STATUTORY INSTRUMENTS

1968 No. 1875

INDUSTRIAL INVESTMENT

The Aluminium Industry (Invergordon Project) Scheme 1968

Laid before Parliament in draft

Made - - - - 21*st November* 1968
Coming into Operation 26*th November* 1968

WHEREAS in the opinion of the Board of Trade (hereinafter referred to as "the Board") the project to which the following industrial investment scheme relates is likely to benefit the economy of the United Kingdom as being calculated to create new primary production capacity in the aluminium industry:

AND whereas in the Board's opinion the project would not be undertaken without such financial support as the scheme authorises the Board to provide:

AND whereas, for the purpose of providing such support, the Board, subject to the scheme's being approved by the House of Commons, propose to enter with the British Aluminium Company Limited into an agreement in the terms of the draft agreement set out in the Schedule hereto (hereinafter referred to as "the draft B.A. Co. Loan Agreement"):

AND whereas a draft of the scheme has been laid before Parliament and approved by the House of Commons:

NOW, therefore, in pursuance of sections 1 and 2 of the Industrial Expansion Act 1968(a), the Board, with the approval of the Treasury, hereby make the following industrial investment scheme:—

1. This scheme relates to the project of the British Aluminium Company Limited (hereinafter referred to as "the Invergordon project") for the construction and operation at Invergordon in Ross and Cromarty of an aluminium reduction plant having an annual rated capacity of approximately 100,000 long tons of primary aluminium.

2. The Board may, for the purposes of the Invergordon project and in accordance with an agreement to be made between the Board and the British Aluminium Company Limited in the terms of the draft B.A. Co. Loan Agreement, make loans not exceeding in the aggregate £30,000,000 to the British Aluminium Company Limited.

3. The aggregate amount of expenditure which may be incurred by the Board under the scheme is £30,000,000.

4.—(1) This scheme may be cited as the Aluminium Industry (Invergordon Project) Scheme 1968, and shall come into operation on 26th November 1968.

(a) 1968 c. 32.

(2) The Interpretation Act 1889(a) shall apply for the interpretation of this scheme as it applies for the interpretation of an Act of Parliament.

21st November 1968.

Edmund Dell,
Minister of State,
Board of Trade.

Approved by the Treasury

21st November 1968.

Walter Harrison,
E. Alan Fitch,
Two of the Lords Commissioners
of Her Majesty's Treasury.

SCHEDULE

Draft B.A. Co. Loan Agreement

THIS AGREEMENT is made the day of 1968 Between THE BOARD OF TRADE (hereinafter called "the Board") of the one part and THE BRITISH ALUMINIUM COMPANY LIMITED whose registered office is at Norfolk House, St. James's Square, London, S.W.1 (hereinafter called "B.A.") of the other part.

WHEREAS:—

(1) B.A. proposes to undertake a project (hereinafter referred to as "the project") providing for the construction and operation of an aluminium reduction plant at Invergordon in Scotland for which the North of Scotland Hydro-Electric Board (hereinafter called "NOSHEB") would supply the electrical power required (hereinafter referred to as "the power supply element of the project").

(2) In a contract of even date herewith (hereinafter referred to as "the power contract") between B.A. and NOSHEB providing for the power supply element of the project there is included inter alia:—

(*a*) a provision being clause 8 thereof whereby B.A. will pay to NOSHEB from time to time capital sums related to a proportion of the total cost (inter alia) of construction of the Hunterston "B" power station (the sums payable by B.A. pursuant to such provision being hereinafter called "the capital cost incurred by B.A. in relation to the power supply element of the project"); and

(*b*) a provision being clause 19 thereof (hereinafter referred to as "the residual value clause") whereby in the event of the power contract being determined in the circumstances therein specified NOSHEB are to pay to B.A. a sum to be calculated as therein provided after making such deductions as are therein specified.

(a) 1889 c. 63.

NOW IT IS HEREBY AGREED as follows:—

GENERAL INTERPRETATION

1.—(1) In this Agreement:—

(*a*) any reference to a principal sum outstanding at any time shall be a reference to a sum equal to the aggregate of—

(i) the sum of all advances theretofore made by the Board to B.A. in accordance with this Agreement, and

(ii) all sums (if any) deemed to be theretofore added to the sums so advanced, pursuant to the provisions of clause 6(2) and (3) and clause 12(5) hereof less any amounts attributable to such interest in earlier instalments,

less any amounts attributable to principal in earlier instalments;

(*b*) "instalment date" means the 30th September;

(*c*) "the appropriate actuarial principles" means the normal actuarial principles as exemplified in the "Tables for Repayment of Loans by way of Annuity" in Archer's Loan Repayment and Compound Interest Tables (10th Edition) or such other tables as the parties may agree;

(*d*) "the contracted quantity" of electricity for any period for the purposes of clause 12 hereof shall be the number of kilowatt hours of the supplies of electricity contracted to be afforded to B.A. over such period under the provisions of clause 2 and Schedule 1 of the power contract;

(*e*) "loan year" means any period of twelve months ending on (and including) 30th September.

(2) For the purposes of this Agreement the present value at any relevant 1st October of any sums advanced or expected to be advanced thereafter shall be the value thereof at that date calculated in accordance with the appropriate actuarial principles with interest at the specified rate discounted on each intervening instalment date between the subsequent date on which the advance was made or was then expected to be made, as the case may may be, and such 1st October.

WARRANTIES

2. B.A. hereby represents and warrants to the Board that it has obtained all necessary authorities and consents and has taken all corporate action necessary to enter into this Agreement and into the Assignment hereinafter mentioned.

ADVANCES BY THE BOARD TO B.A.

3.—(1) If at any time and from time to time B.A. by not less than two weeks' previous notice in writing shall notify the Board of its desire to borrow any sum for application in payment of the capital cost incurred by B.A. in relation to the power supply element of the project the Board will advance such sum to B.A. by way of loan, but so that:—

(*a*) the Board shall not be obliged so to advance any sum unless B.A. shall previously have furnished to the Board—

(i) such information as shall reasonably be necessary to satisfy the Board that B.A. will apply as hereinbefore mentioned the whole sum specified in the notice within two weeks of its receipt by B.A.; and

(ii) (except for the purposes of the first such advance) a certificate or certificates by the Auditors of B.A. that the amount of the last preceding advance by the Board to B.A. has been so applied as hereinbefore mentioned within such period of two weeks as aforesaid;

(*b*) the Board shall not be obliged so to advance sums aggregating more than £30,000,000;

(*c*) the Board shall not be obliged so to advance any sum after the 31st March 1977 or at any time if B.A. is in default in the performance or observance of any of its obligations to the Board under this Agreement unless

such default has been made good or the written consent or waiver of the Board has been obtained by B.A. to its non-performance.

(2) Each advance shall for the purposes of this Agreement be regarded as being made and received when it is paid to the credit of B.A. at such bank in London as B.A. shall by notice to the Board specify for the purpose and as being applied as aforesaid when instructions shall have been given by B.A. to such bank to effect on B.A.'s behalf payment thereof to NOSHEB.

APPLICATION BY B.A. OF ADVANCES BY THE BOARD

4. Every such sum advanced by the Board shall be applied in payment of the capital cost incurred by B.A. in relation to the power supply element of the project and B.A. shall furnish to the Board:—

(*a*) not later than every 31st December (commencing on the 31st December next following the date of the advance of the first sum by the Board) until all such sums advanced shall have been applied such information as to the state of progress of the construction of the aluminium reduction plant and to the power supply element of the project as the Board may reasonably require; and

(*b*) not later than three months after the date of payment of the final sum advanced by the Board a certificate by the Auditors of B.A. that the aggregate amount of all sums advanced has been so applied.

SECURITY FOR AND RANKING OF THE BOARD'S ADVANCES

5.—(1) B.A. shall on the date hereof enter into and deliver to the Board by way of security for all sums to be advanced by the Board under this Agreement and for all interest payable thereon as hereinafter provided an Assignment in the form set out in the Annexe hereto (hereinafter called "the Assignment") of the benefits of the residual value clause and the right to any sum becoming payable to B.A. pursuant thereto.

(2) Immediately upon repayment by B.A. to the Board of all sums advanced by the Board pursuant to this Agreement together with all interest thereon as herein provided the Board will re-assign to B.A. the said benefit and right or otherwise discharge the said security.

(3) In the event of a winding up of B.A. the rights of the Board to the repayment of all sums advanced under this Agreement and of all interest thereon as hereinafter provided shall be postponed and subordinated to the rights of all other creditors of B.A. (whether secured or unsecured) to payment in full of amounts owing to them by B.A. except:—

(*a*) in so far as payment under the residual value clause is made to the Board by virtue of the Assignment which payment shall be applied by the Board first to the discharge of interest accrued and thereafter to or towards repayment of principal; and

(*b*) that the Board shall rank pari passu with the unsecured creditors of B.A. for the whole or such part of any balance due to the Board (after applying payments under the residual value clause as hereinbefore provided) as shall be equal to any amounts which NOSHEB shall be entitled under the residual value clause to deduct in respect of accrued but unpaid annual charges for the supply of electricity arising under clauses 9 and 10 of the power contract and shall have deducted from the sum otherwise payable under the residual value clause;

and the Board agree that they will not prove in any such winding up in competition with or to the detriment of the other creditors of B.A. except to the extent provided in paragraph (*b*) hereof and will authorise the liquidator to make such distributions and payments to the other creditors of B.A. in such manner as shall be necessary to give effect to the foregoing provisions of this sub-clause.

INTEREST

6.—(1) Every sum advanced by the Board under this Agreement shall carry interest at the rate of 7 per cent. per annum (hereinafter called "the specified rate") from and including the day following the date of advance.

(2) Interest on every sum advanced on or before 30th September 1971 shall be compounded at annual rests on 30th September in each year up to and including 30th September 1971. Such interest shall for the purpose of calculating the instalments thereafter payable as hereinafter provided be deemed to be added to the principal sum outstanding on 1st October 1971 and the interest so added shall carry interest at the specified rate as from and including that date.

(3) Interest on sums advanced during each loan year from and including the loan year ending on 30th September 1972 and accruing to 30th September in such loan year shall for the purpose aforesaid be deemed to be added to the principal sum outstanding on 1st October next following such 30th September, to the extent of the amount (if any) by which the aggregate of that interest and of the interest accruing to such 30th September on the principal sum outstanding on the preceding 1st October exceeds the amount of the instalment payable on such 30th September, and any interest so added shall carry interest at the specified rate as from (and including) 1st October next following such 30th September.

(4) Any instalments payable to the Board under the following provisions of this Agreement or any partial repayment made to the Board under clause 13 hereof shall be applied first in or towards payment of interest already accrued due for payment and subject thereto in or towards payment of interest deemed to have been added to principal under the provisions of sub-clauses (2) and (3) of this clause and by virtue of clause 12(5) and subject thereto in or towards payment of principal.

(5) All interest payable under this Agreement is to be paid without deduction of income tax unless at any time B.A. shall be obliged by statute to deduct income tax before payment to the Board.

REPAYMENT OF ADVANCES WITH INTEREST BY YEARLY INSTALMENTS

7.—(1) B.A. will repay to the Board the sums advanced by the Board to B.A. under this Agreement together with interest thereon as aforesaid by yearly instalments comprising elements of capital and interest on 30th September (hereafter in this Agreement called "the instalment date") in each year in accordance with the following provisions of this Agreement the first of such instalments to be paid on the instalment date in the year 1972.

(2) The amount of the instalment falling to be paid on any instalment date pursuant to sub-clause (1) of this clause shall be the appropriate amount for that instalment prescribed by the Board pursuant to clause 8 or 9 hereof, or, as the case may be, calculated in accordance with the provisions of clause 10.

8.—(1) Not earlier than 1st August nor later than 1st September in 1972 the Board shall by notice in writing to B.A. (hereafter in this clause called "the said notice") given after consultation with B.A. prescribe the amount of the instalment payable by B.A. pursuant to clause 7 hereof in the year 1972, being the amount calculated for that purpose in accordance with the appropriate actuarial principles on the basis of a loan of the total sum referred to in sub-clause (2) of this clause carrying interest at the specified rate and repayable by equal yearly instalments over the period commencing on 1st October 1971 and ending on the instalment date in the year 1999 (including both such dates).

(2) The total sum for the purposes of sub-clause (1) of this clause shall be a sum equal to the aggregate of:—

(*a*) the principal sum outstanding on 1st October 1971; and

(*b*) the aggregate of the present values on 1st October 1971 of (i) each of the sums advanced to B.A. on or after 1st October 1971 but prior to the date of the said notice, and (ii) each of the sums then expected (according to the latest estimate then available) to be subsequently advanced to B.A. pursuant to this Agreement.

9.—(1) Not earlier than 1st August nor later than 1st September in the loan year ending on 30th September 1973 and in each subsequent loan year up to (and including) the loan year in which the final advance required to be made by the Board under this Agreement has been paid to B.A. the Board shall by notice in writing to B.A. (hereafter in this clause called "the said notice") given after consultation with B.A. prescribe the amount of the instalment payable by B.A. pursuant to clause 7 hereof on the instalment date next following the date of the said notice, being the amount calculated for that purpose in accordance with the appropriate actuarial principles on the basis of a loan of the total sum referred to in sub-clause (2) of this clause carrying interest at the specified rate and repayable by equal yearly instalments over the period commencing on the 1st October last preceding the date of the said notice and ending (subject to the operation of clauses 12 and 13 hereof) on the instalment date in the year 1999 (including both such dates).

(2) The total sum for the purposes of sub-clause (1) of this clause shall be a sum equal to the aggregate of—

(*a*) the principal sum outstanding on the 1st October last preceding the date of the said notice; and

(*b*) the aggregate of the present values on such 1st October as aforesaid of (i) each of the sums advanced to B.A. on or after such 1st October but prior to the date of the said notice and (ii) each of the sums (if any) then expected (according to the latest estimate then available) to be subsequently advanced to B.A. pursuant to this Agreement.

10.—(1) The amount of the instalment payable by B.A. pursuant to clause 7 hereof on the instalment date in the loan year next following that in which the final advance is paid to B.A. and in every subsequent loan year shall be the amount calculated (in consultation between the Board and B.A.) for that purpose in accordance with the appropriate actuarial principles on the basis of a loan of the sum referred to in sub-clause (2) of this clause carrying interest at the specified rate and repayable by equal yearly instalments over the period commencing on the 1st October next following the payment of the final advance and ending (subject to the operation of clauses 12 and 13 hereof) on the instalment date in the year 1999 (including both such dates).

(2) The sum for the purposes of sub-clause (1) of this clause shall be a sum equal to the principal sum outstanding on 1st October next following the payment of the final advance.

INTEREST ON OVERDUE PAYMENTS

11. B.A. hereby covenants with the Board to pay to the Board interest (without deduction of tax) at the rate of 5 per cent. per annum or at a rate equal to 1 per cent. per annum above the official discount rate of the Bank of England for the time being (whichever rate shall for the time being be the higher) on any instalment as from the date on which that instalment becomes payable in accordance with this Agreement until the date on which it is paid.

REDUCED INSTALMENTS

12.—(1) Notwithstanding the provisions of clauses 8 to 10 of this Agreement, if (within the period commencing on 1st April 1972 and ending on the instalment date in the year 1998, both such dates included), over any period of six consecutive calendar months, or over each of two such periods neither of which includes any calendar month included in the other, the quantity of electricity actually supplied to B.A. pursuant to the power contract for the purposes of the project is less (by at least 100 million kilowatt hours) than the contracted quantity of electricity for such period or periods then B.A. may give to the Board (not later than 9th September next following the expiration of such period or both such periods) notice in writing to that effect (hereafter in this clause called a "notice of reduction") specifying therein the quantity of electricity (expressed in terms of kilowatt hours) actually so supplied to B.A. over such period or periods together with the contracted quantity for such period or periods.

(2) Upon a notice of reduction being duly given in any year, then, for the appropriate amount (hereafter in this clause called "the full amount") of the instalment which would have been payable by B.A. on the instalment date next following the date of the notice there shall be substituted the reduced amount ascertained in accordance with the provisions of sub-clause (3) or sub-clause (4), as the case may be, of this clause: so, however, that no such instalment as aforesaid shall be so reduced if—

(*a*) (B.A. having elected under sub-clause (6) of this clause), the period of repayment would have to be extended in accordance with sub-cause (7) of this clause by reason of the amount of such reduction and all previous reductions (if any) beyond the instalment date in the year 2004; or

(*b*) (B.A. not having elected as aforesaid), the period of repayment (had B.A. so elected) would have had to be extended in accordance with sub-clause (7) of this clause by reason of the amount of such reduction and all previous reductions (if any) beyond the instalment date in the year 2004.

(3) For the purposes of sub-clause (2) of this clause, the reduced amount (in the case in which the notice of reduction relates to a single period of six months) shall be the aggregate of:—

(*a*) an amount equal to one half of the full amount; and

(*b*) whichever is the greater of the following:—

(i) an amount which bears to one-half of the full amount the same proportion as the number of kilowatt hours of electricity actually supplied to B.A. over such period bears to the contracted quantity for that period;

(ii) £500,000:

so, however, that the reduced amount shall not be less than the minimum amount which would permit of a reduction being made consistently with the provisions of sub-clause (2) of this clause.

(4) For the purposes of sub-clause (2) of this clause, the reduced amount (in the case in which the notice of reduction relates to two periods of six months) shall be the aggregate of:—

(*a*) whichever is the greater of the following:—

(i) an amount which bears to one half of the full amount the same proportion as the number of kilowatt hours of electricity actually supplied to B.A. over the first of such periods bears to the contracted quantity for that period;

(ii) £500,000; and

(*b*) whichever is the greater of the following:—

(i) an amount which bears to one half of the full amount the same proportion as the number of kilowatt hours of electricity actually supplied to B.A. over the second of such periods bears to the contracted quantity for that period;

(ii) £500,000:

so, however, that the reduced amount shall not be less than the minimum amount which would permit of a reduction being made consistently with the provisions of sub-clause (2) of this clause.

(5) To the extent that the reduced amount is insufficient to discharge the full amount of the interest accrued due for payment on the instalment date of the reduced instalment, the balance of that interest shall for the purpose of calculating the instalments thereafter payable (hereafter in this clause called "subsequent instalments") be deemed to be added to the principal sum outstanding on the day next following the date on which the reduced instalment is payable, and accordingly shall carry interest on and from that date at the specified rate.

(6) Upon giving to the Board the first (and only the first) notice of reduction B.A. may (provided that the Board have first been satisfied as to the security

available or offered in respect of the extended period hereinafter referred to) elect therein to have the amount of the instalment payable in each loan year after that in which the first and any subsequent notice of reduction is given calculated by reference to an extended period of repayment.

(7) In the event of B.A. having elected as aforesaid, then in order to give effect to such election the amount of each subsequent instalment payable by B.A. shall be calculated or recalculated, as the case may be, by reference to the period then applicable under clause 9 or 10 hereof, as the case may be, extended so as to end on the instalment date in that year which will result, upon the application of the appropriate actuarial principles, in the amount of each of the subsequent instalments approximating most nearly to but not being less than the amount which would have been payable if the reduced instalment had not been reduced; and accordingly the provisions of clause 9 or 10 hereof, as the case may be, shall apply for the calculation or recalculation of the amount of each such subsequent instalment as if:—

(*a*) in clause 9, for the reference in sub-clause (1) to the instalment date in the year 1999 (or other year then applicable by virtue of this clause or clause 13 hereof) there were substituted a reference to the instalment date in the year on which such extended period as aforesaid ends;

(*b*) in clause 10—

(i) for the period referred to in sub-clause (1) there were substituted the period commencing on 1st October next following the instalment date of the reduced instalment and ending on the instalment date on which such extended period as aforesaid ends; and

(ii) the sum referred to in sub-clause (2) were the principal sum outstanding on 1st October next following the instalment date of the reduced instalment.

(8) In the event of B.A. not electing as aforesaid the amount of each subsequent instalment shall be calculated or recalculated by reference to the principal sum outstanding on the 1st October next following the instalment date of the reduced instalment and the period then commencing and ending on the instalment date in the year 1999 or other date then applicable under the provisions of clause 13 but, subject thereto, in accordance with the other provisions then applicable of clause 9 or clause 10 hereof.

EARLY REPAYMENT

13.—(1) Notwithstanding the foregoing provisions of this Agreement, B.A. may not later than 31st August in any year give to the Board notice in writing (hereafter in this clause called a "notice of repayment") indicating its intention to discharge on the 30th September next following the date of such notice the principal sum outstanding on such 30th September (hereafter in this clause called the "redemption date") or such part of that principal sum as is specified in the notice of repayment.

(2) In the case of a notice of repayment indicating its intention to discharge the principal sum outstanding as aforesaid B.A. shall pay to the Board on the redemption date a sum equal to the aggregate of the following amounts:—

(*a*) the amount of the instalment payable by B.A. on that date; and

(*b*) the amount of all arrears (if any) then outstanding in respect of earlier instalments and of all interest thereon pursuant to clause 11 hereof; and

(*c*) the amount of the redemption value (as hereafter defined) of the principal sum outstanding as aforesaid;

and upon payment of such sum by B.A. on the redemption date (but not otherwise) the indebtedness of B.A. under this Agreement shall thereupon be fully discharged.

(3) In the case of a notice of repayment indicating its intention to discharge a specified part of the principal sum outstanding as aforesaid (hereafter in this clause called the "specified part of the principal sum outstanding") B.A. shall

pay to the Board on the redemption date a sum equal to the aggregate of the following amounts:—

(*a*) the amount of the instalment payable by B.A. on that date; and

(*b*) the amount of all arrears (if any) then outstanding in respect of earlier instalments and of all interest pursuant to clause 11 hereof; and

(*c*) the amount of the redemption value (as hereafter defined) of the specified part of the principal sum outstanding as aforesaid;

and upon payment by B.A. on the redemption date (but not otherwise) of such sum as aforesaid the indebtedness of B.A. in respect of the specified part of the principal sum outstanding shall thereupon be discharged and no further interest in respect of that specified part as such shall be payable by B.A.

(4) The payment made by B.A. on the redemption date pursuant to subclause (3) of this clause shall have effect to reduce the principal sum which would otherwise have been outstanding on 1st October next following the redemption date by an amount equivalent to the specified part of the principal sum included in such payment, and the instalments thereafter payable by B.A. shall be calculated or recalculated in accordance with clause 9 or 10 hereof, as the case may be, by reference to such reduced principal sum outstanding; but so that the period to be taken into account for the purpose of such calculation or recalculation shall be the period commencing on such 1st October as aforesaid and ending on (and including) the instalment date in the year which would result from the application (upon the appropriate actuarial principles) of the specified part of the principal sum outstanding—

(*a*) first in eliminating the number of additional instalments (if any) which, by virtue of the operation of clause 12(6) and (7) hereof, are for the time being to be taken into account in calculating the appropriate amount of the instalments subsequently payable by B.A. or, if the specified part of the principal sum outstanding shall be insufficient to eliminate all the additional instalments, then in eliminating as many complete additional instalments as possible, and then, and subject thereto;

(*b*) to the extent of any balance remaining, in reducing the amount of each of the instalments thereafter payable or, at the option of B.A. (to be expressly exercised in the notice of repayment), in reducing the number of instalments thereafter payable by B.A., so that the amount of each such instalment shall as nearly as practicable be the same as the amount which would have been payable if no such repayment had been made by B.A. on the redemption date.

(5) The expression "redemption value" in relation to the principal sum outstanding or the specified part of the principal sum outstanding, as the case may be, means that sum which shall be the equivalent of the present value, on the redemption date:—

(*a*) in the case of repayment of the principal sum outstanding, of the remaining instalments thereafter payable, or

(*b*) in the case of repayment of a specified part of the principal sum outstanding, of such of the instalments or amounts thereof which are discharged by such repayment;

being the equivalent of the present value calculated in accordance with appropriate actuarial principles at the rate of interest applicable under section 5 of the National Loans Act 1968 seven days prior to the redemption date to British Government loans bearing a life equivalent to that which shall remain to the principal sum outstanding on the redemption date: Provided always that the minimum sum to be repaid in respect of each £100 principal sum outstanding shall be £100.

INFORMATION AND BORROWING LIMITS

14. B.A. further covenants and agrees with the Board that for so long as the sums owing to the Board or any part thereof remain outstanding:—

(1) B.A. shall keep books of account appropriate to the project and make them available for the inspection of the Board on the Board showing

reasonable cause in relation to the position of the Board under this Agreement; and

(2) B.A. shall furnish to the Board two copies of every Annual Balance Sheet, Profit and Loss Account and Director's Report presented or issued to its shareholders and also furnish to the Board such information relating to the project as the Board may reasonably require in relation to the position of the Board under this Agreement; and

(3) without the prior consent of the Board the aggregate amount outstanding of all monies borrowed by B.A. and its United Kingdom subsidiaries (excluding inter-Company borrowings) shall not exceed the greater of £35,000,000 or twice the aggregate of the paid up share capital of B.A. and the consolidated reserves of B.A. and its subsidiaries (adjusted as hereinafter provided).

Monies borrowed—

(*a*) shall include any premium on final repayment, acceptance credits, net borrowings from overseas subsidiaries of B.A. and guarantees of amounts borrowed by and share capital of others than B.A. and its United Kingdom subsidiaries; but

(*b*) shall not include borrowings for the purpose of repaying monies borrowed.

The consolidated reserves of B.A. and its subsidiaries shall be deemed to include any share premium account capital redemption reserve fund profit and loss account and other retained profits and shall be adjusted to exclude:—

(*a*) the amounts of reserves of overseas subsidiaries of B.A.;

(*b*) the amounts (if any) included in such consolidated reserves in respect of amounts set aside for tax equalisation or in relation to investment grants or building grants received or receivable under the Industrial Development Act 1966 or Local Employment Acts 1960 to 1966 respectively;

(*c*) amounts represented by goodwill and other intangible assets (provided that any asset representing interest arising under the provisions of this Agreement which is accrued but deferred or the capital cost incurred by B.A. in relation to the power supply element of the project shall be deemed not to be an intangible asset); and

(4) the amount of any net accretion thereto resulting from any revaluation of the land and buildings of B.A. and its United Kingdom subsidiaries made prior to the expiration of a period of 5 years from the date of this Agreement or from the date of any previous revaluation which is not excluded by virtue of this provision.

CIRCUMSTANCES IN WHICH ADVANCES BECOME REPAYABLE

15. The whole of the principal outstanding together with interest accrued thereon in respect of the advances made by the Board under this Agreement shall become repayable immediately on the happening of any of the following events:—

(*a*) if B.A. makes default in the repayment of any part of any sum advanced to B.A. under this Agreement or of any interest thereon for a period of 21 days from the date of delivery of a notice from the Board to B.A. specifying such default;

(*b*) if B.A. makes default in the performance or observance of any of the other conditions and obligations binding on it under this Agreement which default remains unremedied for more than 28 days from the date of delivery of a notice from the Board to B.A. of such default;

(*c*) if an order be made or an effective resolution be passed for the winding up of B.A. except for the purpose of reconstruction or amalgamation in

respect of which the Board are satisfied that their position as creditor of B.A. under this Agreement will not be prejudiced thereby ; or

(*d*) if B.A. without the consent of the Board does not start to carry out the construction of the aluminium reduction plant by 31st December 1970 or does not start to operate the said plant by the 31st December 1972 or ceases permanently to operate the said plant unless the failure to start to construct such plant or the failure to start to operate it by the relevant date is due in whole or in part to force majeure, that is to say, Act of God, strikes, lockouts, government regulations or any other cause of whatsoever description beyond the control of B.A. or in the event of such failure being due in whole or in part to force majeure B.A. should fail to use reasonable endeavours to start to carry out such construction or to operate the said plant, as the case may be, as soon as is practicable in all the circumstances.

ASSIGNMENT

16. B.A. may with the consent of the Board assign its rights and obligations under this Agreement and/or under the Assignment to any company incorporated and registered in Great Britain which is controlled by B.A. or results from an amalgamation or reconstruction of B.A. provided that:—

(*a*) the Board are satisfied that their position as creditor will not be prejudiced as a result of such assignment ;

(*b*) B.A. execute or cause to be executed such supplemental agreement and other instruments and documents (if any) as the Board reasonably consider necessary to preserve their rights under this Agreement or under the Assignment ; and

(*c*) no order is made or effective resolution is passed for the winding up of B.A. prior to the completion of the assignment of its rights and obligations under this Agreement and to the execution of any agreement instrument and document mentioned in (*b*) above.

COSTS

17. B.A. shall be responsible at its expense for stamping this Agreement and the Assignment with the proper and appropriate stamp duty and will bear all legal costs and other expenses in connection with this Agreement the Assignment and any supplemental agreement and other instruments and documents required by virtue of clause 16(*b*) hereof.

NOTICES

18.—(1) Any notice certificate or other document given or furnished by B.A. to the Board shall be deemed to be effectively given or furnished under this Agreement or under the Assignment if but only if it is left at or is sent by registered post or recorded delivery addressed to the Board at 1 Victoria Street, London, S.W.1 or if another address has been notified in writing by the Board to B.A. as the address of the Board for that purpose that other address.

(2) Any notice certificate or other document given or furnished by the Board to B.A. shall be deemed to be effectively given or furnished under this Agreement or under the Assignment if but only if it is left at or is sent by registered post or recorded delivery addressed to B.A. at its registered office for the time being.

(3) Such notice certificate or other document if posted by prepaid post shall be deemed to be delivered to any address in Great Britain on the day following the day upon which such notice certificate or other document is posted.

(4) In proving delivery of any notice certificate or other document it shall be sufficient to prove that such notice certificate or other document was properly addressed, stamped and posted.

19. This Agreement shall be governed by English law.

IN WITNESS whereof the Official Seal of the Board of Trade has been hereunto affixed and B.A. has caused its Common Seal to be hereunto affixed the day and year first before written.

THE OFFICIAL SEAL of the BOARD OF TRADE was hereunto affixed in the presence of:— } SEAL

THE COMMON SEAL of THE BRITISH ALUMINIUM COMPANY LIMITED was hereunto affixed in the presence of:— } SEAL

Director.

Director.

Secretary.

ANNEXE

Form of Assignment

THIS ASSIGNMENT is made the day of 1968 Between THE BRITISH ALUMINIUM COMPANY LIMITED whose registered office is situate at Norfolk House, St. James's Square, London, S.W.1 (hereinafter called "B.A.") of the one part and THE BOARD OF TRADE (hereinafter called "the Board") of the other part:

WHEREAS in accordance with the provisions of an Agreement dated 1968 made between the Board and B.A. (hereinafter referred to as "the Loan Agreement") the Board may advance to B.A. sums not exceeding in the aggregate £30,000,000 to be applied (in relation to B.A.'s project for the construction and operation of an aluminium reduction plant at Invergordon in Scotland) in payment to the North of Scotland Hydro-Electric Board (hereinafter called "NOSHEB") as part of the consideration for the supply by NOSHEB to B.A. of the electrical power required for the purposes of B.A.'s project pursuant to a contract (hereinafter referred to as "the power contract") dated 1968 and made between NOSHEB and B.A.

AND whereas the power contract contains a provision being clause 19 thereof (hereinafter referred to as "the residual value clause") whereby in the event of the power contract being determined in the circumstances therein specified NOSHEB are to pay to B.A. a sum to be calculated as therein provided after making such deductions as are therein specified:

AND whereas B.A. has agreed to secure the sums advanced by the Board pursuant to the Loan Agreement by granting to the Board an assignment of the benefit of the residual value clause and of any sum becoming payable to B.A. pursuant thereto:

NOW THIS DEED WITNESSETH as follows:

1. In pursuance of the Loan Agreement and as security for repayment of the sums to be advanced by the Board pursuant thereto (hereinafter referred to as "the Board's loan") together with interest thereon B.A. hereby assigns to the Board the full benefit of the residual value clause and the rights of B.A. thereunder and all that sum becoming due or payable to B.A. in pursuance of that clause less an amount equivalent to the amount of any liability of B.A. for tax in respect of that sum TO HOLD the same unto the Board subject only to the proviso for redemption hereinafter contained.

2. B.A. hereby covenants with the Board as follows:—

(*a*) that B.A. will not without the previous consent of the Board do permit or suffer to be done any act or thing whereby the rights of B.A. under the residual value clause shall be lost or prejudiced;

(*b*) that B.A. will not without such consent receive compound or release the said sum or do any act or thing whereby the recovery of the said sum may be impeded delayed or prevented;

(*c*) that B.A. will from time to time execute and do all such assurances and things as the Board may reasonably require for perfecting the security hereby constituted and after the security hereby constituted has become enforceable for facilitating the realisation of the property hereby assigned. And B.A. hereby irrevocably appoints the Board to be the attorney of B.A. in the name and on behalf of B.A. to execute and do any assurances and things which B.A. ought to execute and do hereunder.

3. Provided always and it is hereby declared as follows:—

(*a*) if B.A. shall repay the Board's loan together with all interest thereon in accordance with the terms of the Loan Agreement the Board will at the request and cost of B.A. re-assign to B.A. the property hereby assigned or otherwise discharge this security;

(*b*) it shall not be incumbent on B.A. to take any steps or institute any proceedings for the recovery of any sum becoming payable under and by virtue of the residual value clause nor shall B.A. be answerable for any loss arising from its having neglected to take such steps or institute such proceedings nor for any deductions from or reduction in the amount otherwise payable under the residual value clause resulting from the operation of the provisions of such clause;

(*c*) the Board shall not by virtue of this Assignment have or be entitled to any interest in or rights arising under the power contract apart from the residual value clause and nothing in this Assignment shall affect or inhibit in any way the right of B.A. to exercise and enjoy and implement for its own account and benefit the provisions of the power contract other than the residual value clause.

4. In this deed when the context so admits the expression "B.A." includes the persons deriving title under it.

5. This Assignment shall be governed by English law.

IN WITNESS etc.

EXPLANATORY NOTE

(*This note is not part of the Scheme.*)

This scheme, made under the Industrial Expansion Act 1968, authorises the Board of Trade to provide financial support by way of loans up to an aggregate of £30,000,000 to the British Aluminium Company Limited for the purpose of a project for the construction and operation of an aluminium reduction plant at Invergordon in Ross and Cromarty.