

No. 27449

**UNITED NATIONS
INDUSTRIAL DEVELOPMENT ORGANIZATION
and
PAPUA NEW GUINEA**

**Basic Cooperation Agreement. Signed at Port Moresby on
2 February 1989, and at Vienna on 14 April 1989**

Authentic text: English.

*Registered by the United Nations Industrial Development Organization on
27 July 1990.*

**ORGANISATION DES NATIONS UNIES
POUR LE DÉVELOPPEMENT INDUSTRIEL
et
PAPOUASIE-NOUVELLE-GUINÉE**

**Accord de base en matière de coopération. Signé à Port-
Moresby le 2 février 1989, et à Vienne le 14 avril 1989**

Texte authentique : anglais.

*Enregistré par l'Organisation des Nations Unies pour le développement
industriel le 27 juillet 1990.*

BASIC CO-OPERATION AGREEMENT¹ BETWEEN THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION AND THE GOVERNMENT OF PAPUA NEW GUINEA

Whereas Article 16 of the Constitution of the United Nations Industrial Development Organization² (hereinafter referred to as “UNIDO”) provides that the Director-General of UNIDO, on behalf of the Organization and subject to its financial regulations, may accept voluntary contributions to the Organization from Governments, inter-governmental or non-governmental organizations or other non-governmental sources;

Whereas Article 17 of the Constitution of UNIDO provides that in order to increase the resources of UNIDO and to enhance its ability to meet promptly and flexibly the needs of the developing countries, UNIDO shall have an Industrial Development Fund to be financed by the voluntary contributions to the Organization and by other income as may be provided in the financial regulations of the Organization;

Whereas in accordance with Article 13 and Annex II of the Constitution of UNIDO, the Organization’s expenditures for technical assistance and other related activities in the field of industrial development shall be financed from the above-mentioned voluntary contributions as well as by a share in the amount of six per cent of the total assessed regular budget of the Organization;

Determined to enhance the effectiveness of UNIDO as an instrument of international co-operation in the field of industrial development;

Conscious of the desirability and usefulness of establishing the basic terms and conditions under which UNIDO may provide industrial development assistance financed from the Industrial Development Fund or other funds administered by UNIDO;

Now therefore the Government of Papua New Guinea (hereinafter referred to as “the Government”) and UNIDO have agreed to enter into the following Basic Co-operation Agreement:

Article I. SCOPE OF THE AGREEMENT

1. This Agreement embodies the basic terms and conditions under which UNIDO may assist the Government in implementing its objectives in the field of industrial development activities. The Agreement shall apply to all such assistance by UNIDO and, in particular, to such Project Documents as may be agreed between the Government and UNIDO.

2. Each project shall be fully described in a Project Document, which shall be signed on behalf of the Government and UNIDO and which shall state the specific terms and conditions regarding the activities and the financing of the project, as well as the respective roles and responsibilities in these respects of the Government and of UNIDO.

3. Assistance shall be provided by UNIDO under this Agreement only in response to requests made by the Government and approved by UNIDO. Such assist-

¹ Came into force on 14 April 1989 by signature, in accordance with article XIV (1).

² United Nations, *Treaty Series*, vol. 1401, p. 3.

ance shall be made available to the Government, or to such entity as the Government may designate, and it shall be provided and received in accordance with the pertinent resolutions, decisions and regulations applicable to UNIDO, and subject to the availability of the necessary funds to UNIDO.

Article II. FORMS OF ASSISTANCE

Assistance which may be made available by UNIDO to the Government under this Agreement may consist of:

(a) The services of staff members, advisory experts, associate experts or consultants, as well as of subcontracted firms or organizations, selected by and responsible to UNIDO;

(b) The services of operational experts, selected by UNIDO to perform functions of an operational, executive or administrative character as civil servants of the Government or as employees of such entities as the Government may designate under Article I, paragraph 1, hereof;

(c) The services of members of the United Nations Volunteers (hereinafter called "volunteers");

(d) Equipment and supplies required for implementation of an approved project;

(e) Demonstration projects, expert working groups, seminars and similar activities;

(f) Fellowships, scholarships, training programmes or similar arrangements under which candidates nominated by the Government and approved by UNIDO may study or receive training in the country or abroad; and

(g) Any other form of assistance within the field of industrial development, which may be agreed upon by the Government and UNIDO.

Article III. SENIOR INDUSTRIAL DEVELOPMENT FIELD ADVISER

1. UNIDO may appoint, where appropriate upon consultation with the United Nations Development Programme, a Senior Industrial Development Field Adviser (hereinafter referred to as "SIDFA") in the country. The SIDFA shall be responsible for the industrial development operational activities of UNIDO at the country level. In the performance of his duties the SIDFA shall be the principal channel of communication between the Government and UNIDO in matters pertaining to the formulation, implementation and evaluation of UNIDO-assisted projects. The SIDFA shall maintain liaison on behalf of UNIDO with the appropriate organs of the Government, and shall coordinate his activities with those of the Resident Co-ordinator of the United Nations and of the Resident Representative of the United Nations Development Programme in the country.

2. The contribution of the Government to the support costs for the services of the SIDFA shall be laid down in a supplementary agreement, which is hereby incorporated by reference and becomes part of this Agreement.

Article IV. IMPLEMENTATION OF PROJECTS

1. The Government shall have overall responsibility for any UNIDO-assisted project, including responsibility for implementation of the project and realization of the objectives of the project, in accordance with the relevant Project Document.

2. The Government and UNIDO shall each carry out such activities or implement such measures as are stipulated in the relevant Project Document and related Work Plan forming part of the Project Document, and which they have undertaken to accomplish by signing the Project Document.

3. The Government shall inform UNIDO of the Government Co-operating Agency directly responsible for the Government's participation in each UNIDO-assisted project. Without prejudice to the Government's overall responsibility for UNIDO-assisted projects, the Government and UNIDO may agree that UNIDO shall assume primary responsibility for implementation of a project in consultation and agreement with the Co-operating Agency; any arrangement to this effect shall be stipulated in the Project Document or in the related Work Plan forming part of the Project Document, together with arrangements for transfer of such responsibility to the Government or to any entity designated by the Government, which shall be envisaged in the course of project implementation and not later than at the operational completion of the project.

4. Compliance by the Government with any prior obligation agreed to be required for UNIDO assistance to a project shall be a condition of performance by UNIDO of its responsibilities with respect to that project. Should provision of such assistance be commenced before such prior obligations have been met, it may be suspended or terminated without notice at the discretion of UNIDO.

5. Any agreement between the Government and UNIDO, including Project Documents, or between the Government and any of the persons referred to in Article II (a), (b) or (c) above, concerning the implementation of a UNIDO-assisted project, shall be subject to the provisions of this Agreement.

6. The Co-operating Agency shall, as appropriate and in consultation with UNIDO, assign a full-time director for each project, who shall perform such functions as are assigned to him by the Co-operating Agency. UNIDO shall, as appropriate and in consultation with the Government, appoint a Chief Technical Adviser or Project Co-ordinator responsible to UNIDO for overseeing UNIDO's participation in the project at the project level. He shall supervise and co-ordinate activities of experts and other UNIDO personnel and be responsible for on-the-job training of Government counterpart personnel. He shall be responsible for the management and efficient utilization of all UNIDO-financed inputs, including equipment provided to the project.

7. In the performance of their duties, advisory experts or associate experts, consultants, firms, organizations and volunteers shall act in close consultation with the Government and with persons or bodies designated by the Government, and shall comply with such guidance from the Government as may be appropriate to the nature of their duties and the assistance to be given and as may be mutually agreed upon between UNIDO and the Government. Operational experts shall be solely responsible to, and be under the exclusive direction of, the Government or the entity to which they are assigned, but shall not be required to perform any functions incompatible with their international status or with the purposes of UNIDO. The Government undertakes that the commencing date of each operational expert in its service shall coincide with the effective date of the expert's contract with UNIDO.

8. Recipients of fellowships shall be selected by UNIDO. Such fellowships shall be administered in accordance with the fellowship policies and practices of UNIDO.

9. Technical and other equipment, materials, supplies and other property financed or provided by UNIDO shall belong to UNIDO unless and until ownership thereof is transferred, on terms and conditions mutually agreed upon between the Government and UNIDO, to the Government or to an entity nominated by it.

10. Patent rights, copyrights and other similar rights to any discoveries or work resulting from UNIDO assistance under this Agreement shall belong to UNIDO. Unless otherwise agreed by the Government and UNIDO in each case, however, the Government shall have the right to use any such discoveries or work within the country free of royalty or any charge of similar nature.

Article V. INFORMATION CONCERNING PROJECTS

1. The Government shall furnish UNIDO with such relevant reports, maps, accounts, records, statements, documents, statistical data and other information as it may request concerning any UNIDO-assisted project, its implementation or its continued feasibility and soundness, or concerning the compliance by the Government with its responsibilities under this Agreement or Project Documents.

2. UNIDO undertakes that the Government shall be kept currently informed of the progress of its assistance activities under this Agreement. Either party shall have the right, at any time, to observe the progress of operations on UNIDO-assisted projects.

3. The Government shall, subsequent to the completion of a UNIDO-assisted project, make available to UNIDO at its request information as to benefits derived from and activities undertaken to further the purposes of that project, including information necessary or appropriate to its evaluation or to evaluation of UNIDO assistance, and shall consult with and permit observation by UNIDO for this purpose.

4. The Government and UNIDO shall consult each other regarding the publication, as appropriate, of any information relating to any UNIDO-assisted project or to benefits derived therefrom. However, any information relating to any investment-oriented project may be released by UNIDO to potential investors, unless and until the Government has requested UNIDO in writing to restrict the release of information relating to such project.

Article VI. PARTICIPATION IN AND CONTRIBUTION OF THE GOVERNMENT TOWARDS THE IMPLEMENTATION OF PROJECTS

1. In fulfillment of the Government's responsibility to participate and co-operate in the implementation of the projects assisted by UNIDO under this Agreement, it shall contribute the following in kind to the extent detailed in relevant Project Documents:

(a) Local professional and other staff services, including national counterpart personnel to operational experts;

(b) Land, buildings, training and other facilities available or produced within the country; and

(c) Equipment, materials and supplies available or produced within the country.

2. Whenever the provision of equipment forms part of UNIDO assistance to the Government, the latter shall meet charges relating to customs clearance of such

equipment, its transportation and insurance from the port of entry to the project site together with any incidental handling or storage and related expenses, its insurance after delivery to the project site, and, unless otherwise provided in the relevant project document, its installation, commissioning and maintenance.

3. The Government also shall meet the salaries of trainees and recipients of fellowships during the period of their fellowships.

4. The cost, as detailed in Project Budgets, of items constituting the Government's contribution in kind towards implementation of the project shall be considered to be estimates based on the best information available at the time of preparation of such Project Budgets.

5. If so provided in the Project Document, the Government shall pay, or arrange to have paid, to UNIDO the sums required, to the extent specified in the Project Budget of the Project Document, for the provision of any of the items enumerated in paragraph 1 of this Article, whereupon UNIDO shall obtain the necessary items.

6. Moneys payable to UNIDO under the preceding paragraph shall be paid to an account designated for this purpose by the Director-General of UNIDO and shall be administered by UNIDO in accordance with the applicable financial regulations of UNIDO. The sums, as detailed in Project Budgets, of such moneys payable by the Government shall be subject to adjustment, whenever necessary, to reflect the actual cost to UNIDO of any such items at the time of the transaction.

7. The Government shall, as appropriate, display suitable signs at each project indentifying it as one assisted by UNIDO.

Article VII. CONTRIBUTION BY THE GOVERNMENT IN RESPECT OF OTHER ITEMS PAYABLE IN LOCAL CURRENCY

1. In addition to the contribution referred to in Article VI above, the Government shall further assist UNIDO in paying each operational expert directly the salary, allowances and other related emoluments which would be payable to one of its nationals if appointed to the post involved. It shall grant an operational expert the same annual and sick leave as UNIDO grants its own officials and shall make any arrangement necessary to permit him to take home leave to which he is entitled under the terms of his service with UNIDO. Should his service with the Government be terminated by it under circumstances which give rise to an obligation on the part of UNIDO to pay him an indemnity under its contract with him, the Government shall contribute to the cost thereof the amount of separation indemnity which would be payable to a national civil servant or comparable employee of like rank whose service is terminated in the same circumstances.

2. The Government undertakes to furnish in kind the following local services and facilities:

- (a) The necessary office space and other premises;
- (b) Such medical facilities and services for international personnel as may be available to national civil servants;
- (c) Simple but adequately furnished accommodation to volunteers; and
- (d) Assistance in finding suitable housing accommodation for international personnel, and the provision of such housing to operational experts under the same conditions as to national civil servants of comparable rank.

3. If UNIDO posts a SIDFA in the country, the Government shall also contribute towards the expense of maintaining the SIDFA and his staff by paying annually to UNIDO a mutually agreed lump sum to cover the following expenditures:

(a) An appropriate office with equipment and supplies, adequate to meet the requirements of the SIDFA;

(b) Appropriate local secretarial and clerical help, interpreters, translators and related assistance;

(c) Transportation of the SIDFA and his staff for official purposes within the country;

(d) Postage and telecommunications for official purposes; and

(e) Subsistence for the SIDFA and his staff while in official travel status within the country.

4. The Government shall have the option of providing in kind the facilities referred to in paragraph 3 above, with the exception of items (b) and (e).

5. Moneys payable under the provisions of this Article, other than under paragraph 1, shall be paid by the Government to UNIDO and administered by UNIDO in accordance with Article VI, paragraph 6, hereof.

Article VIII. RELATION TO ASSISTANCE FROM OTHER SOURCES

In the event that assistance towards the implementation of a project is obtained from sources other than the Government or UNIDO, they shall consult each other with a view to effective co-ordination and utilization of assistance received from all sources. The obligations of the Government hereunder shall not be modified by any arrangements it may enter into with other entities co-operating with it in the implementation of a project.

Article IX. USE OF ASSISTANCE

The Government shall exert its best efforts to make the most effective use of the assistance provided by UNIDO and shall use such assistance for the purpose for which it is intended. Without restricting the generality of the foregoing, the Government shall take such steps to this end as are specified in the Project Document.

Article X. PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials, including the SIDFA and his staff in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations,¹ except that if the Government has acceded in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies,² the Government shall apply the provisions of the latter Convention, including any Annex to that Convention applicable to UNIDO.

2. The SIDFA of UNIDO and his staff in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise

¹ United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

² *Ibid.*, vol. 33, p. 261. For final or revised texts of annexes to the Convention transmitted to the Secretary-General subsequent to the date of its registration, see vol. 71, p. 318; vol. 79, p. 326; vol. 117, p. 386; vol. 275, p. 298; vol. 314, p. 308; vol. 323, p. 364; vol. 327, p. 326; vol. 371, p. 266; vol. 423, p. 284; vol. 559, p. 348; vol. 645, p. 340; vol. 1057, p. 320, and vol. 1060, p. 337.

of their official functions. In particular, the SIDFA shall enjoy the same privileges and immunities as the Government accords to diplomatic envoys in accordance with international law.

3. (a) Except as the Government and UNIDO may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNIDO, who are not covered by paragraphs 1 and 2 above, the same privileges and immunities as are granted to officials under Section 18 or 19, respectively, of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, as applicable.

(b) For purposes of the instruments on privileges and immunities referred to in the preceding parts of this Article:

- (i) All papers and documents relating to a project in the possession or under the control of the persons referred to in sub-paragraph 3 (a) above shall be deemed to be documents belonging to UNIDO; and
- (ii) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of a project shall be deemed to be the property of UNIDO.

4. The expression "persons performing services" as used in Articles X, XI and XIV of this Agreement includes operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNIDO may retain to implement or to assist in the implementation of UNIDO assistance to a project and their employees. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organizations or firms or their employees in any other instrument.

Article XI. FACILITIES FOR IMPLEMENTATION OF UNIDO ASSISTANCE

1. The Government shall take any measures which may be necessary to exempt UNIDO, its experts and other persons performing services on its behalf from regulations or other legal provisions which may interfere with operations under this Agreement and shall grant them such other facilities as may be necessary for the speedy and efficient implementation of UNIDO assistance. It shall, in particular, grant them the following rights and facilities:

- (a) Prompt clearance of experts and other persons performing services on behalf of UNIDO;
- (b) Prompt issuance without cost of necessary visas, licenses or permits;
- (c) Access to the site of work and all necessary rights of way;
- (d) Free movement within or to or from the country to the extent necessary for proper execution of UNIDO assistance;
- (e) The most favourable legal rate of exchange;
- (f) Any permits necessary for the tax and duty-free importation of equipment, materials and supplies, and for their subsequent tax and duty-free exportation;
- (g) Any permits necessary for tax and duty-free importation of property belonging to and intended for the personal use or consumption of officials of UNIDO, or of other persons performing services on its behalf, and for the subsequent tax and duty-free exportation of such property; and

(h) Prompt release from customs of the items mentioned in sub-paragraphs (f) and (g) above.

2. Assistance under this Agreement being provided for the benefit of the Government and people of Papua New Guinea, the Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims, which may be brought by third parties against UNIDO, its officials, or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Government and UNIDO have agreed that a claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

Article XII. SUSPENSION OR TERMINATION OF ASSISTANCE

1. UNIDO may by written notice to the Government suspend its assistance to any project if in the judgment of UNIDO any circumstance arises, which interferes with or threatens to interfere with the successful completion of the project or the accomplishment of its purposes. UNIDO may, in the same or a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance to the project. Any such suspension shall continue until such time as such conditions are accepted by the Government and as UNIDO shall give written notice to the Government that it is prepared to resume its assistance.

2. The provisions of this Article shall be without prejudice to any other rights or remedies UNIDO may have in the circumstances, whether under general principles of law or otherwise.

Article XIII. SETTLEMENT OF DISPUTES

1. Any dispute between UNIDO and the Government arising out of or relating to the interpretation or application of this Agreement, which is not settled by negotiation or other agreed mode of settlement, shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to UNIDO by either the Government or the operational expert involved, and UNIDO shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either the Government or UNIDO be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this Article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

Article XIV. GENERAL PROVISIONS

1. This Agreement shall enter into force upon signature. It shall continue in force until terminated under paragraph 3 below. Upon the entry into force of this Agreement, it shall supersede existing Agreements concerning the provision of assistance to the Government out of UNIDO resources and concerning any UNIDO office in the country, and it shall apply to all assistance provided to the Government and to any UNIDO office established in the country under the provision of the Agreements now superseded.

2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of UNIDO. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.

4. The obligations assumed by the parties under Articles V (concerning project information) and IX (concerning the use of assistance) hereof shall survive the expiration or termination of this Agreement. The obligations assumed by the Government in any supplementary agreement concluded pursuant to Article III, paragraph 2 (concerning support costs), under Articles X (concerning privileges and immunities), XI (concerning facilities for implementation of UNIDO assistance) and XIII (concerning settlement of disputes) hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly withdrawal of personnel, funds and property of UNIDO and of any persons performing services on its behalf under this Agreement.

Article XV. REGISTRATION

The present Agreement shall be registered with the Secretariat of UNIDO, which shall transmit a certified copy thereof to the Secretariat of the United Nations for filing and recording.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the United Nations Industrial Development Organization and of the Government, respectively, have on behalf of the Parties signed the present Agreement in the English language in two copies at Port Moresby this 2nd day of February 1989 and at Vienna this 14th day of April 1989.

For the United Nations
Industrial Development
Organization:

[Signed]

DOMINGO L. SIAZON, Jr.
Director-General

For the Government
of Papua New Guinea:

[Signed]

GALEVA KWARARA
Minister
for Trade and Industry