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**CONSTITUTIONAL ASSEMBLY**

**SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6**

**FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES**

**13 MARCH 1995**

**ROOM V227**

**14H00**

**DOCUMENTATION**

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# CONSTITUTIONAL ASSEMBLY

## SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

### FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

MONDAY 13 MARCH 1995

#### AGENDA

A meeting of the above committee will be held on 13 March 1995 at 14h00 in Room V227, Old Assembly Wing.

**1. CONFIRMATION OF MINUTES**

1.1 Minutes: 6 March 1995 (p2-4)

**2. MATTERS ARISING**

2.1 Panel Discussion held on 27 February

The draft report is attached at Annexure A.

2.2 Formation of sub-committee between TC3 and TC6

The Chairperson to report.

2.3 Invitation to the World Bank

The invitation is attached at page 5.

**3. PROGRESS REPORT**

For discussion.

**4. FURTHER BUSINESS**

**CONSTITUTIONAL ASSEMBLY**  
**SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6**  
**FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES**  
**MONDAY 6 MARCH 1995**

**PRESENT**

**Davies R (Chairperson)**

Andrew KM  
Botha WJ  
Jacobsz F  
Marcus G  
Nair B  
Welgemoed P

**Apologies:**

Hogan B  
Makgothi H  
Rustomjee C

**Absent:**

Bekker H  
Jordaan JA  
Woods G

**In attendance:** P Fahrenfort, N Morrison

**1. CONFIRMATION OF MINUTES**

The minutes of the meeting held Monday 27 February 1995 at 09h00 were confirmed and signed subject to the following corrections:

Item 3.1.1. : The Committee noted the following proposed work plan

- i) incorrect numbering ie item e) to become item f)
- ii) item f) to read:

*an attempt be made to schedule sub-theme committee 2 meetings to co-incide with the time set aside for theme committee meetings*

**2. MATTERS ARISING**

It was noted that while Dr Stals' memorandum was not dealt with in a meeting, all members had received it and are aware of the contents.

**3. FORMATION OF SUB-COMMITTEE BETWEEN TC3 & TC6**

It was agreed that the Chairperson liaise with Theme Committee 3 and report back to this committee.

**4. INVITATION TO THE WORLD BANK**

It was recommended the Secretariat (Pat Fahrenfort) follow up this matter with Dr G Marais.

**5. PROGRESS REPORT**

The Committee suggested the following:

- a) results of today's meeting be conveyed to Mr Rustomjee
- b) the technical advisers to write a draft report and have it ready for circulation by Thursday 9 March 1995
- c) noting that the Freedom Front's members will be abroad, that available documents be sent to them for comment
- d) in the event of the committee not being able to finalise the report by March 15, a request be made to the CA for an extension

**6. PUBLIC PARTICIPATION**

The Committee noted that public participation events will be held as follows:

- i) Saturday 11 March in the Northern Cape - Kuboes
- ii) Sunday 12 March in Northern Transvaal - Phalaborwa

Members indicated that they will not be available to attend these hearings.

**7. SUBMISSION PRESENTATIONS**

**7.1 COSAB (Council of Southern African Bankers)**

Presenters: Mr Piet Liebenberg, Chief Executive  
Ms Lyn Arnold from ABSA

The Committee had before it the submission by COSAB in which they dealt with the Auditor General, Reserve Bank, FFC, National Revenue Fund, Public Enterprises and the Commissioner for Inland Revenue highlighting areas of concern.

The Committee noted that this submission will be conveyed to the Standing Committee on Finance for their consideration.

The meeting closed at 10h20.

.....  
CHAIRPERSON

.....  
DATE

# CONSTITUTIONAL ASSEMBLY

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PO Box 15  
CAPE TOWN 8000  
REPUBLIC OF SOUTH AFRICA

REF No:

8 March 1995

Ms Paula Pool  
The Department of Finance  
PRETORIA

Dear Ms Pool

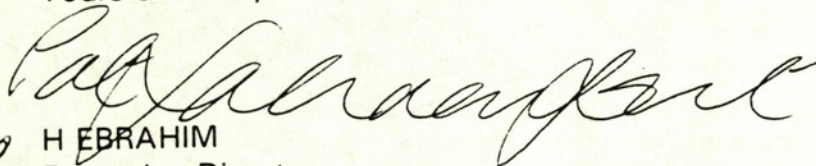
## INVITATION TO PROFESSOR ANWAR SHAH - WORLD BANK

Our conversation of yesterday refers.

Our Sub-theme committee which deals Financial Institutions and Public Enterprises have recommended that an invitation be extended to Professor Anwar Shah to address our members on Intergovernmental financial and fiscal relations at local, provincial and national levels. We understand that Professor Shah will be engaged in a training seminar in Washington on 3 and 4 May. The date we have in mind is 8 May 1995. If this is at all suitable could you inform us accordingly as soon as possible in order for us to make the necessary arrangements.

Should you require any further information please do not hesitate to contact Pat Fahrenfort. Tel: (021) 245031 Fax (021) 241160/1.

Yours sincerely



PP H EBRAHIM  
Executive Director  
Constitutional Assembly

CC TC2 & TC3

**REPORT OF THE PANEL DISCUSSION HELD ON MONDAY 27  
FEBRUARY 1995 IN ROOM E249**

**PRESENT**

**Davies R (Chairperson)**

Andrew KM  
Hogan B  
Makgothi H  
Marais G  
Nair B  
Sisulu M  
Van Wyk A  
Welgemoed P

**Apologies:**

Jacobsz F

**Absent:**

Bekker H  
Jordaan JA  
Woods G

**PANEL**

Mr C Rustomjee (Technical Expert), Department of Finance, Parliament  
Prof B Kahn           Department of Economics, UCT  
Prof H High            Department of Economics, UCT  
Prof L Loots           Department of Economics & Management Science, UWC

In Attendance:     Mr N Morrison, Technical Expert

Mr Rustomjee in his overview briefly addressed the following issues, which are fully detailed in the attached appendix containing the slides of his full presentation:

- the role of technical experts
- the importance considering a degree of simplicity in constitutional provisions. This is particularly the case in the light of comparative examples of 16 constitutions, including those of:- Germany, USA, France, Japan, New Zealand, Canada and others.
- the impact of financial issues on expectations and confidence



- broad observations made to date by Mr Rustomjee as the Technical Expert in assessing the various submissions and presentations which had been made to date. This included major elements of multi-party consensus, particularly on the Reserve Bank and the Auditor General provisions of the interim constitution
- external presentations to the committee reflected a degree of flexibility and stressed, in a number cases the need for simplicity in constitutional provisions
- Mr Rustomjee brought to the attention of the committee two important comparative texts which might be useful references for members of the committee

Professor High's presentation drew on the following main points to be considered:

**National Commissions/Boards (Audit, Reserve Bank, FFC)**

Constitutional provisions should be brief and cover:

- Method of selection
- assurance of independence
- method of removal
- duties of commissions/boards

Stressed the importance of the structure of constitution writing, that it should be sufficiently solid so that generations of people with widely difference preferences, can live within them and adapt to changing circumstances

**Professor B Kahn:**

Highlighted issues to be looked specifically with regard to the Central Bank and the Reserve Bank and to Budgetary Rules:-

- Agreement that the constitution be brief and not contain a range of conflicting criteria
- disagreement that it should contain the goals of the Central Bank
- that the interim constitution contains a mission statement of the Central Bank as a protection of the internal and external value of the rand including the development objectives of the economy
- can draw on examples of other countries where in the 1050s and 1960s the Central Bank's legislation was similar, noting that African countries were modelled on the old British Bank Act

- important to maintain price stability in setting out a range of goals of the Central Bank
- a concern being the role of the Finance Minister vis-a-vis the Central Bank with regard to exchange rate policy - presently the Central Bank has to conduct monetary policy, the responsibility for exchange rate policies lies with the Ministry of Finance
- agree that the main issue should be to maintain price stability in the long run that would then giving the Reserve Bank the power to try and implement necessary policies
- raised concerns regarding independence of the Central Bank - governor would not want to implement policies that would be diametrically opposed to the overall goals of government policy.
- Should the Reserve Bank is to be charged with the responsibility of maintaining price stability and conducting monetary policy would result in a negative impact on monetary policy
- suggesting that its a question of whether this should be in the constitution or in legislation that the function of exchange rate policy should be explicitly handed over to the RB although issues relating to capital controls which could be seen more as a political decision could still remain with the minister of finance
- Agrees with Professor High's theory of the composition of the Board
- role of the Central Bank seems limited
- that the board in fact meets once a quarter and therefore no way that board can be seen as having a major impact on the running of the Central Bank -
- in the event of important decisions for example the discount rate is not taken by the board - board simply to meet at a later stage
- referred to the Chilean Reserve Bank arguing that the international comparative experience suggests basic points for appointing board members which should be included in the constitution. That is, appointments made through a complex process not depending exclusively on the decision of the will of their president; once appointments are made the governor should not have the capacity to ask for their resignation or dismiss them except in the case of grave misconduct; that board members be renewed in gradual way of a process which is in line with what Professor High is saying and that the terms served by the board members be long and if possible be longer than those of the political authorities.
- the function of board members be incompatible with other remunerative activity in the public or private sector. In other words people shouldn't be in a position to be able to - people involved in financial institutions shouldn't be on the board which implies that they could gain from inside information.

## **Professor Loots**

Addressed issues of General Finance - more or less agreed with guidelines set out by Professor High

### *Auditor General:*

- general comment about boards and councils is that it might be very problematic to write details into the constitution
- should something like an audit council be contemplated, a strong appeal be made that broad terms be can dealt with
- writing into the constitution that each province shall be represented in many instances could be problematic
- provincial members required to negotiate on behalf of the province

### *Reserve Bank*

- Agree with Professor Kahn i.e. supporting principle that the board of the RB composition should be different and houses of parliament to play a prominent role. Financial institutions may be beneficiaries of the board

## **Discussion**

Mr Rustomjee presented a series of slides dealing with comparative international experience on several aspects of the Central Bank. The central purpose of this aspect of his presentation was as follows:-

- to illustrate the fact that many modern constitutions tend to contain broad principles and not detailed provisions with regard to Central Banks
- that many modern constitutions do not even include reference to Central Banks or Monetary Policy
- that many of the issues discussed during the panel discussion, for example the question of representation on the boards, the numbers of people on boards, the staggering of term of office of board members, the accountability of such members, etc are usually issues which are contained in subsidiary legislation, not in the constitutions themselves. Therefore although the discussions are extremely useful and relevant to the institutions concerned [eg the Central Bank, the Auditor General, the FFC etc] they are not necessarily directly applicable to the immediate objective of constitution writing. Mr Rustomjee noted, however, that it may well be the intention or desire of the committee members to write an extremely detailed constitution. However this was not necessarily in keeping with typical practice among other constitutions internationally.

- He also addressed a question of fact raised in the SACOB presentation to the Sub-theme committee:- this being the question of whether the term of office of the governor of the Central Bank in South Africa was shorter than the term of office of governor of Central Banks elsewhere. In the slides presented Mr Rustomjee illustrated the fact that the SARB governor's term of office is very similar to standard international practice

### **Responses**

- Boards should not be too large to be effective - appealing that the constitution be drafted in such a way that they need not have to be large - rather to have 3 full time people than 35 part time people
- Balanced budget - favour of a balanced budget approach at lower levels
- balanced budget requirement is workable at provincial level but not at national level

### **Response**

- composition of boards : would depend on the functions of these boards
- Are they there to run things on a day to day or regular basis or are they there to give input from diverse points of view - representative of diverse points of view.
- Different models of Central Banks have different situations emerging. In South Africa board meets every 3 months and the day to day running of the Reserve Bank is done by the governor's committee. Whereas you get the - in that case its probably not that important that members of the board are technocrats. But their role would be to try and discuss issues and raise issues from different constituencies with the governor and to try and influence monetary policy in very broad terms. Different in Chilean Central Bank where you have a board of governors which is composed of 5 people all of these specialists
- Very brief constitution needed that must only contain principles which are a guide to good governors. Can't legislate good governors. All one can do is to guide the government and to set bench marks against which the public can evaluate the performance of public institutions.

### **Wrap up by panellists**

#### **Neil Morrison**

- need to steer away from short term legislative type of thinking

Mr Rustomjee made two final comments:

- the issues discussed by the panel are very relevant, but the committee may consider the appropriateness of introducing many of these issues in subsidiary legislation. In such a case, the bulk of the work in introducing subsidiary legislation will in fact already have been done, because of the extensive debates and discussions within the Theme Committees and the presentations made to the committee
- it was stressed that in many constitutions but certainly not all constitutions, as may have been intimated by a member of the committee earlier during the panel discussion, do not provide for Central Banks or Monetary Policy provisions

### Hugh High

Nothing to add other than which is in my written submission except to reinforce the statement that you're well aware of that I hope ladies and gentlemen that you will write the constitution on the assumption that your worst enemy could be in power tomorrow.

### Lieb Loots

Our discussion this afternoon revolves around two issues and I think they are critical issues, and that is who makes the decisions ie how does one compose the board or where who makes the decision. Secondly what do they make decisions about. What are the objectives that pursue and those key areas have been heard. As far as the first is concerned, the decision makers I think in addition to the principle that has already been outlined it there should not be details in the constitution which should mean legislation and I think there we can probably agree with ..I think one has to distinguish between the different kinds of boards or decision making bodies that you're talking about. In the case for example about the Auditor General who does not make decisions about policy. Its brief is very clear. I don't think one needs a board which can bring in different perspectives because there are no different perspectives he has to report truthfully and honestly on the following, well established international practises of what he should do. In the case of the Reserve Bank there is a policy making role. One might want to contemplate some kind of small board or a committee of which the functions are more clearly defined. But there I think because of the policy making role one might want to relieve the responsibility of it lying only in the hands of one person. But then again rearing to the principle that the constitution should not include details which should be legislation. And I think as far as the second area of discussion is concerned what should decisions be made about, perhaps in terms of the two bodies that I have referred to I think the AG is perfectly clear. there's not much debate there. As far as the Reserve Bank is concerned there is some debate there around the exchange rate policy, I would there appeal to get consideration before too many functions - and I think I want what Mr Morrison has said too many objectives prescribed to the Reserve Bank. In addition to that there is the idea of separation of powers which should be considered. In terms of the latter issue area - to what

extent does one try to write other objectives into the general financial section, Morrison was specifically we talked about balance budget, we talked about limit on expenditure. My view is that those things are not things that one can write into the constitution apart from definitional problems I think there are many other constraints. And I would argue in the final instance where you have governments which follow what might be described as responsible fiscal policies, it is not primarily I would argue because it is written into some kind of constitution but rather because they adhere to those norms. They adhere to the norms of what constitutes good governance. Its a culture of good governance which has to be promoted. It can always be easy to get around inadequate and then complete constitutional provisions.

### **Rob Davies**

Discussion focused on issues that we have come across with in one way or another when receiving submissions. We are often getting submissions that are unclear unclear as to whether they are proposing matters to be included in legislation or the constitution. I think we have had from the panel different views about what constitutional provisions should entail. But nonetheless there's been a common view that the constitution should deal with very broad principles and not with details. I think its also been quite useful that it has been pointed out that in the interim constitution there is actually some unevenness that some of the provisions in the interim constitution are more or less broad general principles and other provisions deal, for various reasons that Neil Morrison indicated, with more details and that is also something that we are going to have to take on board. I think finally the recommendation that was made by Cyrus Rustomjee we've done in an ad hoc way and we need to think about it at the end of the process in a more systematic way that some of the submissions that we have heard would be appropriate inputs when legislation is being discussed or thought about or contemplated. We have passed on specific inputs to the Finance Committee in an ad hoc way I think because its covering some particular issue that they are dealing with but I think we need to think about a way at the end of systematising all those other inputs and passing them on to the relative authorities.

- ROLE AS TECHNICAL EXPERT

- CONFINED TO RESEARCHING ISSUES RAISED
- ASSISTING IN REPORT-WRITING

- IMPORTANCE OF SIMPLICITY IN CONSTITUTIONAL PROVISIONS

- COMPARISON WITH OTHER CONSTITUTIONS
- KEY TO ENSURE THAT BROAD PRINCIPLES ARE REFLECTED
- SEVERAL ASPECTS MORE APPROPRIATELY LEGISLATED - EG:-

- TERMS OF OFFICE OF CENTRAL BANK GOVERNORS
- DETAILED PROVISIONS FOR THE RESOURCING OF THE OFFICE OF THE AUDITOR-GENERAL

- TIMEFRAME FOR REPORTING

- IMPACT OF FINANCIAL ISSUES ON EXPECTATIONS & CONFIDENCE
- POWERFUL MESSAGE IF CONCLUDED AFTER FULL, TRANSPARENT
- CONSULTATION, EARLY.

## ● BROAD OBSERVATIONS TO DATE

- ▶ MAJOR ELEMENTS OF MULTI-PARTY CONSENSUS
- ▶ PARTICULARLY ON THE SARB AND THE AUDITOR-GENERAL PROVISIONS OF THE INTERIM CONSTITUTION
- ▶ STILL REQUIRES FURTHER CONSULTATION & TRANSPARENCY
- ▶ PRESENTATIONS TO THE COMMITTEE TO DATE:- PRESENTERS HAVE BROADLY INDICATED WILLINGNESS FOR FLEXIBILITY AND NEED FOR SIMPLICITY IN CONSTITUTIONAL PROVISIONS
- ▶ COMPARATIVE CONSTITUTIONAL MATERIAL FOR AUDITOR-GENERAL IS NOT AS EXTENSIVE AS THAT FOR (EG:- CENTRAL BANKS), AS MANY CONSTITUTIONS DO NOT EXPRESSLY REFER TO THIS FUNCTION (USUALLY TREATED IN NORMAL LEGISLATION)

## ● IMPORTANT COMPARATIVE TEXTS (MAY BE USEFUL FOR MEMBERS)



## COUNTRY

## CONSTITUTIONAL REFERENCE TO CENTRAL BANK.

### BOTSWANA

The constitution has no references to the Bank or monetary policy.

### CANADA

According to the Constitution, Parliament legislates for:- currency and coinage, issue of paper money, legal tender, interest, bills of exchange and promissory notes, and public debt, among other things.

### CHILE

The Bank is ensured to be "an autonomous institution" and shall not directly or indirectly finance public expenditures, except in case of war (Constitution, Art. 97 and 98)

### JAPAN

The Constitution has no references to the Bank or monetary policy

### S. KOREA

The Constitution does not refer to the Bank or monetary policy..

## COUNTRY

## CONSTITUTIONAL REFERENCE TO CENTRAL BANK.

### NEW ZEALAND

The legislation that de facto constitutes the non-existing constitution, does not mention the Bank or monetary policy.

### NORWAY

The Constitution does not refer to the central bank or monetary policy.ings.

### SWITZERLAND

The Constitution stipulates that credit and monetary policy shall be "beneficial to the general interest of Switzerland" and describes some of the functions of the Bank: issue bank-notes and regulate the circulation of money.

### USA

The Constitution does not refer to the central bank or monetary policy. However Section 324 of the statutes of the United States stipulates the right and organisation of issuing national currency.

## COUNTRY

## CONSTITUTIONAL REFERENCE TO CENTRAL BANK.

### GERMANY

The Constitution stipulates that "The Federation shall establish a note-issuing and currency bank as the Federal Bank. Its responsibilities and powers may, within the framework of the European Union, be transferred to the European Central Bank, which is independent and whose primary aim is to safeguard price stability". (Art. 88 of the Basic Law).

### FRANCE

The Constitution does not refer to the central bank or monetary policy. Rules concerning the conditions and terms for the issue of currency shall be enacted by Parliament. (Art. 34). Note however that the provisions of Article 34 may be further specified and complemented by a constitutional enactment.

### SPAIN

The Constitution does not refer to the central bank or monetary policy.

## COUNTRY

## PRINCIPLE STATUTORY OBJECTIVE OF CENTRAL BANK

### BOTSWANA

The Bank "may exercise the powers generally conferred upon a central bank" (Bank of Botswana Act, 1975, Sec. 4(2). The Government can, however, regulate interest rates and conditions on certain loans and deposits of non-bank financial institutions (Sec. 39.).

### CANADA

The Minister and the Governor shall consult regularly on monetary policy and on its relation to general economic policy (Sec. 14, Bank of Canada Act, 1985).

### CHILE

The Bank determines monetary policy:- " The powers of the Bank ... shall be those of regulating the amount of money and credit ... issuing rules for the monetary, credit, financial and foreign exchange areas" (Organic Law Establishing the Central Bank of Chile, 1989, Art. 3).

## COUNTRY

## PRINCIPLE STATUTORY OBJECTIVE OF CENTRAL BANK

### NEW ZEALAND

The primary function of the Bank is to formulate and implement monetary policy directed towards the statutory objective of achieving and maintaining stability in the general level of prices. The Minister, in agreement with the Governor, fixes policy targets for the achievement of the statutory objective (Reserve Bank of New Zealand Act, 1989 most recent amendment 1990, Sec. 9). The Bank would act outside the law if it accepted other Government instructions on monetary policy.

### NORWAY

"The Bank shall be an executive and advisory body for monetary, credit..." policy, and shall "... monitor developments in the monetary, credit..." markets (Act Relating to Norges Ba and the Monetary Systems, 1985, Sec.1).

The Bank carries out monetary policy according to the overall guidelines set by the Government and approved by Parliamen

## COUNTRY

## PRINCIPLE STATUTORY OBJECTIVE OF CENTRAL BANK

### JAPAN

The Board has the sole authority over interest rate policies (Bank of Japan Law, 1942, most recent amendment 1988, Art.13-3).

However the Minister can, de jure, intervene, if the Minister deems it necessary (Art. 43). The Minister, upon approval of the Cabinet, fixes maximum limits of bank note issuance, which can be exceeded by the Bank by paying a tax. (Art. 30,31 and 31-2).

### S. KOREA

The Board shall formulate monetary and credit policies (Art. 95). The Government may also formulate monetary and credit policies, but shall consult with the Board (Art. 82).

## COUNTRY

## PRINCIPLE STATUTORY OBJECTIVE OF CENTRAL BANK

### SWITZERLAND

The Directorate of the Bank sets and executes monetary policy, including setting limits for overall borrowing to be authorised, if required by the Federal Council (National Bank Law, 1953, most recent amendment 1982, Art.52 and 16g).

The Bank shall advise the Federal authorities of monetary matters and the Bank and Federal Council shall, prior to significant decisions, inform one another about their intentions and harmonise their actions (Art. 2), which, however, may need to be authorised by the Federal Council (Amendment of Art. 63 from 1978).

### USA

The Federal Open Market Committee and the Board determines monetary policy independently (Federal Reserve Act, 1913, most recent amendment 1989, Sec. 11 - 13). The monetary goals of the Bank do not need to conform to the goals of the administration and congress, but deviations from original target need to be explained by the Bank.

COUNTRYCENTRAL BANK BOARDS

<u>COUNTRY</u>	<u>NO. OF BOARD MEMBERS</u>	<u>GOVERNORS' TERM</u>	<u>OTHER BOARD MEMBERS' TERM</u>
<u>BOTSWANA</u>	5	Up to 5 years Renewable	Up to 4 years Renewable
<u>CANADA</u>	14	Up to 7 years Renewable	Up to 3 years Renewable
<u>CHILE</u>	5	Up to 5 years Renewable	Up to 10 years Renewable (One member reappointed every 2 years).
<u>JAPAN</u>	7	Up to 5 years No specific renewal provisions	Up to 4 years Renewable (one per year)



COUNTRYCENTRAL BANK BOARDS

<u>NO. OF BOARD MEMBERS</u>	<u>GOVERNORS' TERM</u>	<u>OTHER BOARD MEMBERS' TERM</u>
<u>KOREA</u>	9 Up to 4 years Renewable	Up to 4 years Renewable
<u>NEW ZEALAND</u>	7-10 Up to 5 years Renewable	Up to 3 years Renewable
<u>NORWAY</u>	15 Up to 6 years Renewable (2 terms max.)	Up to 4 years Renewable (3 terms max.)
<u>SWITZERLAND</u>	40 NB. Includes the full Bank Council.	Up to 4 years Renewable
<u>USA</u>	7 Up to 4 years Renewable	Up to 4 years Renewable