loan was to run for a period of five years or more; and

(c) the debtor is a corporation, company, association, firm, partnership, bank, church, welfare institution, or other non-governmental institution; and

(d) the debtor is, on 1 January 1953, or on any later date when his creditors request an offer of settlement, resident in the German Federal Republic or in Berlin (West); and

(e) the loan is denominated in non-German currency, or is denominated in German currency and contains a non-German currency or gold clause.

2. Notwithstanding the provisions of paragraph 1 of this Article, the present Agreement shall not be applicable to-

(i) the following categories of debts, which require separate treatment:

(a) debts of public utilities located in and controlled by the City of Berlin;

(b) debts owed by a debtor to any person or persons who, directly or indirectly, own such debtor;

(c) debts in respect of loans the original amount of which, converted at the exchange rate prevailing on 1 July 1952, was less than US \$40,000;

(d) debts subject to the Swiss-German Agreements of 6 December 1920[19] and 25 March 1923[20] (the so-called Schweizer Frankengrundsschulden);

(ii) the debts of the jointly owned German-Swiss Boundary power plants on the Rhine. There are outstanding three bonded loans and two non-bonded loans which are owed by German companies to Swiss bondholders and other creditors. Owing to certain special features relating to the operation of jointly-owned power plants along the Rhine, the settlement of these debts is bound up with other issues. Considering these circumstances, the final settlement (upon which it is impossible to agree at this time) is left for direct negotiations between Switzerland and the Federal Republic of Germany. However the creditors agree that, in negotiating such a settlement, they will not ask for payment of an annual amount exceeding 5 million Swiss francs in the first five years after 1 January 1953.

3. No debt shall be excluded solely because a new debtor becomes or has become liable for it, by operation of law or otherwise, either before or after 8 May 1945. For example, no debt of an enterprise subject to Allied High Commission Law No. 27, "Reorganisation of the German Coal and Iron and Steel Industries," shall be excluded by virtue of the assumption of such debt by unit or other successor companies.

4. This Agreement shall not apply to individual bonds or coupons which require validation under the German Validation Law of 19 August 1949 (Wirtschaftsgesetzbl. p. 295), and the German Validation Law for Foreign Bonds of August 1952, until such bonds or coupons shall have been validated pursuant to the provisions of any such law and of any intergovernmental agreement which may be entered into with the country of issue respecting such law.

5. The problem of the debts of the German Central Bank for Agriculture (Deutsche Rentenbank Kreditanstalt) is complicated by various factors. As a result of the partition of Germany the assets invested in East Germany are presently uncollectable by the Bank, and to that extent the amount of debt covered by this Agreement is reduced by varying amounts as fixed by existing regulations, the percentage being different in each case and ranging from 20 percent to 67 percent of the outstanding loans. The German representatives stated that the Federal

Government do not at present have the power to alter this situation, which results in particular from the relevant regulations under the currency conversion legislation. They do agree that the Federal Government shall do everything in its power to facilitate the settlement of the debts of the Bank and the payment of interest and amortisation as provided under the said Laws and Regulations.

The creditors' representatives reserve the right of the creditors to take such action as may be open to them to rectify what they consider to be a settlement prejudicial to and discriminatory as between different classes of creditors.

It is understood that the Bank retains its liability to the creditors in respect of the indebtedness secured by assets in East Germany and will service that liability as and when those assets become available to it.

There are several other institutions in a similar position where the same principles should be applied.

6. In dealing with the Potash Loan in any plan of settlement under the provisions of this Agreement, there will need to be considered the special features of this loan.

Article IV Outstanding amount of debt

1. The outstanding amount of any debt is the unpaid principal and all unpaid interest due up to 1 January 1953, such interest to be computed as simple interest at the rate established in the existing contract, regardless of whether the debt has matured before that date and regardless of the effect of any default under the existing contract prior to that date.

2. An amount is unpaid within the meaning of paragraph 1 of this Article if it has not been received and accepted expressly or implicitly by the creditor. Acceptance by the creditor of funding bonds, scrip or cash from the Konversionskasse constitutes payment of any debt, or of any part of a debt, in respect of which they were accepted.

Article V Settlement terms

1. Principal

There shall be no reduction in the outstanding principal amount.

2. Foreign currency debts with gold clauses

(a) Gold dollars and gold Swiss francs.

In the case of debts expressed in gold dollars or gold Swiss francs, the debts shall be computed on the basis of 1 currency dollar equalling 1 gold dollar and 1 currency Swiss franc equalling 1 gold Swiss franc, and the new contracts shall be expressed in currency dollars or currency Swiss francs respectively.

(b) Other currencies with gold clauses.

In the case of other debts with gold clauses (excluding German currency debts with gold clauses - see paragraph 3 below) the amounts due shall be payable only in the currency of the country in which the loan was raised or the issue was made (below referred to as "the currency of issue"), the amount due being computed as the equivalent at the rate of exchange when the amount is due for payment of a sum in US dollars which shall be arrived at by converting the amount of the obligation expressed in the currency of issue into US dollars at the rate of exchange ruling when the loan was raised or the issue made. The amount of currency of issue so reached shall, however, not be less than if it were computed at the rate of exchange current on 1 August 1952.

3. German currency debts with gold clauses

(a) The principle is accepted that such financial debts and mortgages, expressed in Gold Marks or in Reichsmarks with a gold clause, as had a specific foreign character shall be converted into Deutsche Mark at the rate of 1 Goldmark, or 1 Reichsmark with a gold clause, = 1 Deutsche Mark.

(b) The definition of the criteria constituting the specific foreign character of the above indebtedness shall be the subject of further negotiation.[21] Both sides reserve their position as to the question in which cases and in which way the above principle can be implemented. It shall lie with the German Delegation to decide how the solution arrived at can be fitted into the framework of the German laws on currency reform and on the equalisation of war and post-war burdens.

(c) The abovementioned negotiation between a German delegation and creditor delegates shall take place not later than 31 October 1952.

4. Arrears of interest

Subject to the provisions of paragraph 6 below, two-thirds of the unpaid interest to 1 January 1953 shall be funded and one-third waived. Such funded interest together with the unpaid principal shall constitute the new principal amount.

5. Future rate of interest

Subject to the provisions of paragraph 6 below, interest shall run from 1 January 1953, irrespective of the date when the new contract is entered into pursuant to this Agreement, at 75 percent of the rate of interest provided for in the existing contract. Such new current rate of interest, however, shall not exceed 5 1/4 percent on bonded debts and 6 percent on non-bonded indebtedness, nor shall it be below 4 percent, except that in cases where the interest rate provided for in the existing contract is below 4 percent the rate provided for in the existing contract shall be paid.

6. Interest rate in cases where there has been an effective conversion

In the case of any debt which has been the subject of an effective conversion the debtor shall elect either-

(a) to fund all unpaid interest outstanding under the existing contract to 1 January 1953, and to pay interest from that date at the full rate provided in the existing contract, or

(b) to fund unpaid interest and to pay future interest as though the original contract were still in force and paragraphs 4 and 5 of this Article were applicable.

7. Payment of interest

Interest for the period beginning 1 January 1953 shall be payable at least semi-annually. Appropriate adjustment shall be made in any case where the new contract is not entered into until after 1 January 1954, if the debtor cannot reasonably be expected to pay at once all interest due in respect of the period between 1 January 1953 and the date the new contract is entered into.

8. Amortisation payments

(a) Amortisation shall be paid annually from 1958 to 1962 at an annual rate of 1 percent of the new principal amount and thereafter until the maturity date at an equal rate of 2 percent of such new principal amount. Amortisation payments for each year after 1958 shall be increased by the amount of one year's interest on all debt retired by means of the amortisation payments for previous years excluding, however, debt retired by means of payments made pursuant to sub-paragraph (d) below.

(b) Amortisation payments shall be made on the first interest payment date in any given year. If the first interest payment date in 1958 does not fall on 1 January, the first amortisation payment shall be calculated for the period from 1 January 1957 to such interest payment date, and the same principle shall apply when the annual rate of 2 percent comes into operation.

(c) All such amortisation shall be applied to the reduction of the new principal amount. In the case of bond issues the amortisation payments shall be applied to the retirement of bonds through call by lot at the par or face value unless otherwise agreed between the debtor and his creditors.

(d) As long as the service is maintained in accordance with the new contract, additional amortisation may be made by the debtor in any manner, including acquisition of bonds whether in the open market or otherwise.

9. Maturity

The new contract shall establish a maturity date not less than 10 years nor more than 25 years from 1 January 1953. The new maturity date must be agreed upon between the debtor and his creditors. The debtor should offer the earliest maturity date, within the above limits, which is practicable in view of his particular circumstances.

It is contemplated that maturities of 10 to 15 years, or in exceptional cases up to 20 years, should be accorded to industrial debtors, banks and churches; public utilities and basic industries, however, may extend their maturities to 20 years, but not in excess of 25 years in any case; and in the case of non-bonded debt the normal maturity shall be 10 years.

10. Repayment of small amounts of indebtedness

Wherever the outstanding amount of a debt is very small or is small compared to the amount of the original loan, agreements may be entered into for an earlier repayment and final disposition of the entire amount of such indebtedness and arrears of interest without regard to the provisions of paragraphs 8 and 9 of this Article.

11. Hardship cases

Wherever owing to extraordinary circumstances, including but not limited to a loss of assets in Germany outside the Federal Republic of Germany and Berlin (West), affecting the financial position of a debtor, it becomes impossible or impracticable for him to make an offer for a new contract on the terms specified in this Agreement, agreements between the debtor and his creditors making such adjustments as may be deemed necessary in the light of the particular circumstances shall not be precluded.

12. Security

Subject to other applicable provisions of law, the provisions of the existing contract for liens and collateral and any other type of security for the protection of creditors shall remain in force, but in so far as the security provided under the existing contract no longer corresponds in its nature or extent with the new principal amount of the debt or no longer corresponds with the circumstances prevailing at the time the new contract is entered into, the debtor may propose a change in the nature or extent of the security. The security proposed by the debtor shall, however, be fully adequate and must be acceptable to the creditor.

To the extent that the security has been impaired or substantially altered the debtor shall make such readjustments as are necessary to provide his creditors with at least the degree of protection originally afforded.

The creditor may demand, and his debtor shall provide, reasonable security or other protective provisions acceptable to the creditor.

13. Reserves and sinking funds

Because the amortisation payments are only to commence in 1958 and then at the relatively low rate of 1

percent, and in 1963 increase to only 2 percent, the debtor shall pursue a policy of assuring a sufficiently strong liquid financial position in order to meet his obligations at maturity. Therefore, additional provisions should be discussed between creditors and debtors which may provide for the establishment of reserves or sinking funds for the debts under which an annual amount, calculated either as a percentage of the net earnings prior to dividend payments or otherwise as may be agreed, shall be set aside.

14. Provision of foreign exchange

The debtor shall make the arrangements required under German law for the provision of the necessary foreign exchange to discharge all obligations under the new contract.

15. Default of the debtor

In the event of default, in addition to any penalties for default provided in the new contract, the creditor shall be entitled, for the period of the default, to receive interest at the rate provided in the existing contract.

16. Modification of terms

Nothing in this Agreement shall prevent any debtor from obtaining, with the consent of his creditors, terms more favourable to the debtor than those specified in this Agreement.

17. Concessions for benefit of debtors

The creditors consider that the concessions made by them under this Agreement should accrue to the benefit of the debtors.

Article VI

Miscellaneous provisions affecting debts

I. Repayment in German currency

Any debtor may arrange at the request of any of his creditors for repayment of a debt or part thereof in German currency.

2. Change of creditor

Apart from the case of bonds, the creditor may assign to some other person ordinarily resident outside the Federal Republic of Germany and Berlin (West) his claim or a substantial part thereof provided that the assignment

(a) is made to a resident in the same currency area,

(b) does not entail any modification of the conditions underlying the claim,

(c) does not result indirectly or directly in settlement of the claim

3. Change of debtor

The German Foreign Exchange Control Authorities will favourably consider applications for the taking over of an existing debt by a new German debtor, and for the replacement of existing pledged security by a new security.

Article VII

Procedure for negotiation of new contracts

1. The provisions of and the technical details relating to the new contracts to be entered into between creditors and their debtors shall be included in an offer of settlement to be made by the debtor.

2. All proposed agreements, contracts or indentures shall be subject to approval as to form and content by legal counsel for the creditors if they so desire.

3. Each debtor shall, prior to 30 June 1953, or within six months of his taking up residence in the Federal Republic of Germany or in Berlin (West), prepare and submit to his creditor a detailed offer of settlement. The creditor may request his debtor to enter into negotiations with him regarding any aspect of the offer, and the debtor shall enter into such negotiations.

4. The term creditor, as used in paragraphs 2 and 3 of this Article, shall in the case of any bond issue mean the creditors' representative appointed pursuant to Article VIII.

5. In the case of bonded indebtedness, the terms of the settlement may be enforced on existing bonds or new bonds may be issued in exchange for existing bonds, and new bonds or fractional scrip exchangeable for bonds may be issued for arrears of interest, depending upon the convenience and prevailing custom in the respective markets in which the bonds were issued. Enforced bonds or new bonds shall conform to prevailing market practice. The debtor, at his own expense, shall employ suitable banking institutions for the purpose of carrying out the settlement and shall meet all requirements of governmental authorities and securities markets in order to ensure marketability.

Article VIII

Creditor representation

The Committees and organisations whose delegates participated in the Conference on German External Debts as representatives of the various national groups of creditors affected by this Agreement (such Committees and organisations being hereinafter referred to as "Creditor Committees") shall, subject to the right of approval of their respective Governments, appoint as creditors' representatives such persons or organisations as may be required to forward and bring about settlements between particular debtors and their creditors pursuant to this Agreement, or may themselves act in such capacity. Not more than one representative or representative organisation shall be appointed in any particular case, except that, where deemed necessary by the Creditor Committees in order to protect fully the rights of the holders of different issues of bonds of a particular debtor, there may be appointed not more than one representative or representative organisation for each such issue. The German debtor is entitled to request the Creditor Committees to appoint representatives. Participation in the Debt Conference shall not bar any person from serving in any capacity in any negotiations entered into pursuant to this Agreement.

Article IX

Arbitration and Mediation Committee

1. Jurisdiction

In order to forward the settlements between individual debtors and their creditors, an Arbitration and Mediation Committee shall be established. The duty of this Committee shall be to mediate and arbitrate between the debtor and his creditors in the event that they are not able to agree between themselves as to the terms of the offer of settlement to be made. Either party shall have the right to refer a disputed point to the Committee.

The decision of the Committee shall be binding on both parties. The debtor shall be obliged to offer to his creditors the terms set forth in such decision. The creditor shall be obliged to accept such terms,^[22] or, in the case of a bond issue where the bondholders are represented pursuant to the provisions of Article VIII of this Agreement, the creditors' representative shall be obliged to recommend acceptance of the offer by the bondholders.

Where a creditors' representative has been appointed pursuant to such Article VIII, the rights of the creditors under this Article shall be exercised by such representative.

2. Composition

The Committee shall be composed of four members appointed by the creditors and four members appointed by the debtors. The Committee may elect a further member for any particular case upon request of a majority of its members. The chairman of the Committee shall be elected from among the creditor members. The first Chairman shall be the United States member. For each member an alternate may be designated. Each member of the Committee including the Chairman shall have one vote.

3. Appointment of members

The members of the Committee shall be appointed as follows:

(a) The creditor members shall be appointed by organisations designated by the respective Creditor Committees of the United States, United Kingdom, Switzerland and the Netherlands. At the request of the Creditor Committee of a country whose creditors are specially concerned in a particular case, a member appointed by the Creditor Committee in that country shall replace one of these members as his alternate.

(b) The debtor members shall be appointed by the Head of the German Delegation on External Debts.

4. Procedure

The Committee may set up subcommittees for any particular case and may appoint temporary members to sit on such subcommittees.

The manner of submitting disputes, the times and places of hearing, the manner of giving notice of hearings, and all other matters relating to the procedure or administration of the Committee or its subcommittees shall be determined by the Committee.

5. Costs

Members of the Committee and temporary members shall be reimbursed for all travel and out-of-pocket expenses incurred in connection with the performance of their duties and shall receive in addition remuneration to be established by the Committee for all time spent in connection with the performance of their duties.

All expenses and costs incurred by the Committee or its members or temporary members in a given dispute shall be borne by the particular German debtor involved. In any case, however, where the Committee or the appropriate subcommittee determines that resort to the Committee has not been made in good faith by a creditor or that the appeal is frivolous the costs and expenses shall be borne by such creditor to the extent directed by the Committee or subcommittee.

All other expenses of the Committee and its members, including compensation to the members when engaged in Committee affairs, shall be refunded by the debtors by assessment or otherwise

Article X

Expenses of creditors, creditor representatives and others

1. The debtors affected by this Agreement shall pay all expenses incurred in connection with the Debt Conference or in the general execution of this Agreement by any Creditor Committee.

2. Expenses incurred by the creditors in connection with negotiations between a debtor and his creditors

pursuant to Article VII of this Agreement shall be borne by the debtor involved. Such expenses and compensation shall be paid, in the case of non-bonded debt, to the creditors and, in the case of bonded debt, to the creditors' representatives appointed pursuant to Article VIII of this Agreement.

3. The term expenses, as used in paragraphs 1 and 2 of this Article, includes reasonable compensation for services. Any dispute as to the reasonableness of expenses payable under this Article may be referred to the Arbitration and Mediation Committee.

4. Payments provided for in this Article shall not stand in the way of or bar any creditors' representative from making and collecting additional charges from the bondholders or creditors.

Article XI Entry into force

No payments may be made, under the terms of any settlement offer made pursuant to this Agreement, prior to the date of entry into force of the contemplated Intergovernmental Agreement on German External Debts. Nevertheless, the debtors shall proceed expeditiously to prepare and present offers of settlement to their creditors in accordance with the provisions of Article VII of this Agreement, to conduct such negotiations as may be necessary, and otherwise to take all steps to forward the preparation of the new offers contemplated hereunder.

SUB-ANNEX TO ANNEX II

INTERPRETATION OF THE SECOND PARAGRAPH OF SECTION 1 OF ARTICLE IX OF ANNEX II

12 November 1952

The Tripartite Commission on German Debts

29 Chesham Place SW1

Gentlemen

Our attention has been drawn to a misunderstanding which has arisen as to the meaning of the second paragraph of Section 1 of Article IX of Appendix 4 to the Report of the Conference on German External Debts. This paragraph reads:

" ...

The decision of the Committee shall be binding on both Parties. The debtor shall be obliged to offer to his creditors the terms set forth in such decision. The creditor shall be obliged to accept such terms, or, in the case of a bond issue where the bondholders are represented pursuant to the provisions of Article VIII of this Agreement, the creditors' representative shall be obliged to recommend acceptance of the offer by the bondholders.

... "

The words in italics, "accept such terms," have given rise to the misunderstanding. The proper interpretation would be clear if they were replaced by the words: "recognise such terms as being in accordance with the provisions of this Agreement."

We shall be grateful if the Tripartite Commission will take note that the above-quoted second paragraph of Section 1 of Article IX of Appendix 4 properly has the sense it would have if it were expressed in this changed wording, ie, if it read:

"The decision of the Committee shall be binding on both parties. The Debtor shall be obliged to offer to his creditors the terms set forth in such decision, and the creditor shall be obliged to recognise such terms as being in accordance with the provisions of this Agreement, or, in the case of a bond issue where the bondholders are represented pursuant to the provisions of Article VIII of this Agreement, the creditors' representative shall be obliged to recommend acceptance of the offer by the bondholders."

Yours faithfully

[Signed:]

N LEGGETT

Chairman of Negotiating Committee B at the Conference on German External Debts

[Signed:]

HERMANN J ABS

Head of the German Delegation for External Debts

ANNEX III
[23]

AGREED RECOMMENDATIONS FOR THE SETTLEMENT OF STANDSTILL DEBTS: THE GERMAN CREDIT AGREEMENT OF 1952

AGREEMENT made between a COMMITTEE representative of BANKING, COMMERCIAL and INDUSTRIAL CONCERNS in THE FEDERAL REPUBLIC OF GERMANY and the WESTERN SECTORS of BERLIN (hereinafter referred to as "the German Committee" which expression shall include any institution or body succeeding to any of its functions relevant to this Agreement), the BANK DEUTSCHER LAENDER (which shall include any institution or body succeeding to any of its functions relevant to this Agreement) and such of the following Committees (hereinafter collectively referred to as "the Foreign Bankers' Committees") as become signatories hereto, namely COMMITTEES representative of BANKING INSTITUTIONS carrying on business in the UNITED STATES OF AMERICA, THE UNITED KINGDOM and SWITZERLAND respectively

WHEREAS:

(1) An Agreement for the maintenance of short-term banking credits to Germany which came into force on 17 September 1931, was entered into by foreign banking creditors in response to the request of the Seven-Power Conference, which met in London in July 1931, that "the foreign banking creditors of Germany should take concerted measures with a view to maintaining the volume of credits they had already extended to Germany" and in reliance on the declaration by that Conference that "in order to ensure the maintenance of the financial stability of Germany, which is essential in the interests of the whole world," the Governments concerned "were ready to cooperate, so far as lies within their power, to restore confidence."

(2) Maintenance of such short-term banking credits was continued by successive annual Agreements, the latest of which (hereinafter referred to as "the 1939 Agreement") was due to expire on 31 May 1940, but, in consequence of the outbreak of hostilities between Germany and the United Kingdom and its Allies, was terminated on 4 September 1939 by notice given on behalf of the Committees representative of the banking creditors in the USA and England in accordance with the conditions of that Agreement.

(3) Following the termination of the 1939 Agreement certain Agreements were entered into between the American Creditors' Committee and the appropriate German parties in 1939 and 1940 for the continued maintenance (with certain restrictions and modifications) of such of the said short-term banking credits as had been granted by the foreign banking creditors in the USA, the second of which Agreements expired on 31 May 1941.

(4) Following the termination of the 1939 Agreement certain other Agreements were entered into between the Swiss Creditors' Committee and the appropriate German parties for the continued maintenance (with certain

restrictions and modifications) of such of the said short-term banking credits as had been granted by foreign banking creditors in Switzerland but all such Agreements have since expired.

(5) In accordance with the conditions of the latest of the previous Agreements applicable thereto, all indebtedness arising under the said short-term banking credits to Germany matured on the expiration of the respective Agreement with the effects stipulated therein and all such indebtedness (including indebtedness arising under certain credits which were granted in substitution for short-term credits formerly governed by one or more of the previous Agreements) then became due and payable by the respective debtors (together with interest and other charges accrued and accruing thereon) in the relative foreign currencies and is still so due and payable except to the extent that the said indebtedness has meanwhile been discharged or reduced by payment or satisfaction in either foreign or German currency. No provision has yet been made to enable the remainder of such indebtedness to be discharged in the respective currencies of the debts.

(6) Banking, commercial and industrial concerns in the Federal Republic through the German Committee have requested their foreign banking creditors to enter into a new Agreement for regulating payment of the outstanding short-term indebtedness and for establishing means for the restoration of normal conditions for financing the foreign trade of the Federal Republic and in response to such request appropriate provisions have been formulated and embodied in this Agreement and it has been agreed by the Foreign Bankers' Committees to recommend foreign banking creditors in their respective countries to adhere to this Agreement.

(7) This Agreement has been executed by the Foreign Bankers' Committees upon the terms that so long as this Agreement remains in force, there shall be promulgated and maintained such legislation and regulations by the Government of the Federal Republic or other appropriate authority[24] as may be necessary to render its provisions effective and that no legislation or regulations substantially affecting the obligations of this Agreement shall be promulgated and in particular that the legislation to be so promulgated and maintained shall ensure that

(i) There will be no discrimination on the part of banking, commercial or industrial concerns in the Federal Republic in the making of repayment or the giving of security as between their foreign banking creditors whether adhering to this Agreement or not;

(ii) There will be no discrimination on the part of banking, commercial or industrial concerns in the Federal Republic in the giving of security as between their creditors in the Federal Republic and their foreign banking creditors whether adhering to this Agreement or not; [25]

(iii) Unauthorised movements of capital shall be prevented; and[26]

(iv) [27]All banking, commercial and industrial concerns in the Federal Republic who are subject to any form of indebtedness falling within this Agreement shall adhere thereto

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

In this Agreement, unless the context shall otherwise require, the undermentioned expressions shall have the following meanings, namely:

"Short-term credits" means and includes

(i) All acceptances, time deposits, cash advances and/or any other form of indebtedness arising from special agreements in non-German currency in respect of which adherence was effected by a Foreign Bank Creditor to the latest of the previous Agreements applicable thereto and which is outstanding at the date of this Agreement; but not indebtedness arising out of short-term banking credits extended to banking, commercial or industrial concerns in any country outside the territory comprised in the German State on 31 December 1937, unless some banker, banking institution or commercial or industrial firm or company ordinarily resident in the Federal Republic (as herein defined) is liable (whether originally or by way of succession or as guarantor, endorser or credit insurer) in respect of such indebtedness;

(ii) Any further acceptances, time deposits, cash advances and/or other forms of banking credit in non-German

currency outstanding at the date of this Agreement and arising out of special credit arrangements which were made pursuant to the provisions of any of the previous Agreements in substitution for any short-term credit previously subject to those Agreements or any of them or by way of investment of registered credit balances under the previous Agreements or any of them;

(iii) All indebtedness in respect of interest which shall have accrued on indebtedness falling within the foregoing paragraphs (i) and (ii) up to and including the date of this Agreement and in respect of which the Foreign Bank Creditor shall have elected or be deemed to have elected option (i) expressed in Clause 11A hereof;

(iv) Any further indebtedness arising out of any form of banking credit which shall have been granted by way of recommercialisation of any short-term credit as defined in the foregoing paragraphs (i) to (iii) pursuant to the provisions of Clause 5 hereof.

"German Debtor" means and includes

(i) Any banker, banking institution or commercial or industrial firm or company ordinarily resident in the Federal Republic who is liable in respect of a short-term credit but does not include a foreign branch, subsidiary or affiliation thereof except that adherence may be effected by notification to any German commercial or industrial firm or company in respect of credits granted to its foreign branches, subsidiaries or affiliations in cases in which adherence was permitted to be made to any of the previous Agreements. Upon such adherence such credits shall be treated in all respects for the purposes of this Agreement as short-term credits granted to the German parent firm or company;

(ii) Any successors (as herein defined) of a banker, banking institution or commercial or industrial firm or company as aforesaid;

(iii) Any German Public Debtor as that expression is defined in the German Public Debtors' Credit Agreement of 1932.

"German Bank Debtor" means any German Debtor whose primary business is that of banking.

"German Commercial or Industrial Debtor " means any German Debtor who is not a German Bank Debtor or a German Public Debtor as hereinbefore referred to.

"Successors" means and includes

(i) Every party ordinarily resident in the Federal Republic who is liable in respect of a short-term credit as a result of the decease, liquidation, re-organisation or bankruptcy of any German Debtor or former German Debtor.

(ii) Any company ordinarily resident in the Federal Republic which, having derived all or a substantial part of its initial assets from a German Debtor or former German Debtor, has by operation of law or otherwise become liable in respect of a short-term credit.

"Foreign Bank Creditor" means and includes any banker or banking institution ordinarily resident in one of the countries named in the preamble to this Agreement and any other firm or corporation ordinarily resident in one of those countries to whom indebtedness under short-term credits is owing and who shall in either case have unconditionally adhered to this Agreement in accordance with Clause 22 hereof.

"Federal Republic" means and includes the territory comprised in the Federal Republic of Germany and the Western Sectors of Berlin on the date of this Agreement.[28]

"German" means appertaining to the Federal Republic as herein defined.

"Foreign" means appertaining to any country outside the territory comprised in the German State on 31 December 1937.

"Firm" includes an individual trading in his own or under a firm name.

"Insolvency" when used with reference to a German Debtor means a state in which the Debtor for want of liquid assets, not merely temporary, is unable to discharge all his debts as they mature.

"The previous Agreements" means and includes the German Credit Agreements of 1931 to 1939, the German Public Debtors' Credit Agreements of 1932 to 1938, the German-American Standstill Agreements of 1939 and 1940, and the Agreements relating to short-term credits owing to banking creditors in Switzerland and known respectively as "Das Deutsche Kreditabkommen von 1940, 1941, 1942, 1943 und 1944".

"Face value" in relation to short-term credits for the time being outstanding means the total amount of such short-term credits according to the latest information available to the respective Foreign Bankers' Committees expressed for the purposes of computation in German currency calculated at the official middle rate quoted in the Federal Republic on the first working day prior to the day on which the computation is made.

2. PERIOD OF AGREEMENT

[29]

(1) Unless otherwise stated, the provisions of this Agreement shall come into force on the day of 1952, and remain in force for a period of twelve calendar months from that date, subject to earlier determination by the Foreign Bankers' Committees in any of the following events, namely:

(i) If there shall be declared in the Federal Republic a moratorium which affects any obligation of German Debtors to Foreign Bank Creditors dealt with in this Agreement, or

(ii) If in the future international decisions or governmental action of a financial, political or economic character create a situation in which, in the opinion of a majority of the Foreign Bankers' Committees, the carrying out of this Agreement becomes seriously endangered, or

(iii) If the Foreign Bankers' Committees, after the attention of the German Committee has been drawn to the matter, shall find that any of the terms contained in Recital (7) has not been complied with.

(2) Any such determination shall be without prejudice to rights and obligations accrued under this Agreement prior to the date of such determination and to be effective must be made by notice in writing or by cable or radiogram (specifying the date upon which this Agreement is to be determined) signed on behalf of a majority of the Foreign Bankers' Committees and despatched to the Bank for International Settlements and to the German Committee, but failure so to notify the German Committee shall not nullify such termination.

(3) The declaration in the Federal Republic of a general foreign moratorium in whatever form shall ipso facto determine this Agreement.

3. MAINTENANCE OF CREDITS, ETC

(1) During the period of this Agreement the right of any Foreign Bank Creditor to repayment of short-term credits with respect to which he has adhered to this Agreement shall be postponed until the termination of this Agreement, except that such Foreign Bank Creditor shall be entitled to any earlier payment granted or permitted by any Clause of this Agreement. Every German Debtor by adhering hereto agrees that all short-term credits with respect to which he adheres shall be due and payable in full in the relative foreign currency on the termination of this Agreement, subject to such reductions as shall have been made prior to such termination pursuant to any of the provisions hereof.

(2) Neither the execution of this Agreement nor anything contained herein shall operate to prejudice any of the rights and obligations of a Foreign Bank Creditor and his German Debtor in respect of a short-term credit which have arisen

(i) as a result of any act or thing done or omitted by the German Debtor for the benefit of the Foreign Bank

Creditor during the period from the termination of the latest of the previous Agreements applicable to the relative short-term credit and the coming into force of this Agreement, or

(ii) as a result of the exercise by the Foreign Bank Creditor of any rights or powers available to him during the period mentioned in the last foregoing paragraph.

By adhering to this Agreement in respect of any short-term credit the Foreign Bank Creditor shall be deemed to ratify and confirm any action taken by his German Debtor for the benefit of such Foreign Bank Creditor as specified in the foregoing paragraph (i) and such ratification shall be deemed to have had effect at the time when the relative action was taken.

(3) The ratification provided in the preceding sub-Clause shall not apply to any payments made by any German Debtor in German currency other than payments made to or for the account of the Foreign Bank Creditor with his express consent.

(4) With respect to any short-term credit or part thereof in regard to which a German Bank Debtor was required pursuant to sub-Clause (1) of Clause 7 of the 1939 Agreement (or corresponding provisions of any subsequent Agreement) to obtain from its client an eigene Wechsel or letter of guarantee, such Bank Debtor shall upon his adherence to this Agreement procure for the Foreign Bank Creditor a new eigene Wechsel or (at the option of the Foreign Bank Creditor) a new letter of guarantee dated not earlier than the date of this Agreement and shall hold the same for or forward it to the Foreign Bank Creditor as required by the said sub-Clause (or corresponding provisions). Such letter of guarantee shall contain an obligation of the client to reimburse the German Bank Debtor in the form and to the extent demanded by such Bank Debtor in the event that such Bank Debtor voluntarily repays the relative short-term credit or part thereof in German currency pursuant to Clause 10 hereof.

(5) Every German Bank Debtor or German Commercial or Industrial Debtor shall be obligated to cover at maturity any bill accepted for its account by a Foreign Bank Creditor.

(6) Any Foreign Bank Creditor to whom a short-term credit is owing in a currency other than that of his own country may, by giving notice in writing to his German Debtor at any time within the period of this Agreement, convert such credit into the currency of the country of such Foreign Bank Creditor. Such conversion shall thereupon be effected in the books of the Foreign Bank Creditor and the German Debtor, and the amount of the short-term credit expressed in the new currency shall be calculated by reference to the official middle rates for exchange of German currency into the original currency of the credit and such new currency respectively quoted in the Federal Republic on the date of the relative notice.

4. REDUCTION OF INDEBTEDNESS (TEMPORARILY INOPERATIVE)

Each Foreign Bank Creditor shall have the right to require permanent repayment, three months after the date of this Agreement and at the end of each three calendar monthly period thereafter during the period of this Agreement, by percent of the total amount of the short-term credits owing to such Foreign Bank Creditor by his German Debtors at the date of the coming into force of this Agreement, in respect of which adherence shall be made. Such repayment shall be made in the currency of the country of the Foreign Bank Creditor and the right to repayment of the total of the short-term credits by percent, may be exercised by the Foreign Bank Creditor by applying such aggregate repayment right to the short-term credits owing by one or more of his German Debtors as the Foreign Bank Creditor may elect. The Foreign Bank Creditor shall be entitled to allocate his repayment rights to any particular indebtedness owing by an individual German Debtor.

(Note: Additional provisions may be required for mechanics of payment.)

5. RECOMMERCIALISATION

(1) The Bank deutscher Laender shall from time to time announce to the Foreign Bank Creditors that a certain percentage (hereinafter called the "stated percentage") of each Foreign Bank Creditor's aggregate short-term credits outstanding on the date of this Agreement may be recommercialised.

(2) Thereupon each Foreign Bank Creditor may within three months of such announcement arrange with Banks or other concerns in the Federal Republic (being or capable of becoming German Debtors as defined in this

Agreement) for the opening of new credit lines (hereinafter called "substituted lines") up to the stated percentage of his aggregate short-term credits referred to in the preceding sub-Clause.

(3) Upon any such arrangement being concluded the Foreign Bank Creditor shall notify the Bank deutscher Laender that it is proposed to open the relative substituted line upon final repayment of an equal amount of specified short-term credits or parts thereof (hereinafter called "designated indebtedness") owing by a German Debtor (hereinafter called the "designated Debtor") and designated by the Foreign Bank Creditor. Except where the substituted line is with a German licensed foreign trade bank (Aussenhandelsbank) the Bank deutscher Laender shall have the right to disapprove the arrangement if it is not satisfied that the new debtor will be able to make adequate use of the substituted line.

(4) Unless the Bank deutscher Laender disapproves the arrangement for recommercialisation, pursuant to the preceding sub-Clause, the Foreign Bank Creditor shall give notice to the designated Debtor to repay the designated indebtedness and such Debtor shall, as promptly as possible, arrange through the Bank deutscher Laender for such repayment in foreign currency and upon such repayment the substituted line will be open for availment.

(5) A Foreign Bank Creditor who has received security for designated indebtedness shall notify the designated Debtor of his willingness in case of a part repayment to release, against such repayment, a proportionate part of such security except where the security is not capable of division or except where the agreement between the parties otherwise provides. Failing such notification the Foreign Bank Creditor shall not be entitled to demand repayment of such indebtedness.

(6) In so far as a Foreign Bank Creditor who has given or participated in giving a credit on joint account as defined in Clause 7 of the German Credit Agreement of 1931 is entitled (under any still subsisting arrangements governing the rights of the parties to such credit inter se) to demand any separate repayment on account of his participation, he shall not be permitted to demand repayment of the indebtedness owing by a German Commercial or Industrial Debtor without at the same time demanding repayment of at least a corresponding proportion of the indebtedness owing by the German Bank Debtor in the joint account provided that such German Bank Debtor has adhered to this Agreement.

(7) No syndicate as such may exercise any of the rights of a Foreign Bank Creditor under this Clause. Nothing in this sub-Clause is intended to affect such rights as any participant in a syndicate may have either through withdrawal from such syndicate or by arrangements therewith to make an individual demand for repayment of designated indebtedness under this Clause.

(8) Substituted lines shall be available only by bills drawn for financing trade between the Federal Republic and other countries and not merely for the purpose of creating foreign exchange or for the purpose of financing business which could more properly be financed by inland credits; provided that a Foreign Bank Creditor shall not be obliged to accept any bill drawn in respect of a transaction which is for the time being prohibited or disapproved by the authorities of the respective foreign creditor country or which it would not be the current practice of banks in such country to finance by an acceptance credit. If any question shall arise whether any bill complies with the foregoing provisions, such question shall be decided by agreement between the Foreign Bankers' Committee concerned and the German Committee. All such bills outstanding at any time shall be covered by the German Debtor at maturity in cash in the currency of the credit and the unavailment thus created shall be again availed of only in accordance with this sub-Clause. For the cash payment referred to herein a German Debtor may use the proceeds of a new bill; provided that-

(i) the new bill shall have been presented to the Foreign Bank creditor a week, if possible, and at least four business days before the due date of the maturing bill and shall have been designated for the purpose of meeting the maturing bill from the proceeds;

(ii) the new bill complies with the requirements of this sub-Clause, and

(iii) the Foreign Bank Creditor shall have accepted the new bill before the due date of the maturing bill.

If a new bill so offered is not so accepted by the Foreign Bank Creditor on the grounds that it does not comply with the requirements of this sub-Clause the German Debtor shall be bound to remit cash to cover the maturing bill punctually on maturity. The German Debtor in that case may apply to the Foreign Bankers' Committee concerned through the German Committee and if such Committees agree that the new bill does comply with the requirements of this sub-Clause, then the Foreign Bank Creditor shall be bound to accept the new bill.

(9) If a Foreign Bank Creditor has failed within three months of the announcement of any stated percentage to take advantage of the whole or part of his rights to arrange recommercialisation, such rights shall lapse (without however affecting such Foreign Bank Creditor's right to other recommercialisation pursuant to subsequent announcements of stated percentages).

(10) The Bank deutscher Laender will use its best efforts to arrange that a certain amount of eligible business shall be available for recommercialisation.

(11) A Foreign Bank Creditor who has opened a substituted line and the Debtor to whom such line is granted shall be subject to all the provisions of this Agreement in respect of such substituted line and forms of adherence in respect thereof shall be exchanged upon the Foreign Bank Creditor receiving repayment of the relative designated indebtedness.

(12) If in the opinion of the Bank deutscher Laender a substituted line is not being adequately availed of in the interests of the German economy, the Bank deutscher Laender may require the Foreign Bank Creditor to place so much of such line as is not then availed of at the disposition of some other bank, banking institution or commercial or industrial firm or company in the Federal Republic (being or capable of becoming a German Debtor) selected by the Foreign Bank Creditor and not disapproved by the Bank deutscher Laender. In such case the original substituted line shall be cancelled pro tanto and the new line of equivalent amount shall constitute a new substituted line, and the Foreign Bank Creditor and new German Debtor shall be subject to all the provisions of this Agreement in respect of the new substituted line and forms of adherence in respect thereof shall be exchanged. If the Foreign Bank Creditor shall fail to select a new German Debtor to the satisfaction of the Bank deutscher Laender the latter may propose a new German Debtor; and, if the Foreign Bank Creditor shall refuse to accept such proposed new German Debtor, the reasonableness of such refusal shall at the request of the Bank deutscher Laender be determined by agreement between the German Committee and the relative Foreign Bankers' Committee and, if such Committees are unable to agree, then by the Arbitration Committee.

6. SECURITY

(1) (a) Where

(i) A German Bank Debtor holds from any of its clients any security, whether general or specific (including guarantees) as collateral for credit facilities held by the German Bank Debtor at the disposal of such client and

(ii) the credit facilities granted to such client (whether secured or not) have arisen out of any short-term credit owed to one or more Foreign Bank Creditors by the German Bank Debtor

the whole of such security or a pro rata share thereof for the time being held by the German Bank Debtor shall be held by the German Bank Debtor in valid and effectual trust for such Foreign Bank Creditor or Foreign Bank Creditors, upon the same terms and conditions as those upon which it is held by the German Bank Debtor. The existence of such trust shall not interfere with the administration by German Bank Debtors in accordance with ordinary banking practice of any such security from time to time held by them.

(b) In the event of the security becoming enforceable the proceeds thereof shall be divided amongst the German Bank Debtor and the Foreign Bank Creditors as nearly as possible in accordance with the provisions which would have been applicable to such division under the 1939 Agreement.

(c) The German Bank Debtors shall continue, whenever it appears to them necessary for the protection of the interests of themselves and the Foreign Bank Creditors, to obtain security from their clients and to maintain it at an appropriate amount.

(d) Each German Bank Debtor shall furnish his Foreign Bank Creditors with confirmation in writing of the holding of security in trust for them pursuant to the provisions of this sub-Clause and supply to his Foreign Bank Creditors upon general or specific request statements in the standard form agreed upon by the German Committee with the Foreign Bankers' Committees and made up as at 30 June and 31 December showing (i) by an estimated percentage figure, the extent to which any short-term credit referred to in paragraph (a) of this sub-Clause is secured, (ii) the total amount of the short-term credits owed by the German Bank Debtor to the Foreign Bank Creditor to whom the statement is supplied, (iii) the estimated value of the pro rata share of the

Foreign Bank Creditor in the security mentioned in (i) above, and (iv) details of the security so held showing the nature thereof and the extent to which security is held for the obligations of any particular clients.

(2) In the case of short-term credits for account of German Commercial or Industrial Debtors the German Commercial and Industrial Debtor shall provide collateral security in favour of a Foreign Bank Creditor as follows:

(a) Where and so far as under the arrangement existing under the latest of the previous Agreements applicable to the relative short-term credit the German Commercial or Industrial Debtor was under obligation to provide security, he shall continue to provide security of the same character and to the same extent during the period of this Agreement.

(b) Where and so far as the giving of security is consonant with the business of the German Commercial or Industrial Debtor and such security can be given without endangering the position of his other creditors.

(3) A German Debtor shall promptly upon demand furnish to any of his Foreign Bank Creditors a copy of his last audited Balance Sheet and such other particulars relating to his financial position as the Foreign Bank Creditor may reasonably require.

(4) A Foreign Bank Creditor may with the consent of the Bank deutscher Laender realise outside the Federal Republic any security in existence at the date of this Agreement in respect of a short-term credit and apply the net proceeds of such realisation (after payment of all expenses incurred in effecting realisation) in permanent reduction or discharge of the relative short-term credit. Provided that he shall be obligated to secure the best terms and conditions reasonably obtainable in the interest of the German Debtor.

7. SWITCHING OF CREDITORS

A Foreign Bank Creditor shall have the right to transfer any short-term credit or part thereof (i) to another Foreign Bank Creditor or (ii) to any other person, firm or corporation approved for that purpose by the Foreign Bankers' Committee of the country of the transferor and the German Committee; provided that

(a) no such transfer shall (except by agreement with the German Debtor in question) involve any change in the terms attaching to such credit or part of a credit;

(b) forthwith upon any such transfer being effected the necessary forms of adherence shall be exchanged between the transferee and the German Debtor;

(c) any such transfer to a Foreign Bank Creditor or other person, firm or corporation as aforesaid in the country of one of the other Foreign Bankers' Committees shall also be subject to the consent of the Bank deutscher Laender.

Upon any such transfer being effected and the necessary forms of adherence being exchanged the transferee shall have the same rights and obligations in respect of the short-term credit or part of a credit so transferred as if he were the original creditor.

8. SWITCHING OF DEBTORS

Any Foreign Bank Creditor may at any time during the period of this Agreement with the agreement of the German Debtor (who shall first obtain the consent of the Bank deutscher Laender) make arrangements for the transfer to another banker, banking institution or commercial or industrial firm or company in the Federal Republic (being or capable of becoming a German Debtor) of liability in respect of a short-term credit (not being a substituted line as defined in Clause 5 hereof) owing by any German Debtor. Upon such transfer being effected the Foreign Bank Creditor and the new German Debtor shall be subject to all the provisions of this Agreement in respect of such credit and forms of adherence in respect thereof shall be exchanged.

9. EXTENSION OF NEW CREDITS

(1) If any Foreign Bank Creditor shall during the continuance of this Agreement make additional foreign exchange facilities available to the German economy by granting to any German bank, banking institution or commercial or industrial firm or company a new credit line (not being a substituted line as defined in Clause 5 hereof) in non-German currency for the purpose of financing trade between the Federal Republic and other countries, every original and subsequent availment of such credit line shall give rise to repayment rights in accordance with this Clause of an amount at the rate of 3 percent of such availment for every three months of such availment. Any such new credit line shall not be subject to this Agreement.

(2) For the purpose of this Clause the term "availment" shall include the acceptance of a bill, the granting of a cash advance and, in the case of a confirmed credit, the opening of such credit.

(3) Such repayment rights may be exercised by the Foreign Bank Creditor by applying the same to such short-term credits or parts thereof owing by any one or more of his German Debtors as the Foreign Bank Creditor may select.

(4) Upon any such availment notice may be given by the Foreign Bank Creditor to the German Debtor or Debtors to whose short-term credits or parts thereof he proposes to apply any repayment right as aforesaid and a copy of such notice, together with particulars of the new credit line and the availment thereof, shall simultaneously be forwarded by the Foreign Bank Creditor to the Bank deutscher Laender. Each such German Debtor shall as promptly as possible arrange through the Bank deutscher Laender for final repayment in foreign currency of the relative amount specified in the Creditor's notice.

(5) The provisions of sub-Clauses (5), (6) and (7) of Clause 5 hereof shall be deemed to be incorporated mutatis mutandis in this Clause

(6) If any German Debtor shall fail to comply with a notice for repayment with reasonable promptitude the Foreign Bank Creditor shall be entitled to apply the relative repayment right or part thereof to some other short-term credits in accordance with the forgoing conditions.

10. REPAYMENT IN GERMAN CURRENCY

(1) Any German Debtor may arrange at the request of his Foreign Bank Creditor to make repayment of a particular short-term credit or part thereof in German currency, converted as hereinafter provided, to the same extent as such German Debtor might on 24 May 1952 have voluntarily made such repayment pursuant to Directive (50)6 of the Allied Bank Commission to the Bank deutscher Laender dated 26 June 1950.

(2) Conversion from foreign currency into German currency shall be calculated at the official middle rate quoted in the Federal Republic one working day previous to the day on which the payment in German currency is actually made.

(3) Every such payment shall upon acceptance by the Foreign Bank Creditor constitute final repayment of the foreign currency amount of the short-term credit or part of the short-term credit calculated at the conversion rate provided in sub-Clause (2) of this Clause.

(4) Balances in German currency arising from repayment of short-term credits pursuant to this Clause or Clause 11A shall be applicable and transferable as permitted under provisions of any Allied laws, ordinances, directives and licences (including General and Special licences issued by the Bank deutscher Laender) in effect in the Federal Republic on 24 May 1952, or as otherwise permitted by the Bank deutscher Laender. However, no regulation of the Bank deutscher Laender shall at any time with regard to the transfer and use of German currency balances and affecting Foreign Bank Creditors be more unfavourable in effect to such Creditors, or cause their rights to be more limited, than such rights as existed under the aforesaid laws, ordinances, directives and licences.

11. COMMISSION AND INTEREST CHARGES

As from the date of this Agreement all commission and discounting charges in keeping with usual banking practice, together with bill stamp duty, shall be paid in advance and interest shall be paid monthly in the currency in which the respective credit is maintained. It is desirable that commission and interest charges shall not be more than reasonable under the circumstances and should any difference arise as to the amount thereof

between a Foreign Bank Creditor and a German Debtor the matter may be referred to their respective Central Banks.

11A. ARREARS OF INTEREST

Interest on short-term credits at the rate of 4 percent per annum for the period since the date to which such interest was last paid to the Foreign Bank Creditor or the date of termination of the latest of the previous Agreements applicable thereto (whichever be the later) up to the date of this Agreement shall, at the option of the Foreign Bank Creditor concerned, either

(i) as of the date of this Agreement be added to the principal of the relative short-term credit and form part thereof for the purpose of adherence to and for all other purposes of this Agreement, or

(ii) be postponed and fall due in the relative foreign currency upon the termination of this Agreement, provided however that at any time prior to such termination the Foreign Bank Creditor may be paid pursuant to the provisions of Clause 10 hereof all or any part of such postponed interest in German currency (converted at the official middle rate quoted in the Federal Republic one working day previous to the day on which payment is actually made).

Each Foreign Bank Creditor, upon giving notice to his German Debtor of adherence to this Agreement, shall at the same time notify such Debtor which of the options the Creditor elects to exercise and, if no election is so notified, the Creditor shall be deemed to have elected to exercise option (i).

12. PRORATING OF PAYMENTS AND SECURITY BY GERMAN BANKS

(1) If a German Debtor, who is indebted both to a Foreign Bank Creditor and to a German Bank Debtor, has become insolvent or has sought a composition or other arrangement of a similar character with all or some of his creditors or has been declared bankrupt within the period of this Agreement or within three months thereafter, the German Bank Debtor shall prorate with the Foreign Bank Creditor any repayments received by the German Bank Debtor from the German Debtor at any time within four months before the happening of such event, as well as any security (including guarantees) received from the German Debtor at any time within the period of this Agreement.

(2) The Trustee in bankruptcy (Konkursverwalter), any German official in charge of any composition or arrangement as aforesaid and the German Bank Debtor shall furnish all the Foreign Bank Creditors concerned with full information as to any repayments made or security given as aforesaid.

13. RETENTION OF THE LIABILITY OF GUARANTORS, ETC

(1) No guarantor, endorser or credit insurer in the Federal Republic in respect of any short-term credit shall obtain any release from obligations under his guarantee, endorsement or insurance by reason of the postponement of or any change in the form of such short-term credit or part thereof (including the change provided for in Clause 19 hereof) by virtue of or consequent upon this Agreement and no debtor in the Federal Republic whether absolutely or contingently liable in respect of any short-term credit shall be released by reason of any partial payment on account thereof by any third party or by reason of any change in the form of such short-term credit or any part thereof by virtue of or consequent upon this Agreement. If the indebtedness of a German Debtor is guaranteed or credit insured by a guarantor or credit insurer outside the Federal Republic who does not assent to the postponement of or change in the form of such indebtedness the German Debtor shall not be entitled to the benefit of this Agreement.

(2) If a person being a partner of a firm which is a German Bank Debtor or German Commercial or Industrial Debtor ceases to be a partner during the continuance of this Agreement whether owing to his death or from any other cause any liability arising under any short-term credit maintained under this Agreement shall be deemed to be a liability existing at the date when such person ceased to be a partner; and the personal liability of such person or if he be dead the liability of his estate for liabilities of his firm which were existing at the date when he ceased to be a partner shall apply to any liability arising under any such short-term credit while maintained under this Agreement.

14. BANKRUPTCY, INSOLVENCY OR BREACH; AND EFFECT OF LOSS OF BENEFITS OF THIS AGREEMENT BY A GERMAN DEBTOR

(1) If at any time during the period of this Agreement a German Debtor is declared bankrupt or becomes insolvent he shall forthwith cease to enjoy any benefits and privileges under this Agreement. If a Foreign Bank Creditor during the period of this Agreement claims that a German Debtor has become insolvent and this claim is disputed either party shall have the right to refer the dispute for decision to the Arbitration Committee. Pending a decision by the said Arbitration Committee the Foreign Bank Creditor shall refrain from taking any steps against the German Debtor.

(2) If at any time during the period of this Agreement a German Debtor applies to the competent tribunal for a composition (Vergleichsverfahren) or other arrangement of a similar character with all or some of his creditors any Foreign Bank Creditor of such Debtor at any time before such composition or other arrangement is confirmed by the competent tribunal may give notice to such Debtor terminating this Agreement as between the parties and upon the giving of such notice the Debtor shall cease to enjoy any benefits and privileges under this Agreement.

(3) If at any time during the continuance of this Agreement a Foreign Bank Creditor claims that a German Debtor has committed a breach of any of the provisions of this Agreement and has failed to remedy such breach upon request within a fortnight of receipt of formal notice from the Foreign Bank Creditor, such Foreign Bank Creditor may refer the dispute to the Arbitration Committee for decision. If such reference shall have been so made no steps shall be taken in the matter by any party to this Agreement pending a decision by the Arbitration Committee. If the Arbitration Committee shall give a decision adverse to the German Debtor and the German Debtor shall fail, within a fortnight of the decision of such Committee, to comply therewith the German Debtor shall forthwith cease to enjoy any benefits or privileges under this Agreement in respect of the short-term credit held at his disposal by the Foreign Bank Creditor.

(4) If a German Debtor ceases at any time to enjoy any benefits or privileges under this Agreement by reason of any of the provisions of the foregoing sub-Clauses of this Clause, then in the case of bankruptcy, insolvency or composition (Vergleichsverfahren) or other arrangement of a similar character with all or some of his creditors his indebtedness to all his Foreign Bank Creditors, and in the case of a breach of his indebtedness to the Foreign Bank Creditor or Creditors affected by such breach, shall forthwith become due and payable and thereupon nothing shall prevent the Foreign Bank Creditor or Creditors concerned from prosecuting and enforcing all his or their claims against the German Debtor including the exercise of such remedies as he or they would have if permanently resident in the Federal Republic.

(5) The fact that a German Debtor has lost the benefit of this Agreement shall not prejudice the rights of any party which existed at the date on which such loss of benefit took place and in particular shall not prejudice the rights of his Foreign Bank Creditor against the Deutsche Golddiskontbank in respect of any guarantee of short-term credits in respect of which such Debtor was liable.

(6) If a German Debtor shall at any time cease to enjoy any benefits or privileges under this Agreement by reason of notice given pursuant to sub-Clause (2) of this Clause other than in case of a composition (Vergleichsverfahren), then the provisions of Clause 16 hereof shall not be applicable to the obligations of such Debtor in respect of the relative indebtedness.

15. MAINTENANCE OF CREDITS FOR LONGER PERIODS

Any Foreign Bank Creditor may make arrangements with his German Debtor for the maintenance of his short-term credits or some of them for a period longer than is provided by Clause 2 of this Agreement or for the substitution of such credits by other credits to be maintained for a period longer than is provided by that Clause. On the making of any such arrangement the short-term credit or short-term credits which is or are so extended or substituted shall cease to be subject to this Agreement if the Bank deutscher Laender agrees.

16. PROVISION OF FOREIGN EXCHANGE

The Bank deutscher Laender undertakes to make available at all times during the period of this Agreement the necessary foreign exchange to enable the German Debtors to discharge the obligations necessitating the provision of foreign exchange and assumed by them under or pursuant to this Agreement.

17. CONSULTATIVE COMMITTEE

(1) For the purpose of conferring from time to time with the German Committee and the Bank deutscher Laender and keeping the Foreign Bankers' Committees informed of matters arising during the period of this Agreement and of performing such other duties, consistent with the terms of this Agreement, as shall be entrusted to them under this Agreement or by the Foreign Bankers' Committees, a meeting of a Consultative Committee consisting of delegates representing the Foreign Bankers' Committees may be convened at any time by the Chairman of the Joint Committee of Representatives of Foreign Bankers' Committees and shall be so convened by him at any time if he is requested so to do by the German Committee or by any Foreign Bankers' Committee. Each Foreign Bankers' Committee signatory to this Agreement shall be entitled to nominate a delegate. Any meeting fixed by or in accordance with this Clause may be cancelled or postponed by notice given by the Chairman of the said Joint Committee.

(2) Subject as hereinafter provided all decisions of the delegates shall be taken by the vote of delegates present and representing a majority of the Foreign Bankers' Committees, provided that such majority of Foreign Bankers' Committees shall represent not less than 50 percent in face value of the short-term credits then outstanding.

(3) The Committee herein appointed may by unanimous vote of the delegates present at a meeting and with the agreement of the German Committee construe and amend the terms of this Agreement from time to time, provided that no amendment shall be made which shall substantially change the rights of the parties or adherents hereto. The determination of the Committee herein appointed and of the German Committee that any such amendment does not substantially change such rights shall be binding on all the parties and adherents hereto.

(4) If at any time it becomes possible under laws then in force in the Federal Republic for a Foreign Bank Creditor to require repayment of a short-term credit or any part thereof in German currency, then the Consultative Committee by unanimous vote of its delegates at a meeting (or by written agreement of all such delegates without a formal meeting) may amend Clauses 10 and 11A of this Agreement so as to make payment in German currency thereunder compulsory upon the Debtor if and to the extent that a Foreign Bank Creditor shall require the same subject, however, to any then still subsisting limitations in force in the Federal Republic regarding such payments. Any such amendment shall be binding upon all the parties and adherents hereto.

18. INVESTMENTS UNDER PREVIOUS AGREEMENTS

As from the date of this Agreement interest and earnings in respect of investments made out of Registered Credit Balances pursuant to Clause 10 of any of the previous Agreements shall be dealt with as provided in clause 10(5)(g) of the 1939 Agreement; provided that the rate at which such interest and earnings will be transferred shall not exceed the rate of interest for the time being payable on short-term credits to Foreign Bank Creditors in the same creditor country.

19. MATURITY OF CREDITS

All indebtedness arising under short-term credits covered by this Agreement shall mature on the expiration or termination hereof and such indebtedness shall thereupon become due and payable. Furthermore, on such expiration or termination, Foreign Bank Creditors shall be entitled to debit the accounts of German Debtors with the amount of all bills accepted for account of such German Debtors notwithstanding the fact that the bills themselves are drawn for later maturity but so that no interest shall be chargeable until the bills mature. In the case of confirmed credits, Foreign Bank Creditors shall be entitled to debit as an actual liability the amount of all bills drawn thereunder prior to the expiration of this Agreement, notwithstanding the fact that such bills have not at that date been presented for acceptance and, as a contingent liability, the unused balance of any confirmed credit, but so that interest shall not be chargeable until the bills mature or until cash has actually been advanced by Foreign Bank Creditors in respect of such credits.

20. ARBITRATION

(1) In case any dispute shall occur between Foreign Bank Creditors and German Debtors^[30] or the Bank deutscher Laender as to the interpretation of this Agreement or as to any matter or thing arising thereout, the same shall be referred to an Arbitration Committee constituted in accordance with the provisions of this Clause.

(2) The Arbitration Committee shall be constituted as follows:

(a) The Bank for International Settlements shall nominate three persons to serve as permanent members of the

Arbitration Committee, designating one of such persons as Chairman of the Committee and a second person as Vice-Chairman to preside over any meeting of the Committee in the absence of the Chairman.

(b) In addition the Bank for International Settlements shall nominate three persons who shall be available to serve as alternate members of the Arbitration Committee in place of any one or more of the permanent members who may from time to time be unable through illness or otherwise to attend meetings of the Committee, specifying the permanent member which each such alternate is to replace. No alternate shall be entitled to attend any meeting of the Committee except in the absence of and as substitute for his respective permanent member.

(3) The Rules of the Arbitration Committee shall provide inter alia that:

(a) Not less than ten days' notice shall be given to each of the signatories to this Agreement (that is to say, the Foreign Bankers' Committees, the German Committee and the Bank deutscher Laender) of the hearing of any questions referred to the Arbitration Committee by any of such signatories and thereupon each of such signatories shall have the rights of a party to the proceedings as provided in the next succeeding paragraph of this sub-Clause.

(b) In respect of every question referred to the Arbitration Committee all parties to the proceedings shall be entitled to be represented at the hearing thereof by a representative, lawyer or other agent and to submit for consideration of the Arbitration Committee a written statement of arguments in support of or in opposition to such question in accordance with such regulations as to procedure as the Arbitration Committee may from time to time prescribe.

(c) The Arbitration Committee shall decide from time to time the times and places at which the sessions of the Committee are to take place and shall give due notice thereof to all signatories to this Agreement.

(d) The Arbitration Committee shall in respect of every decision made by it, whether or not such decision is unanimous, state briefly in writing the grounds upon which such decision is based provided, however, that the grounds for the Committee's decision need not be given in the Committee so determined by a unanimous vote, unless one of the parties has prior to the hearing requested in writing that the grounds be stated. In cases where no grounds are stated the award shall contain a record of the fact that a unanimous decision to that effect was passed by the Committee and that no request was made by any of the parties as aforesaid.

(e) If the Arbitration Committee shall, in respect of any question referred to it, declare itself not to be competent to decide the same and if upon application to the appropriate court of law in the country of any of the parties to the proceedings, jurisdiction shall be declined upon the ground that jurisdiction rests with the Committee, or, if the question be referred back wholly or in part to the Committee, then in either such case the Committee shall decide the question.

21. EXPENSES

The costs and expenses of and incidental to the preparation and execution of this Agreement and of carrying the terms thereof into effect, including all legal costs and other expenses properly incurred by Foreign Bankers' Committees prior to the execution of this Agreement (but not earlier than 1 November 1950) and during the continuance thereof, shall be for the account of the German Debtors. Provision for the payment of all such costs and expenses and remuneration shall be made by the German Committee.

22. ADHERENCE

(1) Adherence to this Agreement shall be effected by each Foreign Bank Creditor notifying to his German Debtor or Debtors within two months from the coming into force of this Agreement his willingness to adhere, by means of a letter in standard form rendered in duplicate (specifying the short-term credits in respect of which such German Debtor or Debtors are liable and in respect of which adherence is made) which will be obtainable from the Foreign Bankers' Committees in the respective foreign creditor countries. Every German Debtor shall forward within four days of receipt of a letter of adherence from any of his Foreign Bank Creditors a letter confirming his adherence^[31] in standard form which will be obtainable from the Bank deutscher Laender or any Landeszentralbank.^[32] Adherence by the Foreign Bank Creditor may be effected by cable subsequently confirmed in the foregoing manner.

(2) Each Foreign Bank Creditor who formerly participated in a syndicate credit shall be entitled to adhere to this Agreement in respect of his participation in the business.

(3) Upon adherence having been effected the Foreign Bank Creditor and the German Debtor shall become parties to this Agreement in respect of the short-term credits so specified, and shall thenceforth be entitled to the rights granted to and be subject to the obligations to be assumed by the Foreign Bank Creditors and German Debtors respectively under this Agreement.

(4) Any Foreign Bankers' Committee may, with the consent of the German Committee, extend the time within which any one or more Foreign Bank Creditors in its country may adhere to this Agreement. Provided that where any person, firm or company in the Federal Republic becomes liable in respect of a short-term credit or part thereof by way of succession or substituted succession during the period of this Agreement or where new adherences are exchanged pursuant to Clause 5, 7 or 8 hereof, adherence in respect of such credit or part of a credit may be made without such consent as aforesaid within a reasonable time after such succession or other relevant event takes place.

(5) In the case of any short-term credit or part thereof which has been granted to a bank debtor who is not ordinarily resident inside the Federal Republic or whom his Foreign Bank Creditor can no longer locate or identify and in respect of which a client of such bank debtor ordinarily resident inside the Federal Republic is also liable, such client shall be bound (if the Foreign Bank Creditor so requires) to adhere to this Agreement in respect of such credit or part of a credit to which the provisions of this Agreement shall then apply as if the same had originally been granted direct to the client.

(6) In the case of any short-term credit or part thereof which has been granted to a commercial or industrial debtor who is not ordinarily resident inside the Federal Republic or whom his Foreign Bank Creditor can no longer locate or identify and in respect of which some person ordinarily resident inside the Federal Republic is also liable as guarantor, endorser or credit insurer, such person shall be bound (if the Foreign Bank Creditor so requires) to adhere to this Agreement in respect of such credit or part of a credit to which the provisions of this Agreement shall then apply as if the same had originally been granted direct to such person.

(7) Where a German banking, commercial or industrial concern becomes or has become the successor to the primary liability under any short-term credit or part thereof pursuant to or as a result of German law (eg, Reg. 35 under Monetary Law No. 63 or Credit Institution Law promulgated 29 March 1952) the Foreign Bank Creditor may adhere to this Agreement vis-à-vis such concern in respect of such credit or part of a credit and such concern shall confirm adherence on its part in the manner and with the effects provided in this Agreement. This provision shall also be operative in the case of any substituted succession in respect of a short-term credit or part thereof where such substitution is in accordance with laws now in force in the Federal Republic (eg, Art. 7(3) of Credit Institution Law promulgated 29 March 1952). Upon adherence by any successor German Debtor in respect of a short-term credit or part thereof the relative adherence by any predecessor German Debtor shall (except as herein otherwise provided) cease to have force and effect.

(8) Where pursuant to laws now in force in the Federal Republic (eg, Reg. 35 under Monetary Law No. 63 or Credit Institution Law promulgated 29 March 1952) one or more successor banking institutions become or have become jointly liable with the original German Bank Debtor in respect of a short-term credit or part thereof, then (subject to the provisions of the two succeeding sub-Clauses) such successor institution or institutions shall also adhere to this Agreement in respect of such credit or part of a credit, but in such case the adherence of the original German Bank Debtor shall continue in full force and effect.

(9) In the case of any short-term credit or part thereof which has been granted to a German Bank Debtor and in respect of which a client of such German Bank Debtor ordinarily resident outside the Federal Republic is also liable, neither the German Bank Debtor nor any banking institution jointly liable with it shall be obliged to take any action in respect of such credit or part of a credit under the provisions of this Agreement (except to adhere by way of acknowledgment of the existence and amount of such credit or part of a credit) unless and until the Foreign Bank Creditor would be entitled in the absence of this Agreement to enforce payment in the Federal Republic of the relative indebtedness under German law.

(10) In the case of any short-term credit derived from an original cash advance which was not converted into an acceptance credit, payment of which the Foreign Bank Creditor (by reason of laws for the time being in force in the Federal Republic, eg, Reg. 35 under Monetary Law No. 63 or Art. 7(2) of the Credit Institution Law promulgated 29 March 1952) can enforce within the Federal Republic only to the extent of a proportionate part, the German Bank Debtor and any banking institution which may be jointly liable with it shall not be obliged to

take any action under the provisions of this Agreement in respect of that proportionate part which the Foreign Bank Creditor cannot for the time being enforce (except to adhere by way of acknowledgment of the existence and amount thereof) until the Foreign Bank Creditor would be entitled in the absence of this Agreement to enforce payment in the Federal Republic of the relative indebtedness under German law.

23. Deutsche Golddiskontbank

(1) Nothing contained herein shall limit the obligations of, or the rights of any Foreign Bank Creditor against the Deutsche Golddiskontbank as the same are set forth or incorporated in the latest of the previous Agreements applicable to a particular short-term credit and Clause 23 of the 1939 Agreement is incorporated herein by reference (to be effective as from the date of this Agreement) except that as regards the text of such Clause:

(a) sub-Clause (3) thereof shall be deemed to be amended so that the words "this Agreement" in sub-Clause (5)(b) of Clause 23 of the 1933 Agreement shall be substituted by the words "any of the previous Agreements."

(b) sub-Clause (4) thereof shall be deemed to be amended so that the words "Clause 23 of the 1932, 1933, 1934, 1935, 1936, 1937 and 1938 Agreements" shall be substituted by the words "Clause 23 of any of the previous Agreements."

(c) sub-Clauses (5) and (7) thereof shall be deleted.

(2) The Liquidator of the Deutsche Golddiskontbank by signing this Agreement accepts the provisions of sub-Clause (1) of this Clause and severally acknowledges to each Foreign Bank Creditor holding any short-term credit or part of a short-term credit payment of which has heretofore been guaranteed by the Deutsche Golddiskontbank and in respect of which adherence is made to this Agreement that, to the extent that such credit or part of a credit has not heretofore been paid or satisfied, the liability upon such guarantee remains in full force and effect.

24. Payments from other sources

In the event that subsequent to his adherence to this Agreement any Foreign Bank Creditor shall in relation to any existing indebtedness owed by a debtor in the territory comprised in the German State on 31 December 1937, accept payment of any sum of money from a source other than such debtor, which sum he is required by operation of law or otherwise or elects to apply against short-term credits covered by this Agreement, then such Foreign Bank Creditor shall apply such moneys in permanent repayment of indebtedness in respect of the short-term credit or credits (if any) in relation to which such sum was received; provided that if such sum was not received in relation to any particular short-term credit or credits then, unless the Foreign Bank Creditor has other indebtedness of the nature aforesaid (not being short-term credits) owing to him against which he can legally apply and elects to apply such moneys, the same shall be applied by the Foreign Bank Creditor against such short-term credit or credits as he may select. Promptly upon application of such moneys in reduction of any short-term credit or credits the Foreign Bank Creditor shall notify the relative debtor or debtors and the German Committee and his own Foreign Bankers' Committee of such application and the indebtedness in respect of the short-term credit or credits against which such moneys are so applied shall thereafter be permanently repaid accordingly.

25. Execution and short title

(1) The original parts of this Agreement executed by the German Committee, the Bank deutscher Laender and the respective Foreign Bankers' Committee shall be forwarded through the respective Central Banks to the Bank for International Settlements for retention by that institution in safe custody for all parties interested therein.

(2) For purposes of reference this Agreement may be referred to as "THE GERMAN CREDIT AGREEMENT OF 1952."

26. Notices

Any notice in writing, formal or otherwise, required to be given pursuant to any of the provisions of this Agreement shall be deemed to have been duly given if sent by post, telegram, radiogram or cablegram (charges

prepaid) to or delivered at an address furnished by the party entitled to receive the notice or if no such address shall have been furnished, the said party's usual place of business.

27. [Deleted.]

28. Headings

Headings are intended for reference only and are not intended in any way to govern the construction of this Agreement.

29. Requisite signatures

This Agreement shall become effective when signed by the German Committee and the Bank deutscher Laender and when signed and (where appropriate) ratified by Foreign Bankers' Committees representing Foreign Bank Creditors whose short-term credits constitute 75 percent in face value of the short-term credits outstanding.

SUB-ANNEX TO ANNEX III

EXCHANGE OF LETTERS BETWEEN CREDITOR AND DEBTOR REPRESENTATIVES RECORDING SUPPLEMENTARY UNDERSTANDINGS REACHED BY THEM WITH RESPECT TO ANNEX III

To:

The American Committee for Standstill Creditors of Germany

The British Banking Committee for German Affairs

The Swiss Banking Committee for the German Credit Agreement

Dear Sirs

THE GERMAN CREDIT AGREEMENT OF 1952

We refer to the statements which have been made by the Tripartite Commission on German Debts on behalf of the Governments represented thereon and by the German Delegation on behalf of the Government of the Federal Republic of Germany that their Governments are prepared by appropriate administrative action in Germany to permit the German Credit Agreement of 1952 (contained in Annex III to the Agreement on German External Debts and below referred to as "the 1952 Agreement") to come into force on ratification of the Agreement on German External Debts by the Federal Republic of Germany, except that foreign currency payments provided for in the 1952 Agreement, other than those normally arising pursuant to Clause 5 thereof, shall be postponed until the Agreement on German External Debts (below referred to as the "Intergovernmental Agreement") comes into force in accordance with Article 35 thereof.

We also refer to the forms of Adherence proposed to be exchanged conditionally between creditors and debtors under the 1952 Agreement in which reference is made (inter alia) to the postponement of foreign currency payments under that Agreement as mentioned above and the debtors agree that upon the 1952 Agreement becoming fully effective pursuant to the said Intergovernmental Agreement, they will make prompt payment to the creditors of all foreign currency payments under the 1952 Agreement which shall in the meantime have been postponed.

We hereby agree that the 1952 Agreement shall come into force upon compliance with the provisions of Clause 29 thereof and upon ratification of the said Intergovernmental Agreement by the Federal Republic of Germany, but shall cease to become effective if it is not included in the said Intergovernmental Agreement when the latter Agreement comes into force. Accordingly Clause 2 of the 1952 Agreement shall be read as if the date when compliance shall have been made with Clause 29 of that Agreement and when ratification of the Intergovernmental Agreement shall have been made by the Federal Republic of Germany were inserted therein as the date upon which the provisions of the 1952 Agreement shall come into force.

We further agree that, if the 1952 Agreement is included in the said Intergovernmental Agreement when the latter Agreement comes into force in accordance with Article 35 thereof, we will do all such things as are within our respective powers to enable prompt payment to be made to the creditors of all foreign currency payments under the 1952 Agreement which shall in the meantime have been postponed.

We confirm that, by agreement between the parties to the 1952 Agreement, the following amendments are to be made to the text of that Agreement as contained in Appendix 5 to the Final Report of the Conference on German External Debts and are to be incorporated in the Agreement in the form in which it is signed, viz:

Paragraph (7) of Preamble

The words "Government of the Federal Republic or other appropriate authority" to be substituted by the words "appropriate governmental authorities in the Federal Republic of Germany and the Western Sectors of Berlin."

The word "and" to be inserted at the end of sub-paragraph (ii) and the same word to be deleted at the end of sub-paragraph (iii).

Sub-paragraph (iv) to be preceded by the words "and shall ensure as far as possible that".

Clause 1: Definitions

The words "and relates to the identification of territory and not to governmental jurisdiction" to be added at the end of the definition of "Federal Republic."

Clause 20: Arbitration

In sub-Clause (1) the words "who have adhered to this Agreement" to be inserted after the words "German Debtors".

Clause 22: Adherence

In sub-Clause (1) the words "confirming his adherence" to be deleted and the words "confirming his adherence to this Agreement and (if the creditor so requests) agreeing that he will adhere to any renewal or extension thereof that may be signed by the German Committee and the Bank deutscher Länder" to be inserted at the end of the second sentence of that sub-Clause.

We, the undersigned German Committee, hereby consent, in accordance with Clause 22(4) of the 1952 Agreement, to your Committee's extending the time within which any one or more foreign bank creditors in your respective countries may adhere to the 1952 Agreement to enable such adherence to be made at any time within two months of the said Intergovernmental Agreement coming into force.

Yours faithfully

[Signed:]

For and on behalf of the German Committee for Standstill Debts

[Signed:]

For and on behalf of the Bank deutscher Länder

To:

The German Committee for Standstill Debts
The Bank deutscher Länder

Dear Sirs

THE GERMAN CREDIT AGREEMENT OF 1952

We acknowledge receipt of your letter with regard to the arrangements for the bringing into force of the above Agreement and the temporary postponement of payment to the creditors of foreign currency payments provided for in that Agreement, other than those normally arising pursuant to Clause 5 thereof, and hereby confirm our acceptance of the terms and conditions set out in your letter.

In particular we agree-

(a) that the 1952 Agreement shall come into force upon compliance with the provisions of Clause 29 thereof and upon ratification of the Agreement on German External Debts (below referred to as the "Intergovernmental Agreement") by the Federal Republic of Germany but shall cease to become effective if it is not included in the said Intergovernmental Agreement when the latter Agreement comes into force;

(b) that all foreign currency payments provided for in the 1952 Agreement, other than those normally arising pursuant to Clause 5 thereof, shall be postponed until the Intergovernmental Agreement comes into force in accordance with Article 35 thereof; and

(c) that the amendments to the text of the 1952 Agreement set out in your letter are to be incorporated in the Agreement in the form in which it is signed.

This letter may be executed in several counterparts which taken together will constitute one and the same instrument

Yours faithfully

[Signed:]

For and on behalf of the American Committee for Standstill Creditors of Germany

[Signed:]

For and on behalf of the British Banking Committee for German Affairs

[Signed:]

For and on behalf of the Swiss Banking Committee for the German Credit Agreement

(Sent on 20 February 1953.)

ANNEX IV
[33]

AGREED RECOMMENDATIONS FOR THE SETTLEMENT OF CLAIMS ARISING OUT OF GOODS AND SERVICES TRANSACTIONS, OF CERTAIN CLAIMS ARISING FROM CAPITAL TRANSACTIONS AND OF VARIOUS OTHER CLAIMS

SECTION A. CLASSIFICATION OF CLAIMS

The settlement shall include:

Article 1

Monetary claims arising out of international transactions for goods and services, as well as monetary claims of a similar character, against private or public debtors which became due before 8 May 1945 (old commercial claims).

These cover, in particular-

- (1) Claims arising out of supplies of goods;
- (2) Claims arising out of prepayments for supplies of goods and services;
- (3) Incidental charges in connection with the exchange of goods, in so far as they are not contained in the invoice; these also cover freights and similar items;
- (4) Claims arising out of services, in so far as they are not comprised in other items; these also cover directors' and trustees' fees;
- (5) Claims in respect of industrial property rights, copyrights, technical aid and similar claims;
- (6) Claims for damages in connection with goods and services transactions which arose and became due prior to 8 May 1945;
- (7) Wages, salaries and pensions based on employment, and commission;
- (8) Payments arising out of social insurance;
- (9) Claims arising out of private insurance business.

Claims not specifically mentioned in paragraphs (1) to (9) which clearly fall within the scope of the international goods and services transactions dealt with in this section, shall be allotted to the corresponding items.

Article 2

The following claims which arose out of financial transactions before 8 May 1945, including any interest outstanding, against non-public debtors:

- (1) Claims expressed in German currency without gold or non-German currency clause;
- (2) Claims expressed either in foreign currency or in German currency with gold or foreign currency clause, which-
 - (a) are owed by natural persons and not contracted in the name of a firm belonging to the debtor, irrespective of duration and amount; or
 - (b) are owed by German firms and belong to natural or legal persons, or groups of persons, who are directly or

indirectly owners of the German firms concerned, irrespective of whether the claims are in the form of non-marketable bonds or in any other form; or

(c) originally had a duration stipulated at less than 5 years; or

(d) were originally below the sum of US\$40,000 or its equivalent (at the rate of exchange on 1 July 1952), irrespective of duration.

(3) Claims not specifically mentioned in (1) and (2) but clearly falling within the scope of claims arising from financial transactions and not falling under the settlement proposals in Annexes I to III to the Agreement on German External Debts.

(4) By way of exception, claims arising out of mortgages and land charges (Grund- und Rentenschulden) where the debtor or land owner is a Gemeinde (municipality) or another public institution and the charge does not form part of a loan contract.

See Sub-Annex regarding the Swiss franc land charges (Schweizer Frankengrundschulden) pursuant to the German-Swiss Agreements of 6 December 1920 and 25 March 1923.

Article 3

Income of foreign creditors from investments in the Federal Republic of Germany or Berlin (West), which was due before 8 May 1945, in so far as it is not dealt with in the Agreement on German External Debts or in another Annex thereto.

This includes, in particular-

(1) Dividends on securities issued within the Federal Republic or Berlin (West);

(2) Profits;

(3) Rents.

Article 4

Monetary claims which arose prior to 8 May 1945, not dealt with in other Annexes to the Agreement on German External Debts and not mentioned in Articles 1-3 of this settlement proposal, but which by their character fall within the scope of this settlement proposal.

Article 5

Exceptions-

Excluded from this settlement proposal are, until otherwise stipulated, claims against the City of Berlin and against public utilities located in the area of and controlled by Berlin.

SECTION B. GENERAL PRINCIPLES

Article 6

Conversion into Deutsche Mark

(1) Claims expressed in Reichsmark shall be settled after the foreign creditor has declared his agreement to his claim being converted into Deutsche Mark at the same rate as would apply in the case of a similar claim of a domestic creditor. This applies also to such monetary claims expressed in Goldmark or Reichsmark with a gold clause as have no specific foreign character within the meaning of the following paragraph (2). The German Foreign Exchange Control Authorities shall continue to issue any licence necessary for a conversion pursuant to the Conversion Law or for a modification of the conversion rate pursuant to the legislation on Deutsche Mark balance sheets, to the extent that the creditor is entitled to such conversion or modification.

(2) The principle is accepted that such monetary claims arising from financial transactions and mortgages, expressed in Goldmark or in Reichsmark with a gold clause as had a specific foreign character, shall be converted into Deutsche Mark at the rate of 1 Goldmark, or 1 Reichsmark with a gold clause, = 1 Deutsche Mark.

The definition of the criteria constituting the specific foreign character of such claims shall be the subject of further negotiation.[34] The contracting parties reserve their position as to the question in which cases and in which way the above principle can be implemented. It shall lie with the German Delegation to decide how the solution arrived at can be fitted into the framework of the German laws on currency reform and on the equalisation of war and post-war burdens.

The abovementioned negotiations between a German Delegation and the creditors' representatives should take place not later than 31 October 1952.

Article 7

Claims expressed in foreign currency with gold clauses

For the purpose of the settlement of these claims the following principles shall apply mutatis mutandis:

In the case of debts expressed in gold dollars or gold Swiss francs, the debts shall be computed on the basis of 1 currency dollar equalling 1 gold dollar and 1 currency Swiss franc equalling 1 gold Swiss franc, and the new contracts shall be expressed in currency dollars or currency Swiss francs respectively.

In the case of other debts with gold clauses (excluding German currency debts with gold clauses - see Article 6, paragraph 2) the amounts due shall be payable only in the currency of the country in which the loan was raised or the issue was made (referred to below as "the currency of issue"), the amount due being computed as the equivalent at the rate of exchange when the amount is due for payment of a sum in US dollars which shall be arrived at by converting the amount of the obligation expressed in the currency of issue into US dollars at the rate of exchange ruling when the loan was raised or the issue made. The amount of currency of issue so reached shall, however, not be less than if it were computed at the rate of exchange current on 1 August 1952.

Article 8

Computation in Deutsche Mark of claims expressed in foreign currency

Claims expressed in foreign currency shall be computed in Deutsche Mark based on the parity of the day preceding the date of repayment, as notified to the International Monetary Fund. Where no parity is laid down, the computation shall be made according to the mean rate of exchange quoted by the Bank deutscher Länder on the day preceding the date of payment.

Article 9

Konversionskasse for German external debts

I. The German Delegation was of the opinion that the German debtor was definitively discharged of his debt to the extent of his payments into the Konversionskasse. The creditor representatives, on the other hand, were of the opinion that as a rule such payments into the Konversionskasse would not be recognised as discharging the German debtors under the laws of their respective countries.

In their desire to put an end to fruitless legal discussions, both sides agreed to seek a practical solution which would permit settlement of the claims of the creditors without unnecessary formalities.

Accordingly the German Delegation and the foreign creditor representatives, while reserving their respective legal positions, have agreed as follows:

(1) The German debtor undertakes to settle the creditor's claim in accordance with the new settlement terms, regardless of the payments made to the Konversionskasse, to the extent that the creditor-

(a) has not in fact received from the Konversionskasse the payment corresponding to that made by the debtor to it, or

(b) refused to accept a payment or performance from the Konversionskasse based on a payment made by the debtor, on the ground that he (the creditor) was unwilling to recognise such payment or performance as discharging the debt.

In the case of securities subject to the validation law for German Foreign Currency Bonds, the arrangement set out above shall apply only to such Bonds and Coupons as shall have been validated pursuant to the provisions of such law and of any agreement entered into with the country of issue respecting the application of such law, or with respect to the declaratory decrees (Feststellungsbescheide) which the creditor shall have received pursuant to the said law.

(2) The amounts so paid by the debtors shall be reimbursed to them out of German public funds.

(3) Payments made by the debtor into the Konversionskasse which do not fall within the provisions of subparagraph (1) shall be considered as discharging the debt to the extent of such payments.

II. Subject to the general provisions contained in paragraph I above:

(a) the Federal Government agrees to assume liability for full payment in the due currencies to the foreign creditors of the sums paid into the Konversionskasse by debtors in the Saar in respect of which the foreign creditors have not received foreign exchange payments or been otherwise satisfied;

(b) the Federal Government agrees to assume liability for payment in the respective foreign currencies to the foreign creditors of 60 percent of the sums paid into the Konversionskasse by debtors in Austria, France, Belgium and Luxemburg in respect of which the foreign creditors have not received foreign exchange payments or been otherwise satisfied;

(c) the Federal Government will negotiate with the foreign creditors' representatives before the end of December 1952 as regards the implementation of these undertakings.

Article 10

Payments into the Deutsche Verrechnungskasse

The negotiating parties have discussed the payments made by German debtors to the Deutsche Verrechnungskasse which were not paid out to the creditors.

In view of the variations in the terms of the contracts between Germany and other countries, which are not yet executed, the creditors and debtors are of the opinion that the questions which have not been clarified should be solved by Governmental negotiations between the Federal Republic of Germany and the States concerned.

Article 11

Hardship clause

Where and in so far as the financial position of a debtor has been affected by war or the repercussions of war or other extraordinary conditions, to such an extent that the debtor cannot be expected to settle his obligations in accordance with the conditions and within the time-limits laid down in this settlement proposal, he should be granted relief. This shall be equitable and take into account the debtor's special circumstances. The relief shall be in accordance with the concessions which the debtor has been or may be granted by a German creditor on similar grounds under German Law, especially under the legislation for the Relief of Debtors (Vertragshilferecht).

Where the creditor and debtor do not reach agreement, the competent German Court shall make a decision. The creditor shall have the option of appealing against the decision of the Lower Court under the provisions of German Law, or, within a period of 30 days after notice of the Court decision has been served, of appealing to the Court of Arbitration constituted according to the provisions of Article 17. The decision of the Court of Arbitration shall be binding.

Article 12

Succession to claims and debts by operation of law

(1) Where a foreign creditor has acquired or shall hereafter acquire claims of another foreign creditor by legal succession on death, the claim shall be treated within the framework of this settlement proposal in the same manner as if the original creditor continued to be entitled to it. The same shall apply to similar cases of succession by operation of law.

(2) Any person who, by law or by a binding order, is under an obligation to take over the debt, or who has taken it over by contract, shall be liable for the debt as the successor of the debtor.

Article 13

Charge of creditor

(1) The creditor may assign to some other foreigner the total amount of his claim for which he may demand payment to a foreign country, provided that the assignment-

(a) is made to a resident within the same currency area,

(b) does not entail any modification of the terms underlying the claim,

(c) does not result indirectly or directly in settlement of a claim.

The competent German authorities will give permission for the assignment if the conditions laid down in (a) to (c) are fulfilled. Over and above this, they shall give favourable consideration to well-founded applications by a foreign creditor for approval of an assignment of part of his claim.

By the acquisition of the claim the new creditor shall have the same rights and obligations as the original creditor. Should the new creditor demand from the debtor settlement of the claim in Deutsche Mark, the regulations for "original blocked accounts" shall apply to his blocked account after a period of three months has elapsed since the change of creditors occurred.

(2) As far as the assignment of claims is concerned for which the creditor can demand payment only in Deutsche Mark, the regulations concerning the use and assignment of such claims in force at the time in the territory of the Federal Republic of Germany and Berlin (West) shall be decisive (see Article 19).

Article 14

Participation of creditors and debtors in the debt settlement, foreign currency regulations, debtor obligations

(1) Creditors and debtors desiring to settle a claim and obligation under the terms of this settlement proposal, must exchange written declarations to this effect. The creditor's declaration of participation may also be made through an agency established in the creditor country for the transmission of such declarations.

(2) The valid Exchange Control Regulations in Germany and abroad, taking into consideration the special facilities and assurances specified in this settlement proposal, shall apply to the relations between the creditor and debtor.

(3) Where the debtor refuses to make a declaration but the creditor declares himself bound to his own declaration of participation in relation to the debtor, the German Foreign Exchange Authorities shall at the request of the creditor issue to him within the limits of his declaration of participation any necessary foreign exchange licences.

Such foreign exchange licences shall enable the creditor to sue for and recover his claims against the debtor to the extent and in the manner provided in this settlement proposal for such claims.

In so far as the creditor has not obtained satisfaction by judicial execution, he may evoke his declaration of participation.

The issue of the foreign exchange licence shall not constitute a decision on the existence and amount of the claim.

(4) Should the creditor require payment in Deutsche Mark, he shall be obliged to make a written declaration to the debtor that he accepts such payment in settlement of his claim.

(5) Where the creditor is entitled to require, and requires, payment in a foreign country, the debtor shall be obliged to take all the steps necessary under valid German Foreign Exchange Control Regulations to procure the necessary instruments of payment in foreign currency.

Article 15 Settlement of disputes

Except as otherwise expressly provided in this settlement proposal, any disputes between creditor and debtor as to the existence and the amount of any claims shall be decided by a Court of Law, or a Court of Arbitration agreed upon by the parties, which is competent in view of the legal relationship between the parties.

Article 16 Mixed Commission

A Mixed Commission, which shall be composed of an equal number of representatives of the creditor countries, on the one hand, and of the Federal Government, on the other hand, as well as of one Chairman, shall be set up to decide differences as to the interpretation of this settlement.

It is recommended that the Commission shall be competent to decide questions of fundamental importance for the interpretation of this settlement which are submitted to it by the Governments concerned.

Where a Government is of the opinion that a case, which is pending in the Court of Arbitration (Article 17), is of fundamental importance, it is recommended that the Government may require the Court of Arbitration to refer the case to the Mixed Commission. The Court of Arbitration should have the same right.

Article 17 Court of Arbitration

The Court of Arbitration referred to in Article 11 shall be composed of one arbitrator appointed by each of the

parties. The two arbitrators shall elect a chairman. Should they not be able to agree on the person, they shall request the President of the International Chamber of Commerce to appoint him.

The arbitrators shall possess the qualifications required for holding judicial office in their respective countries; this shall not apply to the Chairman.

The Court of Arbitration shall decide upon its own procedure. It shall also decide which party shall bear the costs.

The German Delegation will advise the Federal Government to make provision that in cases where the parties are unable to make an advance of costs or bear the costs as fixed, the payment of such costs shall be adequately settled.

On the joint application of the parties, the Court of Arbitration may also decide in other disputes between creditors and debtors.

Detailed provisions relative to the Court of Arbitration proposed in this Article shall be agreed upon in the Governmental discussions for the implementation of the recommendations of the Conference on German External Debts.

Article 18

Payment in Deutsche Mark

Payment in Deutsche Mark according to this settlement shall be understood as meaning payment in German currency into an account held by a foreign creditor or opened in his name at his request with a financial institution in the territory of the Federal Republic of Germany or Berlin (West). The account shall be subject to the German Foreign Exchange Control Regulations from time to time in force.

This shall not exclude the issue of special licences for other forms of payment.

Article 19

Utilisation of blocked Deutsche Mark accounts

(1) The foreign creditor of an "original credit account" in German currency shall be permitted to utilise it within the framework of the legal provisions in force in the Federal Republic of Germany and Berlin (West) at the time this settlement comes into effect, including the right to assign such credits to another person outside Germany.

(2) The foreign creditor of an "acquired credit account" in German currency shall continue to be permitted to assign his credit to another person outside Germany.

The foreign creditor of such account shall continue to be permitted to utilise his credit mainly for long-term investments in the German economy.

(3) The competent German authorities shall draw up the regulations necessary to prevent the illegal disposal of credits in German currency and to preclude any other abuses detrimental to the German economy and to the creditors as a whole. Utilisations permitted by a general licence at the time this settlement comes into force may, in order to ensure proper control, be made dependent upon the issue of a separate licence without thereby restricting the general possibilities of utilisation.

(4) The competent German authorities will endeavour to provide facilities for the utilisation of blocked Deutsche Mark accounts to such an extent as the foreign exchange situation shall permit. They will aim at simplifying the licence procedure as much as possible.

(5) The Federal Government shall set up an Advisory Committee composed of an equal number of representatives of the main creditor countries, on the one hand, and of representatives of the Federal Republic,

on the other hand, for the discussion of general matters in connection with the utilisation of blocked Deutsche Mark accounts.

Article 20
Effect of the settlement on existing claims

In the absence of any contrary provision, this settlement shall not modify the claims dealt with therein.

Article 21
Currency option clauses without a gold clause

The decision as to the currency in which claims with currency option clauses (without a gold clause) shall be discharged, shall be reserved to intergovernmental arrangements.

Article 22
Concessions in favour of debtors

The creditors are of the opinion that the concessions granted under the terms of this settlement should accrue to the benefit of the debtors.

Article 23
Effective conversion

(1) A change in the terms of the debt relationship between creditor and debtor shall be considered as an effective conversion, if it was made before 9 June 1933, or if it occurred on or after 9 June 1933, as a result of free negotiation or on account of the insolvency or threatened insolvency of the debtor.

(2) It shall be presumed that there is no effective conversion resulting from free negotiation if at the time of conversion the creditor was represented by the German Custodian of Enemy Property or by a similar person appointed by the German authorities without his consent.

(3) In the case of bonded claims, a conversion shall likewise not be considered an effective conversion if the creditor has merely accepted a unilateral offer made by the debtor.

(4) The burden shall be on the debtor to prove that the conversion was an effective conversion.

(5) In the case of Church loans, any conversion shall be considered effective.

Article 24
Currency of payment

Provisions as to the currency in which monetary claims shall be discharged, are reserved to intergovernmental arrangements.

Article 25
Validation laws for German bonds

This settlement shall not apply to bonds and interest coupons which require to be validated under the German Validation Law for Bonds of 19 August 1949 (Wirtschaftsgesetzbl., page 295) and the Validation Law for German

External Bonds of August 1952, until these bonds and interest coupons have been validated pursuant to the provisions of such laws or any agreement which may be concluded with the country of issue with regard to such laws.

SECTION C. SETTLEMENT OF OLD COMMERCIAL CLAIMS (ARTICLE 1)

Article 26

Claims arising out of supplies of goods (Article 1(1))

(1) The creditor shall be entitled to demand payment to a foreign country as follows:

(a) in respect of one-third of the amount owed as from the beginning of the year 1953,

(b) in respect of the remaining two-thirds of the amount owed in ten equal yearly instalments, starting on 1 January 1954.

(2) The creditor may up to 31 December 1953 demand that the debtor, instead of effecting payment to a foreign country as stipulated under (1)(b), shall, within three months after such request pay the balance of his claim (two-thirds of the original amount owed) in Deutsche Mark. It shall be left to the creditors and debtors in special circumstances to agree upon extension of the time limit for a further three months.

(3) After 31 December 1953 payment of the balance of the claim in Deutsche Mark may be demanded only in agreement with the debtor.

Article 27

Claims arising out of prepayments for supplies of goods and services (Article 1(2))

(1) Creditors and debtors should, where necessary, with the approval of their competent authorities, agree upon a settlement appropriate to the circumstances of the case.

(2) Should it not be possible to reach agreement, the creditor shall be entitled to ask the debtor for payment to a foreign country of the amount owed in ten equal yearly instalments, starting as from 1 October 1953.

(3) The creditor may up to 31 December 1953 demand that the debtor, instead of effecting payment to a foreign country as stipulated under (2), shall, within three months after such request, pay the total amount of the claim in Deutsche Mark. It shall be left to the creditors and debtors, in special circumstances, to agree upon extension of the time limit for a further three months.

(4) After 31 December 1953 payment of the claim in Deutsche Mark may be demanded only in agreement with the debtor.

Article 28

Wages, salaries and pensions based on employment, commission (Article 1(7))

(1) The creditor shall be entitled to demand from the debtor payment to a foreign country of the amount owed in five equal yearly instalments, starting on 1 January 1953. On application by the claimant, or by a private or governmental organisation which the claimant has duly authorised to act on his behalf, to the competent German authorities this settlement may also include such amounts as, according to proof furnished, have been paid temporarily into an account with a financial institution located in the Federal territory or Berlin (West) by the claimant or by his employer to the claimant's credit.

It shall lie with the competent German authorities to give favourable consideration to the possibility of an early payment to a foreign country in cases of hardship.

(2) The creditor may, at any time, demand that the debtor shall, within three months after being so requested, pay, in Deutsche Mark, the balance or the claim which has not yet been transferred to a foreign country.

Article 29

Services from social insurance (Article 1(8))

These services are already or may become the subject of bilateral agreements and negotiations. It is recommended that the arrears of such payments be incorporated into these agreements.

Article 30

Claims arising out of private insurance business (Article 1(9))

(1) Claims and debts of either Party arising out of insurance or reinsurance contracts or agreements of any kind, or in connection with such contracts or agreements, may be the subject of bilateral arrangements.

Such claims and debts may be settled only in accordance with the relevant bilateral arrangements.

(2) Where no such bilateral arrangements for direct insurance exist or have been concluded by 31 March 1953, claims of foreign insurance holders against insurance companies in the Federal Republic of Germany and Berlin (West) shall be settled pursuant to the following provisions:

(a) Claims arising out of life insurance contracts pursuant to the provisions of Articles 33 and 34.

(b) Claims arising out of damage, accident or third party insurance contracts:

(aa) where the insurance contract was concluded for the safeguarding of assets in the Federal Republic of Germany or Berlin (West), payment shall be effected in Deutsche Mark pursuant to the Foreign Exchange Regulations in force in the Federal Republic of Germany and Berlin (West);

(bb) all other such claims shall be settled pursuant to the provisions of Article 31.

(c) Claims arising out of all types of insurance contracts for payments of pensions pursuant to the provisions of Article 28.

Details of the provisions under paragraph (2) shall be laid down in the Intergovernmental Agreement.

Article 31

Other old commercial claims (Article 1, (3), (4), (5) and (6))

(1) The creditor shall be entitled to demand from the debtor payment to a foreign country of the amount owed in ten equal yearly instalments starting on 1 July 1953.

(2) The creditor may, up to 31 December, 1953, demand that the debtor, instead of effecting payment to a foreign country as stipulated under (1) above, shall, within three months after such request pay the amount owed in Deutsche Mark. It is left to the creditors and debtors, in special circumstances, to agree upon extension of the time limit for a further three months.

(3) After the 31 December 1953 the creditor may demand payment of his claim in Deutsche Mark only in agreement with the debtor.

(4) In certain special cases the creditor and debtor may agree upon settlement in some other form, subject to approval by the competent authorities.

Article 32

Joint provisions for old commercial debts (Article 1, (1) to (9))

(1) Arrears of interest

Where interest is owing on a claim, the following interest rates, without allowing for compound interest, shall apply for the computation of the arrears of interest owed up to 31 December 1952:

(a) where the annual interest rate has heretofore been 4 percent or less, the interest rate shall remain the same as before;

(b) where the annual interest rate has heretofore been more than 4 percent, this shall be reduced to 2/3 but not less than 4 percent per annum.

The reduced amount of interest arrears shall be added to the principal.

(2) Future interest

No interest shall be due for the period from 1 January 1953 to 31 December 1957.

Where interest was due for the period up to 1 January 1953, the amount of the claims for the time being outstanding on or after 1 January 1958 shall bear interest. The rate of interest shall represent 75 percent of the due rate.

The new rate of interest shall, however, be not less than 4 percent nor more than 6 percent per annum. Where heretofore a rate of interest of 4 percent per annum or less was due, this rate shall remain. The interest shall be paid at the end of each year in non-German currency together with the amortisation amount.

(3) Special deposit

(a) As far as claims of groups in Article 1, (1) to (7), are concerned the creditor may, instead of specifying payment in accordance with Article 26, 27, 28 or 31, require the debtor to effect payment into a Deutsche Mark Deposit Account maintained in his name with an agency to be designated by the competent German authorities, if his claim is proved to be jeopardised.

Should the debtor in respect of such a request invoke the hardship clause (see Article 11), the demand of the creditor for a deposit shall take effect only when the invocation of the hardship clause by the debtor has been finally rejected.

(b) The debtor may pay the amount of a debt covered by the categories specified by paragraph (a) into such a deposit in favour of the creditor, provided he can furnish proof that-

(aa) he (the debtor) is the heir or executor of the original debtor and the estate is due to be apportioned;

(bb) he (the debtor) is a company going into liquidation;

(cc) the receiver or the composition administrator of the debtor is paying out dividends on bankruptcy or composition settlements.

(c) Payment into a deposit account in accordance with the abovementioned provisions shall discharge the debtor from his debt. In this case, the creditor shall, in respect of payment to a foreign country, be accorded the same treatment as if the amount on deposit (including interest, if the deposit agency pays interest) were in the hands of the debtor.

(d) The creditor shall have the right, at any time, to demand transfer of an amount paid into a special deposit account to his Deutsche Mark account (Article 18).

(4) Small claims

In cases of claims for small amounts, the competent German authorities shall give favourable consideration to applications of interested parties for approval of an early payment to a foreign country.

(5) Payments for supplies of goods and services where the creditor can furnish proof that the payment into his account was effected without his consent

A creditor who furnishes proof that a payment in respect of goods and services to his bank account or Postscheckkonto (Article 1) was effected without his consent shall, by payment into such an account, not forgo his right of having the payment dealt with under Section C.

SECTION D. SETTLEMENT OF CLAIMS ARISING OUT OF PRIVATE FINANCIAL TRANSACTIONS

(Article 2)

Article 33

Claims in German currency arising out of financial transactions, including such claims as are expressed in Goldmark or Reichsmark with a gold clause and are not of a specific foreign character (Article 6), may continue to be discharged under the agreed contractual interest and amortisation terms, pursuant to the foreign exchange regulations in force at the time of payment in the Federal Republic of Germany and Berlin (West). According to the regulations at present valid, payment may be made only in Deutsche Mark.

Article 34

Claims expressed in a foreign currency, arising out of financial transactions, and those expressed in Goldmark or Reichsmark with a gold clause but which are of a specific foreign character (Article 6) shall be settled as follows:

(1) Where the debtor has effected payments to the "Konversionskasse für deutsche Auslandsschulden," the amounts of unpaid principal and interest shall be determined in accordance with the provisions of Article 9.

(2) Where interest is owing, the following interest rates without allowing for compound interest shall be applicable for the computation of the arrears of interest owing up to 31 December 1952:

(a) where the annual interest rate has heretofore been 4 percent or less, the interest rate shall remain the same as before;

(b) where the annual interest rate has heretofore been more than 4 percent, this shall be reduced to 2/3 but not to less than 4 percent per annum.

(3) The amount of arrears of interest computed in accordance with paragraphs (1) and (2) shall be added to the undischarged claim. The resulting new principal shall bear interest as from 1 January 1953 at a rate which shall represent 75 percent of the interest rate in force at the time this settlement comes into effect. The new interest rate shall, however, be

(a) in the case of bonded claims, at least 4 percent and at the most 5 1/4 percent per annum,

(b) in the case of other claims, at least 4 percent and at the most 6 percent per annum.

Where an interest rate of 4 percent or less has been owed heretofore, this rate shall remain the same.

The interest shall be payable to a foreign country at least semi-annually.

(4) In the case of any claims which have been the subject of an effective conversion that rate of interest agreed upon in the effective conversion shall form the basis for the computation of any reduction pursuant to paragraphs (2) and (3).

Interest reductions on which there is a time-limit shall be taken into consideration only for the period for which they were arranged.

(5) In the case of any claims which have been the object of a non-effective conversion, that rate of interest which would have been valid without this conversion shall form the basis for the computation of any reductions pursuant to paragraphs (2) and (3).

(6) The new principal shall be discharged as from 1 January 1958 by payment to a foreign country as follows:

(a) during the first five years (1 January 1958 to 31 December 1962) at 3 percent per annum;

(b) during the next five years (1 January 1963 to 31 December 1967) at 8 percent per annum;

(c) during the subsequent three years (1 January 1968 to 31 December 1970) at 15 percent per annum.

Interest shall be computed on the principal outstanding from time to time.

(7) The creditor may demand up to 30 June 1953, that arrears of interest computed in accordance with paragraphs (2) and (4) shall not be added to the principal according to paragraph (3) but shall be discharged by payment in Deutsche Mark. The debtor shall effect payment within six months after such request.

(8) Where small amounts are involved, the parties concerned may, in special cases, agree upon different terms of repayment with the approval of the competent German authorities.

(9) Creditors and debtors may, in accordance with the Foreign Exchange Regulations in force in the Federal Republic of Germany and Berlin (West), agree upon payment of the claim or part thereof in Deutsche Mark.

(10) The competent German authorities reserve, in cases of hardship, the right of giving favourable consideration to applications by the parties concerned for the approval of different terms of repayment.

(11) Foreign creditors of claims listed in Article 2, paragraph (2)(b), may ask for payment in Deutsche Mark of the interest due up to 31 December 1952, without the reduction proposed in paragraph (2) of this Article, provided they accept such payment as discharge of their claim.

(12) If necessary, the principles laid down in Annex II to the Agreement on German External Debts may be adopted to supplement these rules for the settlement of claims arising out of bonds and interest coupons covered by this settlement proposal.

SECTION E. ARREARS OF INCOME FROM INVESTMENTS
(Article 3)

Article 35

Payments shall be made in Deutsche Mark pursuant to the foreign exchange regulations in force in the Federal Republic of Germany and Berlin (West).

SECTION F. OTHER MONETARY CLAIMS
(Article 4)

Article 36

These claims shall be settled pursuant to the provisions for the category of claims to which they either belong or, by their character, are most similar. In cases of doubt, the same practice shall apply as in the Payment Agreements.

SUB-ANNEX TO ANNEX IV
[35]

JOINT STATEMENT BY THE GERMAN AND SWISS DELEGATIONS CONCERNING THE NEGOTIATIONS ON THE SETTLEMENT OF THE SWISS FRANC LAND CHARGES (SCHWEIZER FRANKENGRUNDSCHULDEN)

Discussions were held at Freiburg i.B. on 10-11 June 1952, in implementation of the statement made on 20 March 1952, by the creditor and debtor representatives - for the attention of the London Debt Conference. These negotiations could not, however, be brought to a conclusion. The London Conference was informed of this by a statement on 11 June 1952.

Owing to various circumstances it has so far proved impossible to continue the negotiations. The parties will, however, resume the discussions, in consultation with the "Vertrauensstelle," at the earliest possible date. The German Delegation will inform the London Conference of their results in good time before the signing of the general Governmental Agreement on the settlement of German External Debts.

The Swiss side refers again to the exposé on the Swiss Franc land charges which was submitted to the Conference subsequent to the statements made by the Swiss Delegation in the Second Plenary Meeting on 29 February 1952, and distributed under Ref. No. GD/V/Negotiating Committee D/Doc. 3 of 13 March 1952. The Swiss side reserves the right, therefore, of making a further statement, dependent upon the results of the bilateral negotiations.

On the other hand, the German side is of the opinion that the Swiss Franc land charges fall under the terms of reference of the London Conference for the Settlement of German External Debts and that they are to be settled in accordance with the principles laid down by Negotiating Committee D.

Both sides agree that a Court of Arbitration, which is to be set up within the scope of the settlement of the debts dealt with in Negotiating Committee D, shall not be competent to deal with the Swiss Franc land charges but that the cases arising shall be submitted to the "Vertrauensstelle" set up pursuant to the German-Swiss Agreements.

London, 25 July 1952

[Signed:] [Signed:]

PAUL LEVERKUEHN KOENIG

ANNEX V
[36]

AGREED RECOMMENDATIONS FOR THE TREATMENT OF PAYMENTS MADE TO THE KONVERSIONSKASSE

I. The German Delegation was of the opinion that the German debtor was definitively discharged of his debt to the extent of his payments into the Konversionskasse. The creditor representatives, on the other hand, were of the opinion that as a rule such payments into the Konversionskasse would not be recognised as discharging the German debtors under the laws of their respective countries.

In their desire to put an end to fruitless legal discussions, both sides agreed to seek a practical solution which would permit settlement of the claims of the creditors without unnecessary formalities.

Accordingly, the German Delegation and the foreign creditor representatives while reserving their respective legal positions, have agreed as follows:

(1) The German debtor undertakes to settle the creditor's claim in accordance with the new settlement terms, regardless of the payments made to the Konversionskasse, to the extent that the creditor-

(a) has not in fact received from the Konversionskasse the payment corresponding to that made by the debtor to it, or

(b) refused to accept a payment or performance from the Konversionskasse based on a payment made by the debtor, on the ground that he (the creditor) was unwilling to recognise such payment or performance as discharging the debt.

In the case of securities subject to the validation law for German Foreign Currency Bonds, the arrangement set out above shall apply only to such Bonds and Coupons as shall have been validated pursuant to the provisions of such law and of any agreement entered into with the country of issue respecting the application of such law, or with respect to the declaratory decrees (Feststellungsbescheide) which the creditor shall receive pursuant to the said law.

(2) The amounts so paid by the debtors shall be reimbursed to them out of German public funds.

(3) Payments made by the debtor into the Konversionskasse which do not fall within the provisions of subparagraph (1) shall be considered as discharging the debt to the extent of such payments.

II. Subject to the general provisions contained in paragraph I above:

(a) the Federal Government agrees to assume liability for full payment in the due currencies to the foreign creditors of the sums paid into the Konversionskasse by debtors in the Saar, in respect of which the foreign creditors have not received foreign exchange payments or been otherwise satisfied;

(b) the Federal Government agrees to assume liability for payment in the due currencies to the foreign creditors of 60 percent of the sums paid into the Konversionskasse by debtors in Austria, France, Belgium and Luxemburg in respect of which the foreign creditors satisfied; and

(c) the Federal Government will negotiate with the foreign creditors' representatives before the end of December 1952 as regards the implementation of these undertakings.

ANNEX VI
[37]

AGREED RECOMMENDATIONS FOR THE UTILISATION OF BLOCKED DEUTSCHE MARK ACCOUNTS

The following detailed arrangements have been agreed upon for the utilisation of blocked Deutsche Mark accounts:

(1) The foreign creditor of an "original credit account" in German currency shall be permitted to utilise it within the framework of the regulations in force in the German Federal Republic and Berlin (West) at the date on which this settlement comes into effect, including the right to assign such accounts to another person outside Germany.

(2) The foreign creditor of an "acquired credit account" in German currency shall continue to be permitted to assign his account to another person outside Germany.

The foreign creditor of such account shall continue to be permitted to utilise his account mainly for long-term investments in the German economy.

(3) The competent German authorities shall draw up and issue the regulations necessary to prevent the illegal disposal of accounts in German currency and to preclude any other abuses detrimental to the German economy and to the creditors as a whole. Utilisations permitted by a general licence at the time this settlement comes into force may, in order to ensure proper control, be made dependent upon the issue of a special licence without thereby restricting the general possibilities of utilisation.

(4) The competent German authorities will endeavour to provide facilities for the utilisation of blocked Deutsche Mark accounts to such an extent as the foreign exchange situation shall permit. They will aim at simplifying the licence procedure as much as possible.

(5) The German Government shall set up an Advisory Committee composed of an equal number of representatives of the main creditor countries, on the one hand, and of representatives of the German Federal Republic, on the other, for the discussion of general matters in connection with the utilisation of blocked Deutsche Mark accounts.

ANNEX VII

AGREEMENT ON GOLDMARK LIABILITIES AND REICHSMARK LIABILITIES WITH A GOLD CLAUSE, HAVING A SPECIFIC FOREIGN CHARACTER

German Delegation for External Debts

London SW1

21 November 1952

243-18 Del. 39-2177/52

The Chairman of the Tripartite Commission on German Debts

29 Chesham Place

London SW1

Mr Chairman

The negotiations provided for in Article V, paragraph 3, of Appendix 4 and in Article 6 of Appendix 6 to the Final Report of the London Debt Conference and referred to in the joint letter from Sir Otto Niemeyer and Herr Hermann J Abs to the Tripartite Commission on German Debts, the purpose of which was to define the criteria constituting the specific foreign character of Goldmark liabilities and of Reichsmark liabilities with a gold clause or a gold option, took place in London from 21 October to 21 November 1952 between the German Delegation for External Debts and a delegation of British, American, Swiss and Netherlands creditor representatives.

We are glad to be able to inform you that these negotiations resulted on 21 November 1952 in an understanding which was recorded in an Agreement signed today. The Chairman of the two Delegations, in signing this Agreement, exchanged four letters dated 21 November 1952, designed to clarify various questions in connexion with the Agreement, as follows:

1. Exchange of letters concerning the transfer of amounts due for payment on Goldmark claims with a specific foreign character.
2. Exchange of letters concerning the interpretation of the provision on a "trusteeship contract".
3. Exchange of letters concerning a question of interpretation in connexion with the 40th Executory Ordinance to the Currency Conversion Law.
4. Exchange of letters concerning a reservation by the creditors with respect to the conversion of claims against secondary debtors and the possibility of the withdrawal of this reservation.

We have the honour to submit to you one copy of the text of the Agreement in the German and English languages and of the four exchanges of letters, also in the German and English languages, with the request that you should approve them as soon as possible. We should be grateful if the Agreement and also the four exchanges of letters could be appended as sub-Annexes to Annexes I, II and IV of the Debt Agreement.

Please accept, Mr Chairman, the expression of our highest esteem.

[Signed:] [Signed:]

HERMANN J ABS N LEGGETT

Head of the German Delegation Chairman of Negotiating Committee B
for External Debts at the Conference on German External Debts

Note:

1. It was agreed by the signatories to the above letter that these documents should become Annex VII to the Agreement on German External Debts and not sub-Annexes to Annexes I, II and IV of that Agreement, as requested in the final paragraph above.
2. The exchanges of letters referred to in the final paragraph above have now been summarised and are attached as the Sub-Annex to Annex VII.

AGREEMENT ON GOLDMARK LIABILITIES AND REICHSMARK LIABILITIES WITH A GOLD CLAUSE, HAVING A SPECIFIC FOREIGN CHARACTER

London

21 November 1952

By virtue of the reservations made in Article V, paragraph 3, Appendix 4, and in Article 6 of Appendix 6 of the Final Report of the London Debt Conference, and of the joint letter addressed by the Head of the German Delegation, Herr Hermann J Abs, and Sir Otto Niemeyer to the Tripartite Commission on German Debts, dated 19 November 1952, on the subject of Goldmark loans of German municipalities, it is agreed as follows:

- I. In respect of the claims and rights specified below it is recognised that they have a specific foreign character within the meaning of the abovementioned provisions.

1. Claims expressed in Goldmarks or in Reichsmarks with a gold clause or a gold option arising out of bonds made out by German debtors and issued or placed abroad, if-

(a) they constitute a loan, the conditions of which show that it was intended for investment, sale or negotiation in foreign countries only. Where the interest on any bond has been exempt from taxation of capital yield, the bond shall be considered as forming part of a loan which was intended for investment, sale or negotiation in foreign countries only;

(b) they are payable in foreign countries only under the terms of the bonds.

Any part of a loan which differs from the other parts of the loan in respect of special designation or special treatment in Germany as regards taxation or quotation shall likewise be considered as a loan within the meaning of (a) or (b) above, except where the bonds belonging to such part of a loan were officially quoted on a German Stock Exchange before 1 September 1939.

2. Claims expressed in Goldmarks, or in Reichsmarks with a gold clause or a gold option, arising from other loans or advances resulting from financial transactions and raised abroad by German debtors, including claims of this kind secured by mortgage charges; if

(a) it was expressly agreed under the original written debt arrangements that the place of payment or the competent court is situated abroad or foreign law is applicable; and if

(b) whenever the debt was incurred after 31 July 1931, the equivalent was made available in foreign currency, free Reichsmarks or gold, or originates in a blocked Reichsmark account to which repayments on a Goldmark or foreign currency loan from a foreign country granted before 31 July 1931 had been credited provided that the foreign creditor has again loaned out the amounts withdrawn from the blocked Reichsmark account, with the consent of the competent German Foreign Exchange Control Authorities, to some other German debtor, stipulating a gold clause or gold option Clause for such renewed loan.

A loan or advance shall likewise be deemed to have been raised in a foreign country if the debtor was aware, when the indebtedness was incurred, that the German creditor, by virtue of a trusteeship contract, was merely the trustee of a foreign lender. A loan or advance raised from the foreign trustee of a German lender shall not be deemed to have been raised in a foreign country.

II. The claims and rights mentioned under I do not include claims of foreign credit institutions and insurance enterprises which under German Law are required to prepare a conversion sheet, provided the claims have to figure as assets on the conversion sheet.

III. [38] In the case of real estate liens (mortgages, land charges and terminable annuities), which on 20 June 1948 had been entered for the purpose of securing the personal claims of a foreign creditor specified in such agreement, the original conversion shall, subject to the provisions set out hereinafter, continue to apply as carried out in accordance with the Conversion Law, including the 40th Executory Ordinance issued thereto. In those cases where any such real estate lien has, in accordance with these prescriptions, been converted at a rate other than 1:1, the security in favour of the creditor in the form of real estate lien of the same nominal amount as the real estate lien in his favour on the 20 June 1948, less any subsequent reductions thereof, will be re-established in equal rank in so far as this is possible without interference with any real property rights which a third party may have acquired during the period between the 21 June 1948 and 15 July 1952. To the extent that third parties may have acquired such rights during the said period, the following rules shall apply, it being agreed that they will in detail be established by German legislation:

(a) Where the real property has changed ownership, the security in favour of the creditor, in the form of a real estate lien, which is lacking will be re-established only to the extent that a public charge in respect of the levy on mortgage profits (Hypothekengewinnabgabe) is or will be reduced.

(b) Where a third party has acquired some other real estate right in the property, the security in favour of the creditor, in the form of a real estate lien, which is lacking will be re-established only in the next best rank. Where, however, a public charge in respect of the levy on mortgage profits (Hypothekengewinnabgabe) is reduced, the re-established security will rank before the rights of such third party in so far as and to the extent that the third party benefits from the reduction.

(c) A creditor who has a claim of a specific foreign character shall be given a lien on such compensation claim as is to be awarded to the debtor to the extent that such creditor's real estate security cannot be re-established in its original rank or cannot be re-established for the full amount for which the claim was secured.

(d) In cases where the creditor cannot be given a real estate lien corresponding in amount with the former real estate lien, the debtor shall, out of public funds, be enabled to meet the claim in so far as and to the extent that it cannot be satisfied out of security owing to the impossibility of the re-establishment of the former security.

It is agreed that in respect of Berlin (West) an analogous arrangement adapted to the special characteristics of local legislation will apply without the creditors' existing rights or those provided under the terms set forth above being thereby reduced.

IV. In every case it will be a prerequisite for the specific foreign character that the claims on 1 January 1945 were held by a person who at that time was a national of a creditor country or, without possessing German nationality, was resident in a creditor country. In cases where a claim or a real estate lien securing a claim was at that date held by a trustee, the criterion shall not be the person of the trustee but the person of the grantor of the trust. A juridical person shall be deemed to be a national of the country under the laws of which it was established.

V. The Creditor representatives asked that the claims, including real estate liens, of foreign creditors against secondary debtors [as defined in Article 15, paragraph (8), of the Conversion Law as newly worded by AHC Law No. 46 (Official Gazette 1951, No. 46, page 756) - without restriction, however, to United Nations nationals -], in such cases where they are expressed in Goldmarks or Reichsmarks with a gold clause or gold option, shall be regarded as having a specific foreign character and be converted at the rate of 1 Goldmark, or 1 Reichsmark with gold clause, = 1 Deutsche Mark. To this the German Delegation replied that these claims and real estate liens should be considered from the point of view of the security which the German primary debtor would have to propose in the offer to be made under the London Debt Settlement.

It was agreed that this matter should be held over pending the clarification of the question of security for the individual primary debtors' obligations. The Creditor representatives, however, reserved the right to demand final settlement of the conversion at the rate of 1 Deutsche Mark = 1 Goldmark or Reichsmark with a gold clause or gold option, of the secondary debtors' obligations in the event that the security offered by the German primary debtor in any particular case should not be sufficient.

[Signed:] [Signed:]

HERMANN J ABS N LEGGETT

Head of the German Delegation Chairman of Negotiating Committee B

for External Debts at the Conference on German External Debts

SUB-ANNEX TO ANNEX VII

AGREED PROVISIONS DESIGNED TO CLARIFY VARIOUS QUESTIONS IN CONNECTION WITH ANNEX VII

London

9 February 1953

The Chairman

The Tripartite Commission on German Debts

29 Chesham Place

LONDON SW1

Mr Chairman

We refer to our letter of 21 November 1952 to which we attached four exchanges of letters designed to clarify various questions in connection with the Agreement of 21 November 1952 on Goldmark liabilities and Reichsmark liabilities with a Gold Clause, having a specific foreign character.

It was suggested that for the sake of simplicity these four exchanges of letters might be embodied in one document, to be annexed to the abovementioned Agreement of 21 November 1952. The text of such an Annex has now been agreed on between us, and we have the honour to submit it to you herewith, in English and German, and to request that it may be appended as an Annex to the Agreement referred to.

Please accept, Mr Chairman, the expression of our highest esteem.

[Signed:] [Signed:]

HERMANN J ABS N J F LEGGETT

Head of the German Delegation Chairman of Negotiating Committee B
for External Debts at the Conference on German External Debts

ANNEX TO AGREEMENT OF 21 NOVEMBER 1952 ON GOLDMARK LIABILITIES AND REICHSMARK LIABILITIES WITH A GOLD CLAUSE, HAVING A SPECIFIC FOREIGN CHARACTER

The following provisions shall constitute an Annex to the Agreement dated 21 November 1952:

1. It is confirmed that the transfer of amounts due in respect of claims expressed in Goldmarks or in Reichsmarks with a Gold Clause or Gold Option, under Appendices 3 and 4 of the Report of the Conference on German External Debts, shall be treated as if they were payable in a non-German currency in a foreign country in accordance with Article 11, paragraph 1(a) of the draft Intergovernmental Agreement on German External Debts.
2. It is agreed that the existence of a "trusteeship contract," as referred to in the last paragraph of Article 12 of the Agreement of 21 November 1952, may be proved not only by a document of contract or letters referring to the trusteeship but also by the treatment of the foreign lender as a creditor which was extended to him over the years by the competent German foreign exchange control authorities.
3. It is agreed that, in the case of mortgages (ie, all Grundpfandrechte) securing claims expressed in non-German currency which are converted at the rate of 1 Deutschemarek = 1 Reichsmark or Reichsmark with a Gold Clause or Gold Option in accordance with Article I, paragraph 2, Clauses 1, 2 and 5 of the 40th Executory Ordinance to the Currency Conversion Law, that conversion is final; this affords the reason why such case is not included in the Agreement of 21 November 1952.
4. Under Article V of the Agreement of 21 November 1952, the creditors have reserved the right, in the case of their claims (including real estate liens) against secondary debtors, to demand final settlement of the conversion at the rate of 1 Deutschemarek = 1 Goldmark or 1 Reichsmark with a Gold Clause or Gold Option, in the event that in the offer made by any particular German primary debtor for settlement of his liability the security offered is not deemed by the creditor to be sufficient. In this connexion the head of the German Delegation for External Debts, Mr Hermann J Abs, will seek to influence the respective primary debtors to make without delay to their foreign creditors offers of settlement which if accepted will leave the creditors in a position in no way inferior to their present position as provided in the 40th Executory Ordinance to the Currency Conversion Law. If such offers are made and accepted it is contemplated that the creditors will withdraw the reservation made by them in Article V as regards the conversion of their claims against the secondary debtors.

Although the abovementioned reservation strictly relates only to creditors whose cases are covered by the 40th Executory Ordinance to the Currency Conversion Law and Article 15 of that Law (as amended by Law 46), ie, United Nations Nationals, it is agreed that, according to the principle of non-discrimination and equal treatment of all creditors, such reservation shall also apply to claims against secondary debtors of creditors who are not United Nations Nationals.

ANNEX VIII

AGREED INTERPRETATION CONCERNING PARAGRAPH (2) OF ARTICLE 5 OF THE AGREEMENT ON GERMAN EXTERNAL DEBTS

Nothing in paragraph (2) of Article 5 of the Agreement on German External Debts shall be construed as affecting any rights under existing legislation in the Federal Republic of Germany, or which are provided for in any agreement which has been signed, prior to the signature of the Agreement on German External Debts, between the Federal Republic of Germany and any of the other Parties to the last mentioned Agreement.

ANNEX IX

CHARTER OF THE ARBITRAL TRIBUNAL FOR THE AGREEMENT ON GERMAN EXTERNAL DEBTS

Article 1

(1) The Arbitral Tribunal for the Agreement on German External Debts (hereinafter referred to as "the Tribunal") shall be composed of eight permanent members appointed as follows:

- (a) three members appointed by the Government of the Federal Republic of Germany;
- (b) one member appointed by the Government of the French Republic;
- (c) one member appointed by the Government of the United Kingdom of Great Britain and Northern Ireland;
- (d) one member appointed by the Government of the United States of America;
- (e) a President and a Vice-President who shall be appointed jointly by the Governments entitled to appoint the other permanent members of the Tribunal. If such Governments fail to agree on the appointment of the President and Vice-President or either of them within four months of the entry into force of the Agreement on German External Debts (hereinafter referred to as "the Agreement"), the President of the International Court of Justice shall, at the request of the Government of the United Kingdom of Great Britain and Northern Ireland made in pursuance of the authority hereby conferred upon it by the Parties to the Agreement, make such appointment or appointments.

(2) When a Party to the Agreement, other than any Government specified in paragraph (1) of this Article is a party to a proceeding before the Tribunal, such Party shall be entitled to appoint an additional member to sit in such proceed