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AGREEMENT ESTABLISHING THE  
[SOUTH[ERN] AFRICAN DEVELOPMENT BANK]

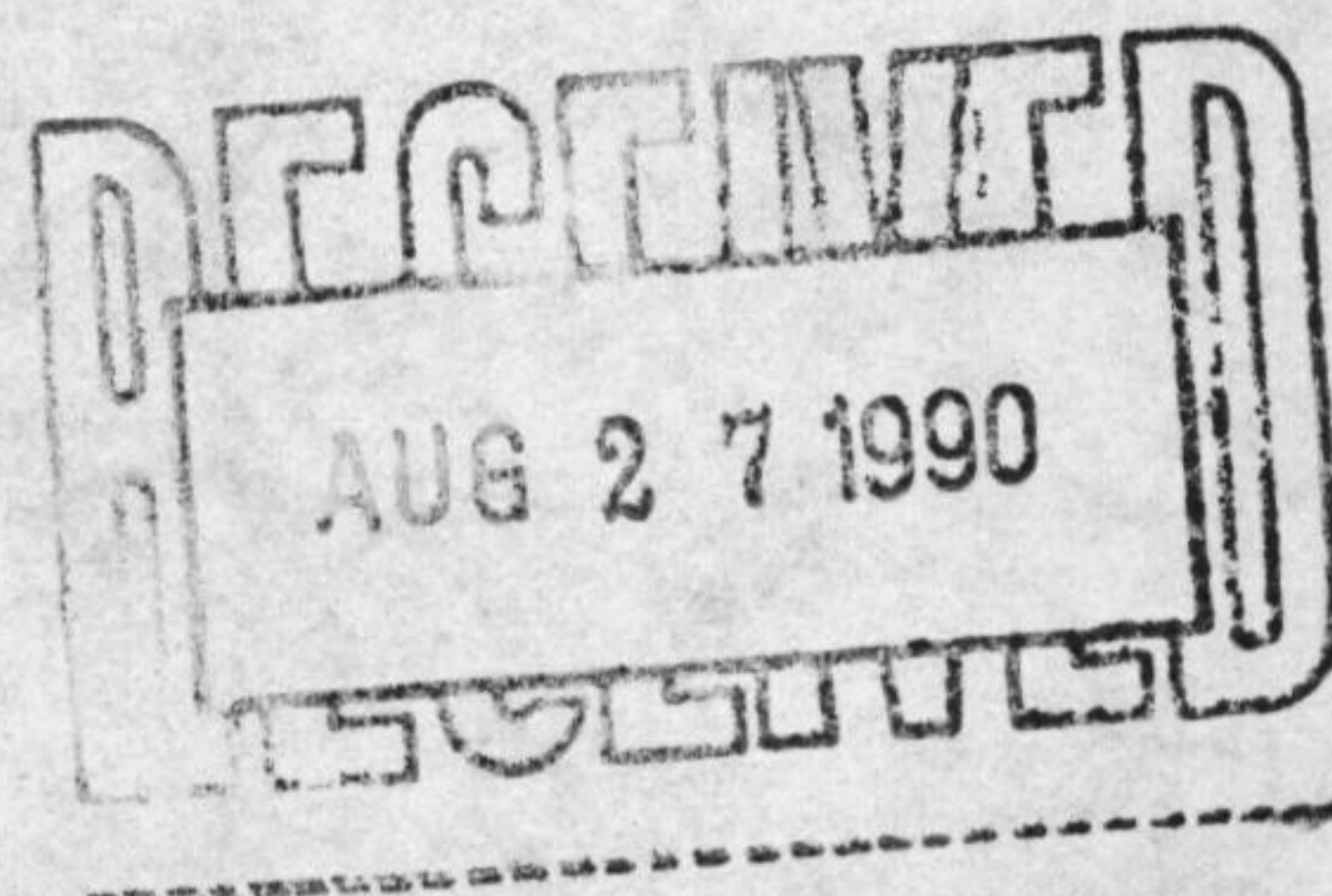




TABLE OF CONTENTS

	<u>Page</u>
I. Purpose, Functions and Membership.....	1
Article 1 - Purpose.....	1
Article 2 - Functions.....	2
Article 3 - Membership.....	2
II. Capital.....	3
Article 4 - Capital.....	3
Article 5 - Subscription of Shares.....	3
Article 6 - Payment of Subscriptions.....	4
Article 7 - Ordinary Capital Resources....	6
III. Operations.....	6
Article 8 - Use of Resources.....	6
Article 9 - Ordinary and Special Operations.....	7
Article 10 - Separation and Operations.....	7
Article 11 - Methods of Operations.....	8
Article 12 - Limitations on Ordinary Operations.....	10
Article 13 - Operating Principles.....	10
Article 14 - Terms and Conditions for Loans and Guarantees.....	12
Article 15 - Commission and Fees.....	12
Article 16 - Special Reserve.....	13
Article 17 - Methods of Meeting the Losses of the Bank.....	13
Article 18 - Special Funds.....	14
Article 19 - Special Funds Resources.....	14
IV. Borrowing and Other Miscellaneous Powers.....	15



	<u>Page</u>
Article 20 - Borrowing and Other Miscellaneous Powers.....	15
V. Currencies.....	16
Article 21 - Determination and Use of Currencies.....	16
VI. Organization and Management.....	16
Article 22 - Structure.....	16
Article 23 - Board of Governors: Composition.....	17
Article 24 - Board of Governors: Powers.....	17
Article 25 - Board of Governors: Procedure.....	18
Article 26 - Board of Directors: Composition.....	19
Article 27 - Board of Directors: Powers.....	20
Article 28 - Board of Directors: Procedure.....	21
Article 29 - Voting.....	21
Article 30 - The President.....	22
Article 31 - Vice President(s).....	23
Article 32 - International Character of the Bank.....	23
Article 33 - Location of Offices.....	23
Article 34 - Depositories and Channels of Communication.....	24
Article 35 - Publication of Reports and Provision of Information.....	24
Article 36 - Allocation and Distribution of Net Income.....	24
VII. Withdrawal and Suspension of Membership, Temporary Suspension and Termination of Operations.....	25
Article 37 - Rights of Members to Withdraw.....	25
Article 38 - Suspension of Membership.....	25
Article 39 - Settlement of Accounts with Former Members.....	26
Article 40 - Temporary Suspension of Operations.....	27
Article 41 - Termination of Operations.....	27
Article 42 - Liability of Members and	



	<u>Page</u>
Payment of Claims.....	28
Article 43 - Distribution of Assets.....	28
VIII. Status, Immunities, Privileges and Exemptions.....	29
Article 44 - Purposes of Chapter.....	29
Article 45 - Status of the Bank.....	29
Article 46 - Position of the Bank with Regard to Judicial Process....	29
Article 47 - Immunity of Assets from Seizure.....	30
Article 48 - Immunity of Archives.....	30
Article 49 - Freedom of Assets from Restrictions.....	30
Article 50 - Privilege for Communications.....	30
Article 51 - Immunities of Officers and Employees.....	30
Article 52 - Privilege of Officers and Employees.....	30
Article 53 - Exemption From Taxation.....	31
Article 54 - Implementation of Chapter.....	33
Article 55 - Waiver of Immunities, Privileges and Exemptions.....	33
IX. Amendments, Interpretation, Arbitration.....	33
Article 56 - Amendments.....	33
Article 57 - Interpretation and Application.....	34
Article 58 - Arbitration.....	35
Article 59 - Approval Deemed Given.....	35
X. Final Provisions.....	35
Article 60 - Signature and Deposit.....	35
Article 61 - Ratification, Acceptance or Approval.....	36
Article 62 - Entry into Force.....	36
Article 63 - Inaugural Meeting and Commencement of Operations....	37
Annex A.....	38



## Chapter I

### PURPOSE, FUNCTIONS AND MEMBERSHIP

#### Article 1

##### PURPOSE

The purpose of the Bank shall be to contribute to the economic progress and reconstruction of a democratic South[ern] Africa.

#### Article 2

##### FUNCTIONS

1. To implement its purpose, the Bank shall have the following functions:

(i) to promote investment in South[ern] Africa of public and private capital;

(ii) to utilize its own capital, funds raised by it in financial markets, and other available resources, for financing the development, restructuring and economic growth of South[ern] Africa, giving priority to those loans and guarantees that will contribute most effectively to raising the standard of living and social conditions of the previously disadvantaged;

(iii) to encourage public and private investment in projects, enterprises, hospitals, schools and activities contributing to economic development and restructuring and to supplement private investment when private capital is not available on reasonable terms and conditions;

(iv) to cooperate with [the government of South Africa] [the governments of regional members] to orient [its] [their] economic policies toward a fairer utilization of their resources, in a manner consistent with its economic growth and the opening of economic, educational and social opportunity to the previously disadvantaged;

[(v) to utilize the resources at its disposal for financing development of the regional members, giving priority to those regional, sub-regional and national programmes which will contribute most effectively to the



harmonious economic growth of the region as a whole, and having special regard to the needs of the smaller or less developed member countries in the region;] *ELA ADB*

[(vi) to meet requests from members in the region to assist them in the coordination of their economic policies and plans with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, in particular, intra-regional trade;]

(vii) to provide technical assistance for the research, preparation, financing, and implementation of economic development and restructuring plans and projects, including the study of priorities and the formulation of specific project proposals; and

(viii) to undertake such other activities and provide such other services as may advance its purpose.

2. In carrying out its functions, the Bank shall cooperate as far as possible with national and international institutions and with private sources supplying investment capital.

In carrying out the functions referred to in paragraph 1 of this Article, the Bank shall work in close cooperation with all its members and, in such manner as it may deem appropriate within the terms of this Agreement, with the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the Organization for Economic Cooperation and Development, and the European Community and shall cooperate with the United Nations and its Specialized Agencies and other related bodies, and any entity, whether public or private, concerned with the economic development of, and investment in South[ern] Africa.

### Article 3

#### MEMBERSHIP

1. Membership in the Bank shall be open:

(i) [to countries which are members of the International Monetary Fund] [to any country]; and

(ii) to [International Organizations? Regional Organizations? the European Community?]

2. Countries eligible for membership under paragraph 1 of this Article, which do not become members in



accordance with Article 61 of this Agreement, may be admitted, under such terms and conditions as the Bank may determine, to membership in the Bank upon the affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.

## Chapter II

### CAPITAL

#### Article 4

##### AUTHORIZED CAPITAL STOCK

1. The original authorized capital stock shall be \_\_\_\_\_ (\_\_\_\_\_) dollars. It shall be divided into \_\_\_\_\_ (\_\_\_\_\_) shares, having a par value of \_\_\_\_\_ (\_\_\_\_\_) dollars each, which shall be available for subscription only by members in accordance with the provisions of Article 5 of this Agreement.

2. The original capital stock shall be divided into paid-in shares and callable shares. The initial total aggregate par value of paid-in shares shall be \_\_\_\_\_ (\_\_\_\_\_) dollars.

3. The authorized capital stock may be increased at such time and under such terms as may seem advisable, by a vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.

#### Article 5

##### SUBSCRIPTION OF SHARES

1. Each member shall subscribe to shares of the capital stock of the Bank, subject to fulfillment of the member's legal requirements. Each subscription to the original authorized capital stock shall be for paid-in shares and callable shares in the proportion of [three (3) to seven (7).] The initial number of shares available to be subscribed to by Signatories to this Agreement which become members in accordance with Article 61 of this Agreement shall be that set forth in Annex A. No member shall have an initial subscription of less than [one hundred (100)] shares.

2. The initial number of shares to be subscribed to by countries which are admitted to membership in accordance with paragraph 2 of Article 3 of this Agreement shall be determined by the Board of Governors.



3. The Board of Governors shall at intervals of not more than [five (5)] years review the capital stock of the Bank. In case of an increase in the authorized capital stock, each member shall have a reasonable opportunity to subscribe, under such uniform terms and conditions as the Board of Governors shall determine, to a proportion of the increase in stock equivalent to the proportion which its stock subscribed bears to the total subscribed capital stock immediately prior to such increase. No member shall be obliged to subscribe to any part of an increase of capital stock.

4. Subject to the provisions of paragraph 3 of this Article, the Board of Governors may, at the request of a member, increase the subscription of that member, or allocate shares to that member within the authorized capital stock which are not taken up by other members.

5. Shares of stock initially subscribed to by members shall be issued at par. Other shares shall be issued at par unless the Board of Governors, by a vote of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members, decides to issue them in special circumstances on other terms.

6. Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank in accordance with Chapter VII of this Agreement.

7. The liability of the members on shares shall be limited to the unpaid portion of their issue price. No member shall be liable, by reason of its membership, for obligations of the Bank.

## Article 6

### PAYMENT OF SUBSCRIPTIONS

1. Payment of the paid-in shares of the amount initially subscribed to by each Signatory to this Agreement, which becomes a member in accordance with Article 61 of this Agreement, shall be made in 5 instalments of 20 per cent each of such amount. The first instalment shall be paid by each member within [sixty (60)] days after the date of the entry into force of this Agreement, or after the date of deposit of its instrument of ratification, acceptance or approval in accordance with Article 61, if this latter is later than the date of the entry into force. The remaining        instalments shall each become due successively [one year] from the date on which the preceding instalment became



due and shall each, subject to the legislative requirements of each member, be paid.

2. The first instalment shall consist of immediately available funds. Thereafter, [fifty (50)] per cent of payment of each instalment pursuant to paragraph 1 of this Article, or by a member admitted in accordance with paragraph 2 of Article 3 of this Agreement, may be made in promissory notes or other obligations issued by such member and denominated in United States dollars or in Japanese yen, to be drawn down as the Bank needs funds for disbursement as a result of its operations. Such notes or obligations shall be non-negotiable, non-interest-bearing and payable to the Bank at par value upon demand. Demands upon such notes or obligations shall, over reasonable periods of time, be made so that the value of such demands in United States dollars at the time of demand from each member is proportional to the number of paid-in shares subscribed to and held by each such member depositing such notes or obligations.

3. All payment obligations of a member in respect of subscription to shares in the initial capital stock shall be settled either in United States dollars or in Japanese yen on the basis of the average exchange rate of the relevant currency in terms of United States dollars for the period from \_\_\_\_\_ to \_\_\_\_\_ inclusive.

4. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call, taking account of Articles 17 and 42 of this Agreement, only as and when required by the Bank to meet its liabilities.

5. In the event of a call referred to in paragraph 4 of this Article, payment shall be made by the member in United States dollars or in Japanese yen. Such calls shall be uniform in United States dollar value upon each callable share calculated at the time of the call.

6. The Bank shall determine the place for any payment under this Article not later than one month after the inaugural meeting of its Board of Governors, provided that, before such determination, the payment of the first instalment referred to in paragraph 1 of this Article shall be made to \_\_\_\_\_, as trustee for the Bank.

7. For subscriptions other than those described in paragraphs 1, 2 and 3 of this Article, payments by a member in respect of subscription to paid-in shares in the authorized capital stock shall be made in United States dollars or in Japanese yen whether in cash or in promissory notes or in other obligations.



8. For the purposes of this Article, payment or denomination in United States dollars shall include payment or denomination in any fully convertible currency which is equivalent on the date of payment or encashment to the value of the relevant obligation in United States dollars.

## Article 7

### ORDINARY CAPITAL RESOURCES

As used in this Agreement, the term "ordinary capital resources" of the Bank shall include the following:

(i) authorized capital stock of the Bank, including both paid-in and callable shares, subscribed to pursuant to Article 5 of this Agreement;

(ii) funds raised by borrowings of the Bank by virtue of powers conferred by subparagraph (i) of Article 20 of this Agreement, to which the commitment to calls provided for in paragraph 4 of Article 6 of this Agreement is applicable;

(iii) funds received in repayment of loans or guarantees and proceeds from the disposal of equity investment made with the resources indicated in sub-paragraphs (i) and (ii) of this Article;

(iv) income derived from loans and equity investment, made from the resources indicated in sub-paragraphs (i) and (ii) of this Article, and income derived from guarantees and underwriting not forming part of the special operations of the Bank; and

(v) any other funds or income received by the Bank which do not form part of its Special Funds resources referred to in Article 19 of this Agreement.

## Chapter III

### OPERATIONS

## Article 8

### USE OF RESOURCES

1. The resources and facilities of the Bank shall be used exclusively to implement the purpose and carry out the functions set forth, respectively, in Articles 1 and 2 of this Agreement.

[2. In cases where the government of South Africa [any regional member] might be implementing policies which



are inconsistent with Article 1 of this Agreement, or in exceptional circumstances, the Board of Directors shall consider whether continued access by South Africa [any regional member] to Bank resources should be suspended or otherwise modified and may make recommendations accordingly to the Board of Governors. Any decision on these matters shall be taken by the Board of Governors by a majority of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members.]

#### Article 9

##### ORDINARY AND SPECIAL OPERATIONS

The operations of the Bank shall consist of ordinary operations financed from the ordinary capital resources of the Bank referred to in Article 7 of this Agreement and special operations financed from the Special Funds resources referred to in Article 19 of this Agreement. The two types of operations may be combined.

#### Article 10

##### SEPARATION OF OPERATIONS

1. The ordinary capital resources and the Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of entirely separately from each other. The financial statements of the Bank shall show the reserves of the Bank, together with its ordinary operations, and separately, its special operations.

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 special operations or other activities for which Special Funds resources were originally used or committed.

3. 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 Special Funds resources. Any other expenses shall, subject to paragraph 1 of Article 18 of this Agreement, be charged as the Bank shall determine.



## Article 11

### METHODS OF OPERATIONS

1. The Bank shall carry out its operations in furtherance of its purpose and functions as set out in Articles 1 and 2 of this Agreement in any or all of the following ways:

(i) by making, or co-financing together with multilateral institutions, commercial banks or other interested sources, or participating in, loans to private sector enterprises [(including without limitation, the funding of microlending and the financing of trading companies)] and to state-owned enterprises;

(ii) by facilitating access to domestic and international capital markets by private sector enterprises or by other enterprises referred to in subparagraph (i) of this paragraph for the ends mentioned in that subparagraph, through the provision of guarantees, where other means of financing are not appropriate, and through financial advice and other forms in assistance;

(iii) by deploying Special Funds resources in accordance with the agreements determining their use; and

(iv) by making or participating in loans and providing technical assistance for the reconstruction or development of infrastructure, including environmental programs.

(v) by cooperating with the [Central Bank of South Africa] [or central banks of regional members] to engage in activities as principal or as agent, support the liquidity and efficient operation of markets in [list of government or other securities] and to otherwise assist the [Central Bank of South Africa] [central banks of other members] in achieving particular economic and monetary goals.

[2. The Bank shall have the authority to establish and maintain the [South[ern] African Finance Corporation (the "SAFC")] as a separate legal entity or otherwise. The objective of the [SAFC] shall be to encourage the growth of productive public and private enterprises in South[ern] Africa in furtherance of the purpose of the Bank as set out in Article 1 of this Agreement. In carrying out this objective, the [SAFC] shall:

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[(i) assist in financing the establishment, improvement and expansion of productive public and private enterprises which would contribute to the development of South[ern] Africa by:

[(a) making investments in the equity capital of such enterprises, other investments without guarantee of repayment, and loans [(including without limitation, the funding of microlending and the financing of trading companies)], in cases where sufficient private capital is not available on reasonable terms and conditions; and

[(b) underwriting, where other means of financing are not appropriate, the equity issue of securities by private sector enterprises and state-owned enterprises;

[(ii) seek to bring together investment opportunities, domestic and foreign private capital, and experienced management; and

[(iii) seek to stimulate and help to create conditions conducive to the flow of private capital, domestic and foreign, into productive investment in South[ern] Africa.]

3. (i) The Board of Directors shall review at least annually the Bank's operations and lending strategy to ensure that the purpose and the functions of the Bank, as set out in Articles 1 and 2 of this Agreement, are fully served. Any decision pursuant to such a review shall be taken by a majority of not less than two-thirds of the Directors, representing not less than three-fourths of the total voting power of the members.

[(ii) The said review shall involve the consideration of, inter alia, the progress made by South Africa towards the abolition of apartheid and the transition to a democratic non-racial government.]

[4. (i) Not more than \_\_\_\_\_ per cent of the amount of the Bank's total committed loans, guarantees and equity investments, without prejudice to its other operations referred to in this Article, shall be provided to the state sector. Such percentage limit shall apply initially over a two (2) year period, from the date of commencement of the Bank's operations, taking one year with another, and thereafter in respect of each subsequent financial year.]

(ii) For the purposes of this paragraph,



(a) the state sector includes national and local governments, their agencies, and enterprises owned or controlled by any of them; and

(b) loans to a financial intermediary for on lending to the private sector shall not be considered as made to the state sector.

## Article 12

### LIMITATIONS ON ORDINARY OPERATIONS

1. The total amount of outstanding loans, equity investments and guarantees made by the Bank in its ordinary operations shall not be increased at any time, if by such increase the total amount of its unimpaired subscribed capital, reserves and surpluses included in its ordinary capital resources would be exceeded.

2. The amount of any equity investment shall not normally exceed such percentage of the equity capital of the enterprise concerned as shall be determined, by a general rule, to be appropriate by the Board of Directors. The Bank shall not seek to obtain by such an investment a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment, except in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Bank, threaten to jeopardize such investment, in which case the Bank may take such action and exercise such rights as it may deem necessary for the protection of its interests.

3. The amount of the Bank's disbursed equity investments shall not at any time exceed an amount corresponding to its total unimpaired paid-in subscribed capital, surpluses and general reserve.

[4. The Bank shall not issue guarantees for export credits nor undertake insurance activities.]

## Article 13

### OPERATING PRINCIPLES

The Bank shall operate in accordance with the following principles:

(i) the Bank shall apply sound banking principles to all its operations;



(ii) the operations of the Bank shall provide for the financing of specific projects, whether individual or in the context of specific investment programs, and for technical assistance, designed to fulfill its purpose and functions as set out in Articles 1 and 2 of this Agreement;

[(iii) the Bank shall not finance any undertakings within the territory of [South Africa if the government of South Africa] [or within the territory of other regional members if the government of such regional member] objects to such financing;]

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(iv) the Bank shall not allow a disproportionate amount of its resources to be used for the benefit of any particular sector of the economy;

(v) the Bank shall seek to maintain reasonable diversification in all its investments;

(vi) before a loan, guarantee or equity investment is granted, the applicant shall have submitted an adequate proposal and the President of the Bank shall have presented to the Board of Directors a written report regarding the proposal, together with recommendations, on the basis of a staff study;

(vii) the Bank shall not undertake any financing, or provide any facilities, when the applicant is able to obtain sufficient financing or facilities elsewhere on terms and conditions that the Bank considers reasonable;

(viii) in providing or guaranteeing financing, the Bank shall pay due regard to the prospect that the borrower and its guarantor, if any, will be in a position to meet their obligations under the financing contract;

(ix) in 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 as it is actually incurred;

(x) the Bank shall seek to revolve its funds by selling its investments to private investors whenever it can appropriately do so on satisfactory terms;

(xi) in its investments in individual enterprises, the Bank shall undertake its financing on terms and conditions which it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the Bank, and the terms and conditions normally obtained by private investors for similar financing;

(xii) the Bank shall place no restriction upon the procurement of goods and services from any country from the



proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Bank, and shall, in all appropriate cases, make its loans and other operations conditional on international invitations to tender being arranged; and

(xiii) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used only for the purposes for which the loan or the equity investment was granted and with due attention to considerations of economy and efficiency.

#### Article 14

##### TERMS AND CONDITIONS FOR LOANS AND GUARANTEES

1. In the case of loans made, participated in, or guaranteed by the Bank, the contract shall establish the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other fees, the terms of any collateral, charges, maturities and dates of payment in respect of the loan or the guarantee, respectively. In setting such terms and conditions, the Bank shall take fully into account the need to safeguard its income.

2. Where the recipient of loans or guarantees of loans is a state-owned enterprise, the Bank may, when it appears desirable, require [the government of South Africa,] [the government of the regional member] [province, territory,] public agency or any instrumentality [of the government of South Africa] [of the regional member] to guarantee the repayment of the principal and the payment of interest and other fees and charges of the loan in accordance with the terms thereof. The Board of Directors shall review annually the Bank's practice in this matter, paying due attention to the Bank's creditworthiness.

3. The loan or guarantee contract shall expressly state the currency or currencies in which all payments to the Bank thereunder shall be made.

#### Article 15

##### COMMISSION AND FEES

1. The Bank shall charge, in addition to interest, a commission on loans made or participated in as part of its ordinary operations. The terms and conditions of this commission shall be determined by the Board of Directors.



2. In guaranteeing a loan as part of its ordinary operations, or in underwriting the sale of securities, the Bank shall charge fees, payable at rates and times determined by the Board of Directors, to provide suitable compensation for its risks.

3. The Board of Directors may determine any other charges of the Bank in its ordinary operations and any commission, fees or other charges in its special operations.

#### Article 16

##### SPECIAL RESERVE

1. The amount of commissions and fees received by the Bank pursuant to Article 15 of this Agreement shall be set aside as a special reserve which shall be kept for meeting the losses of the Bank in accordance with Article 17 of this Agreement. The special reserve shall be held in such liquid form as the Bank may decide.

2. If the Board of Directors determines that the size of the special reserve is adequate, it may decide that all or part of the said commission or fees shall henceforth form part of the income of the Bank.

#### Article 17

##### METHODS OF MEETING THE LOSSES OF THE BANK

1. In the Bank's ordinary operations, in cases of arrears or default on loans made, participated in, or guaranteed by the Bank, and in cases of losses on underwriting and in equity investment, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate provisions against possible losses.

2. Losses arising in the Bank's ordinary operations shall be charged:

(i) first, to the provisions referred to in paragraph 1 of this Article;

(ii) second, to net income;

(iii) third, against the special reserve provided for in Article 16 of this Agreement;

(iv) fourth, against its general reserve and surpluses;

(v) fifth, against the unimpaired paid-in capital;



(vi) last, against an appropriate amount of the uncalled subscribed callable capital which shall be called in accordance with the provisions of paragraphs 4 and 5 of Article 6 of this Agreement.

#### Article 18

##### SPECIAL FUNDS

1. The Bank may accept the administration of Special Funds which are designed to serve the purpose and come within the functions of the Bank. The full cost of administering any such Special Fund shall be charged to that Special Fund.

2. Special Funds accepted by the Bank may be used in any manner and on any terms and conditions consistent with the purpose and the functions of the Bank, with the other applicable provisions of this Agreement, and with the agreement or agreements relating to such Funds.

3. The Bank shall adopt such rules and regulations as may be required for the establishment, administration and use of each Special Fund. Such rules and regulations shall be consistent with the provisions of this Agreement, except for those provisions expressly applicable only to ordinary operations of the Bank.

#### Article 19

##### SPECIAL FUNDS RESOURCES

The term "Special Funds resources" shall refer to the resources of any Special Fund and shall include:

(i) funds accepted by the Bank for inclusion in any Special Fund;

(ii) funds repaid in respect of loans or guarantees, and the proceeds of equity investments, financed from the resources of any Special Fund which, under the rules and regulations governing that Special Fund, are received by such Special Fund; and

(iii) income derived from the investment of Special Funds resources.



## Chapter IV

### BORROWING AND OTHER MISCELLANEOUS POWERS

#### Article 20

##### GENERAL POWERS

1. The Bank shall have, in addition to the powers specified elsewhere in this Agreement, the power to:

(i) borrow funds in member countries or elsewhere, provided always that:

(a) before making a sale of its obligations in the territory of a country, the Bank shall have obtained its approval; and

(b) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval;

(ii) invest or deposit funds not needed in its operations;

(iii) buy and sell securities, in the secondary market, which the Bank has issued or guaranteed or in which it has invested;

(iv) guarantee securities in which it has invested in order to facilitate their sale;

(v) underwrite, or participate in the underwriting of, securities issued by any enterprise for purposes consistent with the purpose and functions of the Bank;

(vi) provide technical advice and assistance which serve its purpose and come within its functions;

(vii) exercise such other powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement; and

(viii) conclude agreements of cooperation with any public or private entity or entities.

2. 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 or member, unless it is in fact the obligation of a particular Government or member, in which case it shall so state.



## Chapter V

### CURRENCIES

#### Article 21

##### DETERMINATION AND USE OF CURRENCIES

1. Whenever it shall become necessary under this Agreement to determine whether any currency is fully convertible for the purposes of this Agreement, such determination shall be made by the Bank, taking into account the paramount need to preserve its own financial interests, after consultation, if necessary, with the International Monetary Fund.

2. Members shall not impose any restrictions on the receipt, holding, use or transfer by the Bank of the following:

(i) currencies received by the Bank in payment of subscriptions to its capital stock, in accordance with Article 6 of this Agreement;

(ii) currencies obtained by the Bank by borrowing;

(iii) currencies and other resources administered by the Bank as contributions to Special Funds; and

(vi) currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments, or the proceeds of disposal of such investments made out of any of the funds referred to in subparagraphs (i) to (iii) of this paragraph, or in payment of commission, fees or other charges.

## Chapter VI

### ORGANIZATION AND MANAGEMENT

#### Article 22

##### STRUCTURE

The Bank shall have a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and such other officers and staff as may be considered necessary.



## Article 23

### BOARD OF GOVERNORS: COMPOSITION

1. Each member shall be represented on the Board of Governors and shall appoint one Governor and one Alternate. Each Governor and Alternate shall serve at the pleasure of the appointing member. No Alternate may vote except in the absence of his or her principal. At each of its annual meetings, the Board shall elect one of the Governors as Chairman who shall hold office until the election of the next Chairman.

2. Governors and Alternates shall serve as such without remuneration from the Bank.

## Article 24

### BOARD OF GOVERNORS: POWERS

1. All the powers of the Bank shall be vested in the Board of Governors.

2. The Board of Governors may delegate to the Board of Directors any or all of its powers, except the power to:

(i) admit new members and determine the conditions of their admission;

(ii) increase or decrease the authorized capital stock of the Bank;

(iii) suspend a member;

(vi) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;

(v) authorize the conclusion of general agreements for co-operation with other international organizations;

(vi) elect the Directors and the President of the Bank;

(vii) determine the remuneration of the Directors and Alternate Directors and the salary and other terms of the contract of service of the President;

(viii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Bank;



(ix) determine the reserves and the allocation and distribution of the net profits of the Bank;

(x) amend this Agreement;

(xi) decide to terminate the operations of the Bank and to distribute its assets; and

(xii) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.

3. The Board of Governors shall retain full power to exercise authority over any matter delegated or assigned to the Board of Directors under paragraph 2 of this Article, or elsewhere in this Agreement.

## 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 of Governors or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by not less than [five (5)] members of the Bank or members holding not less than [one quarter] of the total voting power of the members.

2. [Two-thirds] of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than [two-thirds] 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 the latter deems such action advisable, obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

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



## Article 26

### BOARD OF DIRECTORS: COMPOSITION

1. The Board of Directors shall be composed of 10 members who shall not be members of the Board of Governors, and of whom:

#### [Regional Bank Option]

[(a) \_\_\_\_\_ ( ) shall be elected by the Governors representing the regional members; and

(b) \_\_\_\_\_ ( ) shall be elected by the Governors representing the non-regional members.]

#### [South African Bank Option]

[(a) \_\_\_\_\_ ( ) shall be elected by the Board of Governors of which number \_\_\_\_\_ ( ) shall be citizens of South Africa; and

(b) \_\_\_\_\_ ( ) shall be elected by the Government of South Africa.]

2. Directors shall be persons of high competence in economic and financial matters.

3. The Board of Governors may increase or decrease the size, or revise the composition, of the Board of Directors, in order to take into account changes in the number of members of the Bank, by an affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members. Without prejudice to the exercise of these powers for subsequent elections, the number and composition of the second Board of Directors shall be as set out in paragraph 1 of this Article.

4. Each Director shall appoint an Alternate with full power to act for him or her when he or she is not present. Directors and Alternates shall be nationals of member countries. [No member, other than South Africa, shall be represented by more than one Director.] [No two or more Directors may be of the same nationality nor may any two or more alternates be of the same nationality. (THIS LATTER RESTRICTION FOR REGIONAL BANK ONLY)] An Alternate may participate in meetings of the Board but may vote only when he or she is acting in place of his or her principal.

5. Directors shall hold office for a term of [three (3)] years and may be reelected; provided that the first Board of Directors shall be elected by the Board of



Governors at its inaugural meeting, and shall hold office until the next immediately following annual meeting of the Board of Governors or, if that Board shall so decide at that annual meeting, until its next subsequent annual meeting. They shall continue in office until their successors shall have been chosen and assumed office. If the office of a Director becomes vacant more than one hundred and eighty (180) days before the end of his or her term, a successor shall be chosen, for the remainder of the term, by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty (180) days or less before the end of his or her term, a successor may similarly be chosen for the remainder of the term, by the votes cast by such Governors who elected the former Director, in which election a majority of the votes cast by such Governors shall be required. While the office remains vacant, the Alternate of the former Director shall exercise the powers of the latter, except that of appointing an Alternate.

#### Article 27

##### BOARD OF DIRECTORS: POWERS

Without prejudice to the powers of the Board of Governors as provided in Article 24 of this Agreement, the Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

(i) prepare the work of the Board of Governors;

(ii) in conformity with the general directions of the Board of Governors, establish policies and take decisions concerning loans, guarantees, investments in equity capital, borrowing by the Bank, the furnishing of technical assistance, and other operations of the Bank;

(iii) submit the audited accounts for each financial year for approval of the Board of Governors at each annual meeting; and

(vi) approve the budget of the Bank.



## Article 28

### BOARD OF DIRECTORS: PROCEDURE

1. The Board of Directors shall normally function at the principal office of the Bank and shall meet as often as the business of the Bank may require.

2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two-thirds 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 send a representative to attend, without right to vote, any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.

## Article 29

### VOTING

1. The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank. In the event of any member failing to pay any part of the amount due in respect of its obligations in relation to paid-in shares under Article 6 of this Agreement, such member shall be unable for so long as such failure continues to exercise that percentage of its voting power which corresponds to the percentage which the amount due but unpaid bears to the total amount of paid-in shares subscribed to by that member in the capital stock of the Bank.

2. In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power of the members voting.

3. In voting in the Board of Directors each Director shall be entitled to cast the number of votes to which the Governors who have elected him or her are entitled. A Director representing more than one member may cast separately the votes of the members he or she represents. Except as otherwise expressly provided in this Agreement, and except for general policy decisions in which cases such policy decisions shall be taken by a majority of not less than two-thirds of the total voting power of the members voting, all matters before the Board of Directors

*Handwritten:* 20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-1225-1226-1227-1228-1229-1230-1231-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shall be decided by a majority of the voting power of the members voting.

## Article 30

### THE PRESIDENT

1. The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect the first President of the Bank. Thereafter the Board of Governors shall nominate a President who must be confirmed by a majority vote of the Board of Directors. The President, while holding office, shall not be a Governor or a Director or an Alternate for either.

2. The term of office of the President shall be four (4) years. He or she may be re-elected. He or she shall, however, cease to hold office when the Board of Governors so decides by an affirmative vote of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. If the office of the President for any reason becomes vacant, the Board of Governors, in accordance with the provisions of paragraph 1 of this Article, shall elect a successor for up to four (4) years.

3. The President shall not vote, except that he or she may cast a deciding vote in case of an equal division. He or she may participate in meetings of the Board of Governors and shall chair the meetings of the Board of Directors.

4. The President shall be the legal representative of the Bank.

5. The President shall be chief of the staff of the Bank. He or she shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations to be adopted by the Board of Directors. In appointing officers and staff, he or she shall, subject to the paramount importance of efficiency and technical competence, pay due regard to recruitment on a wide geographical basis among members of the Bank. The President shall prepare a personnel hiring and policy statement which statement must be approved and reviewed by the Board of Governors. [Such policy statement shall include a plan for cooperating with other international organizations with respect to employee benefits and salary scales.]

6. The President shall conduct, under the direction of the Board of Directors, the current business of the Bank.



## Article 31

### VICE PRESIDENT(S)

1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. A Vice-President shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, a Vice-President shall exercise the authority and perform the functions of the President.

2. A Vice-President may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that he or she may cast the deciding vote when acting in place of the President.

## Article 32

### INTERNATIONAL CHARACTER OF THE BANK

1. The Bank shall not accept Special Funds or other loans or assistance that may in any way prejudice, deflect or otherwise alter its purpose or functions.

2. The Bank, its President, Vice-President(s), officers and staff shall in their decisions take into account only considerations relevant to the Bank's purpose, functions and operations, as set out in this Agreement. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

3. The President, Vice-President(s), officers and staff of the Bank, in the discharge of their offices, shall 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 33

### LOCATION OF OFFICES

1. The principal office of the Bank shall be located in \_\_\_\_\_. Until 199X, the principal office of the Bank may be located in \_\_\_\_\_.

2. The Bank may establish agencies or branch offices in the territory of any member of the Bank.



## Article 34

### DEPOSITORIES AND CHANNELS OF COMMUNICATION

1. Each member shall designate its central bank, or such other institution as may be agreed upon with the Bank, as a depository for all the Bank's holdings of its currency as well as other assets of the Bank.

2. Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement.

## Article 35

### PUBLICATION OF REPORTS AND PROVISION OF INFORMATION

1. The Bank shall publish an annual report containing an audited statement of its accounts and shall circulate to members at intervals of three (3) months or less a summary statement of its financial position and a profit and loss statement showing the results of its operations. The financial accounts shall be kept in United States dollars.

2. The Bank shall report annually on the environmental impact of its activities and may publish such other reports as it deems desirable to advance its purpose.

3. Copies of all reports, statements and publications made under this Article shall be distributed to members.

## Article 36

### ALLOCATION AND DISTRIBUTION OF NET INCOME

1. The Board of Governors shall determine at least annually what part of the Bank's net income, after making provision for reserves and, if necessary, against possible losses under paragraph 1 of Article 17 of this Agreement, shall be allocated to surplus or other purposes and what part, if any, shall be distributed. Any such decision on the allocation of the Bank's net income to other purposes shall be taken by a majority of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. No such allocation, and no distribution, shall be made until the general reserve amounts to at least ten (10) per cent of [the authorized capital stock] [aggregate loans and other investment outstanding].



2. Any distribution referred to in the preceding paragraph shall be made in proportion to the number of paid-in shares held by each member; provided that in calculating such number account shall be taken only of payments received in cash and promissory notes encashed in respect of such shares on or before the end of the relevant financial year.

3. Payments to each member shall be made in such manner as the Board of Governors shall determine. Such payments and their use by the receiving country shall be without restriction by any member.

## Chapter VII

### WITHDRAWAL AND SUSPENSION OF MEMBERSHIP: TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS

#### Article 37

##### RIGHTS OF MEMBERS TO WITHDRAW

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, and its membership shall cease, on the date specified in its notice but in no event less than six (6) months after such notice is received by the Bank. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.

#### Article 38

##### SUSPENSION OF MEMBERSHIP

1. If a member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership by decision of a majority of not less than two-thirds of the Governors, representing not less than two-thirds of the total voting power of the members. The member so suspended shall automatically cease to be a member one year from the date of its suspension unless a decision is taken by not less than the same majority to restore the member to good standing.

2. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.



## Article 39

### SETTLEMENT OF ACCOUNTS WITH FORMER MEMBERS

1. After the date on which a member ceases to be a member, such former 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, equity investments or guarantees contracted before it ceased to be a member are outstanding; but it shall cease to incur such liabilities with respect to loans, equity investments 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 member ceases to be a member, the Bank shall arrange for the repurchase of such former member's shares as a part of the settlement of accounts with such former member in accordance with the provisions 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 date of cessation of membership, with the original purchase price of each share being its maximum value.

3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:

(i) any amount due to the former member for its shares shall be withheld so long as the former member, its central bank or any of its agencies or instrumentalities 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 former member resulting from its subscription for shares in accordance with paragraphs 4, 5 and 7 of Article 6 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date upon which the member ceases to be a member;

(ii) payments for shares may be made from time to time, upon their surrender by the former member, 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, equity investments and guarantees in subparagraph (i) of this paragraph until the former member has received the full repurchase price;

(iii) payments shall be made on such conditions and in such fully convertible currencies, and on such dates, as the Bank determines; and



(iv) if losses are sustained by the Bank on any guarantees, participations in loans, or loans which were outstanding on the date when the member ceased to be a member, or if a net loss is sustained by the Bank on equity investments held by it on such date, and the amount of such losses exceeds the amount of the reserves provided against losses on the date when the member ceased to be a member, such former member 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 under paragraph 4 of Article 6 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.

4. If the Bank terminates its operations pursuant to Article 41 of this Agreement within six (6) months of the date upon which any member ceases to be a member, all rights of such former member shall be determined in accordance with the provisions of Articles 41 to 43 of this Agreement.

#### Article 40

##### TEMPORARY SUSPENSION OF OPERATIONS

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

#### Article 41

##### TERMINATION OF OPERATIONS

The Bank may terminate its operations by the affirmative vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members. Upon such termination of operations, 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 42

### 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 shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

2. Creditors on ordinary operations holding direct claims shall be paid first out of the assets of the Bank, secondly out of the payments to be made to the Bank in respect of unpaid paid-in shares, and then out of payments to be made to the Bank in respect of callable capital stock. 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 holders of contingent claims.

## Article 43

### DISTRIBUTION OF ASSETS

1. No distribution under this Chapter shall be made to members on account of their subscriptions to the capital stock of the Bank until:

(i) all liabilities to creditors have been discharged or provided for; and

(ii) the Board of Governors has decided by a vote of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members, to make a distribution.

2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of assets. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.

3. Any member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.



## Chapter VIII

### STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

#### Article 44

##### PURPOSES OF CHAPTER

To enable the Bank to fulfill its purpose and the functions with which it is entrusted, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member country.

#### Article 45

##### STATUS OF THE BANK

The Bank shall possess full legal personality and, in particular, the full legal capacity:

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

#### Article 46

##### POSITION OF THE BANK WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, 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. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

#### Article 47

##### IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Bank, wheresoever 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 48

### IMMUNITY OF ARCHIVES

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

## Article 49

### FREEDOM OF ASSETS FROM RESTRICTIONS

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 assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

## Article 50

### PRIVILEGE FOR COMMUNICATIONS

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

## Article 51

### IMMUNITIES OF OFFICERS AND EMPLOYEES

All Governors, Directors, Alternates, officers and employees of the Bank and experts performing missions for the Bank shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, employee or expert.

## Article 52

### PRIVILEGES OF OFFICERS AND EMPLOYEES

1. All Governors, Directors, Alternates, officers and employees of the Bank and experts of the Bank performing missions for the Bank:

(i) not being 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 regula-



tions, as are accorded by members to the representatives, officials, and employees of comparable rank of other members; and

(ii) shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

2. The spouses and immediate dependents of those Directors, Alternate Directors, officers, employees and experts of the Bank who are resident in the country in which the principal office of the Bank is located shall be accorded opportunity to take employment in that country. The spouses and immediate dependents of those Directors, Alternate Directors, officers, employees and experts of the Bank who are resident in a country in which any agency or branch office of the Bank is located should, wherever possible, in accordance with the national law of that country, be accorded similar opportunity in that country. The Bank shall negotiate specific agreements implementing the provisions of this paragraph with the country in which the principal office of the Bank is located and, as appropriate, with the other countries concerned.

#### Article 53

##### EXEMPTION FROM TAXATION

1. Within the scope of its official activities, the Bank, its assets, property and income shall be exempt from all direct taxes.

2. When purchases or services of substantial value and necessary for the exercise of the official activities of the Bank are made or used by the Bank and when the price of such purchases or services includes taxes or duties, the member that has levied the taxes or duties shall, if they are identifiable, take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement.

3. Goods imported by the Bank and necessary for the exercise of its official activities shall be exempt from all import duties and taxes, and from all import prohibitions and restrictions. Similarly goods exported by the Bank and necessary for the exercise of its official activities shall be exempt from all export duties and taxes, and from all export prohibitions and restrictions.

4. Goods acquired or imported and exempted under this Article shall not be sold, hired out, lent or given away against payment or free of charge, except in accordance



with conditions laid down by the members which have granted exemptions or reimbursements.

5. The provisions of this Article shall not apply to taxes or duties which are no more than charges for public utility services.

6. Directors, Alternate Directors, officers and employees of the Bank shall be subject to an internal effective tax for the benefit of the Bank on salaries and emoluments paid by the Bank, subject to conditions to be laid down and rules to be adopted by the Board of Governors within a period of one year from the date of entry into force of this Agreement. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax. The members may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

7. Notwithstanding the provisions of paragraph 6 of this Article, a member may deposit, with its instrument of ratification, acceptance or approval, a declaration that such member retains for itself, its political subdivisions or its local authorities the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member. The Bank shall be exempt from any obligation for the payment, withholding or collection of such taxes. The Bank shall not make any reimbursement for such taxes.

8. Paragraph 6 of this Article shall not apply to pensions and annuities paid by the Bank.

9. 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:

(i) which discriminates against such obligation or security solely because it is issued by the Bank, or

(ii) 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.

10. 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:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank, or



(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

#### Article 54

#### IMPLEMENTATION OF CHAPTER

Each member shall promptly take such action as is necessary for the purpose of implementing the provisions of this Chapter and shall inform the Bank of the detailed action which it has taken.

#### Article 55

#### WAIVER OF IMMUNITIES, PRIVILEGES AND EXEMPTIONS

The immunities, privileges and exemptions conferred under this Chapter are granted in the interest of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine any of the immunities, privileges and exemptions conferred under this Chapter in cases where such action would, in its opinion, be appropriate in the best interests of the Bank. The President shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Bank, other than the President or a Vice-President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President and each Vice President.

#### Chapter IX

#### AMENDMENTS, INTERPRETATION, ARBITRATION

#### Article 56

#### AMENDMENTS

1. Any proposal to amend 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 of Governors, the Bank shall, by any rapid means of communications, ask all members whether they accept the proposed amendment. When not less than three-fourths of the members, having not less than four-fifths of the total voting power of the



members, have accepted the proposed amendment, the Bank shall certify that fact by formal communication addressed to all members.

2. Notwithstanding paragraph 1 of the Article:

(i) acceptance by all members shall be required in the case of any amendment modifying:

(a) the right to withdraw from the Bank;

(b) the rights pertaining to purchase capital stock provided for in paragraph 3 of Article 5 of this Agreement;

(c) the limitations on liability provided in paragraph 7 of Article 5 of this Agreement; and

(d) the purpose and functions of the Bank as defined by Articles 1 and 2 of this Agreement;

3. Amendments shall enter into force for all members (3) months after the date of the formal communication provided in paragraph 1 of this Article unless the Board of Governors specifies a different period.

Article 57

INTERPRETATION AND APPLICATION

1. Any questions of interpretation or application 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 its decision. If there is no Director of its nationality in that Board, a member particularly affected by the question under consideration shall be entitled to representation in the meeting of the Board of Directors in which the question is scheduled for such consideration. The representative of such member shall, however, have no vote. Such right of representation shall be by the Board of Governors.

2. In any case where the Board of Directors has given its decision under paragraph 1 of this Article, any member may request that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may, so far as it deems it necessary, act and rely the basis of the decision of the Board of Directors.



## Article 58

### ARBITRATION

If a disagreement should arise between the Bank and any member which has ceased to be a member, or between the Bank and any member after adoption of a decision to terminate operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three (3) arbitrators, one appointed by the Bank, another by the member or former member concerned and the third, unless the parties otherwise agree, by 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. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

## Article 59

### APPROVAL DEEMED GIVEN

Whenever the approval or the acceptance of any member is required before any act may be done by the Bank, except under Article 56 of this Agreement, approval or acceptance shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

## Chapter X

### FINAL PROVISIONS

## Article 60

### SIGNATURE AND DEPOSIT

1. This Agreement, deposited with the Government of \_\_\_\_\_ (hereinafter called "the Depository"), shall remain open until \_\_\_\_\_ for signature by the prospective members whose names are set forth in Annex A to this Agreement.

2. The Depository shall communicate certified copies of this Agreement to all the Signatories.



## Article 61

### RATIFICATION, ACCEPTANCE OR APPROVAL

1. The Agreement shall be subject to ratification, acceptance or approval by the Signatories. Instruments of ratification, acceptance or approval shall, subject to paragraph 2 of this Article, be deposited with the Depository not later than \_\_\_\_\_. The Depository shall duly notify the other Signatories of each deposit and the date thereof.

2. Any Signatory may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until one year after the date of its entry into force or, if necessary, until such later date as may be decided by a majority of Governors, representing a majority of the total voting power of the members.

3. A Signatory whose instrument referred to in paragraph 1 of this Article 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 of the Bank on the date on which its instrument of ratification, acceptance or approval is deposited.

## Article 62

### ENTRY INTO FORCE

1. This Agreement shall enter into force when (a) instruments of ratification, acceptance or approval have been deposited by Signatories whose initial subscriptions represent not less than two-thirds of the total subscriptions set forth in Annex A; (b) an instrument of ratification, acceptance or approval has been deposited by the government of \_\_\_\_\_; and (c) the Signatories have been notified that (a) a democratic government satisfactory to a majority of the Signatories has been established in South Africa or (b) an interim South African government satisfactory to a majority of the Signatories and which represents significant progress towards the abolition of apartheid has been established in South Africa.

2. If this Agreement has not entered into force by \_\_\_\_\_, 199\_, the Depository may convene a conference of interested prospective members to determine the future course of action and decide a new date by which instruments of ratification, acceptance or approval shall be deposited.



## Article 63

### INAUGURAL MEETING AND COMMENCEMENT OF OPERATIONS

1. As soon as this Agreement enters into force under Article 62 of this Agreement, each member shall appoint a Governor. The Depository shall call the first meeting of the Board of Governors within sixty (60) days of entry into force of this Agreement under Article 62 or as soon as possible thereafter.

2. At its first meeting, the Board of Governors:

(i) shall elect the President;

(ii) shall elect the Directors of the Bank in accordance with Article 26 of this Agreement;

(iii) shall make arrangements for determining the date of the commencement of the Bank's operations; and

(iv) shall make such other arrangements as appear to it necessary to prepare for the commencement of the Bank's operations.

3. The Bank shall notify its members of the date of commencement of its operations.

Done at \_\_\_\_\_ on \_\_\_\_\_ 199\_ in a single original, whose \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ texts are equally authentic, which shall be deposited in the archives of the Depository which shall transmit a duly certified copy to each of the other prospective members whose names are set forth in Annex A.



ANNEX A

INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL  
STOCK FOR PROSPECTIVE MEMBERS WHICH MAY BECOME  
MEMBERS IN ACCORDANCE WITH ARTICLE 61

COUNTRIES	NUMBER OF SHARES	CAPITAL SUBSCRIPTION (in million dollars)
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