

**AGREEMENT ESTABLISHING
THE AFRICAN DEVELOPMENT FUND**

The States parties to this Agreement and the African Development Bank have agreed to establish hereby the African Development Fund which shall be governed by the following provisions:

**CHAPTER I
DEFINITIONS**

Article 1. Definitions

1. The following terms wherever used in this Agreement shall have the following meanings, unless the context shall otherwise specify or require:

“Fund” shall mean the African Development Fund established by this Agreement.

“Bank” shall mean the African Development Bank.

“member” shall mean a member of the Bank.

“participant” shall mean the Bank and any State which shall become a party to this Agreement.

“State participant” shall mean a participant other than the Bank.

“original participant” shall mean the Bank and each State participant which becomes a participant pursuant to Article 57 (1).

“subscription” shall mean amounts subscribed by participants pursuant to Articles 5, 6 or 7.

“unit of account” shall mean the unit of account for the time being in use by the African Development Bank.

“freely convertible currency” shall mean currency of a participant which the Fund determines, after consultation with the International Monetary Fund, is adequately convertible into other currencies for the purpose of the Fund’s operations.

“President”, “Board of Governors” and “Board of Directors” shall mean respectively the President, Board of Governors and

Board of Directors of the Fund and in the case of the governors and directors shall include alternate governors and alternate directors when acting as governors and directors respectively.

“regional” shall mean located in the continent of Africa or the African islands.

2. Reference to Chapters, Articles, paragraphs and Schedules shall mean the Chapters, Articles and paragraphs of, or Schedules to, this Agreement.
3. The headings of the Chapters and Articles are inserted for convenience of reference only and are not part of this Agreement.

CHAPTER II PURPOSE AND PARTICIPATION

Article 2. Purpose

The purpose of the Fund shall be to assist the Bank in making an increasingly effective contribution to the economic and social development of the Bank's members and to the promotion of co-operation (including regional and sub-regional co-operation) and increased international trade, particularly among such members. It shall provide finance on concessional terms for purposes which are of primary importance for and serve such development.

Article 3. Participation

1. The participants in the Fund shall be the Bank and those States which shall have become parties to this Agreement in accordance with its terms.
2. The original State participants shall be those States listed in Schedule A which shall have become parties to this Agreement pursuant to Article 57 (1).
3. A State which is not an original participant may become a participant and a party to this Agreement upon such terms, not inconsistent with this Agreement, as the Board of Governors shall determine by a unanimous resolution adopted by the affirmative vote of the total voting power of the participants.

Such participation shall be open only to those States which are members of the United Nations or any of its specialized agencies or are parties to the Statute of the International Court of Justice.

4. A State may authorize an entity or agency acting on its behalf to sign this Agreement and to represent it in all matters relating to this Agreement with the exception of the matters referred to in Article 55.

CHAPTER III RESOURCES

Article 4. Resources

The resources of the Fund shall consist of:

- (i) subscriptions by the Bank;
- (ii) subscriptions by State participants;
- (iii) other resources received by the Fund; and
- (iv) funds derived from operations or otherwise accruing to the Fund.

Article 5. Subscriptions by the Bank

The Bank shall pay to the Fund as its initial subscription the amount, expressed in units of account, set forth opposite its name in Schedule A, utilizing for that purpose the funds standing to the credit of the "African Development Fund" of the Bank. Payment shall be made on the same terms and conditions as are specified in Article 6 (2) for the payment of the initial subscriptions of State participants. The Bank will thereafter subscribe such other amounts as the Board of Governors of the Bank may determine, on such terms and conditions as shall be agreed with the Fund.

Article 6. Initial Subscriptions of State Participants

1. Upon becoming a participant each State participant shall subscribe funds in the amount assigned to it. Such subscriptions are hereinafter referred to as initial subscriptions.
2. The initial subscription assigned to each original State participant

shall be in the amount set forth opposite its name in Schedule A, and shall be expressed in units of account and payable in freely convertible currency. Payment shall be made in three equal annual instalments as follows: the first such instalment shall be paid within thirty days after the Fund shall begin operations pursuant to Article 60 or on the date on which the original State participant becomes a party to this Agreement, whichever is later; the second instalment within one year thereafter and the third instalment within one year after the payment or the due date of the second instalment, whichever is earlier. The Fund may request earlier payment of either or both of the second and third instalments if the operations of the Fund shall require it, but such earlier payment shall be entirely voluntary on the part of each participant.

3. The initial subscriptions of State participants other than original participants shall also be expressed in units of account and payable in freely convertible currency. The amount and terms of payment of such subscriptions shall be determined by the Fund pursuant to Article 3 (3).
4. Except as the Fund may otherwise agree, each State participant shall maintain the free convertibility of its currency paid in by it pursuant to this Article.
5. Notwithstanding the foregoing provisions of this Article, a State participant may defer for a period of not more than three months the making of any payment required by this Article when budgetary or other circumstances necessitate such delay.

Article 7. Additional Subscriptions by State Participants.

1. The Fund shall at such time as it deems appropriate in the light of the schedule of payments of the initial subscriptions of original participants and of its own operations, and at appropriate intervals thereafter, review the adequacy of its resources and, if it deems it desirable, may authorize a general increase in the subscriptions of State participants on such terms and conditions as the Fund shall determine. Notwithstanding the foregoing, the Fund may authorize general or individual increases in such subscriptions at any time, provided that an individual increase shall be considered only at the request of the State participant involved.

2. When any additional individual subscription is authorized pursuant to paragraph 1, each State participant shall be given an opportunity to subscribe, under no less favourable conditions, reasonably determined by the Fund, than those prescribed under paragraph 1, an amount which will enable it to maintain its relative voting power as among State participants.
3. No State participant shall be obliged to subscribe additional amounts in the case of general or individual increases in subscriptions.
4. All authorizations for, and determinations in respect of, general increases under paragraph 1 shall be by an eighty-five per cent majority of the total voting power of the participants.

Article 8. Other Resources

1. Subject to the following provisions of this Article, the Fund may enter into arrangements to receive other resources, including grants and loans, from members, participants, States which are not participants and from any public or private entity or entities.
2. Such arrangements shall be on terms and conditions which are consistent with the Fund's purposes, operations and policies and which will not impose an undue administrative or financial burden on the Fund or the Bank.
3. Such arrangements, other than those for grants for technical assistance, shall be on terms which will permit the Fund to comply with the requirements of Article 15 (4) and (5).
4. Such arrangements shall be approved by the Board of Directors, in the case of arrangements with a State which is not a member or a participant or with an agency of such State, by an eighty-five per cent majority of the total voting power of the participants.
5. The Fund shall not accept any loan (except temporary accommodations required for its operations) which is not on concessional terms and shall not borrow in any market or, as a borrower, guarantor, or otherwise, participate in the issue of securities in any market and shall not issue negotiable or transferable obligations evidencing indebtedness for loans received pursuant to paragraph 1.

Article 9. Payment of Subscriptions

The Fund shall accept any part of a participant's subscription payable by the participant under Articles 5, 6 or 7 or under Article 13 and not needed by the Fund in its operations, in the form of notes, letters of credit or similar obligations issued by the participant or the depository, if any, designated by the participant pursuant to Article 33. Such notes or other obligations shall be non-negotiable, non-interest-bearing and payable at their par value on demand to the account of the Fund in the designated depository or, if there is none, as the Fund shall direct. Notwithstanding the issuance or acceptance of any such note, letter of credit or other obligation, the obligation of the participant under Articles 5, 6 and 7 and Article 13 shall continue to subsist. Amounts held by the Fund in respect of subscriptions of participants which do not avail themselves of the provisions of this Article may be deposited or invested by the Fund to produce income to help defray its administrative and other expenses. The Fund shall draw down all subscriptions on a pro rata basis, as far as practicable over reasonable periods of time, to finance expenditures regardless of the form in which such subscriptions are made.

Article 10. Limitation on Liability

No participant shall be liable, by reason of its participation, for acts or obligations of the Fund.

CHAPTER IV CURRENCIES

Article 11. Use of Currencies

1. Currencies received in payment of, or under Article 13 in respect of, subscriptions made pursuant to Article 5 and Article 6 (2) may be used and exchanged by the Fund for any of its operations and, subject to the approval of the Board of Directors, for the temporary investment of funds not needed in its operations.
2. The use of currencies received in payment of, or under Article 13 in respect of, subscriptions under Article 6 (3) and Article 7 (1)

- and (2) or as other resources under Article 8 shall be governed by the terms and conditions pursuant to which such currencies are received or, in the case of currencies received under Article 13, the use shall be governed by the terms and conditions on which the currencies whose value is so maintained were received.
3. All other currencies received by the Fund may be freely used and exchanged by the Fund for any of its operations and, subject to the approval of the Board of Directors, for the temporary investment of funds not needed in its operations.
 4. No restriction shall be imposed which is contrary to the provisions of this Article.

Article 12. Valuation of Currencies

1. Whenever it shall be necessary under this Agreement to determine the value of any currency in terms of another currency or currencies or of the unit of account, such valuation shall be reasonably made by the Fund after consultation with the International Monetary Fund.
2. In the case of a currency which does not have a par value established with the International Monetary Fund, the value of such currency in terms of the unit of account shall be determined from time to time by the Fund pursuant to paragraph 1 of this Article and the value so determined shall be treated as if it were the par value of such currency for the purpose of this Agreement, including, without limitation, Article 13 (1) and (2).

Article 13. Maintenance of Value of Currency Holdings

1. Whenever the par value in the International Monetary Fund of the currency of a State participant is reduced in terms of the unit of account, or its foreign exchange value has, in the opinion of the Fund, depreciated to a significant extent within that participant's territory, that participant shall pay to the Fund within a reasonable time an amount of its currency required to maintain the value, as of the time of subscription, of the amount of such currency paid in to the Fund by that participant pursuant to Article 6 and pursuant to the provisions of the present paragraph, whether or not such currency is held in the form of notes, letters of credit or other obligations accepted pursuant to Article 9, provided that the foregoing shall apply only so long as and to the extent that such

currency shall not have been initially disbursed or exchanged for another currency.

2. Whenever the par value of the currency of a State participant is increased in terms of the unit of account or its foreign exchange value has, in the opinion of the Fund, appreciated to a significant extent within that participant's territory, the Fund shall return to that participant within a reasonable time an amount of such currency equal to the increase in the value of the amount of such currency to which the provisions of paragraph 1 are applicable.
3. The Fund may waive or declare inoperative the provisions of this Article when a uniform change in the par value of the currencies of all State participants is made by the International Monetary Fund.

CHAPTER V OPERATIONS

Article 14. Use of Resources

1. The Fund shall provide financing for projects and programmes to further economic and social development in the territory of members. The Fund shall provide such financing for the benefit of those members whose economic situation and prospects require such financing to be on concessional terms.
2. Financing provided by the Fund shall be for purposes which in the opinion of the Fund are of high developmental priority in the light of the needs of the area or areas concerned and shall, except in special circumstances, be for specific projects or groups of projects, particularly those forming part of a national or regional or sub-regional programme, including provision of financing for national development banks or other suitable institutions for relending for specific projects approved by the Fund.

Article 15. Conditions of Financing

1. The Fund shall not provide financing for any project in the territory of a member if that member objects thereto, except that it shall not be necessary for the Fund to assure itself that individual

- members do not object in the case of financing provided to a public international, regional or sub-regional organization.
2.
 - (a) The Fund shall not provide financing if, in its opinion, such financing is available from other sources on terms that the Fund considers are reasonable for the recipient.
 - (b) In making financing available for entities other than members, the Fund shall take all necessary steps to ensure that the concessional benefits of its financing accrue only to members or other entities which should, taking into account all the relevant circumstances, receive some or all of those benefits.
 3. Before financing is provided, the applicant shall have presented an adequate proposal through the President of the Bank and the President shall have presented to the Board of Directors of the Fund a written report recommending such financing, on the basis of a staff study of its merits.
 4. Procurement shall be on the basis of international competition among eligible suppliers except in cases where the Board of Directors determines that such international competition would not be justified.
 5. The Fund shall make arrangements to ensure that the proceeds of any financing are used only for the purposes for which the financing was provided, with due attention to considerations of economy, efficiency and competitive international trade and without regard to political or other non-economic influences or considerations.
 6. Funds to be provided under any financing operations shall be made available to the recipient only to meet expenses in connection with the project as they are actually incurred.
 7. The Fund shall be guided by sound development banking principles in its operations.
 8. The Fund shall not engage in refinancing operations.
 9. In making a loan, the Fund shall pay due regard to the prospects that the borrower and the guarantor, if any, will be able to meet their obligations.
 10. In considering an application for financing, the Fund shall pay due regard to the relevant self-help measures being taken by the recipient and, where the recipient is not a member, by both

the recipient and the member or members whose territories the project or programme is intended to serve.

11. The Fund shall adopt such measures as shall be required to ensure the effective application of this Article.

Article 16. Form and Terms of Financing

1. Financing by the Fund from resources provided under Articles 5, 6 and 7, and from repayments of, and income arising from, such financing, shall take the form of loans. The Fund may provide other financing, including grants, out of resources received pursuant to arrangements under Article 8 expressly authorizing such financing.
2. (a) Subject to the provisions of the foregoing paragraph, financing by the Fund shall be on such concessional terms as may be appropriate.
(b) Where the borrower is a member, or an inter-governmental body to which one or more members belong, the Fund shall, in establishing the terms of financing, take account primarily of the economic circumstances and prospects of the member or members for whose benefit the financing is being provided and, in addition, of the nature and requirements of the project or programme concerned.
3. The Fund may provide financing for: (a) any member or any geographical or administrative subdivision or agency thereof; (b) any institution or undertaking in the territory of any member; and (c) any regional or sub-regional agency or institution concerned with development in the territories of members. All such financing shall, in the opinion of the Fund, be for the furtherance of the purposes of this Agreement. Where the borrower is not itself a member, the Fund shall require a suitable governmental or other guarantee or guarantees.
4. The Fund may make foreign exchange available to meet local expenditure on a project when and to the extent which, in the opinion of the Fund, this is necessary or appropriate for the purposes of the loan, having regard to the economic position and prospects of the member or members for whose benefit the financing is being provided, and to the nature and requirements of the project.
5. Loans shall be repayable in the currency or currencies loaned,

or in such other freely convertible currency or currencies as the Fund shall determine.

6. Before any financing is made available to or for the benefit of a member or for a project in the territory of a member, the Fund shall be satisfied that such member has taken all such administrative and legislative measures in respect of its territory as are necessary to give effect to the provisions of Article 11 (4) and Chapter VIII as if the member were a State participant, and it shall be a term of such financing that such administrative and legislative measures shall be maintained, and that in the event of any dispute between the Fund and a member, and in the absence of any other provision therefore, the provisions of Article 53 shall have effect, as if the member were a State participant in the circumstances to which that Article applies.

Article 17. Review and Evaluation

A comprehensive and continuing review of completed projects, programmes, and activities financed by the Fund shall be carried out to aid the Board of Directors and the President in determining the effectiveness of the Fund in accomplishing its purposes. The President, with the agreement of the Board of Directors, shall make arrangements for carrying out this review and its results shall be reported through the President to the Board of Directors.

Article 18. Co-operation with Other International Organizations, Other Institutions and States

In furtherance of its purposes, the Fund shall seek to co-operate, and may enter into arrangements for co-operation, with other international organizations, regional and sub-regional organizations, other institutions and States, provided that no such arrangement shall be made with a State which is not a member or a participant or with an agency of such State unless it shall have been approved by an eighty-five per cent majority of the total voting power of the participants.

Article 19. Technical Assistance

In furtherance of its purposes, the Fund may provide technical assistance, but such assistance will normally be on a reimbursable basis if it is not

provided from special technical assistance grants or other means made available to the Fund for the purpose.

Article 20. Miscellaneous Operations

In addition to the powers provided for elsewhere in this Agreement, the Fund may undertake such other activities incidental to its operations as shall be necessary or desirable in furtherance of its purposes and consistent with the provisions of this Agreement.

Article 21. Political Activity Prohibited

Neither the Fund, nor any officials or other persons acting on its behalf, shall interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only considerations relevant to the economic and social development of members shall be relevant to such decisions, and these considerations shall be weighed impartially to achieve the purposes stated in this Agreement.

CHAPTER VI ORGANIZATION AND MANAGEMENT

Article 22. Organization of the Fund

The Fund shall have a Board of Governors, a Board of Directors and a President. The Fund will utilise the officers, staff, organization, services, and facilities of the Bank to carry out its functions and, if the Board of Directors recognizes that there is need for additional personnel, will have such personnel who shall be engaged by the President pursuant to Article 30 (4) (v).

Article 23. Board of Governors: Powers

1. All the powers of the Fund shall be vested in the Board of Governors.
2. The Board of Governors may delegate to the Board of Directors all its powers, except the power to:
 - (i) admit new participants and determine the terms of their admission;

- (ii) authorize increases in subscription under Article 7 and determine the terms and conditions relating thereto;
 - (iii) suspend a participant;
 - (iv) decide appeals from decisions made by the Board of Directors concerning the interpretation or application of this Agreement;
 - (v) authorize the conclusion of general arrangements for co-operation with other international organizations, other than arrangements of a temporary or administrative character;
 - (vi) select external auditors to audit the accounts of the Fund and certify the balance sheet and statement of the income and expenditures of the Fund;
 - (vii) approve, after reviewing the report of the auditors, the balance sheet and the statement of the income and expenditures of the Fund;
 - (viii) amend this Agreement;
 - (ix) decide to terminate the operations of the Fund and distribute its assets; and
 - (x) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.
3. The Board of Governors may at any time revoke the delegation of any matter to the Board of Directors.

Article 24. Board of Governors: Composition

1. The governors and alternate governors of the Bank shall be ex officio governors and alternate governors respectively of the Fund. The President of the Bank shall notify to the Fund as necessary the names of such governors and alternates.
2. Each State participant which is not a member shall appoint one governor and one alternate governor who shall serve at the pleasure of the appointing participant.
3. No alternate may vote except in the absence of his principal.
4. Subject to the provisions of Article 60 (4), governors and alternates shall serve as such without payment of remuneration or expenses by the Fund.



Article 25. Board of Governors: Procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors. The Chairman of the Board of Governors of the Bank shall be ex officio Chairman of the Board of Governors of the Fund.
2. The annual meeting of the Board of Governors shall be held in conjunction with the annual meeting of the Board of Governors of the Bank.
3. A quorum for any meeting of the Board of Governors shall be a majority of the total number of governors, representing not less than three-fourths of the total voting power of the participants.
4. The Board of Governors may by regulation establish a procedure whereby the Board of Directors may, when it deems such action advisable, obtain a vote of the governors on a specific question without calling a meeting of the Board of Governors.
5. The Board of Governors, and the Board of Directors to the extent authorized by the Board of Governors, may establish such subsidiary committees as may be necessary or appropriate to conduct the business of the Fund.
6. The Board of Governors, and the Board of Directors to the extent authorized by the Board of Governors or by this Agreement, may adopt such regulations, not inconsistent with this Agreement, as shall be necessary or appropriate for the conduct of the business of the Fund.

Article 26. Board of Directors: Functions

Without prejudice to the powers of the Board of Governors provided for in Article 23, the Board of Directors shall be responsible for the direction of the general operations of the Fund and for this purpose shall exercise any functions expressly given to it in this Agreement or delegated to it by the Board of Governors and, in particular, shall:

1. prepare the work of the Board of Governors;
2. in conformity with the general directives of the Board of Governors, take decisions regarding individual loans and other forms of financing to be provided by the Fund under this Agreement;

3. adopt such rules, regulations or other measures as may be required to ensure that proper and adequate audited accounts and records are kept in relation to the operations of the Fund;
4. ensure that the Fund is served in the most efficient and economical manner;
5. submit to the Board of Governors, for approval at each annual meeting, the accounts for each financial year in a form which distinguishes, to the extent necessary, between the accounts of the general operations of the Fund and of such operations as are financed from contributions made available to the Fund under Article 8;
6. submit to the Board of Governors for approval at each annual meeting an annual report; and
7. approve the budget and general lending programme and policies of the Fund, in accordance with the resources respectively available for these purposes.

Article 27. Board of Directors: Composition¹

1. There shall be a Board of Directors composed of fourteen Directors.
2. The State participants shall, pursuant to Schedule B, select seven directors and seven alternate directors.
3. The Bank shall, pursuant to Schedule B, designate seven directors, and their alternates from the Board of Directors of the Bank.
4. An alternate director of the Fund may attend all meetings of the Board of Directors but shall neither participate nor vote except in the absence of his principal.
5. The Board of Directors shall invite the other directors of the Bank and their alternates to attend meetings of the Board of Directors as observers and any such Bank director or, in his absence, his alternate may participate in the discussion of any proposed project designed to benefit the country which he represents in the Board of Directors of the Bank.

¹ Modified by virtue of the provisions of Resolution F/BG/2010/03 adopted by the Board of Governors on 27 May 2010.



6.
 - (a) A director designated by the Bank shall hold office until his successor shall have been designated pursuant to Schedule B and shall have assumed office. If a director designated by the Bank shall cease to be a director of the Bank he shall cease to be a director of the Fund.
 - (b) The term of office of directors selected by State participants shall be three years, but shall terminate whenever a general increase in subscriptions pursuant to Article 7 (1) becomes effective. Such directors shall be eligible for a further term or terms of office. They shall continue in office until their successors have been selected and have assumed office. If the office of such a director shall become vacant before the expiration of his term of office, the vacancy shall be, filled by a new director selected by the State participant or participants whose votes his predecessor was entitled to cast. Such successor director shall hold office for the remainder of the term of office of his predecessor.
 - (c) While the office of a director remains vacant the alternate of the former director shall exercise the powers of the latter except that of appointing an alternate, other than a temporary alternate to represent him at meetings when he cannot be present.
7. If a State shall become a State participant pursuant to Article 3 (3), or a State participant shall increase its subscription, or if for any other reason the voting rights of individual State participants should change between the times provided for the selection of directors representing State participants:
 - (a) There shall be no change in directors as a result thereof, provided that if a director shall cease to have any voting rights, his term of office and that of his alternate shall terminate forthwith.
 - (b) Voting rights of State participants and of the directors selected by them shall be adjusted as of the effective date of the increase in subscription or the new subscription or other change in voting rights, as the case may be; and
 - (c) If such a new State participant shall have voting rights, it may designate a director then representing one or more State participants to represent it and cast its votes until the next general selection of State participant directors.

8. Directors and alternates shall serve as such without payment of remuneration or expenses by the Fund.

Article 28. Board of Directors: Procedure

1. The Board of Directors shall meet as often as the business of the Fund may require. The Chairman shall call a meeting of the Board of Directors whenever requested to do so by four directors.
2. A quorum for any meeting of the Board of Directors shall be a majority of the total number of directors having not less than three-fourths of the total voting power of the participants.

Article 29. Voting

1. The Bank, and the State participants as a group, shall each have 1,000 votes.
2. Each governor of the Fund who is a governor of the Bank shall have, and shall be entitled to cast, such proportionate share of the Bank's votes as shall have been notified to the Fund by the President of the Bank.
3. Each State participant shall have a proportionate share of the aggregate votes of the State participants based on the subscriptions of such participant made pursuant to Article 6 and, to the extent agreed by the State participants in connection with additional subscriptions authorized under Article 7 (1) and (2), on such additional subscriptions. However, the total votes to be allocated to regional members that are State participants shall not exceed one per cent of the total votes of State participants. In voting in the Board of Governors, each governor representing a State participant shall be entitled to cast the votes of the participant he represents.
4. In voting in the Board of Directors, directors designated by the Bank shall together have 1,000 votes and directors selected by the State participants shall together have 1,000 votes. Each director designated by the Bank shall have the number of votes allocated to him by the Bank as set forth in the notification of his designation, given pursuant to Part I of Schedule B. Each director selected by one or more State participants shall have the number of votes held by the participant or participants which selected him.

5. Each Bank director shall cast his votes as a unit. A director representing more than one State participant may cast separately the votes of the States he represents.
6. Notwithstanding any of the other provisions of this Agreement, if a State shall be or become both a State participant and a member it shall, but solely for the purposes of this Agreement, be treated in all respects as if it were not a member.
7. Except as otherwise provided in this Agreement, all matters before the Board of Governors or the Board of Directors shall be decided by a three-fourths majority of the total voting power of the participants.

Article 30. The President

1. The President of the Bank shall be *ex officio* President of the Fund. He shall be Chairman of the Board of Directors but shall have no vote. He may participate in meetings of the Board of Governors but shall not vote.
2. The President shall be the legal representative of the Fund.
3. In the event that the President of the Bank is absent or his office should become vacant, the person for the time being designated to perform the duties of President of the Bank shall act as President of the Fund.
4. Subject to Article 26, the President shall conduct the ordinary business of the Fund and, in particular, shall:
 - (a) propose the operating and administrative budgets;
 - (b) propose the overall financing programme;
 - (c) arrange for the study and appraisal of projects and programmes for financing by the Fund in accordance with Article 15 (3);
 - (d) draw, as needed, on the officers, staff, organization, services and facilities of the Bank to carry out the business of the Fund and shall be responsible to the Board of Directors for ensuring and controlling the proper organization, staffing and services provided under Article 22; and
 - (e) engage the services of such personnel, including consultants and experts, as may be needed by the Fund, and may terminate such services.

Article 31. Relationship to the Bank

1. The Fund shall reimburse the Bank for the fair value of its use of the officers, staff, organization, services and facilities of the Bank, in accordance with arrangements made between the Fund and the Bank.
2. The Fund shall be an entity juridically separate and distinct from the Bank and assets of the Fund shall be kept separate and apart from those of the Bank.
3. Nothing in this Agreement shall make the Fund liable for the acts or obligations of the Bank, or the Bank liable for the acts or obligations of the Fund.

Article 32. Office of the Fund

The office of the Fund shall be the principal office of the Bank.

Article 33. Depositories

Each State participant shall designate its central bank or such other institution as may be acceptable to the Fund as a depository in which the Fund may keep holdings of such participant's currency or other assets of the Fund. In the absence of any different designation, the depository for each member shall be the depository designated by it for the purposes of the Agreement establishing the Bank.

Article 34. Channel of Communication

Each State participant shall designate an appropriate authority with which the Fund may communicate in connection with any matter arising under this Agreement. In the absence of any different designation, the channel of communication designated by a member for the Bank shall be its channel for the Fund.

Article 35. Publication of Reports and Provision of Information

1. The Fund shall publish an annual report containing an audited statement of its accounts and shall circulate to participants and members at appropriate intervals a summary statement of its financial position and an income and expenditures statement showing the results of its operations.

2. The Fund may publish such other reports as it deems desirable to carry out its purposes.
3. Copies of all reports, statements and publications made under this Article shall be distributed to participants and members.

Article 36. Allocation of Net Income

The Board of Governors shall determine from time to time the disposition of the Fund's net income, having due regard to provision for reserves and contingencies.

CHAPTER VII WITHDRAWAL; SUSPENSION OF PARTICIPATION; TERMINATION OF OPERATIONS

Article 37. Withdrawal by Participants

Any participant may withdraw from participation in the Fund at any time by transmitting a notice in writing to the Fund at its principal office. Withdrawal shall become effective upon the date such notice is received or upon such date, not more than six months thereafter, as may be specified in such notice.

Article 38. Suspension of Participation

1. If a participant fails to fulfil any of its obligations to the Fund, the Fund may suspend its participation by decision of the Board of Governors. The participant so suspended shall automatically cease to be a participant one year from the date of its suspension unless a decision is taken by the Board of Governors to restore the participant to good standing.
2. While under suspension, a participant shall not be entitled to exercise any rights under this Agreement except the right of withdrawal, but shall remain subject to all obligations.

Article 39. Rights and Duties of States Ceasing to be Participants

1. When a State ceases to be a participant, it shall have no rights under this Agreement except as provided in this Article and in Article 53 but it shall, except as in this Article otherwise

provided, remain liable for all financial obligations undertaken by it to the Fund, whether as a participant, borrower, guarantor or otherwise.

2. When a State ceases to be a participant, the Fund and the State shall proceed to a settlement of accounts. As part of such settlement of accounts, the Fund and the State may agree on the amounts to be paid to the State on account of its subscription and on the time and currencies of payment. The term “subscription” when used in relation to any participant shall for the purposes of this Article and Article 40 be deemed to include both the initial subscription and any additional subscription of such participant.
3. Pending such agreement, and in any event if no such agreement is reached within six months from the date when the State ceased to be a participant or such other time as may be agreed upon by the Fund and the State, the following provisions shall apply:
 - (a) The State shall be relieved of any further liability to the Fund on account of its subscription, except that the State shall pay to the Fund on their due dates amounts of its subscription unpaid on the date when the State ceased to be a participant and which in the opinion of the Fund are needed by it to meet its commitments as of that date under its financing operations;
 - (b) The Fund shall return to the State funds paid in by the State on account of its subscription or derived therefrom as principal repayments and held by the Fund on the date when the State ceased to be a participant, except to the extent that in the opinion of the Fund such funds will be needed by it to meet its commitments as of that date under its financing operations;
 - (c) The Fund shall pay to the State a pro rata share of all principal repayments received by the Fund after the date on which the State ceases to be a participant on loans contracted prior thereto, except those made out of resources provided to the Fund under arrangements specifying special liquidation rights. Such share shall be such proportion of the total principal amount of such loans as the total amount paid by the State on account of its subscription and not returned to it pursuant to sub-paragraph (ii) above shall bear to the total amount paid by all participants on account of their

subscriptions which shall have been used or in the opinion of the Fund will be needed by it to meet its commitments under its financing operations as of the date on which the State ceases to be a participant. Such Payment by the Fund shall be made in instalments when and as such principal repayments are received by the Fund, but not more frequently than annually. Such instalments shall be paid in the currencies received by the Fund except that the Fund may in its discretion make payment in the currency of the State concerned;

- (d) Any amount due to the State on account of its subscription may be withheld so long as that State, or any sub-division or any agency of any of the foregoing remains liable, as borrower or guarantor, to the Fund, and such amount may, at the option of the Fund, be applied against any such liability as it matures;
 - (e) In no event shall the State receive under this paragraph an amount exceeding, in the aggregate, the lesser of the two following:
 - (1) the amount paid by the State on account of its subscription, or
 - (2) such proportion of the net assets of the Fund, as shown on the books of the Fund as of the date on which the State ceased to be a participant, as the amount of its subscription shall bear to the aggregate amount of the subscriptions of all participants;
 - (f) All calculations required hereunder shall be made on such basis as shall be reasonably determined by the Fund.
4. In no event shall any amount due to a State under this Article be paid until six months after the date upon which the State ceases to be a participant. If within six months of the date upon which any State ceases to be a participant the Fund terminates its operations under Article 40, all rights of such State shall be determined by the provisions of such Article 40, and such State shall be considered a participant in the Fund for purposes of such Article 40, except that it shall have no voting rights.

Article 40. Termination of Operations and Settlement of Obligations

1. The Fund may terminate its operations by vote of the Board of Governors. Withdrawal by the Bank or all the State participants pursuant to Article 37 shall constitute a termination of operations by the Fund. After such termination of operations the Fund shall forthwith cease all activities, except those incidental to the orderly realization, conservation and preservation of its assets and settlement of its obligations. Until final settlement of such obligations and distribution of such assets, the Fund shall remain in existence and all mutual rights and obligations of the Fund and the participants under this Agreement shall continue unimpaired, except that no participant shall be suspended or shall withdraw and that no distribution shall be made to participants except as in this Article provided.
2. No distribution shall be made to participants on account of their subscriptions until all liabilities to creditors shall have been discharged or provided for and until the Board of Governors shall have decided to make such distribution.
3. Subject to the foregoing and to any special arrangements for the disposition of resources agreed upon in connection with the provision of such resources to the Fund, the Fund shall distribute its assets to participants pro rata in proportion to amounts paid in by them on account of their subscriptions. Any distribution pursuant to the foregoing provision of this paragraph shall be subject, in the case of any participant, to prior settlement of all outstanding claims by the Fund against such participant. Such distribution shall be made at such times, in such currencies, and in cash or other assets, as the Fund shall deem fair and equitable. Distribution to the several participants need not be uniform in respect of the type of assets distributed or of the currencies in which they are expressed.
4. Any participant receiving assets distributed by the Fund pursuant to this Article or Article 39 shall enjoy the same rights with respect to such assets as the Fund enjoyed prior to their distribution.

CHAPTER VIII

STATUS; IMMUNITIES; EXEMPTIONS AND PRIVILEGES

Article 41. Purpose of Chapter

To enable the Fund effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Fund in the territory of each State participant, and each State participant shall inform the Fund of the specific action which it has taken for such purpose.

Article 42. Status

The Fund shall possess full juridical personality and, in particular, full capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and
- (iii) to institute legal proceedings.

Article 43. Legal Process

1. The Fund shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to receive loans in accordance with Article 8, in which case actions may be brought against the Fund in a court of competent jurisdiction in the territory of a country in which the Fund has its office, or has appointed an agent for the purpose of accepting service or notice of process, or has otherwise agreed to be sued.
2. Notwithstanding the provisions of paragraph 1, no action shall be brought against the Fund by any participant, or by any agency or instrumentality of a participant, or by any entity or person directly or indirectly acting for or deriving claims from a participant or from any agency or instrumentality of a participant. Participants shall have recourse to such special procedures for the settlement of disputes between the Fund and its participants as may be prescribed in this Agreement, in the by-laws and regulations of the Fund, or in contracts entered into with the Fund.

3. The Fund shall also make provision for appropriate modes of settlement of disputes in cases which do not come within the provisions of paragraph (2) and of Articles 52 and 53 and which are subject to the immunity of the Fund by virtue of paragraph (1) of this Article.
4. Where by virtue of any of the provisions of this Agreement the Fund does not enjoy immunity from legal process, the Fund, and its property and assets wherever located and by whomsoever held, shall nevertheless be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Fund.

Article 44. Immunity of Assets

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 45. Immunity of Archives

The archives of the Fund, and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.

Article 46. Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Fund, and subject to the provisions of this Agreement, all property and other assets of the Fund shall be free from restriction by financial controls, regulations, or moratoria of any kind.

Article 47. Privilege for Communications

Official communications of the Fund shall be accorded by each State participant the same treatment as it accords to the official communications of other international financial institutions of which it is a member.

Article 48. Immunities and Privileges of Officials and Personnel

All governors and directors, and their alternates, the President and personnel, including experts performing missions for the Fund:

1. Shall be immune from legal process with respect to acts performed by them in their official capacity;
2. When they are not local nationals, shall be accorded no less favourable immunities from immigration restrictions, alien registration requirements and national service obligations, and no less favourable facilities as regards exchange regulations, than are accorded by the State participant concerned to the representatives, officials and employees of comparable rank of any other international financial institution of which it is a member; and
3. Shall be granted no less favourable treatment in respect of travelling facilities than is accorded by the State participant concerned to representatives, officials and employees of comparable rank of any other international financial institution of which it is a member.

Article 49. Exemption from Taxation

1. The Fund, its assets, property, income, operations and transactions, shall be exempt from all direct taxation, and from all customs duties, or taxes having equivalent effect, on goods imported or exported for its official use. The Fund shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. Notwithstanding the provisions of paragraph 1, the Fund shall not claim exemption from taxes which are no more than charges for services rendered.
3. Articles imported under an exemption provided for by paragraph 1 shall not be sold in the territory of the State participant which granted the exemption except under conditions agreed with that participant.
4. No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to the President and personnel including experts performing missions for it.

Article 50. Waiver by the Fund

1. The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Fund. The Board, of Directors may waive, to such extent and upon such conditions

as it may determine, the immunities, exemptions and privileges provided in this Chapter in cases where its action would in its opinion further the interests of the Fund.

2. Regardless of the provisions of paragraph 1, the President shall have the right and the duty to waive the immunity of any of the personnel, including experts performing missions for the Fund, in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.

CHAPTER IX AMENDMENTS

Article 51

1. Any proposal to introduce modifications to this Agreement, whether emanating from a participant, a governor or the Board of Directors, shall be communicated to the Chairman of the Board of Governors, who shall bring the proposal before that Board. If the proposed amendment is approved by the Board, the Fund shall, by circular letter or telegram, ask the participants whether they accept the proposed amendment. When three-fourths of the participants having eighty-five per cent of the voting power have accepted the proposed amendment, the Fund shall certify the fact by formal communication addressed to the participants. Amendments shall enter into force for all participants three months after the date of the formal communication provided for in this paragraph unless the Board of Governors specifies a different period or date.
2. Notwithstanding the provisions of paragraph 1, the unanimous approval of the Board of Governors shall be required for the approval of any amendment modifying:
 - (i) the limitation on liability provided for in Article 10;
 - (ii) the provisions of Article 7 (2) and (3) relating to the subscription of additional funds;
 - (iii) the right to withdraw from the Fund; and
 - (iv) the voting majority requirements contained in this Agreement.

CHAPTER X

INTERPRETATION AND ARBITRATION

Article 52. Interpretation

1. Any question of interpretation or application of the provisions of this Agreement arising between any participant and the Fund or between any participants shall be submitted to the Board of Directors for decision. If there is no director of its nationality on that Board, a State participant particularly affected by the question under consideration shall be entitled to direct representation in such cases. Such right of representation shall be regulated by the Board of Governors.
2. In any case where the Board of Directors has given a decision under paragraph 1, any participant may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Fund may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

Article 53. Arbitration

In the case of a dispute between the Fund and a State which has ceased to be a participant, or between the Fund and any participant upon the termination of the operations of the Fund, such dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Fund, another by the participant or former participant concerned, and the two parties shall appoint the third arbitrator, who shall be the Chairman. If within forty-five days of receipt of the request for arbitration either party has not appointed an arbitrator or if within thirty days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the President of the International Court of Justice, or such other authority as may have been prescribed by regulations adopted by the Board of Governors, to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, but the third arbitrator shall have full power to settle all questions of procedure in any case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision, which shall be final and binding upon the parties.

CHAPTER XI FINAL PROVISIONS

Article 54. Signature

The original of this Agreement shall remain open until 31 March 1973 for signature by the Bank and by the States whose names are set forth in Schedule A.

Article 55. Ratification, Acceptance or Approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatories.
2. Instruments of ratification, acceptance or approval shall be deposited with the Bank at its principal office by each signatory before 31 December 1973, provided that, if this Agreement shall not have entered into force by that date in accordance with Article 56, the Board of Directors of the Bank may extend the period for deposit of instruments of ratification, acceptance or approval by not more than six months.

Article 56. Entry into Force

This Agreement shall enter into force on the date on which the Bank and eight signatory States whose initial subscriptions, as set forth in Schedule A to this Agreement, comprise in aggregate not less than 55 million units of account, have deposited their instruments of ratification, acceptance or approval.

Article 57. Participation

1. A signatory whose instrument of ratification, acceptance or approval is deposited on or before the date on which this Agreement enters into force shall become a participant on that date. A signatory whose instrument of ratification, acceptance or approval is deposited thereafter and before the date prescribed in or pursuant to Article 55 (2) shall, become a participant on the date of such deposit.
2. A State which is not an original participant may become a participant pursuant to Article 3 (3), and notwithstanding the provisions of Articles 54 and 55, such participation shall be

effected by signing this Agreement and by depositing with the Bank an instrument of ratification, acceptance or approval, which shall take effect on the date of such deposit.

Article 58. Reservations

A State may, when depositing its instrument of ratification, acceptance or approval, declare:

1. that in its territory the immunity conferred by Article 43 (1) and by Article 48 shall not apply in relation to a civil action arising out of an accident caused by a motor vehicle belonging to the Fund or operated on its behalf, or to a traffic offence committed by the driver of such a vehicle;
2. that it retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Fund to that State's citizens, nationals or residents;
3. that it understands that the Fund will not normally claim exemption from excise duties levied by that State on goods originating in its territory, and from taxes on the sale of movable and immovable property, which form part of the price to be paid, but that where the Fund is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, whenever possible, appropriate administrative arrangements will be made by that State for the remission or return of the amount of duty or tax; and
4. that the provisions of Article 49 (3) shall apply to articles in respect of which a remission or return of duty or tax has been made by that State pursuant to the arrangements referred to in sub-paragraph (iii).

Article 59. Notification

The Bank shall notify all signatories of:

- (a) any signature;
- (b) any deposit of an instrument of ratification, acceptance or approval;
- (c) the date of entry into force of this Agreement; and
- (d) any declarations or reservations made at the time of deposit of an instrument of ratification, acceptance or approval.

Article 60. Inaugural Meeting

1. As soon as this Agreement enters into force, each State participant shall appoint a governor, and the Chairman of the Board of Governors shall call the inaugural meeting of the Board of Governors.
2. At the inaugural meeting:
 - (a) twelve directors of the Fund shall be designated and selected pursuant to Article 27 (2) and (3); and
 - (b) arrangements shall be made for determining the date on which the Fund shall commence operations.
3. The Fund shall notify all participants of the date of commencement of its operations. Reasonable and necessary expenses incurred by the Bank in establishing the Fund, including subsistence expenses of governors and their alternates in attending the Inaugural Meeting, shall be reimbursed by the Fund.



IN WITNESS WHEREOF the undersigned, being thereunto duly authorized, have signed this Agreement.

DONE at Abidjan, this twenty-ninth day of November, one thousand nine hundred and seventy-two, in the English and French languages, both texts being equally authentic, in a single copy, which shall remain deposited with the Bank.

The Bank shall transmit certified copies of this Agreement to each signatory.

SCHEDULE A

1. ORIGINAL PARTICIPANTS

The following States shall be eligible to become original participants: Belgium, Brazil, Canada, Denmark, Finland, Federal Republic of Germany, Italy, Japan, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom, The United States of America and Yugoslavia.

Any of the aforementioned States which, after 31 December 1973, makes a subscription of at least 15 million United States dollars shall, nevertheless, be deemed an original participant provided it signs and ratifies this Agreement on or before 31 December 1974.

2. INITIAL SUBSCRIPTIONS

The Bank and the following States which have signed this Agreement have subscribed the following amounts:

	SUBSCRIPTIONS IN UNITS OF ACCOUNT
African Development Bank	5,000,000
Belgium	3,000,000
Brazil	2,000,000
Canada	15,000,000
Denmark	5,000,000
Federal Republic of Germany	7,447,630
Finland	2,000,000
Italy	10,000,000
Japan	15,000,000
Netherlands	4,000,000
Norway	5,000,000
Spain	2,000,000
Sweden	5,000,000
Swiss Confederation	3,000,000
United Kingdom	5,211,420
Yugoslavia	2,000,000
Total	90,659,050



SCHEDULE B*

DESIGNATION AND SELECTION OF DIRECTORS

Part I

Designation of Directors by the Bank

1. The President of the Bank shall give to the Fund, on the occasion of each designation by the Bank of directors of the Fund, a notification setting forth:
 - (i) the names of the directors so designated; and
 - (ii) the number of votes which each such director shall be entitled to cast.
2. When there shall be a vacancy in the office of a director designated by the Bank, the President shall notify to the Fund the name of the person designated by the Bank as his successor.

Part II

Selection of Directors by Governors representing State Participants

1. In balloting for the selection of directors, each governor representing a State participant shall cast for one person all of the votes to which the State appointing him is entitled. The six persons receiving the greatest number of votes shall be directors, except that no person who receives less than 12 per cent of the total of the votes of such governors shall be considered elected.
2. When six persons are not elected on the first ballot, a second ballot shall be held in which the person who received the lowest number of votes shall be ineligible for election and in which there shall vote only (a) those governors who voted in the first ballot for a person not elected and (b) those governors whose votes for a person elected are deemed under 3 below to have raised the votes cast for that person above fifteen per cent of the eligible votes.

* GENERAL COUNSEL'S NOTE (2010): The provisions of this Schedule B shall be read and interpreted in light of Board of Governors Resolution F/BG/2010/03 adopted on 27 May 2010 pursuant to which the number of Directors on the Board of Directors of the Fund was increased from twelve to fourteen.

3. In determining whether the votes cast by a governor are to be deemed to have raised the total of any person above fifteen per cent of the eligible votes, the fifteen per cent shall be deemed to include, first, the votes of the governor casting the largest number of votes for such person, then the votes of the governor casting the next largest number, and so on until fifteen per cent is reached.
4. Any governor, part of whose votes must be counted in order to raise the total of any person above 12 per cent, shall be considered as casting all of his votes for such person even if the total votes for such person thereby exceed fifteen per cent.
5. If, after the second ballot, six persons have not been elected, further ballots shall be held on the same principles until six persons have been elected, provided that after five persons are elected, the sixth may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.
6. The governors representing State participants may change the foregoing rules by a 75 per cent majority of the total voting power of such governors.
7. There shall be a new selection of directors representing State participants at each of the first three annual meetings of the Board of Governors.
8. Each director shall appoint an alternate who shall have full power to act for him when he is not present. Directors and their alternates shall be nationals of State participants.



AFRICAN DEVELOPMENT FUND

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