

**OPEC FUND FOR INTERNATIONAL DEVELOPMENT LOAN
AGREEMENT (RATIFICATION) ACT, 1980**

No. 31



of 1980

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Ratification of Agreement

An Act to ratify an Agreement entered into between the Government of the Republic of Botswana and the OPEC Fund for International Development

Date of Assent: 17.9.80.

Date of Commencement: 19.9.80.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Opec Fund for International Development Loan Agreement (Ratification) Act, 1980. Short title
2. The Loan Agreement dated 29th July, 1980, entered into between the Government of the Republic of Botswana and the OPEC Fund for International Development, and set out in the Schedule, is hereby ratified. Ratification of Agreement

SCHEDULE

AGREEMENT, dated July 29, 1980 between the Republic of Botswana (hereinafter called the Borrower) and the OPEC Fund for International Development (hereinafter called the Fund);

Whereas OPEC Member Countries, being conscious of the need for solidarity among all developing countries and aware of the importance of financial cooperation between them and other developing countries, have established the Fund to provide financial support to the latter countries on concessional terms, in addition to the existing bilateral and multilateral channels through which OPEC Member Countries have extended financial assistance to other developing countries;

Whereas the Government of Botswana has requested assistance from the Fund in the form of balance of payments support;

Whereas the Governing Board of the Fund has approved to make a balance of payments support loan to the Borrower in the amount of One Million US Dollars (\$1 000 000) upon the terms and conditions set forth hereinafter;

Now, therefore, the parties hereto hereby agree as follows:

Article 1

DEFINITIONS

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

- (a) "Fund" means the OPEC Fund for International Development, established by the States Members of the Organization of Petroleum Exporting Countries by virtue of the Agreement signed to this effect in Paris on January 28, 1976 as amended.
- (b) "Fund Management" means the Director-General of the Fund or his authorized representative.
- (c) "Loan" means the loan provided by virtue of this Agreement.
- (d) "Dollars" and the sign "\$" mean the currency of the United States of America.
- (e) "Effective Date" means the date on which this Agreement shall come into force and effect.

Article 2

THE LOAN

2.01 The Fund hereby extends to the Borrower a loan in the amount of One Million Dollars (\$1 000 000) according to the terms and conditions set forth in this Agreement.

2.02 The Borrower shall pay from time to time into the Fund's account designated for this purpose by the Fund Management, interest of four per cent (4%) per annum and service charges of one half of one per cent ($\frac{1}{2}$ of 1%) per annum on the principal amount of the Loan withdrawn and outstanding. Such interest and charges shall be due and payable in Dollars semi-annually on January 15 and July 15 of each year.

2.03 After this Agreement has been declared effective pursuant to Section 5.01, an amount equivalent to half the proceeds of the Loan shall be transferred by the Fund to an account which the Borrower shall open in the name of the Fund for this purpose in its Central Bank or a similar institution performing the functions of a central bank. The Loan proceeds shall be deemed, for the purposes of Section 2.02, to have been withdrawn by the Borrower from the date of transfer of each portion of the Loan amount and shall constitute a Dollar account which, along with the interest payable in respect thereof by the depository bank, shall be governed by the provisions of this Agreement. Such interest shall not constitute part of the principal Loan amount for the purposes of repayment of the Loan.

2.04 The representative of the Borrower designated in, or in accordance with, Section 7.02 shall be authorized to make withdrawals from the Fund's Dollar account opened pursuant to Section 2.03.

2.05 The Borrower agrees that withdrawals from the Fund's above-mentioned Dollar account, including the amount of interest to be paid by the depository bank, shall be effected within one hundred and eighty days of the date of transfer of each portion of the Loan amount and shall be used exclusively to meet reasonable expenditures to be made by the Borrower for the following economic purposes:

- (a) The importation of capital goods, spare parts and inputs required for agricultural or civilian industrial production.
- (b) The importation of foodstuffs and other essential consumer goods.

2.06 Within one hundred and eighty days from the date of utilization by the Borrower of any amount in the Dollar account referred to in Section 2.03, the Borrower shall credit a special account in the name of the Fund to be opened for this purpose by the Borrower in its Central Bank or similar institution, with an amount in the Borrower's currency equivalent to the Dollar amount withdrawn, according to the official rate of exchange at the time of withdrawal between the Dollar and the currency of the Borrower, and in the absence of such a rate of exchange, according to such rate as may be agreed upon by the Borrower and the Fund Management. The Borrower shall inform the Fund Management of the opening of the above-mentioned account and of any entries thereto as they take place.

2.07 Amount deposited in the currency of the Borrower pursuant to Section 2.06 and the interest accruing thereupon, shall be used solely to finance local costs of one or more development projects or programs in the territory of the Borrower, approved for this purpose by the Fund's Governing Board, in accordance with such supplementary arrangements as shall be agreed upon in this respect between the Borrower and the Fund.

2.08 Upon withdrawal of the entire amount of each of the two portions of the Loan by the Borrower, for one or more of the purposes mentioned in Section 2.05, the Borrower shall furnish the Fund Management with a statement from its Central Bank or similar institution, supported by satisfactory evidence, to the effect that the amount of that portion of the Loan has been used exclusively for the above-mentioned purposes. The Fund shall, upon acceptance of such evidence in relation to the first portion of the Loan amount, transfer to the Fund's Dollar account referred to in Section 2.03 the second portion of the Loan amount, subject to the same conditions applied to the first portion.

2.09 In case any of the two portions of the Loan amount shall not have been withdrawn by the Borrower within the period of 180 days referred to in Section 2.05, the Fund Management shall, at any time thereafter, have the power to withdraw the amount involved from the Fund's Dollar account referred to in Section 2.03.

2.10 The Borrower shall repay the principal of the Loan in Dollars, or in any other freely convertible currency acceptable to the Fund, in an amount equivalent to the Dollar amount due, according to the market exchange rate prevailing at the time and place of repayment. Repayment shall be effected, in fourteen semi-annual instalments commencing on July 15, 1983 after a grace period running up to that date. Each instalment shall be in the amount of Seventy One Thousand Dollars (\$71 000) except for the last and fourteenth instalment, which shall be in the amount of Seventy Seven Thousand Dollars (\$77 000). All such instalments shall be transferred on the date of repayment to the Fund's account as shall be requested by the Fund Management.

2.11 Notwithstanding the provisions of Section 2.10, if within twelve months of the date of the transfer of the first portion of the Loan to the Fund's Dollar account referred to in Section 2.03, no agreement shall have been reached between the Borrower and the Fund on the development project(s) or program(s) to be financed by all or part of the amount of the account in the currency of the Borrower made pursuant to Section 2.06, the Borrower shall immediately thereafter be entitled to withdraw the total amount of such local currency. Repayment of the Loan shall in such a case be effected in ten equal semi-annual instalments commencing on July 15, 1983. Each instalment shall be in the amount of One Hundred Thousand Dollars (\$100 000) and shall be transferred on the date of repayment to the Fund's account designated for this purpose by the Fund Management.

Article 3

ACCELERATION OF MATURITY

3.01 If any of the following events shall occur and shall continue for the period specified below, then at any subsequent time during the continuance of such an event, the Fund Management may, by notice to the Borrower, declare the principal of the Loan then outstanding to be due and payable immediately together with the interest and service charges thereon, and upon any such declaration such principal, together with such interest and service charges, shall become due and payable immediately:

- (a) A default shall occur and continue for a period of thirty days, in the payment of any instalment of the principal, of the interest or of the service charges under any other loan agreement by virtue of which the Borrower shall have received a loan from the Fund;
- (b) A default shall occur in the performance of any other obligation on the part of the Borrower under this Agreement, or any other loan agreement, by virtue of which the Borrower shall have received a loan from the Fund, and such default shall continue for a period of sixty days after notice thereof shall have been given by the Fund Management to the Borrower.

Article 4

ENFORCEABILITY, TERMINATION OF FUND, ARBITRATION

4.01 The rights and obligations of the Parties to this Agreement shall be valid and enforceable in accordance with their terms notwithstanding any local law to the contrary. No party to this Agreement shall be entitled under any circumstances to assert any claim that any provisions of this Agreement are invalid or unenforceable for any reason.

4.02 The Fund Management shall promptly inform the Borrower whenever any decision is taken for the dissolution of the Fund in accordance with the Agreement Establishing the Fund. In the event of such dissolution, this Loan Agreement shall remain in force and the Fund Management shall advise the Borrower of such substitute arrangements for the administration of the Loan as may be devised by the appropriate authority of the Fund on such occasion.

4.03 The Parties to this Agreement shall endeavour to settle amicably all disputes or differences between them arising out of this Agreement or in connection therewith. If any such dispute or difference cannot be amicably settled it shall be submitted to arbitration by the Arbitral Tribunal as hereinafter provided:

- (a) Arbitration proceedings may be instituted by the Borrower against the Fund or vice versa. In all cases, arbitration proceedings shall be instituted by a notice given by the complainant party to the respondent party.

- (b) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one by the claimant party, a second by the respondent party and the third (hereinafter called the Umpire) shall be appointed by agreement of the two arbitrators. If within thirty days after notice of instituting the arbitration proceedings the respondent party shall fail to appoint an arbitrator, such an arbitrator shall be appointed by the President of the International Court of Justice upon the request of the party instituting the proceeding. If the two arbitrators shall not agree on the Umpire within sixty days after the date of the appointment of the second arbitrator, such Umpire shall be appointed by the President of the International Court of Justice.
- (c) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, it shall determine where and when it shall sit. The Arbitral Tribunal shall determine all questions of procedure and questions relating to its competence.
- (d) All decisions of the Arbitral Tribunal shall be by majority vote. The award of the Tribunal, which may be rendered even if one party defaults, shall be final and binding on both parties to the arbitration proceedings.
- (e) Service of any notice or process in connection with any proceeding under this Section, or in connection with any proceeding to enforce any award rendered pursuant to this Section, shall be made in the manner provided in Section 7.01.
- (f) The Arbitral Tribunal shall decide on the manner in which the cost of arbitration shall be borne by either or both parties to the dispute.

Article 5

EFFECTIVE DATE; TERMINATION OF THIS AGREEMENT

5.01 This Agreement shall become effective on the date upon which the Fund dispatches to the Borrower notice of its acceptance of the evidence required by Sections 5.02 and 5.03.

5.02 The Borrower shall furnish the Fund with satisfactory evidence that:

- (a) The execution and delivery of this Agreement on behalf of the Borrower have been duly authorized and ratified according to the constitutional requirements of the Borrower, and
- (b) The Borrower has completed the procedure of opening an account with its Central Bank or similar institution performing the functions of a central bank to which the amount of the Loan shall be transferred pursuant to Section 2.03.

5.03 As part of the evidence to be furnished pursuant to Section 5.02, the Borrower shall furnish the Fund with a certificate issued by the Minister of Justice, or the Attorney General, or the Government's competent legal department of the Borrower showing that this Agreement has been duly authorized and ratified by the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms.

5.04 If this Agreement shall not have come into force and effect by October 31, 1980, this Agreement and all obligations of the parties hereunder shall terminate, unless the Fund Management, after consideration of the reasons for the delay, shall establish a later date for the purposes of this Section.

5.05 When the entire principal amount of the Loan shall have been repaid and the interest and all charges which shall have accrued on the Loan shall have been paid, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

Article 6

EXEMPTIONS

6.01 This Agreement and any supplementary agreement between the Parties to it shall be free from any taxes, levies or duties levied by, or in the territory of, the Borrower on or in connection with the execution, delivery or registration thereof.

6.02 The principal of, the interest and the service charges on, the Loan shall be paid without deduction for, and free from any charges and restrictions of any kind imposed by or in the territory of the Borrower.

6.03 The account opened in the name of the Fund pursuant to Sections 2.03 and 2.06 shall be exempted from any taxes, levies or duties levied by, or in the territory of, the Borrower.

6.04 All Fund documents, records, correspondence and similar material shall be considered as confidential by the Borrower, unless otherwise agreed to by the Fund.

6.05 The Fund and its assets shall not be subject to any measures of expropriation, nationalization, sequestration, custody or seizure in the territory of the Borrower.

Article 7

NOTICE, REPRESENTATION, MODIFICATION

7.01 Any notice or request required or permitted to be given under this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall have been delivered by hand, mail, cable or telex to the party to which it is required to be given or made, at such party's address specified below or at such other address as the party shall have specified in writing to the party giving such notice or making such request.

7.02 Any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement, on behalf of the Borrower, may be taken or executed by the Minister of Finance of the Borrower or any other person authorized by him in writing.

7.03 Any modification of the provisions of this agreement may be agreed to, on behalf of the Fund, by the Chairman of the Fund's Governing Board, and on behalf of the Borrower, by written instrument executed on behalf of the Borrower by the representative designated by, or pursuant to, Section 7.02, provided that, in the opinion of such representative, such modification is reasonable under the circumstances and will not substantially increase the obligations of the Borrower under this Agreement. The Fund may accept the execution by such representative of any such instrument as conclusive evidence that in the opinion of the Borrower the modification or amplification requested by such instrument will not substantially increase the obligations of the Borrower thereunder.

7.04 Each document to be delivered pursuant to this Agreement shall be in the English language. Documents in any other language shall be accompanied by an English translation thereof certified as being an approved translation and such approved translation shall be conclusive between the parties hereto.

In witness whereof the parties hereto acting through their representatives thereunto duly authorized, have caused this Agreement to be signed and delivered at Vienna in six copies in the English language, each considered an original and all to the same and one effect as of the day and year first above written.

FOR THE BORROWER:

Name: H.E. Geoffrey Gabotsewe Garebamono
Ambassador of Botswana

Address: Ministry of Finance and Development Planning
Private Bag No. 008
Gaborone, Botswana

Cable: PULA (FINANCE) Gaborone
Telex: BD 414

FOR THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT:

Name: Dr Ibrahim F.A. Shihata
Director-General

Address: The OPEC Fund for International Development
P.O. Box 995
A-1011 Vienna I
Austria

Cable: OPECFUND
Telex: 131734 FUND A

**REPAYMENT SCHEDULE
IN ACCORDANCE WITH SECTION 2.10
(14 Semi-annual Instalments)**

<i>Date of Repayment</i>	<i>Amount Due (expressed in US Dollars)</i>
July 15, 1983	71 000
January 15, 1984	71 000
July 15, 1984	71 000
January 15, 1985	71 000
July 15, 1985	71 000
January 15, 1986	71 000
July 15, 1986	71 000
January 15, 1987	71 000
July 15, 1987	71 000
January 15, 1988	71 000
July 15, 1989	71 000
January 15, 1989	71 000
July 15, 1989	71 000
January 15, 1990	77 000

**REPAYMENT SCHEDULE
IN ACCORDANCE WITH SECTION 2.11
(10 Semi-annual Instalments)**

<i>Date of Repayment</i>	<i>Amount Due</i> (expressed in US Dollars)
July 15, 1983	100 000
January 15, 1984	100 000
July 15, 1984	100 000
January 15, 1985	100 000
July 15, 1985	100 000
January 15, 1986	100 000
July 15, 1986	100 000
January 15, 1987	100 000
July 15, 1987	100 000
January 15, 1988	100 000

PASSED by the National Assembly this 5th day of September,
1980.

I.P. GONTSE,
Clerk of the National Assembly.