



**AGREEMENT  
ESTABLISHING  
THE AFRICAN  
DEVELOPMENT BANK**

2011 Edition



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**Signed on the fourth day of August nineteen hundred and sixty-three, in Khartoum, Sudan, by twenty-three African Governments, and entered into force on the tenth day of September nineteen hundred and sixty-four when twenty member countries subscribed sixty-five per cent of the initial authorized capital stock.**

Amended:

1. On the seventh day of May nineteen hundred and eighty-two, following the entry into force of Resolution 05-79 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the seventeenth day of May nineteen hundred and seventy-nine.
2. On the first day of September nineteen hundred and ninety-four, following the entry into force of Resolution B/BG/92/06 adopted by the Board of Governors at Dakar, Senegal on the thirteenth day of May nineteen hundred and ninety-two.
3. On the second day of May nineteen hundred and ninety-eight, following the entry into force of Resolution B/BG/97/05 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the twenty-ninth day of May nineteen hundred and ninety-seven.
4. On the thirtieth day of September nineteen hundred and ninety-nine, following the entry into force of Resolution B/BG/98/04 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the twenty-ninth day of May nineteen hundred and ninety-eight.
5. On the fifth day of July two thousand and two, following the entry into force of Resolution B/BG/2001/08 adopted by the Board of Governors at Valencia, Spain on the twenty-ninth day of May two thousand and one.

## **NOTA BENE:**

References in this Agreement to a particular gender shall be applicable to the other gender.



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# AGREEMENT ESTABLISHING THE AFRICAN DEVELOPMENT BANK

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## PREAMBLE

**THE GOVERNMENTS** on whose behalf this Agreement is signed,

**DETERMINED** to strengthen African solidarity by means of economic co-operation between African States,

**CONSIDERING** the necessity of accelerating the development of the extensive human and natural resources of Africa in order to stimulate economic development and social progress in that region,

**REALIZING** the importance of co-ordinating national plans of economic and social development for the promotion of the harmonious growth of African economies as a whole and the expansion of African foreign trade and, in particular, inter-African trade,

**RECOGNIZING** that the establishment of a financial institution common to all African countries would serve these ends,

**CONVINCED** that a partnership of African and non-African countries will facilitate an additional flow of international capital through such an institution for the economic development and social progress of the region, and the mutual benefit of all parties to this Agreement,

### PURPOSE, FUNCTIONS, MEMBERSHIP AND STRUCTURE

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#### ARTICLE 1

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##### Purpose

The purpose of the Bank shall be to contribute to the sustainable economic development and social progress of its regional members individually and jointly.

#### ARTICLE 2

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##### Functions

1. To implement its purpose, the Bank shall have the following functions:
  - a. To use the resources at its disposal for the financing of investment projects and programmes relating to the economic and social development of its regional members, giving special priority to:
    - i. Projects or programmes which by their nature or scope concern several members; and
    - ii. Projects or programmes designed to make the economies of its members increasingly complementary and to bring about an orderly expansion of their foreign trade;
  - b. To undertake, or participate in, the selection, study and preparation of projects, enterprises and activities contributing to such development;
  - c. To mobilize and increase in Africa, and outside Africa, resources for the financing of such investment projects and programmes;
  - d. Generally, to promote investment in Africa of public and private capital in projects or programmes designed to contribute to the economic development or social progress of its regional members;

- e. To provide such technical assistance as may be needed in Africa for the study, preparation, financing and execution of development projects or programmes; and
  - f. To undertake such other activities and provide such other services as may advance its purpose.
- 2. In carrying out its functions, the Bank shall seek to co-operate with national, regional and sub-regional development institutions in Africa. To the same end, it should co-operate with other international organizations pursuing a similar purpose and with other institutions concerned with the development of Africa.
  - 3. The Bank shall be guided in all its decisions by the provisions of articles 1 and 2 of this Agreement.

## **ARTICLE 3**

### **Membership and Geographical Area**

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- 1. Any African country which has the status of an independent State may become a regional member of the Bank. It shall acquire membership in accordance with paragraph 1 or paragraph 2 of article 64 of this Agreement.
- 2. The geographical area to which the regional membership and development activities of the Bank may extend (referred to in this Agreement as “Africa” or “African”, as the case may be) shall comprise the continent of Africa and African islands.
- 3. Non-regional countries which are, or become, members of the African Development Fund, or which have made, or are making, contributions to the African Development Fund under terms and conditions similar to the terms and conditions of the Agreement Establishing the African Development Fund, may also be admitted to the Bank, at such times and under such general rules as the Board of Governors shall have established. Such general rules may be amended only by decision of the Board of Governors by a two-thirds majority of the total number of governors, including two-thirds of the governors of non-regional members, representing not less than three-fourths of the total voting power of the member countries.

## **ARTICLE 4**

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### **Structure**

The Bank shall have a Board of Governors, a Board of Directors, a President, at least one Vice-President and such other officers and staff to perform such duties as the Bank may determine.

### CAPITAL

#### ARTICLE 5<sup>1</sup>

##### Authorized Capital

1. a. The initial authorized capital stock of the Bank shall be 250,000,000 units of account. It shall be divided into 25,000 shares of a par value of 10,000 units of account each share, which shall be available for subscription by members. The authorized capital stock may be increased in accordance with paragraph 3 of this article.
- b. The value of a unit of account shall be equivalent to one Special Drawing Right (SDR) of the International Monetary Fund or any unit adopted for the same purpose by the International Monetary Fund.
2. The authorized capital stock shall be divided into paid-up shares and callable shares. The proportion between the paid-up shares and the callable shares shall be determined by the Board of Governors from time to time. The callable shares shall be callable for the purpose defined in paragraph 4(a) of article 7 of this Agreement.
3. Subject to the provisions of paragraph 4 of this article, the authorized capital stock may be increased as and when the Board of Governors deems it advisable. Unless that stock is increased solely to provide for the initial subscription of a member, the decision of the Board shall be adopted by a two-thirds majority of the total number of Governors, representing not less than three-quarters of the total voting power of the members.
4. The authorized capital stock and any increases thereof shall be allocated for subscription to regional and non-regional members in such proportions that the respective groups shall have available for subscription that number of shares which, if fully subscribed, would result in regional members holding sixty

<sup>1</sup> Paragraph 1(a) of this Article sets forth only the initial amount and value of the capital stock at the date of the creation of the Bank. Following the six general capital increases of 1974, 1979, 1984, 1987, 1998 and 2010, the authorized capital currently is sixty five billion eight hundred and sixty million three hundred and sixty thousand units of account (UA 65,860,360,000).

percent of the total voting power and non-regional members holding forty percent of the total voting power.

## **ARTICLE 6**

### **Subscription of Shares**

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1. Each member shall initially subscribe shares of the capital stock of the Bank. The initial subscription of each member shall consist of an equal number of paid-up and callable shares. The initial number of shares to be subscribed by a State which acquires membership in accordance with paragraph 1 of article 64 of this Agreement shall be that set forth in this respect in annex A to this Agreement, which shall form an integral part thereof. The initial number of shares to be subscribed by other members shall be determined by the Board of Governors.
2. In the event of an increase of the capital stock for a purpose other than solely to provide for an initial subscription of a member, each member shall have the right to subscribe, on such uniform terms and conditions as the Board of Governors shall determine, a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank. No member, however, shall be obligated to subscribe to any part of such increased stock.
3. A member may request the Bank to increase its subscription on such terms and conditions as the Board of Governors may determine.
4. Shares of stock initially subscribed by States which acquire membership in accordance with paragraph 1 of article 64 of this Agreement shall be issued at par. Other shares shall be issued at par unless the Board of Governors decides in special circumstances to issue them on other terms.
5. Liability on shares shall be limited to the unpaid portion of their issue price.
6. Shares shall not be pledged nor encumbered in any manner. They shall be transferable only to the Bank.



## ARTICLE 7

### Payment of Subscriptions

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1. a. Payment of the amount initially subscribed to the paid-up capital stock of the Bank by a member which acquires membership in accordance with paragraph 1 of article 64 shall be made in six instalments, the first of which shall be five per cent, the second thirty-five per cent, and the remaining four instalments each fifteen per cent of that amount.
  - b. The first instalment shall be paid by the Government concerned on or before the date of deposit, on its behalf, of the instrument of ratification or acceptance of this Agreement in accordance with paragraph 1 of article 64. The second instalment shall become due on the last day of a period of six months from the entry into force of this Agreement or on the day of the said deposit, whichever is the later day. The third instalment shall become due on the last day of a period of eighteen months from the entry into force of this Agreement. The remaining three instalments shall become due successively each on the last day of a period of one year immediately following the day on which the preceding instalment becomes due.
2. Payments of the amounts initially subscribed by the members of the Bank to the paid-up capital stock shall be made in convertible currency. The Board of Governors shall determine the mode of payment of other amounts subscribed by the members to the paid-up capital stock.
3. The Board of Governors shall determine the dates for the payment of amounts subscribed by the members of the Bank to the paid-up capital stock to which the provisions of paragraph 1 of this article do not apply.
4. a. Payment of the amounts subscribed to the callable capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its obligations incurred, pursuant to paragraph 1(b) and (d) of article 14, on borrowing of funds for inclusion in its ordinary capital resources or guarantees chargeable to such resources.

- b. In the event of such calls, payment may be made at the option of the member concerned in convertible currency or in the currency required to discharge the obligation of the Bank for the purpose of which the call is made.
  - c. Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.
- 5. The Bank shall determine the place for any payment under this article, provided that, until the first meeting of its Board of Governors provided in article 66 of this Agreement, the payment of the first instalment referred to in paragraph 1 of this article shall be made to the Trustee referred to in article 66.

## **ARTICLE 8**

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### **Special Funds**

- 1. The Bank may establish, or be entrusted with the administration of, Special Funds which are designed to serve its purpose and come within its functions. It may receive, hold, use, commit or otherwise dispose of resources appertaining to such Special Funds.
- 2. The resources of such Special Funds shall be kept separate and apart from the ordinary capital resources of the Bank in accordance with the provisions of article 11 of this Agreement.
- 3. The Bank shall adopt such special rules and regulations as may be required for the administration and use of each Special Fund, provided always that:
  - a. Such special rules and regulations shall be subject to paragraph 4 of article 7, articles 9 to 11, and those provisions of this Agreement which expressly apply to the ordinary capital resources or ordinary operations of the Bank;
  - b. Such special rules and regulations must be consistent with provisions of this Agreement which expressly apply to special resources or special operations of the Bank; and that
  - c. Where such special rules and regulations do not apply, the Special Funds shall be governed by the provisions of this Agreement.

## **ARTICLE 9**

### **Ordinary Capital Resources**

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1. For the purposes of this Agreement, the expression “ordinary capital resources” of the Bank shall include:
2. Authorized capital stock of the Bank subscribed pursuant to the provisions of article 6 of this Agreement;
3. Funds raised by borrowing of the Bank, by virtue of powers conferred in paragraph (a) of article 23 of this Agreement, to which the commitment to calls provided for in paragraph 4 of article 7 of this Agreement applies;
4. Funds received in repayment of loans made with the resources referred to in paragraphs (a) and (b) of this article;
5. Income derived from loans made from the aforementioned funds; income from guarantees to which the commitment to calls provided for in paragraph 4 of article 7 of this Agreement applies; as well as
6. Any other funds or income received by the Bank, which do not form part of its special resources.

## **ARTICLE 10**

### **Special Resources**

---

1. For the purposes of this Agreement, the expression “special resources” shall refer to the resources of Special Funds and shall include:
  - a. Resources initially contributed to any Special Fund;
  - b. Funds borrowed for the purposes of any Special Fund, including the Special Fund provided for in paragraph 6 of article 24 of this Agreement;
  - c. Funds repaid in respect of loans or guarantees financed from the resources of any Special Fund which, under the rules and regulations governing that Special Fund, are received by that Special Fund;
  - d. Income derived from operations of the Bank by which any of the aforementioned resources or funds are used or committed if, under the rules and regulations governing

the Special Fund concerned, that income accrues to the said Special Fund; and

- e. Any other resources at the disposal of any Special Fund.
2. For the purposes of this Agreement, the expression “special resources appertaining to a Special Fund” shall include the resources, funds and income which are referred to in the preceding paragraph and are -as the case may be- contributed to, borrowed or received by, accruing to, or at the disposal of the Special Fund concerned in conformity with the rules and regulations governing that Special Fund.

## **ARTICLE 11**

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### **Separation of Resources**

1. The ordinary capital resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of, entirely separate from special resources. Each Special Fund, its resources and accounts shall be kept entirely separate from other Special Funds, their resources and accounts.
2. The ordinary capital resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of operations or other activities of any Special Fund. Special resources appertaining to any Special Fund shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of operations or other activities of the Bank financed from its ordinary capital resources or from special resources appertaining to any other Special Fund.
3. In the operations and other activities of any Special Fund the liability of the Bank shall be limited to the special resources appertaining to that Special Fund which are at the disposal of the Bank.

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### OPERATIONS

#### ARTICLE 12

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##### Use of Resources

The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth in articles 1 and 2 of this Agreement.

#### ARTICLE 13

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##### Ordinary and Special Operations

1. The operations of the Bank shall consist of ordinary operations and of special operations.
2. The ordinary operations shall be those financed from the ordinary capital resources of the Bank.
3. The special operations shall be those financed from the special resources.
4. The financial statements of the Bank shall show the ordinary operations and the special operations of the Bank separately. The Bank shall adopt such other rules and regulations as may be required to ensure the effective separation of the two types of its operations.
5. Expenses appertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank; expenses appertaining directly to special operations shall be charged to the appropriate special resources. Other expenses shall be charged as the Bank shall determine.

#### ARTICLE 14

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##### Recipients and Methods of Operations

1. In its operations, the Bank may provide or facilitate financing for any regional member, political subdivision or any agency thereof or for any institution or undertaking in the territory of any regional member as well as for international or regional agencies or institutions concerned with the development of Africa. Subject

to the provisions of this chapter, the Bank may carry out its operations in any of the following ways:

- a. By making or participating in direct loans out of:
    - i. Funds corresponding to its unimpaired subscribed paid-up capital and to its reserves and undistributed surplus; or out of
    - ii. Funds corresponding to special resources; or
  - c. By making or participating in direct loans out of funds borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources or in special resources; or
  - d. By investment of funds referred to in sub-paragraph (a) or (b) of this paragraph in the equity capital of an undertaking or institution for the benefit of one or more regional members; or
  - e. By guaranteeing, in whole or in part, loans made by others.
2. The provisions of this Agreement applying to direct loans which the Bank may make pursuant to sub-paragraph (a) or (b) of the preceding paragraph shall also apply to its participation in any direct loan undertaken pursuant to any of those sub-paragraphs. Equally, the provisions of this Agreement applying to guarantees of loans undertaken by the Bank pursuant to sub-paragraph (d) of the preceding paragraph shall apply where the Bank guarantees part of such a loan only.

## **ARTICLE 15**

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### **Limitations on Operations**

1. The total amount outstanding in respect of the ordinary operations of the Bank shall not at any time exceed the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources.
2. The total amount outstanding in respect of the special operations of the Bank relating to any Special Fund shall not at any time exceed the total amount of the unimpaired special resources appertaining to that Special Fund.

3. In the case of loans made out of funds borrowed by the Bank to which the commitment to calls provided for in paragraph 4(a) of article 7 of this Agreement applies, the total amount of principal outstanding and payable to the Bank in a specific currency shall not at any time exceed the total amount of principal outstanding in respect of funds borrowed by the Bank that are payable in the same currency.
4.
  - a. In the case of investments made by virtue of paragraph 1(c) of article 14 of this Agreement out of the ordinary capital resources of the Bank, the total amount outstanding shall not at any time exceed a percentage, fixed by the Board of Governors, of the aggregate amount of the paid-up capital stock of the Bank together with the reserves and surplus included in its ordinary capital resources.
  - b. At the time it is made, the amount of any specific investment referred to in the preceding sub-paragraph shall not exceed a percentage of equity capital of the institution or undertaking concerned, which the Board of Directors shall have fixed for any investment to be made by virtue of paragraph 1(c) of article 14 of this Agreement. In no event shall the Bank seek to obtain by such an investment a controlling interest in the institution or undertaking concerned.

## **ARTICLE 16**

### **Provision of Currencies for Direct Loans**

---

In making direct loans, the Bank shall furnish the borrower with currencies other than the currency of the member in whose territory the project concerned is to be carried out (the latter currency hereinafter to be called "local currency"), which are required to meet foreign exchange expenditure on that project; provided always that the Bank may, in making direct loans, provide financing to meet local expenditure on the project concerned:

1. Where it can do so by supplying local currency without selling any of its holdings in convertible currencies; or
2. Where in the opinion of the Bank local expenditure on that project is likely to cause undue loss or strain on the balance of payments of the country where that project is to be carried out



and the amount of such financing by the Bank does not exceed a reasonable portion of the total local expenditure incurred on that project.

## **ARTICLE 17**

### **Operational Principles**

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1. The operations of the Bank shall be conducted in accordance with the following principles:
  - a.
    - i. The operations of the Bank shall, except in special circumstances, provide for the financing of specific projects, or groups of projects, particularly those forming part of a national or regional development programme urgently required for the economic or social development of its regional members. They may, however, include global loans to, or guarantees of loans made to, African national development banks or other suitable institutions, in order that the latter may finance projects of a specified type serving the purpose of the Bank within the respective fields of activities of such banks or institutions;
    - ii. In selecting suitable projects, the Bank shall always be guided by the provisions of paragraph 1(a) of article 2 of this Agreement and by the potential contribution of the project concerned to the purpose of the Bank rather than by the type of the project. It shall, however, pay special attention to the selection of suitable multinational projects;
  - b. The Bank shall not provide for the financing of a project in the territory of a member if that member objects thereto;
  - c. The Bank shall not provide for the financing of a project to the extent that in its opinion the recipient may obtain the finance or facilities elsewhere on terms that the Bank considers are reasonable for the recipient;
  - d. The proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank shall be used only for procurement in member countries of goods and services produced in member countries, except in any

case in which the Board of Directors determines to permit procurement in a non-member country or of goods and services produced in a non-member country in special circumstances making such procurement appropriate, as in the case of a non-member country in which a significant amount of financing has been provided to the Bank;

- e. In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and the guarantor, if any, will be in a position to meet their obligations under the loan;
  - f. In making or guaranteeing a loan, the Bank shall be satisfied that the rate of interest and other charges are reasonable and such rate, charges and the schedule for the repayment of principal are appropriate for the project concerned;
  - g. In the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditure in connexion with the project as it is actually incurred;
  - h. The Bank shall make arrangements to ensure that the proceeds of any loan made or guaranteed by it are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency;
  - i. The Bank shall seek to maintain a reasonable diversification in its investments in equity capital;
  - j. The Bank shall apply sound banking principles to its operations and, in particular, to its investments in equity capital. It shall not assume responsibility for managing any institution or undertaking in which it has an investment; and
  - k. In guaranteeing a loan made by other investors, the Bank shall receive suitable compensation for its risk.
2. The Bank shall adopt such rules and regulations as are required for the consideration of projects submitted to it.

## ARTICLE 18

### Terms and Conditions for Direct Loans and Guarantees

---

1. In the case of direct loans made by the Bank, the contract:
  - a. Shall establish, in conformity with the operational principles set forth in paragraph 1 of article 17 of this Agreement and subject to the other provisions of this chapter, all the terms and conditions for the loan concerned, including those relating to amortization, interest and other charges, and to maturities and dates of payment; and, in particular,
  - b. Shall provide that --subject to paragraph 3(c) of this article --payments to the Bank of amortization, interest, commission and other charges shall be made in the currency loaned, unless --in the case of a direct loan made as part of special operations --the rules and regulations provide otherwise.
2. In the case of loans guaranteed by the Bank, the contract of guarantee:
  - a. Shall establish, in conformity with the operational principles set forth in paragraph 1 of article 17 of this Agreement and subject to the other provisions of this chapter, all the terms and conditions of the guarantee concerned including those relating to the fees, commission, and other charges of the Bank; and, in particular,
  - b. Shall provide that --subject to paragraph 3(c) of this article --all payments to the Bank under the guarantee contract shall be made in the currency loaned, unless --in the case of a loan guaranteed as part of special operations -- the rules and regulations provide otherwise; and
  - c. Shall also provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.
3. In the case of direct loans made or loans guaranteed by the Bank, the Bank:
  - a. In determining the terms and conditions for the operation, shall take due account of the terms and conditions on

which the corresponding funds were obtained by the Bank;

- b. Where the recipient is not a member, may, when it deems it advisable, require that the member in whose territory the project concerned is to be carried out, or a public agency or institution of that member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan;
- c. Shall expressly state the currency in which all payments to the Bank under the contract concerned shall be made. At the option of the borrower, however, such payments may always be made in convertible currency or, subject to the agreement of the Bank, in any other currency; and
- d. May attach such other terms or conditions, as it deems appropriate, taking into account both the interest of the member directly concerned in the project and the interests of the members as a whole.

## **ARTICLE 19**

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### **Commission and Fees**

Deleted

## **ARTICLE 20**

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### **Special Reserve**

Deleted

## **ARTICLE 21**

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### **Methods of Meeting Liabilities of the Bank (Ordinary Operations)**

- 1. Whenever necessary to meet contractual payments of interest, other charges or amortization on the borrowing of the Bank, or to meet its liabilities with respect to similar payments in respect of loans guaranteed by it and chargeable to its ordinary capital

resources, the Bank may call an appropriate amount of the unpaid subscribed callable capital in accordance with paragraph 4 of article 7 of this Agreement.

2. In cases of default in respect of a loan made out of borrowed funds or guaranteed by the Bank as part of its ordinary operations, the Bank may, if it believes that the default may be of long duration, call an additional amount of such callable capital not to exceed in any one year one per cent of the total subscriptions of the members, for the following purposes:
  - a. To redeem before maturity, or otherwise discharge, its liability on all or part of the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default; and
  - b. To repurchase, or otherwise discharge, its liability on all or part of its own outstanding borrowing.

## **ARTICLE 22**

### **Methods of Meeting Liabilities on Borrowings for Special Funds**

---

Payments in satisfaction of any liability in respect of borrowings of funds for inclusion in the special resources appertaining to a Special Fund shall be charged:

1. First, against any reserve established for this purpose for or within the Special Fund concerned; and
2. Then, against any other assets available in the special resources appertaining to that Special Fund.

### BORROWING AND OTHER ADDITIONAL POWERS

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#### ARTICLE 23

##### General Powers

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In addition to the powers provided elsewhere in this Agreement, the Bank shall have power to:

- a. Borrow funds in member countries or elsewhere, and in that connection to furnish such collateral or other security as it shall determine provided always that:
  - i. Before making a sale of its obligations in the market of a member, the Bank shall have obtained its approval;
  - ii. Where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval; and
  - iii. Where the funds to be borrowed are to be included in its ordinary capital resources, the Bank shall have obtained, where appropriate, the approval of the members referred to in sub-paragraph (i) and (ii) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions;
- b. Buy and sell securities the Bank has issued or guaranteed or in which it has invested provided always that it shall have obtained the approval of any member in whose territory the securities are to be bought or sold;
- c. Guarantee or underwrite securities in which it has invested in order to facilitate their sale;
- d. Invest funds not needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities;
- e. Undertake activities incidental to its operations such as, among others, the promotion of consortia for financing which serves the purpose of the Bank and comes within its functions;

- f.
  - i. Provide all technical advice and assistance which serve its purpose and come within its functions; and
  - ii. Where expenditure incurred by such a service is not reimbursed, charge the net income of the Bank therewith and, in the first five years of its operations, use up to one per cent of its paid-up capital on such expenditure; provided always that the total expenditure of the Bank on such services in each year of that period does not exceed one-fifth of that percentage; and
- g. Exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

## **ARTICLE 24**

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### **Special Borrowing Powers**

- 1. The Bank may request any regional member to loan amounts of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of that member for the purpose of a project to be carried out in the territory of another member.
- 2. Unless the regional member concerned invokes economic and financial difficulties which, in its opinion, are likely to be provoked or aggravated by the granting of such a loan to the Bank, that member shall comply with the request of the Bank. The loan shall be made for a period to be agreed with the Bank, which shall be in relation to the duration of the project which the proceeds of that loan are designed to finance.
- 3. Unless the regional member agrees otherwise, the aggregate amount outstanding in respect of its loans made to the Bank pursuant to this article shall not, at any time, exceed the equivalent of the amount of its subscription to the capital stock of the Bank.
- 4. Loans to the Bank made pursuant to this article shall bear interest, payable by the Bank to the lending member, at a rate which shall correspond to the average rate of interest paid by the Bank on its borrowings for Special Funds during a period of one year preceding the conclusion of the loan agreement. This rate shall in no event exceed a maximum rate which the Board of Governors shall determine from time to time.



5. The Bank shall repay the loan, and pay the interest due in respect thereof, in the currency of the lending member or in a currency acceptable to the latter.
6. All resources obtained by the Bank by virtue of the provisions of this article shall constitute a Special Fund.

## **ARTICLE 25**

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### **Warning to be Placed on Securities**

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless it is in fact the obligation of a particular government in which case it shall so state.

## **ARTICLE 26**

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### **Valuation of Currencies and Determination of Convertibility**

Whenever it shall become necessary under this Agreement:

1. To value any currency in terms of another currency or in terms of the unit of account defined in paragraph 1 (b) of article 5 of this Agreement, or
2. To determine whether any currency is convertible,

such valuation or determination, as the case may be, shall be reasonably made by the Bank after consultation with the International Monetary Fund.

## **ARTICLE 27**

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### **Use of Currencies**

1. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of the following:
  - a. Convertible currencies received by the Bank in payment of subscriptions to the capital stock of the Bank from its members;
  - b. Currencies of members purchased with the convertible currencies referred to in the preceding sub-paragraph;

- c. Currencies obtained by the Bank by borrowing, pursuant to paragraph (a) of Article 23 of this Agreement, for inclusion in its ordinary capital resources;
  - d. Currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraphs (a) to (c) or in payment of commissions or fees in respect of guarantees issued by the Bank; and
  - e. Currencies, other than its own, received by a member from the Bank in distribution of the net income of the Bank in accordance with article 42 of this Agreement.
- 2. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless:
  - a. That member declares that it desires the use of such currency to be restricted to payments for goods or services produced in its territory; or
  - b. Such currency forms part of the special resources of the Bank and its use is subject to special rules and regulations.
- 3. Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization or anticipatory payments or for repurchasing --in whole or in part --its obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.
- 4. The Bank shall not use currencies which it holds for the purchase of other currencies of its members except:
  - a. In order to meet its existing obligations; or
  - b. Pursuant to a decision of the Board of Directors.

## **ARTICLE 28**

### **Maintenance of Value of the Currency Holdings of the Bank**

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1. Whenever the par value of the currency of a member is reduced in terms of the unit of account defined in paragraph 1 (b) of article 5 of this Agreement or its foreign exchange value has, in the opinion of the Bank, depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an amount in its currency required to maintain the value of all such currency held by the Bank on account of its subscription.
2. Whenever the par value of the currency of a member is increased in terms of the said unit of account, or its foreign exchange value has, in the opinion of the Bank, appreciated to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank on account of its subscription.
3. The Bank, in the case envisaged by paragraph 1, or the member, in the case envisaged by paragraph 2, may waive its rights under this article.

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### ORGANIZATION AND MANAGEMENT

#### ARTICLE 29

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##### Board of Governors: Powers

1. All the powers of the Bank shall be vested in the Board of Governors. In particular, the Board shall issue general directives concerning the credit policy of the Bank.
2. The Board of Governors may delegate to the Board of Directors all its powers except the power to:
  - a. Decrease the authorized capital stock of the Bank;
  - b. Establish or accept the administration of Special Funds;
  - c. Authorize the conclusion of general arrangements for co-operation with the authorities of African countries which have not yet attained independent status or of general agreements for co-operation with African Governments which have not yet acquired membership of the Bank, as well as of such agreements with other Governments and with other international organizations;
  - d. Elect the President of the Bank, suspend or remove him from office and determine his remuneration and conditions of service;
  - e. Determine the remuneration of directors and their alternates;
  - f. Select outside auditors to certify the General Balance Sheet and the Statement of Profit and Loss of the Bank and to select such other experts as may be necessary to examine and report on the general management of the Bank;
  - g. Approve, after reviewing the report of the auditors, the General Balance Sheet and Statement of Profit and Loss of the Bank; and
  - h. Exercise such other powers as are expressly provided for that Board in this Agreement.

3. The Board of Governors shall retain full powers to exercise authority over any matter delegated to the Board of Directors pursuant to paragraph 2 of this article.

## **ARTICLE 30**

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### **Board of Governors: Composition**

1. Each member shall be represented on the Board of Governors and shall appoint one governor and one alternate governor. They shall be persons of the highest competence and wide experience in economic and financial matters and shall be nationals of the member States. Each governor and alternate shall serve for five years, subject to termination of appointment at any time, or to reappointment, at the pleasure of the appointing member. No alternate may vote except in the absence of his principal. At its annual meeting, the Board shall designate one of the governors as Chairman. The Chairman shall hold office until the election of a successor at the next annual meeting of the Board, unless otherwise decided by the Board of Governors.
2. Governors and alternates shall serve as such without remuneration from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings.

## **ARTICLE 31**

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### **Board of Governors: Procedure**

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for the Board or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by five members of the Bank, or by members having one-quarter of the total voting power of the members. Annual Meetings of the Board of Governors shall be held in regional and non-regional member States.
2. A quorum for any meeting of the Board of Governors shall be a majority of the total number of governors or their alternates, representing not less than seventy percent of the total voting power of the members.

3. 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.
4. The Board of Governors, and the Board of Directors to the extent authorized, may establish such subsidiary bodies and adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.

## **ARTICLE 32**

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### **Board of Directors: Powers**

Without prejudice to the powers of the Board of Governors as provided in article 29 of this Agreement, the Board of Directors shall be responsible for the conduct of the general operations of the Bank and for this purpose shall, in addition to the powers provided for it expressly in this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

1. Prepare the work of the Board of Governors;
  2. In conformity with the general directives of the Board of Governors, take decisions concerning particular direct loans, guarantees, investments in equity capital and borrowing of funds by the Bank;
  3. Determine the rates of interest for direct loans and of commissions for guarantees;
  4. Submit the accounts for each financial year and an annual report for approval to the Board of Governors at each annual meeting; and
  5. Determine the general structure of the services of the Bank.
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## **ARTICLE 33<sup>2</sup>**

### **Board of Directors: Composition**

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1. The Board of Directors shall be composed of twenty members who shall not be governors or alternate governors. Thirteen members shall be elected by the governors of the regional members and seven members shall be elected by the governors of the non-regional members. They shall be elected by the Board of Governors in accordance with annex B to this Agreement. In electing the Board of Directors, the Board of Governors shall have due regard to the high competence in economic and financial matters required for the office. The Board of Governors may determine to change the number of members of the Board of Directors only by a three-fourths majority of the total voting power of the member countries, including with respect to provisions relating exclusively to the number and election of directors by the regional member countries, by a two-thirds majority of the governors of regional members, and with respect to the provisions relating exclusively to the number and election of directors by non-regional member countries, by a two-thirds majority of the governors of non-regional members.
2. Each director shall appoint an alternate who shall act for him when he is not present. Directors and their alternates shall be nationals of member States; but no alternate may be of the same nationality as his director. An alternate may participate in meetings of the Board but may vote only when he is acting in place of his director.
3. Directors shall be elected for a term of three years and, subject to the limitation set forth in paragraph 4 of this article, may be re-elected. They shall continue in office until their successors are elected. If the office of a director becomes vacant more than 180 days before the end of his term a successor shall be elected in accordance with annex B to this Agreement, for the remainder of the term by the Board of Governors at its next session. While the office remains vacant the alternate of the former director shall exercise the powers of the latter except that of appointing an alternate.

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<sup>2</sup> Modified by virtue of the provisions of Resolution B/BG/2010/10 adopted by the Board of Governors on 27 May 2010.



4. No director shall serve on the Board of Directors for more than two terms of three years each. A director whose term of office commences between two general elections shall be eligible to be elected director for a cumulative period not exceeding six years in total from the date of his first election; provided always that a director who at the time of his election shall have served two terms of three years each as an alternate director shall not be eligible for re-election.

## **ARTICLE 34**

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### **Board of Directors: Procedure**

1. The Board of Directors shall function in continuous session at the principal office of the Bank and shall meet as often as the business of the Bank may require.
2. A quorum for any meeting of the Board of Directors shall be a majority of the total number of directors representing not less than seventy percent of the total voting power of the members.
3. The Board of Governors shall adopt regulations under which, if there is no director of its nationality, a member may be represented at a meeting of the Board of Directors when a request made by, or a matter particularly affecting, that member is under consideration.

## **ARTICLE 35**

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### **Voting**

1. Each member shall have 625 votes and, in addition, one vote for each share of the capital stock of the Bank held by that member, provided, however, that in connection with any increase in the authorized capital stock, the Board of Governors may determine that the capital stock authorized by such increase shall not have voting rights and that such increase of stock shall not be subject to the pre-emptive rights established in paragraph 2 of article 6 of this Agreement.
2. Save as otherwise expressly provided in this Agreement, voting in the Board of Governors shall be as specified in this article. Each governor shall be entitled to cast the votes of the Member that such governor represents. All matters before the Board of

Governors shall, in general, be decided by a majority of sixty-six and two-thirds percent of the voting power of the members represented at the meeting, except that in respect of an issue declared by a member as being of great importance, touching upon a substantial interest of that member, such important issue shall be decided, at the request of the member, by a majority of seventy percent of the total voting power.

3. Save as otherwise expressly provided in this Agreement, voting in the Board of Directors shall be as provided in this article. Each director shall be entitled to cast the number of votes that counted towards the election of such director, which votes shall be cast as a unit. All matters before the Board of Directors shall, in general, be decided by a sixty-six and two-thirds percent majority of the voting power represented at the meeting, except that in respect of an issue declared by a member as being of great importance, touching upon a substantial interest of that member, such important issue shall be decided, at the request of the director concerned, by a majority of seventy per cent of the total voting power.

## **ARTICLE 36**

### **The President: Appointment**

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1. The Board of Governors shall elect by a majority of the total voting power of the members, including a majority of the total voting power of the regional members, the President of the Bank. He shall be a person of the highest competence in matters pertaining to the activities, management and administration of the Bank and shall be a national of a regional member state. While holding office, he shall not be a governor, a director or alternate for either. The term of office of the President shall be five years. It may be renewed; provided, however, that no person may be elected or serve as President for more than two successive terms of five years each. The President shall be suspended or removed from office if the Board of Governors so decides by a majority of the total voting power of the members, including a majority of the total voting power of the regional members. The Board of Governors shall, upon the suspension or removal of the President from office, appoint an Acting President or, as the case may be, elect a President.

2. The Chairman of the Board of Governors, after consultation with the Bureau, shall convene a meeting of the Board of Governors to consider the suspension of the President upon the written requests of at least five Governors representing not less than five constituencies.

## **ARTICLE 37**

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### **The Office of the President**

1. The President shall be Chairman of the Board of Directors but shall have no vote except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote.
2. The President shall be chief of the staff of the Bank and shall conduct, under the direction of the Board of Directors, the current business of the Bank. He shall be responsible for the organization of the officers and staff of the Bank, including Vice-Presidents, whom he shall appoint, fix their terms of employment, and release in accordance with the rules and regulations adopted by the Bank, provided that he shall act in consultation with the Board of Directors in the exercise of his powers of appointment and release of Vice-Presidents.
3. The President shall be the legal representative of the Bank.
4. The Bank shall adopt regulations which shall determine who shall legally represent the Bank and perform the other duties of the President in the event that he is absent or that his office should become vacant.
5. In appointing the officers and staff, the President shall make it his foremost consideration to secure the highest standards of efficiency, technical competence and integrity, and recruit them on as wide a geographical basis as possible, paying full regard to the regional character of the Bank, as well as the participation of non-regional states.

## **ARTICLE 38**

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### **Prohibition of Political Activity; the International Character of the Bank**

1. The Bank shall not accept loans or assistance that could in any way prejudice, limit, deflect or otherwise alter its purpose or functions.
2. The Bank, its President, Vice-Presidents, officers and staff shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the functions of the Bank.
3. The President, Vice-Presidents, officers and staff of the Bank, in discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

## **ARTICLE 39**

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### **Office of the Bank**

1. The principal office of the Bank shall be located in the territory of a regional member State. The choice of the location of the principal office of the Bank shall be made by the Board of Governors at its first meeting, taking into account the availability of facilities for the proper functioning of the Bank.
2. Notwithstanding the provisions of article 35 of this Agreement, the choice of the location of the principal office of the Bank shall be made by the Board of Governors in accordance with the conditions that applied to the adoption of this Agreement.
3. The Bank may establish branch offices or agencies elsewhere.

## **ARTICLE 40**

### **Channel of Communications; Depositories**

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1. Each member shall designate an appropriate authority with which the Bank may communicate in connection with any matter arising under this Agreement.
2. Each member shall designate its central bank or such other institution as may be agreed by the Bank, as a depository with which the Bank may keep its holdings of currency of that member as well as other assets of the Bank.
3. The Bank may hold its assets with such depositories as the Board of Directors shall determine.

## **ARTICLE 41**

### **Publication of the Agreement, Working Languages, Provision of Information and Reports**

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1. The Bank shall endeavour to make available the text of this Agreement and all its important documents in the principal languages used in Africa. The working languages of the Bank shall be, if possible, African languages, English and French.
2. Members shall furnish the Bank with all information it may request of them in order to facilitate the performance of its functions.
3. The Bank shall publish and transmit to its members an annual report containing an audited statement of the accounts. It shall also transmit quarterly to the members a summary statement of its financial position and a profit and loss statement showing the results of its operations. The Annual Report and the Quarterly Statements shall be drawn up in accordance with the provisions of paragraph 4 of article 13 of this Agreement.
4. The Bank may also publish such other reports as it deems desirable to carry out its purpose and functions. They shall be transmitted to the members of the Bank.

## **ARTICLE 42**

### **Allocation of Net Income**

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1. The Board of Governors shall determine annually what part of the net income of the Bank, including the net income accruing to its Special Funds, shall be allocated -- after making provision for reserves -- to surplus and what part, if any, shall be distributed.
2. The distribution referred to in the preceding paragraph shall be made in proportion to the number of shares held by each member.
3. Payments shall be made in such manner and in such currency as the Board of Governors shall determine.

### **WITHDRAWAL AND SUSPENSION OF MEMBERS; TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS OF THE BANK**

#### **ARTICLE 43**

##### **Withdrawal**

1. Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office.
2. Withdrawal by a member shall become effective on the date specified in its notice but in no event less than six months after the date that notice has been received by the Bank.

#### **ARTICLE 44**

##### **Suspension**

1. If a member fails to fulfil any of its obligations under this Agreement or any other obligation to the Bank arising from the Bank's operations under this Agreement, the Board of Governors may suspend such member by a decision of the Board of Governors representing not less than seventy per cent of the total voting power of the members. The Board of Governors may, in lieu of suspension of membership, order suspension of the voting rights of such member upon such terms and conditions as may be established by the Board of Governors, pursuant to regulations adopted under paragraph 4 of this article.
2. The member suspended from membership shall automatically cease to be a member of the Bank one (1) year from the date of its suspension unless the Board of Governors, during the one-year period, decides by the same majority necessary for suspension to restore the member to good standing.
3. While under suspension from membership, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all obligations.

4. The Board of Governors shall adopt regulations as may be necessary for the implementation of this article.

## **ARTICLE 45**

### **Settlement of Accounts**

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1. After the date on which a State ceases to be a member (hereinafter in this article called the “termination date”), the member shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before the termination date is outstanding; but it shall cease to incur liabilities with respect to loans and guarantees entered into thereafter by the Bank and to share either in the income or the expenses of the Bank.
2. At the time a State ceases to be a member, the Bank shall arrange for the repurchase of its shares as a part of the settlement of accounts with that State in accordance with the provisions of paragraphs 3 and 4 of this article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the termination date.
3. The payment for shares repurchased by the Bank under this article shall be governed by the following conditions:
  - a. Any amount due to the State concerned for its shares shall be withheld so long as that State, its Central Bank or any of its agencies remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the liability of the State resulting from its subscription for shares in accordance with paragraph 4 of article 7 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six months after the termination date.
  - b. Payments for shares may be made from time to time, upon their surrender by the Government of the State concerned, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this article exceeds the aggregate amount of liabilities on loans and guarantees referred to in sub-paragraph (a) of



this paragraph until the former member has received the full repurchase price.

- c. Payments shall be made in the currency of the State receiving payment or, if such currency is not available, in convertible currency.
- d. If losses are sustained by the Bank on any guarantees or loans which were outstanding on the termination date and the amount of such losses exceeds the amount of the reserve provided against losses on that date, the State concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 4 of article 7 of this Agreement, to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.
- e. If the Bank terminates its operations pursuant to article 47 of this Agreement within six months of the termination date, all rights of the State concerned shall be determined in accordance with the provisions of its articles 47 to 49.

## **ARTICLE 46**

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### **Temporary Suspension of Operations**

In an emergency, the Board of Directors may suspend temporarily operations in respect of new loans and guarantees pending an opportunity for further consideration and action by the Board of Governors.

## **ARTICLE 47**

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### **Termination of Operations**

- 1. The Bank may terminate its operations in respect of new loans, guarantees and equity investments by a decision of the Board of Governors exercising a majority of seventy-five per cent of the total voting power.

2. After such termination, the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

## **ARTICLE 48**

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### **Liability of Members and Payment of Claims**

1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
2. All creditors holding direct claims shall be paid out of the assets of the Bank and then out of payments to the Bank on calls on unpaid subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims.

## **ARTICLE 49**

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### **Distribution of Assets**

1. In the event of termination of operations of the Bank, no distribution shall be made to members on account of their subscriptions to the capital stock of the Bank until:
  - a. All liabilities to creditors have been discharged or provided for; and
  - b. The Board of Governors has taken a decision to make a distribution. This decision shall be taken by the Board exercising a majority of the total voting power of the members, including a majority of the total voting power of the regional members.
2. After a decision to make a distribution has been taken in accordance with the preceding paragraph, the Board of Directors may decide to make successive distributions of the assets of the Bank to members until all assets have been distributed. This distribution shall be subject to the prior settlement of all outstanding claims of the Bank against each member.

3. Before any distribution of assets is made, the Board of Directors shall fix the proportionate share of each member according to the ratio of its shareholding to the total outstanding shares of the Bank.
4. The Board of Directors shall value the assets to be distributed at the date of distribution and then proceed to distribute in the following manner:
  - a. There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories, to the extent that they are available for distribution, an amount equivalent in value to its proportionate share of the total amount to be distributed.
  - b. Any balance due to a member after payment has been made in accordance with the preceding sub-paragraph shall be paid in its currency, to the extent that it is held by the Bank, up to an amount equivalent in value to such balance.
  - c. Any balance due to a member after payment has been made in accordance with sub-paragraphs (a) and (b) of this paragraph shall be paid in gold or currency acceptable to that member, to the extent that they are held by the Bank, up to an amount equivalent in value to such balance.
  - d. Any remaining assets held by the Bank after payments have been made to members in accordance with sub-paragraphs (a) to (c) of this paragraph shall be distributed pro rata among the members.
5. Any member receiving assets distributed by the Bank in accordance with the preceding paragraph shall enjoy the same rights with respect to such assets as the Bank enjoyed before their distribution.

### STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

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#### ARTICLE 50

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##### Status

To enable it to fulfil its purpose and the functions with which it is entrusted, the Bank shall possess full international personality. To those ends, it may enter into agreements with members, non-member States and other international organizations. To the same ends, the status, immunities, exemptions and privileges set forth in this chapter shall be accorded to the Bank in the territory of each member.

#### ARTICLE 51

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##### Status in Member Countries

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity:

1. To contract;
2. To acquire and dispose of immovable and movable property; and
3. To institute legal proceedings.

#### ARTICLE 52

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##### Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.
2. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure,

attachment or execution before the delivery of final judgement against the Bank.

## **ARTICLE 53**

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### **Immunity of Assets and Archives**

1. Property and assets of the Bank, 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.
2. The archives of the Bank and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.

## **ARTICLE 54**

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### **Freedom of Assets from Restriction**

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

## **ARTICLE 55**

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### **Privilege for Communications**

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

## **ARTICLE 56**

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### **Personal Immunities and Privileges**

All governors, directors, alternates, officers and employees of the Bank and experts and consultants performing missions for the Bank:

1. Shall be immune from legal process with respect to acts performed by them in their official capacity;
2. Where they are not local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same

- facilities as regards exchange regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
3. Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

## **ARTICLE 57**

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### **Exemption from Taxation**

1. The Bank, its property, other assets, income and its operations and transactions shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding, or collection of any tax or duty.
2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.
3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:
  - a. Which discriminates against such obligation or security solely because it is issued by the Bank; or
  - b. If the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
  - a. Which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
  - b. If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

## **ARTICLE 58**

### **Notification of Implementation**

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Each member shall promptly inform the Bank of the specific action which it has taken to make effective in its territory the provisions of this chapter.

## **ARTICLE 59**

### **Application of Immunities, Exemptions and Privileges**

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The immunities, exemptions and privileges provided in this chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in articles 52, 54, 56, and 57 of this Agreement in cases where its action would in its opinion further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official 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 Bank.

### AMENDMENTS, INTERPRETATION, ARBITRATION

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#### ARTICLE 60

##### Amendments

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1. Any proposal to introduce modifications to this Agreement whether emanating from a member, 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 Bank shall, by circular letter, facsimile or telegram, ask the members whether they accept the proposed amendment. When two-thirds of the members, having three-quarters of the total voting power of the members, including two-thirds of the regional members having three-quarters of the total voting power of the regional members, have accepted the proposed amendment, the Bank shall promptly certify the fact by formal communication addressed to the members.
2. Notwithstanding paragraph 1 of this article, the voting majorities provided in article 3(3) may be amended only by the voting majorities stated therein.
3. Notwithstanding paragraph 1 of this article, acceptance by all the members is required for any amendment modifying:
  - a. The right secured by paragraph 2 of article 6 of this Agreement;
  - b. The limitation on liability provided in paragraph 5 of that article; and
  - c. The right to withdraw from the Bank provided in article 43 of this Agreement.
4. Amendments shall enter into force for all members three months after the date of the formal communication provided for in paragraph 1 of this article unless the Board of Governors specifies a different period.
5. Notwithstanding the provisions of paragraph 1 of this article, three years at the latest after the entry into force of this Agreement and in the light of the experience of the Bank, the rule according



to which each member should have one vote shall be examined by the Board of Governors or at a meeting of Heads of State of the member countries in accordance with the conditions that applied to the adoption of this Agreement.

## **ARTICLE 61**

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### **Interpretation**

1. The English and French texts of this Agreement shall be regarded as equally authentic.
2. Any question of interpretation of the provisions of this Agreement arising between any member and the Bank or between any members of the Bank shall be submitted to the Board of Directors for decision. If there is no director of its nationality on that Board, a member 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.
3. In any case where the Board of Directors has given a decision under paragraph 2 of this article, any member may require that the question be referred to the Board of Governors, whose decision shall be sought --under a procedure to be established in accordance with paragraph 3 of article 31 of this Agreement --within three months. That decision shall be final.

## **ARTICLE 62**

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### **Arbitration**

In case of a dispute between the Bank and a former member, or between the Bank and a member upon the termination of the operations of the Bank, such dispute shall be submitted to arbitration by a tribunal of three arbitrators. Each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the Chairman. If within 30 days of the request for arbitration either party has not appointed an arbitrator or if within 15 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 shall be fixed by the arbitrators. However, the third arbitrator shall have full power to settle all questions of procedure in 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.

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### FINAL PROVISIONS

#### ARTICLE 63

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##### Signature and Deposit

1. This Agreement, deposited with the Secretary-General of the United Nations (hereinafter called the "Depositary"), shall remain open until 31 December 1963 for signature by the Governments of States whose names are set forth in annex A to this Agreement.
2. The Depositary shall communicate certified copies of this Agreement to all the Signatories.

#### ARTICLE 64

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##### Ratification, Acceptance, Accession and Acquisition of Membership

1.
  - a. This Agreement shall be subject to ratification or acceptance by the Signatories. Instruments of ratification or acceptance shall be deposited by the Signatory Governments with the Depositary before 1 July 1965. The Depositary shall notify each deposit and the date thereof to the other Signatories.
  - b. A State whose instrument of ratification or acceptance is deposited before the date on which this Agreement enters into force shall become a member of the Bank on that date. Any other Signatory which complies with the provisions of the preceding paragraph shall become a member on the date on which its instrument of ratification or acceptance is deposited.
2. Regional States which do not acquire membership of the Bank in accordance with the provisions of paragraph 1 of this article may become members after the Agreement has entered into force by accession thereto on such terms as the Board of Governors shall determine. The Government of any such State shall deposit, on or before a date appointed by that Board, an instrument of accession with the Depositary who shall notify

such deposit and the date thereof to the Bank and to the Parties to this Agreement. Upon the deposit, the State shall become a member of the Bank on the appointed date.

3. A member may, when depositing its instrument of ratification or acceptance, declare that it retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to that member's citizens, nationals or residents.

## **ARTICLE 65**

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### **Entry into Force**

This Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by twelve signatory Governments whose initial subscriptions, as set forth in annex A to this Agreement, in aggregate comprise not less than sixty-five percent of the authorized capital stock of the Bank; provided always that 1 January 1964 shall be the earliest date on which this Agreement may enter into force in accordance with the provisions of this article.<sup>3</sup>

## **ARTICLE 66**

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### **Commencement of Operations**

1. As soon as this Agreement enters into force, each member shall appoint a governor, and the Trustee appointed for this purpose and for the purpose indicated in paragraph 5 of article 7 of this Agreement shall call the first meeting of the Board of Governors.
2. At its first meeting, the Board of Governors:
  - a. Shall elect nine directors of the Bank in accordance with paragraph 1 of article 33 of this Agreement; and
  - b. Make arrangements for the determination of the date on which the Bank shall commence its operations.
3. The Bank shall notify its members of the date of the commencement of its operations.

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<sup>3</sup> According to the Memorandum on the interpretation of Article 65 of this Agreement, the words «authorized capital stock of the Bank» shall be understood to refer to such authorized capital stock of the Bank as is equivalent to 211.2 million units of account and as corresponds to the aggregate initial number of shares to be subscribed by the States that may acquire its membership in accordance with paragraph 1 of Article 64 of this Agreement. For the text of the Memorandum, see page 97 of the Final Act of the Conference of Finance Ministers on the Establishment of an African Development Bank held under the auspices of the United Nations Economic Commission for Africa.

**DONE in Khartoum, this fourth day of August nineteen hundred and sixty-three, in a single copy in the English and French languages.**

Amended:

1. On the seventh day of May, nineteen hundred and eighty-two, following the entry into force of Resolution 05-79 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the seventeenth day of May nineteen hundred and seventy-nine; and
2. On the first day of September, nineteen hundred and ninety-four, following the entry into force of Resolution B/BG/92/06 adopted by the Board of Governors at Dakar, Senegal on the thirteenth day of May nineteen hundred and ninety-two; and
3. On the second day of May, nineteen hundred and ninety-eight, following the entry into force of Resolution B/BG/97/05 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the twenty-ninth day of May nineteen hundred and ninety-seven; and
4. On the thirtieth day of September, nineteen hundred and ninety-nine, following the entry into force of Resolution B/BG/98/04 adopted by the Board of Governors at Abidjan, Côte d'Ivoire on the twenty-ninth day of May nineteen hundred and ninety-eight.
5. On the fifth day of July, two thousand and two, following the entry into force of Resolution B/BG/2001/08 adopted by the Board of Governors at Valencia, Spain on the twenty ninth day of May two thousand and one.

## INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL STOCK OF THE BANK

	Member	Paid-up Shares	Callable Shares	Total Subscriptions (in millions of account)
1	Algeria	1,225	1,225	24.50
2	Burundi	60	60	1.20
3	Cameroon	200	200	4.00
4	Central African Republic	50	50	1.00
5	Chad	80	80	1.60
6	Congo (Brazzaville)	75	75	1.50
7	Congo (DRC)	650	650	13.00
8	Dahomey (Benin)	70	70	1.40
9	Ethiopia	515	515	10.30
10	Gabon	65	65	1.30
11	Ghana	640	640	12.80
12	Guinea	125	125	2.50
13	Ivory Coast (Côte d'Ivoire)	300	300	6.00
14	Kenya	300	300	6.00
15	Liberia	130	130	2.60
16	Libya	95	95	1.90
17	Madagascar	260	260	5.20
18	Mali	115	115	2.30
19	Mauritania	55	55	1.10
20	Morocco	775	775	15.10
21	Niger	80	80	1.60
22	Nigeria	1,205	1,205	24.10
23	Rwanda	60	60	1.20
24	Senegal	275	275	5.50
25	Sierra Leone	105	105	2.10
26	Somalia	110	110	2.20
27	Sudan	505	505	10.10
28	Tanganyika (Tanzania)	265	265	5.30
29	Togo	50	50	1.00
30	Tunisia	345	345	6.90
31	Uganda	230	230	4.60
32	U.A.R. (Egypt)	1,500	1,500	30.00
33	Upper Volta (Burkina-Faso)	65	65	1.30

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**ELECTION OF DIRECTORS****1. Non-divisible vote**

At the election of directors each governor shall cast all votes of the member he represents for a single person.

**2. Regional Directors**

- a. The twelve persons receiving the highest number of votes of the governors representing the regional members shall be directors, except that no person who receives less than eight\* per cent of the total voting power of the regional members shall be considered as elected.
- b. If twelve persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:
  - i. Governors who voted in the preceding ballot for a person who is not elected; and

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\* GENERAL COUNSEL'S NOTE (1979): The adoption of the amendment to Article 33 whereby the membership of the Bank's Board of Directors was increased from nine to eighteen, and provision was made for the exclusive election of twelve directors by regional members and six by non-regional members, necessitated the establishment in annex B to the Agreement of separate rules for the election of the regional and non-regional directors. The same amendment also made it necessary for the Board of Governors to reconsider the minimum and maximum percentages established in the original version of annex B for the election of a director. The Board of Governors, during the consideration of this amendment, decided that in the section of annex B that deals with the election of regional directors, the respective percentages should be eight and ten instead of ten and twelve as in the original rules, and at the same time fixed the minimum and maximum percentages for the election of non-regional directors at fourteen and nineteen respectively. These decisions having been taken before the adoption of the resolution amending the Bank Agreement, the resulting amendment is deemed to have included the adoption of the new minimum and maximum percentage figures. However, reference should be made to the Rules for the Election of Executive Directors and the relevant resolution authorizing their election, which may include variations of the minimum and maximum percentages contained in this annex B.

GENERAL COUNSEL'S NOTE (2010): With the adoption of Resolution B/BG/2002/04 varying the Rules for the Election of Executive Directors, the minimum percentage for the election of regional directors changed from eight to six per cent while the maximum stayed at ten per cent. The adoption of Resolution B/BG/2010/10 increasing the number of directors from eighteen to twenty implies that the minimum percentage of normalized total voting power required for the election of regional directors has changed to five and a half per cent while the maximum has been reduced from ten per cent to seven per cent. In the case of non-regional directors the minimum and maximum percentages required are now twelve per cent and seventeen per cent, respectively.

- ii. Governors whose votes for a person who is elected are deemed, in accordance with paragraph 2(c) of this annex, to have raised the votes cast for that person above ten\* per cent of the total voting power of the regional members.
- c.
  - i. In determining whether the votes cast by a governor shall be deemed to have raised the total number of votes for any person above ten\* per cent, the said ten\* per cent shall be deemed to include, first, the votes of the governor casting the highest number of votes for that person, and then, in diminishing order, the votes of each governor casting the next highest number until ten\* per cent is attained.
  - ii. Any governor part of whose votes must be counted in order to raise the votes cast for any person above eight\* per cent shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds ten\* per cent.
- d. If, after the second ballot, twelve persons are not elected, further ballots shall be held in conformity with the principles laid down in this annex, provided that after eleven persons are elected, the twelfth may be elected -- notwithstanding the provisions of paragraph 2(a) of this annex -- by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the twelfth director.

### **3. Non-regional Directors**

- a. The six persons receiving the highest number of votes of the governors representing the non-regional members shall be directors, except that no person who receives less than fourteen\* per cent of the total voting power of the non-regional members shall be considered as elected.
- b. If seven persons are not elected at the first ballot, a second ballot shall be held in which the person who received the



lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:

- i. Governors who voted in the preceding ballot for a person who is not elected; and
  - ii. Governors whose votes for a person who is elected are deemed in accordance with paragraph 3(c) of this annex, to have raised the votes cast for that person above nineteen\* per cent of the total voting power of the non-regional members.
- c.
- i. In determining whether the votes cast by a governor shall be deemed to have raised the total number of votes for any person above nineteen\* per cent, the said nineteen\* per cent shall be deemed to include, first the votes of the governor casting the highest number of votes for that person, and then, in diminishing order, the votes of each governor casting the next highest number until nineteen\* per cent is attained.
  - ii. Any governor part of whose votes must be counted in order to raise the votes cast for any person above fourteen\* per cent shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds nineteen\* per cent.
- d. If, after the second ballot, six persons are not elected, further ballots shall be held in conformity with the principles laid down in this annex, provided that after five persons are elected, the sixth may be elected --notwithstanding the provisions of paragraph 3(a) of this annex --by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the sixth director.







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**AFRICAN DEVELOPMENT BANK**

**Website : [www.afdb.org](http://www.afdb.org)**