Loan Agreement

(Hard Coal Mine Closure Project)

between

REPUBLIC OF POLAND

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated August 24, 2004
AGREEMENT, dated August 24, 2004, between REPUBLIC OF POLAND (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received from the Borrower a letter dated May 20, 2004, describing a program of actions, objectives and policies designed to restructure the hard coal sector and to improve performance of the sector (hereinafter called the Program), and declaring the Borrower’s commitment to the implementation of the Program;

(B) the Borrower having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Bank to assist in the financing of the Project; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Loan and Guarantee Agreements for Fixed-Spread Loans” of the Bank, dated September 1, 1999, (as amended through May 1, 2004) constitute an integral part of this Agreement.

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

(a) “ARP” means Agencja Rozwoju Przemyslu Spolka Akcyjna, a joint stock company under the Commercial Code of the Borrower, with its Head Office located in Warsaw, registered in the National Court Register – Business Registry under the number KRS 0000037957, established to monitor industry efficiency;

(b) “BSRK” means Bytom Spolka Restrukturyzacji Kopaln Sp. z o.o, a limited liability company under the Commercial Code of the Borrower, with its Head Office located in Bytom, registered in the National Court Register – Business Registry under the number KRS 0000049089;

(c) “Dewatering Master Plan” means a comprehensive plan to be prepared by the Borrower identifying the necessary actions to minimize the cost of dewatering for the hard coal mine sector;
(d) “Eligible Categories” means category (1) set forth in the table in Part A.1 of Schedule 1 to this Agreement;

(e) “Eligible Expenditures” means the expenditures for Hard Coal Mine Closure Transfers referred to in Section 2.02 of this Agreement;

(f) “2004-2006 Environmental Protection Programs” means the environmental protection programs for KW, KHW and JSW, for the calendar years 2004-2006, prepared and adopted by KW, KHW and JSW, respectively, describing the environmental mitigation and monitoring measures for mine operation and closure;

(g) “Environmental Management Plans” means the environmental management plans prepared for each individual mine to be closed under the Hard Coal Mine Closure Program;

(h) “Financial Agreement” means the agreement entered into annually between the MoEL and: (A) SRK and BSRK, pursuant to the provisions of Section 3.02 of this Agreement; and (B) ARP;

(i) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of this Agreement;

(j) “Hard Coal Mine Closure Program” means the sub-program for hard coal mine liquidation, environmental reclamation, and post-liquidation maintenance and monitoring co-financed by the Bank, prepared and implemented by SRK and BSRK, and approved by the MoEL and funded by the state budget from funds allocated to fulfillment of objectives related to the restructuring of the hard coal mining sector;

(k) “Hard Coal Mine Closure Transfers” means the amount, consisting of 56% out of the proceeds of the Loan and 44% from the Borrower’s own resources, transferred by the Borrower through its Ministry of Finance to MoEL and through MoEL to SRK and BSRK respectively to cover the costs of goods, works and services required for the implementation of the Hard Coal Mine Closure Program excluding subsidence;


(m) “IMCMC” means the Inter-Ministerial Coal Monitoring Committee established by the Borrower to oversee implementation of the Program of Restructuring of the Hard Coal Mining Sector for 2003-2006;

(n) “JSW” means Jastrzebska Spolka Weglowa Spolka Akcyjna, a joint stock company under the Commercial Code of the Borrower, with its Head Office located in Jastrzebie Zdroj, registered in the National Court Register – Business Registry under the number KRS 0000072093;
“KHW” means Katowicki Holding Weglowy Spolka Akcyjna, a joint stock company under the Commercial Code of the Borrower, with its Head office located in Katowice, registered in the National Court Register – Business Registry under the number KRS 0000046994;

“KW” means Kompania Weglowa S.A., a joint stock company under the Commercial Code of the Borrower, with its Head Office located in Katowice, registered in the National Court Register – Business Registry under the number KRS 0000057506;

“MoEL” means the Borrower’s Ministry of Economy and Labor;

“MoEN” means the Borrower’s Ministry of Environment;

“MoF” means the Borrower’s Ministry of Finance;

“MoST” means the Borrower’s Ministry of State Treasury;

“Mine Closure Plans and Engineering Design Plans” means all necessary plans and studies needed for the closure of an underground mine, including engineering design studies for underground workings and surface facilities;

“Operational Manual” means the Operational Manual for the carrying out of the Project, prepared and adopted by the Borrower, as the same may be amended from time to time with the agreement of the Bank;

“Procurement Plan” means the Borrower’s procurement plan, dated May 20, 2004, covering the initial 18 month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.03 to this Agreement, to cover succeeding 18 month periods (or longer) of Project implementation.


“Report-based Disbursements” means the Borrower’s option for withdrawal of funds from the Loan Account referred to in Part A.4 of Schedule 1 to this Agreement;

“SRK” means Spolka Restrukturyzacji Kopaln S.A., a joint stock company under the Commercial Code of the Borrower, with its Head Office located in Katowice, registered in the National Court Register – Business Registry under the number KRS 0000027497;

“Special Account” means the account referred to in Part B of Schedule 1 to this Agreement; and
“Technical and Operational Plans” means the annual plans prepared by KW, JSW, and KHW, each satisfactory to the Bank, and on an annual basis providing technical and business parameters for the calendar year.

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount equal to eighty four million one hundred thousand Euro (EUR 84,100,000) as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.09 of this Agreement.

Section 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of: (a) Hard Coal Mine Closure Transfers required for the Project and to be financed out of the proceeds of the Loan; and (b) the front-end fee referred to in Section 2.04 of this Agreement.

Section 2.03. The Closing Date shall be March 31, 2008 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a front-end fee in an amount equal to eight hundred forty one thousand Euro (EUR 841,000). On or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of such fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge on the principal amount of the Loan not withdrawn from time to time, at a rate equal to: (i) eighty-five one-hundredths of one percent (0.85%) per annum from the date on which such charge commences to accrue in accordance with the provisions of Section 3.02 of the General Conditions to but not including the fourth anniversary of such date; and (ii) seventy-five one-hundredths of one percent (0.75%) per annum thereafter.

Section 2.06. The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, in respect of each Interest Period at the Variable Rate; provided, that upon a Conversion of all or any portion of the principal amount of the Loan, the Borrower shall, during the Conversion Period, pay interest on such amount in accordance with the relevant provisions of Article IV of the General Conditions.

Section 2.07. Interest, commitment and other charges shall be payable semiannually in arrears on May 15 and November 15 in each year.
Section 2.08. The Borrower shall repay the principal amount of the Loan in two equal payments on November 15, 2011 and November 15, 2018.

Section 2.09. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

(i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency;

(ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Variable Rate to a Fixed Rate, or vice versa; and

(iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Variable Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a “Conversion”, as defined in Section 2.01 (7) of the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end shall carry out the Project through: (i) the MoEL; and (ii) the ARP, SRK and BSRK, with due diligence and efficiency and in conformity with appropriate financial, administrative, technical, engineering, mining and environmental practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and the Borrower shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

Section 3.02. (a) The Borrower, through the MoEL, shall transfer through its budget the Hard Coal Mine Closure Transfers to SRK and BSRK under Financial Agreements to be entered into between the MoEL and SRK and BSRK and ARP, respectively, under terms and conditions which shall have been approved by the Bank, including those set forth in paragraph 5 of Schedule 4 to this Agreement.
(b) The Borrower, through the MoEL, shall exercise its rights under each Financial Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive any Financial Agreement or any provision thereof.

Section 3.03. (a) Except as the Bank shall otherwise agree, procurement of goods, works and services required for the Project and to be financed through the Hard Coal Mine Closure Transfers shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall update the Procurement Plan in accordance with guidelines acceptable to the Bank, and furnish such update to the Bank not later than 12 months after the date of the preceding Procurement Plan, for the Bank’s approval.

(c) Without prejudice to the provisions of Section 6.03 (d) of the General Conditions (and the terms of paragraph 1.13 of the Guidelines referred to in Schedule 3 to this Agreement and paragraph 1.18 of the Consultant Guidelines also referred to in said Schedule), if, at any time, the Bank determines that the procurement of any contract financed through disbursements from Hard Coal Mine Closure Transfers is inconsistent with the procedures set forth or referred to in this Agreement, the Bank may, by notice to the Borrower cancel an amount of the Loan equivalent to fifty six percent (56%) of the amount of such contract.

Section 3.04. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Borrower, through the MoEL, shall:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, a plan for the future operation of the Project; and

(b) afford the Bank a reasonable opportunity to exchange views with the Borrower on said plan.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower, through the MoEL, shall cause ARP and SRK and BSRK to maintain a financial management system, including records and accounts, and prepare financial statements, in accordance with consistently applied accounting standards acceptable to the Bank, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower, through the MoEL, shall cause ARP and SRK and BSRK to:
(i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Bank), audited, in accordance with consistently applied auditing standards acceptable to the Bank, by independent auditors acceptable to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than six (6) months after the end of each such year (or such other period agreed to by the Bank): (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such year (or other period agreed to by the Bank), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Bank; and

(iii) furnish to the Bank such other information concerning such records, accounts, and the audit of such financial statements, and concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of reports referred to in Part A.4 of Schedule 1 to this Agreement (Report-based Disbursements) or on the basis of statements of expenditure, the Borrower, through the MoEL, shall cause ARP and SRK and BSRK to:

(i) retain, until at least one (1) year after the Bank has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

(ii) enable the Bank’s representatives to examine such records; and

(iii) ensure that such reports or statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Bank), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower’s progress reporting obligations set out in Schedule 4 to this Agreement, the Borrower, through the MoEL, shall cause ARP to prepare and furnish to the Bank a Financial Monitoring Report, in form and substance satisfactory to the Bank, which: (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Loan, and explains variances between the actual and planned uses of such funds; (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first FMR shall be furnished to the Bank not later than forty-five (45) days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar
quarter; thereafter, each FMR shall be furnished to the Bank not later than forty-five (45) days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. The Borrower, through the MoEL, shall cause KW, KHW, JSW, SRK and BSRK, to make readily available to the public, during Project implementation, their audited financial statements in full, including footnote disclosures.

Section 4.04. The Borrower shall cause JSW, KW and KHW to maintain a hard budget constraint which will be monitored on a cumulative monthly basis and shall include all relevant information in the FMRs for the Project.

Section 4.05. The Borrower, through the MoEL shall: (a) cause preparation and submission to the Bank by March 31 of each year until completion of the Project of an annual progress report, which shall include, inter alia: (i) an assessment of the previous and subsequent calendar year’s financial performance for JSW, KW and KHW each (if not privatized), including any need for further restructuring in addition to the Program of Restructuring of the Hard Coal Mining Sector for 2003-2006; (ii) a report on progress regarding privatization of JSW, KW, and KHW; (iii) a report on mine closures achieved for that calendar year and planned for the following calendar year; and (iv) a report on progress in repairing subsidence and reducing the backlog of subsidence-related repairs; and (b) review with the Bank by April 30 of each year until completion of the Project said report, and, thereafter, take all measures required to ensure efficient completion of the Project.

Section 4.06. The Borrower, through the MoEL, shall cause preparation and submission to the Bank by December 15 of each year until completion of the Project, and, thereafter, exchange views with the Bank, of the draft Technical and Operational Plans for the following calendar year for JSW, KW and KHW (each if not privatized), including planned capacity closure and employment restructuring, planned cash flow, environmental protection and subsidence repair activities.

**ARTICLE V**

**Remedies of the Bank**

Section 5.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional events are specified:

(a) a situation shall have arisen which shall make it improbable that the Program or a significant part thereof, will be carried out; and

(b) the Borrower, ARP, SRK or BSRK, shall have failed to perform any of their obligations under the respective Financial Agreement.
Section 5.02. Pursuant to Section 7.01 (k) of the General Conditions, the following additional event is specified, namely, that the event specified in paragraph (b) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Bank to the Borrower.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) the Operational Manual, satisfactory to the Bank, has been adopted by the Borrower, through the MoEL;

(b) the Financial Agreements, satisfactory to the Bank, between the MoEL and ARP and MoEL and SRK and BSRK, respectively, have been executed on behalf of the MoEL and ARP and the MoEL and SRK and BSRK, respectively; and

(c) KW, KHW and JSW have each adopted their respective 2004-2006 Environmental Protection Programs, satisfactory to the MoEN, including a time bound action plan for implementation of said Programs.

Section 6.02. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions, including, inter alia, reallocations of the proceeds of the Loan among the Categories set forth in the table in paragraph A. 1 of Schedule 1 to this Agreement.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:
For the Borrower:

Ministry of Finance  
u1. Swietokrzyska 12  
00-916 Warszawa  
Republic of Poland

<table>
<thead>
<tr>
<th>Cable address</th>
<th>Telex:</th>
<th>Facsimile:</th>
</tr>
</thead>
<tbody>
<tr>
<td>MINF Poland</td>
<td>825592 minf pl or 814386 minf pl</td>
<td>48 22 826 6670</td>
</tr>
</tbody>
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For the Bank:

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

<table>
<thead>
<tr>
<th>Cable address</th>
<th>Telex:</th>
<th>Facsimile:</th>
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<tbody>
<tr>
<td>INTBAFRAD</td>
<td>248423 (MCI) or 64145 (MCI)</td>
<td>1 (202) 477-6391</td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the City of Warsaw, Republic of Poland, as of the day and year first above written.

REPUBLIC OF POLAND

By /s/ Piotr Sawicki
Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

By /s/ Roger Grawe
Authorized Representative
SCHEDULE 1

Withdrawal of the Proceeds of the Loan

A. General

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of expenditures for items so to be financed in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Loan Allocated (Expressed in EUR)</th>
<th>% of Expenditures to be financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Hard Coal Mine Closure Transfers</td>
<td>70,800,000</td>
<td>56%</td>
</tr>
<tr>
<td>(2) Front-end fee</td>
<td>841,000</td>
<td>Amount due under Section 2.04 of this Agreement</td>
</tr>
<tr>
<td>(3) Unallocated</td>
<td>12,459,000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>84,100,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of: (a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not exceeding eight million four hundred thousand Euro (EUR 8,400,000) may be made in respect of Category (1) set forth in the table in paragraph 1 of this Schedule on account of payments made for expenditures before that date but after January 1, 2004; and (b) payments under Category 1 of the table set forth in paragraph 1 of this Part A, in the event the Borrower shall have failed to furnish to the Bank by a date six months after the end of each fiscal year (or such other period agreed to by the Bank), together with the audits referred to in Section 4.01 (b) of this Agreement, such documents and other evidence showing, to the satisfaction of the Bank, that the amounts of the Hard Coal Mine Closure Transfers were used for goods, works and services eligible for financing out of the proceeds of the Loan as confirmed by such audit report.

3. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods, works and Specialized Technical Services, with the exception of goods estimated to cost the equivalent of EUR 400,000 or more per contract, and works and Specialized Technical Services estimated to cost the equivalent of EUR 5,000,000 or more per contract and each contract procured on the basis of Direct Contracting procedures; (b) services of consulting firms with the exception of services
estimated to cost the equivalent of EUR 160,000 equivalent or more per contract; and services of individual consultants estimated to cost the equivalent of EUR 85,000 equivalent per contract, with the exception of the first contract for services of consulting firms and the first contract for services of individual consultants irrespective of value; all under such terms and conditions as the Bank shall specify by notice to the Borrower.

4. The Borrower may request withdrawals from the Loan Account to be made on the basis of reports to be submitted to the Bank in form and substance satisfactory to the Bank, such reports to include the FMR and any other information as the Bank shall specify by notice to the Borrower (Report-based Disbursements). In the case of the first such request submitted to the Bank before any withdrawal has been made from the Loan Account, the Borrower shall submit to the Bank only a cash forecast report for the Project for the six-month period following the date of such request.

B. Special Account

1. The Borrower may open and maintain in Euro a special deposit account in the National Bank of Poland or in a commercial bank acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure and attachment in the case of a commercial bank.

2. After the Bank has received evidence satisfactory to it that the Special Account has been opened, withdrawals from the Loan Account of amounts to be deposited into the Special Account shall be made as follows:

   (a) if the Borrower is not making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex A to this Schedule 1; and

   (b) if the Borrower is making Report-based Disbursements, withdrawals shall be made in accordance with the provisions of Annex B to this Schedule 1.

3. Payments out of the Special Account shall be made exclusively for Eligible Expenditures. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for Eligible Expenditures.

4. Notwithstanding the provisions of Part B.2 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:

   (a) if the Bank, at any time, is not satisfied that the reports referred to in Part A.4 of this Schedule 1 adequately provide the information required for Report-based Disbursements; or

   (b) if the Borrower shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of: (A) the records and
accounts for the Special Account; or (B) the records and accounts reflecting expenditures with respect to which withdrawals were Report-based Disbursements or were made on the basis of statements of expenditure, as the case may be.

5. The Bank shall not be required to make further deposits into the Special Account in accordance with the provisions of Part B.2 of this Schedule if, at any time, the Bank shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account pursuant to Section 6.02 of the General Conditions. Upon such notification, the Bank shall determine, in its sole discretion, whether further deposits into the Special Account may be made and what procedures should be followed for making such deposits, and shall notify the Borrower of its determination.

6. (a) If the Bank determines at any time that any payment out of the Special Account was made for an expenditure which is not an Eligible Expenditure, or was not justified by the evidence furnished to the Bank, the Borrower shall, promptly upon notice from the Bank, provide such additional evidence as the Bank may request, or deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank determines at any time that any amount outstanding in the Special Account will not be required to cover payments for Eligible Expenditures during the six-month period following such determination, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Borrower may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Bank made pursuant to subparagraphs (a), (b) or (c) of this paragraph 6 shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the provisions of the Loan Agreement.
Annex A
to
SCHEDULE 1

Operation of Special Account When Withdrawals Are Not Report-based Disbursements

1. For the purposes of this Annex, the term “Authorized Allocation” means the amount of EUR 8,400,000 to be withdrawn from the Loan Account and deposited into the Special Account pursuant to paragraph 2 of this Annex.

2. Withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

   (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which in the aggregate do not exceed the Authorized Allocation. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested.

   (b) For replenishment of the Special Account, the Borrower shall furnish to the Bank requests for deposit into the Special Account at such intervals as the Bank shall specify. Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to Part B.3 of Schedule 1 to this Agreement for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for Eligible Expenditures. Each such deposit into the Special Account shall be withdrawn by the Bank from the Loan Account under one or more of the Eligible Categories.

3. The Bank shall not be required to make further deposits into the Special Account, once the total unwithdrawn amount of the Loan minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for Eligible Expenditures.
Annex B
to
SCHEDULE 1

Operation of Special Account
When Withdrawals Are
Report-based Disbursements

1. Withdrawals from the Loan Account shall be deposited by the Bank into the Special Account in accordance with the provisions of Schedule 1 to this Agreement. Each such deposit into the Special Account shall be withdrawn by the Bank from the Loan Account under one or more of the Eligible Categories.

2. Upon receipt of each application for withdrawal of an amount of the Loan, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account an amount equal to the lesser of: (a) the amount so requested; and (b) the amount which the Bank has determined, based on the reports referred to in Part A.4 of this Schedule 1 applicable to such withdrawal application, is required to be deposited in order to finance Eligible Expenditures during the six-month period following the date of such reports.
SCHEDULE 2

Description of the Project

The objective of the Project is to improve the efficiency of the Borrower’s hard coal sector by supporting the implementation of the expected mine liquidation and post-liquidation and environmental improvements during the calendar years 2004-2006 of the Program of Restructuring of the Hard Coal Mining Sector for 2003-2006 and ongoing mine liquidation and post-liquidation commitments from the 1998-2002 Hard Coal Mining Reform Program.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Bank may agree upon from time to time to achieve such objectives:

Part A: Liquidation of underground workings and shafts, including removal of equipment and securing underground areas and dewatering.

Part B: Post liquidation, including demolishing and clearing surface structure, buildings, stockpiles, plant and equipment and, if necessary, stabilization of any waste or other dumps and dewatering.

Part C: Preparation of: (a) a comprehensive Dewatering Master Plan; (b) Environmental Management Plans; and (c) Mine Closure Plans and Engineering Design Studies, and documentation review to obtain necessary approvals for mine liquidation.

Part D: Reclamation of land by preparing the land for: (i) industrial area through clean-up and ground leveling; and (ii) recreational area through clean-up and ground leveling and other remediation actions, including, inter alia, recultivation.

Part E: Post mine closure monitoring and maintenance, as needed, with particular regard for any post-closure de-watering requirements.

* * *

The Project is expected to be completed by September 30, 2007.
SCHEDULE 3

Procurement

Section I. General

A. All goods, works and services (other than consultants’ services) shall be procured in accordance with the provisions of Section I of the “Guidelines for Procurement under IBRD Loans and IDA Credits” dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants’ services shall be procured in accordance with Sections I and IV of the “Guidelines: Selection and Employment of Consultants by World Bank Borrowers” dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Bank of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and services (other than Consultants’ Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding. The provisions of paragraphs 2.55 and 2.56 of the Procurement Guidelines, providing for domestic preference in the evaluation of bids, shall apply to goods manufactured in the territory of the Borrower.

B. Other Procurement Procedures

1. National Competitive Bidding. Goods estimated to cost less than EUR 400,000 equivalent per contract and works and Specialized Technical Services (in accordance with footnote 2 of paragraph 1.1 of the Procurement Guidelines) estimated to cost less than EUR 5,000,000 equivalent per contract, may be procured under contracts awarded on the basis of National Competitive Bidding and the following additional provisions: with respect to eligible contracts procured under the Public Procurement Law, dated January 29, 2004, that became effective on March 2, 2004, the procedures to be followed for National Competitive Bidding shall be those allowing: (a) open tendering for procurement of goods; (b) open tendering for procurement of works; and (c) open or restricted tendering for Specialized Technical Services, set forth in said Law with the clarifications set forth below required for compliance with the Procurement Guidelines: the term “Best Offer” shall be understood as the lowest evaluated bid selected following evaluation with use of quantifiable factors expressed in monetary terms. In addition, no merit points system shall be used to evaluate bids. The restricted tendering can be used only for Specialized Technical Services for which there is a limited number of firms and for contracts estimated not to exceed EUR 400,000.
2. **Shopping.** Goods estimated to cost less than EUR 60,000 equivalent per contract and works estimated to cost less than EUR 60,000 equivalent per contract, may be procured under contracts awarded on the basis of Shopping.

3. **Direct Contracting.** Specialized Technical Services for protective measures, protective measures against water hazards, and maintenance of the mine systems and objects, estimated to cost less than EUR 600,000 equivalent per contract, which the Bank agrees meet the requirements for Direct Contracting may be procured in accordance with the provisions of said procurement method.

**Section III. Particular Methods of Procurement of Consultants’ Services**

A. **Quality- and Cost-based Selection.** Except as otherwise provided in Part B of this Section, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection. For purposes of paragraph 2.7 of the Consultant Guidelines, the short list of consultants for services estimated to cost less than EUR 160,000 equivalent per contract may comprise entirely national consultants.

B. **Other Procedures**

1. **Selection Based on Consultants’ Qualifications.** Services estimated to cost less than EUR 85,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

2. **Individual Consultants.** Services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines.

**Section IV. Review by the Bank of Procurement Decisions**

Except as the Bank shall otherwise determine by notice to the Borrower, the following contracts shall be subject to Prior Review by the Bank: (a) each contract for: (i) goods estimated to cost the equivalent of EUR 400,000 or more; (ii) each contract for works estimated to cost the equivalent of EUR 5,000,000 or more; (iii) each contract for Specialized Technical Services (other than consultants’ services) estimated to cost the equivalent of EUR 5,000,000 or more; and (iv) each contract procured on the basis of Direct Contracting; and (b) (i) the first contract irrespective of its value and each contract for consultants’ services provided by a firm estimated to cost the equivalent of EUR 160,000 or more; (ii) the record of justification referred to in paragraph 5 of Appendix 1 to the Consultant Guidelines for the first contract irrespective of its value and each contract for the employment of individual consultants estimated to cost the equivalent of EUR 85,000 or more. All other contracts shall be subject to Post Review by the Bank.
SCHEDULE 4

Implementation Program

1. The Borrower, through the MoEL, shall: (a) carry out the Project in accordance with the requirements set forth or referred to in the Operational Manual; (b) maintain said Operational Manual in form and content at all times satisfactory to the Bank; and (c) manage the Special Account referred to in Part B of Schedule 1 to this Agreement.

2. The Borrower, through the MoEL, shall be responsible for overall Project coordination including:

   (a) preparation of disbursement applications under the Loan; and

   (b) maintenance of records and accounts related to the Project for the carrying out of the obligations referred to in Section 4.01 (b) of this Agreement.

3. The Borrower, through the MoEL, shall assign to the ARP responsibility for overall Project monitoring, including:

   (a) preparation of all reporting requirements under the Project; and

   (b) carrying out of monitoring and evaluation activities under the Project.

4. The Borrower, through the MoEL, shall cause the SRK and BSRK to carry out the Project in accordance with the requirements set forth or referred to in the Operational Manual and this Agreement.

5. The Borrower, through the MoEL, shall ensure that each Financial Agreement, shall include, inter alia, provisions, whereby: (a) the Borrower shall make the proceeds of the Loan through the Hard Coal Mine Closure Transfers available to the SRK and BSRK in the form of a budgetary transfer for the carrying out of the Project; (b) the SRK and BSRK shall be required to implement the Project in accordance with the requirements set forth or referred to in the Operational Manual and the provisions of this Agreement; and (c) the SRK and BSRK shall each be required as part of its responsibility for Project implementation: (i) to maintain the Project financial records and accounts and make them available to the ARP for the monitoring thereof; and (ii) to prepare and furnish to the ARP starting on August 15, 2004, quarterly reports on the progress of Project implementation.

6. The Borrower, through the MoF, shall take appropriate action to ensure, according to budget capacity, funding of the Program of Restructuring of the Hard Coal Mining Sector for 2003-2006, including subsidence repair costs, on an annual basis.
7. The Borrower, through the MoEL, shall ensure that the IMCMC shall meet at least every quarter during Project implementation for the purpose of monitoring progress under the Program of Restructuring of the Hard Coal Mining Sector for 2003-2006.

8. The Borrower shall: (a) take all actions necessary to identify required funding for, and, thereafter, prepare by December 31, 2005, under terms of reference satisfactory to the Bank, a comprehensive Dewatering Master Plan to identify and examine options and recommend necessary steps to minimize the costs of dewatering for the years 2005-2025; and (b) following consultation with the Bank, thereafter, implement appropriate actions under said Plan and carry out an annual review of progress with the Bank and update said Plan as needed during Project implementation.

9. Except as otherwise agreed with the Bank, the Borrower, through the MoEL, shall cause: (a) KW, KHW and JSW to reduce capacity by an aggregate of 8.35 million tons net mining capacity by December 31, 2006, out of which: (i) 3.55 million tons per year (tpy) net mining capacity by December 31, 2004; (ii) a further 2.9 million tpy net mining capacity by December 31, 2005; and (iii) a further 1.9 million tpy net mining capacity by December 31, 2006; (b) within the reduction in capacity by an aggregate of 8.35 million tons net mining capacity by December 31, 2006 referred to above, SRK to start liquidation of: (i) 2.5 million tpy mining capacity by December 31, 2004; and (ii) another whole mine by December 31, 2005, in accordance with the Program of Restructuring of the Hard Coal Mining Sector for 2003-2006.

10. The Borrower, through the MoEL, shall cause: (a) SRK to prepare a 2004-2006 Environmental Protection Program; and (b) SRK, KW, KHW, and JSW to each implement their respective 2004-2006 Environmental Protection Programs in a timely manner and according to the agreed time bound action plans and shall include adequate information on the carrying out of such measures in the annual progress report for the Project.

11. Except as otherwise agreed with the Bank, the Borrower shall: (a) through the MoEL, take all measures necessary to complete by December 31, 2005, restructuring activities for KW; (b) thereafter, through the MoST, formulate terms of reference for the privatization advisor and appoint said privatization advisor for KW by June 30, 2006; and (c) thereafter, through the MoST, submit to the Bank a report as to the readiness of KW for privatization by December 31, 2006.

12. The Borrower, through the MoEL, shall:

   (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the carrying out of the Project and the Program and the achievement of the objectives thereof;

   (b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about March 31 of each year until completion of the Project, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project and the Program during the
period preceding the date of said report and setting out the measures recommended to ensure the
efficient carrying out of the Project and the Program and the achievement of the objectives
thereof during the period following such date; and

(c) review with the Bank, by April 30 of each year until completion of the Project, or
such later date as the Bank shall request, the report referred to in paragraph (b) of this Section,
and, thereafter, take all measures required to ensure the efficient completion of the Project and the
Program and the achievement of the objectives thereof, based on the conclusions and
recommendations of said report and the Bank’s views on the matter.