

No. 21052

MULTILATERAL

Agreement establishing the African Development Bank, as amended (with annexes and resolutions adopted by the Board of Governors on 17 May 1979 at Abidjan). Concluded at Lusaka on 7 May 1982

Authentic texts: English and French.

Registered ex officio on 7 May 1982.

MULTILATÉRAL

Accord portant création de la Banque africaine de développement, tel que modifié (avec annexes et résolutions adoptées par le Conseil des gouverneurs le 17 mai 1979 à Abidjan). Conclu à Lusaka le 7 mai 1982

Textes authentiques : anglais et français.

Enregistré d'office le 7 mai 1982.

AGREEMENT¹ ESTABLISHING THE AFRICAN DEVELOPMENT BANK DONE AT KHARTOUM ON 4 AUGUST 1963,² AS AMENDED BY RESOLUTION 05-79³ ADOPTED BY THE BOARD OF GOVERNORS ON 17 MAY 1979, CONCLUDED AT LUSAKA ON 7 MAY 1982

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,

¹ Came into force on 7 May 1982, the date on which the African Development Bank notified its members that two thirds of the member States, having three quarters of the total voting power of the members of the Bank had accepted it, in accordance with paragraph 4 of Resolution 05-79 and of article 60 (1) of the Agreement of 4 August 1963 establishing the African Development Bank. Acceptances were effected as follows:

<i>State</i>	<i>Date of acceptance of the Agreement as amended</i>	<i>State</i>	<i>Date of acceptance of the Agreement as amended</i>
Angola	7 January 1981	Mali	16 July 1979
Benin	6 September 1980	Mauritania	5 January 1981
Botswana	13 December 1979	Mauritius	27 September 1979
Burundi	11 January 1980	Morocco	24 November 1980
Cape Verde	22 December 1980	Mozambique	27 December 1979
Central African Republic	15 January 1981	Niger	9 December 1980
Chad	7 September 1981	Nigeria	6 May 1982
Comoros	30 November 1979	Rwanda	2 February 1980
Congo	18 August 1980	Sao Tome and Principe	19 November 1979
Djibouti	29 June 1979	Senegal	10 July 1979
Egypt	27 June 1979	Seychelles	14 December 1979
Equatorial Guinea	14 November 1979	Sierra Leone	26 October 1979
Ethiopia	21 April 1980	Somalia	22 December 1980
Gabon	9 August 1980	Sudan	10 December 1980
Gambia	25 February 1980	Swaziland	11 January 1980
Ghana	13 December 1979	Togo	18 January 1980
Guinea	16 May 1980	Tunisia	27 June 1979
Guinea-Bissau	15 December 1980	Uganda	29 May 1980
Ivory Coast	27 February 1980	United Republic of Cameroon	12 March 1980
Kenya	25 July 1979	United Republic of Tanzania	20 August 1980
Lesotho	20 November 1979	Upper Volta	23 August 1980
Liberia	30 September 1980	Zaire	6 September 1980
Madagascar	18 December 1981	Zambia	3 April 1980
Malawi	23 August 1979	Zimbabwe	24 October 1980

² United Nations, *Treaty Series*, vol. 510, p. 3.

³ See p. 67 of this volume.

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,

Have agreed to establish hereby the African Development Bank (hereinafter called the "Bank") which shall be governed by the following provisions.

CHAPTER I. PURPOSE, FUNCTION, MEMBERSHIP AND STRUCTURE

Article 1. PURPOSE

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

Article 2. 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

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. Nonregional 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,¹ 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. 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.

CHAPTER II. CAPITAL

Article 5. AUTHORIZED CAPITAL

1. *a.* The 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.

b. The value of the unit of account shall be 0.88867088 gramme of fine gold.

2. The authorized capital stock shall be divided into paid-up shares and callable shares. The equivalent of 125,000,000 units of account shall be paid up, and the equivalent of 125,000,000 units of account 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 nonregional members in such proportions that

¹ United Nations, *Treaty Series*, vol. 1197, p. 13.

the respective groups shall have available for subscription that number of shares which, if fully subscribed, would result in regional members holding two thirds of the total voting power and nonregional members one third of the total voting power.

Article 6. SUBSCRIPTION OF SHARES

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 its 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 by a majority of the total voting power of the members 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 SUBSCRIPTION

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 percent 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 latter 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 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 gold or 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 gold, 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. 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

For the purposes of this Agreement, the expression "ordinary capital resources" of the Bank shall include:

- a.* Authorized capital stock of the Bank subscribed pursuant to the provisions of article 6 of this Agreement;

- b.* 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;
- c.* Funds received in repayment of loans made with resources referred to in paragraphs *a* and *b* of this article; and
- d.* 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
- e.* 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. 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.

CHAPTER III. OPERATIONS

Article 12. 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. 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. 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, except as provided in article 20 of this Agreement, to its reserves and undistributed surplus; or out of

ii. Funds corresponding to special resources; or

b. 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

c. By investment of funds referred to in sub-paragraph *a* or *b* of this paragraph in the equity capital of an undertaking or institution; or

d. 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. 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 excepting, however, the special reserve provided for in article 20 of this Agreement.

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 its 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 ten percent 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 excepting, however, the special reserve provided for in article 20 of this Agreement.

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 Governors 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:

- a.* Where it can do so by supplying local currency without selling any of its holdings in gold or convertible currencies; or
- b.* 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 expenditure incurred on that project.

Article 17. OPERATIONAL PRINCIPLES

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, by a vote of the directors representing not less than two thirds of the total voting power, 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; provided, however, that with respect to any increase of capital stock, the Board of Governors may provide that procurement of goods and services with the proceeds of such increase be restricted to those countries which participate in such increase;
- 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 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 provided 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 principle 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 gold or 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. COMMISSION AND FEES

1. The Bank shall charge a commission on direct loans made and guarantees given as part of its ordinary operations. This commission, payable periodically, shall be computed on the amount outstanding on each loan or guarantee and shall be at the rate of not less than one per cent per annum, unless the Bank, after the first ten years of its operations, decides to change this minimum rate by a majority of two thirds of its members representing not less than three quarters of the total voting power of the members.

2. In guaranteeing a loan as part of its ordinary operations, the Bank shall charge a guarantee fee, at a rate determined by the Board of Directors, payable periodically on the amount of the loan outstanding.

3. Other charges of the Bank in its ordinary operations and the commission, fees and other charges in its special operations shall be determined by the Board of Directors.

Article 20. SPECIAL RESERVE

The amount of commissions received by the Bank pursuant to article 19 of this Agreement shall be set aside as a special reserve which shall be kept for meeting liabilities of the Bank in accordance with its article 21. The special reserve shall be held in such liquid form, permitted under this Agreement, as the Board of Directors may decide.

*Article 21. 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 in [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 percent 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:

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

CHAPTER IV. BORROWING AND OTHER ADDITIONAL POWERS

Article 23. GENERAL POWERS

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

- a. Borrow funds in member countries or elsewhere, and in that connexion to furnish such collateral or other security as it shall determine provided 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-paragraphs 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 function;
- 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. 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 to 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. 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. VALUATION OF CURRENCIES AND DETERMINATION OF CONVERTIBILITY

Whenever it shall become necessary under this Agreement:

- i. To value any currency in terms of another currency, in terms of gold or of the unit of account defined in paragraph 1.b of article 5 of this Agreement, or
 - ii. 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. USE OF CURRENCIES

1. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipients from the Bank, for payments anywhere, of the following:

- a. Gold or 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 gold or 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.* Gold or 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, or currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.

4. The Bank shall not use gold or 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 adopted by a two-thirds majority of the total voting power of the members.

Article 28. MAINTENANCE OF VALUE OF THE CURRENCY HOLDINGS OF THE BANK

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 of 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 may waive the provisions of this article where a uniform proportionate change in the par value of the currencies of all its members takes place.

CHAPTER V. ORGANIZATION AND MANAGEMENT

Article 29. 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 cooperation with the authorities of African countries which have not yet attained independent status or of general arrangements 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. Determine, on the recommendation of the Board of Directors, the remuneration and conditions of service of the President of the Bank;
- 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. 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 re-appointment, 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 who shall hold office until the election of the Chairman at the next annual meeting of the Board.

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. BOARD OF GOVERNORS: PROCEDURE

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors.

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. All meetings of the Board of Governors shall be held in regional member countries.

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 two thirds of the total voting power of the members. Such quorum shall include a majority of the governors or their alternates of regional members and at least two governors or their alternates of nonregional members. If the Board of Governors is unable to achieve the sub-quorum requirement respecting the presence of nonregional governors or their alternates within two days of the date set for the meeting, the said sub-quorum requirement may be waived.

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. 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:

- a. On recommendation of the President of the Bank, appoint one or more Vice-Presidents of the Bank and determine their terms of service;
- b. Prepare the work of the Board of Governors;
- c. 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;
- d. Determine the rates of interest for direct loans and of commissions for guarantees;
- e. Submit the accounts for each financial year and an annual report for approval to the Board of Governors at each annual meeting; and
- f. Determine the general structure of the services of the Bank.

Article 33. BOARD OF DIRECTORS: COMPOSITION

1. The Board of Directors shall be composed of eighteen members who shall not be governors or alternate governors. Twelve members shall be elected by the governors of the regional members and six members shall be elected by the governors of the nonregional 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 nonregional member countries, by a two-thirds majority of the governors of nonregional 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 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.

Article 34. 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 two thirds of the total voting power of the members. Such quorum shall include at least one director of nonregional members. If the Board of Directors is unable to achieve the sub-quorum requirement respecting the presence of at least one director of the non-regional members, the said sub-quorum requirement may be waived at the next session.

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. 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 preemptive rights established in paragraph 2 of article 6 of this Agreement.

2. In voting in the Board of Governors, each governor shall be entitled to cast the votes of the member he 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 represented at the meeting.

3. In voting in the Board of Directors, each director shall be entitled to cast the number of votes that counted towards his election, which votes shall be cast as a unit. Except as otherwise provided in this Agreement, all matters before the Board of Directors shall be decided by a majority of the voting power represented at the meeting.

Article 36. THE PRESIDENT: APPOINTMENT

The Board of Governors, on the recommendation of the Board of Directors, 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, neither he nor any Vice-President shall be a governor or a director or alternate for either. The term of office of the President shall be five years. It may be renewed. He shall, however, be suspended from office if the Board of Directors so decides by a two-thirds majority of the voting power of the members including a two-thirds majority of the voting power of the regional members. The Board of Directors shall appoint an Acting President and promptly inform the Board of Governors of such decision and of its reasons therefor. The Board of Governors shall make a final decision on the matter at its next annual meeting, if such suspension occurs not more than ninety days before that meeting, otherwise at a special meeting to be called by its Chairman. The Board of Governors may remove the President from office by a resolution adopted by a majority of the voting power of the members, including a majority of the voting power of the regional members.

Article 37. 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 whom he shall appoint and release in accordance with regulations adopted by the Bank. He shall fix the terms of their employment in accordance with rules of sound management and financial policy.

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 nonregional states.

Article 38. 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 the 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. 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

1. Each member shall designate an appropriate authority with which the Bank may communicate in connexion 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, including gold and convertible currencies, with such depositories as the Board of Directors shall determine.

Article 41. PUBLICATION OF THE AGREEMENT, WORKING LANGUAGES, PROVISION OF INFORMATION AND REPORTS

1. The Bank shall endeavor 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

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 Fund, 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.

CHAPTER VI. 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 by in no event less than six months after the date that notice has been received by the Bank.

Article 44. SUSPENSION

1. If it appears to the Board of Directors that a member fails to fulfil any of its obligations to the Bank, that member shall be suspended by that Board by a majority of the Directors exercising a majority of the total voting power; including, in the case of a regional member, a majority of the total votes of regional members, and in the case of a nonregional member, a majority of the total votes of nonregional members. The decision to suspend a member shall be subject to review by the Board of Governors at a subsequent meeting which the Board of Directors shall convene for that purpose or the next annual meeting of the Board of Governors, whichever comes earlier, and the Board of Governors may decide to reverse the suspension by the same majorities as provided above.

2. A member so suspended shall automatically cease to be a member of the Bank one year from the date of suspension unless a decision is taken by the Board of Governors by the same majority to restore the member to good standing.

3. 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 obligations.

Article 45. SETTLEMENT OF ACCOUNTS

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 gold or 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 pay, 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.

4. 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. 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. TERMINATION OF OPERATIONS

1. The Bank may terminate its operations in respect to new loans and guarantees by a decision of the Board of Governors 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 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. 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 prorata distribution among holders of direct and contingent claims.

Article 49. 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:

- i. All liabilities to creditors have been discharged or provided for; and
- ii. 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 by a two-thirds majority vote 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 [them] 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.

CHAPTER VII. STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

Article 50. 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. STATUS IN MEMBER COUNTRIES

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

- a. To contract;
- b. To acquire and dispose of immovable and movable property; and
- c. To institute legal proceedings.

Article 52. 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 judgment against the Bank.

Article 53. 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. 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. 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. PERSONAL IMMUNITIES AND PRIVILEGES

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

- i. Shall be immune from legal process with respect to acts performed by them in their official capacity;
- ii. 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
- iii. 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. 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:

- 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.

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:

- 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 58. NOTIFICATION OF IMPLEMENTATION

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

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.

CHAPTER VIII. AMENDMENTS, INTERPRETATION, ARBITRATION

Article 60. AMENDMENTS

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 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 certify the fact by formal communication addressed to the members.

2. Notwithstanding paragraph 1 of this article, the voting majorities provided in paragraph 3 of article 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:

- i. The right secured by paragraph 2 of article 6 of this Agreement;
- ii. The limitation on liability provided in paragraph 5 of this article; and
- iii. The right to withdraw from the Bank provided in article 43 of that 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. 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 have 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. ARBITRATION

In the case of a dispute between the Bank and the Government of a State which has ceased to be a member, or between the Bank and any member upon the termination of the operations of the Bank, such dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the Government of the State concerned, and the third arbitrator, unless the parties otherwise agree, shall be appointed by such other authority as may have been prescribed by regulations adopted by the Board of Governors. 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.

CHAPTER IX. FINAL PROVISIONS

Article 63. 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 Signatories.

Article 64. 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 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. 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.

Article 66. 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.

DONE in Khartoum, this fourth day of August nineteen hundred and sixty-three, in a single copy in the English and French languages. Amended at Abidjan by Resolution 05-79 of the Board of Governors adopted at Abidjan on the seventeenth day of May nineteen hundred and seventy-nine. Date of entry into force: sixteenth of February nineteen hundred and eighty-one.

ANNEX A

INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL STOCK OF THE BANK

<i>Member</i>	<i>Paid-up shares</i>	<i>Callable shares</i>	<i>Total subscription (in million of units of accounts)</i>
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 (Leopoldville)	650	650	13.00
8. Dahomey	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	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	155	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	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	65	65	1.30

ANNEX B

ELECTION OF DIRECTORS

1. *Nondivisible 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 percent 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
- 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 percent 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 percent, 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 percent is attained.

ii. Any governor, part of whose votes must be counted in order to raise the votes cast for any person above eight percent, 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. *Nonregional directors*

a. The six persons receiving the highest number of votes of the governors representing the nonregional members shall be directors, except that no person who receives less than fourteen percent of the total voting power of the nonregional members shall be considered as elected.

b. If six 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 percent of the total voting power of the nonregional 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 percent, the said nineteen percent shall be deemed to include, first the votes of the governors 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 percent, 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 percent.

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.

In the name of Argentina:
Au nom de l'Argentine :

In the name of Austria:
Au nom de l'Autriche :

In the name of Belgium:
Au nom de la Belgique :

In the name of Brazil:
Au nom du Brésil :

In the name of Canada:
Au nom du Canada :

In the name of China:
Au nom de la Chine :

In the name of Denmark:
Au nom du Danemark :

In the name of the Federal Republic of Germany:
Au nom de la République fédérale d'Allemagne :

In the name of Finland:
Au nom de la Finlande :

In the name of France:
Au nom de la France :

In the name of India:
Au nom de l'Inde :

In the name of Italy:
Au nom de l'Italie :

In the name of Japan:
Au nom du Japon :

In the name of Kuwait:
Au nom du Koweït :

In the name of the Netherlands:
Au nom des Pays-Bas :

In the name of Norway:
Au nom de la Norvège :

In the name of Portugal:
Au nom du Portugal :

In the name of the Republic of Korea:
Au nom de la République de Corée :

In the name of Saudi Arabia:
Au nom de l'Arabie saoudite :

In the name of Spain:
Au nom de l'Espagne :

In the name of Sweden:
Au nom de la Suède :

In the name of Switzerland:
Au nom de la Suisse :

In the name of the United Kingdom of Great Britain and Northern Ireland:
Au nom du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :

In the name of the United States of America:
Au nom des Etats-Unis d'Amérique :

In the name of Yugoslavia:
Au nom de la Yougoslavie :

AFRICAN DEVELOPMENT BANK

BOARD OF GOVERNORS

RESOLUTION 05-79 CONCERNING THE AMENDMENTS OF THE AGREEMENT ESTABLISHING THE AFRICAN DEVELOPMENT BANK TO ENABLE NON-AFRICAN COUNTRIES TO BECOME MEMBERS THEREOF (ADOPTED AT THE FIFTH PLENARY SITTING OF THE FIFTEENTH ANNUAL MEETING ON 17 MAY 1979)

The Board of Governors

Having regard to articles 1, 2, 3, 5, 14, 17, 24, 28, 29, 31, 32, 33, 34, 35, 36, 37, 39, 44, 47, 49, 56, 60, 64 and annex B of the Agreement establishing the Bank ("the Bank Agreement");

Recalling the Board's Resolution dated 4 May 1978 and, in particular, the request therein made of the President of the Bank that he should, in close consultation with the Board of Directors, initiate consultations with all willing non-African countries with a view to inviting them to subscribe to the capital stock of the Bank;

Noting the Report dated 28 February 1979 on the results of the said consultations;

Having carefully considered the recommendations and conclusions contained in the said Report;

Convinced that the said recommendations and conclusions are well-founded and can constitute the basis of a fruitful and advantageous partnership between the present and future regional members of the Bank and such nonregional States as may now or in the future decide to become members of the Bank in pursuit of the Bank's stated objectives;

Reaffirming by this Resolution the convictions and considerations upon the basis of which Resolution No. 02-78 was adopted by the Board;

1. Commends the Board of Directors and the President of the Bank on the remarkable efficiency with which they have carried out the Board's instructions in this regard;
2. Accepts their Report and the recommendations based on it;
3. Decides to amend the Bank Agreement in the terms set forth in the annex to this Resolution;
4. Further decides that the said amendments shall enter into force on the date on which the Bank shall certify to the members that they have been adopted in accordance with article 60, paragraph 1 of the Bank Agreement;
5. Authorizes the President, in close consultation with the Board of Directors, and in conformity with the terms of this and other resolutions to be adopted by the Board of Governors with the purposes of this Resolution in view, to take all administrative measures necessary to facilitate the admission of non-African countries to membership of the Bank.

Annex

The Agreement Establishing the African Development Bank is amended as follows:

1. The preamble is amended by the addition of a penultimate clause as follows:

"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,".

2. Article I (which states the purpose of the Bank) shall be amended to read as follows:

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

3. Article 2 (which deals with the functions of the Bank) shall be amended as follows:

(i) Sub-paragraph 1(a) thereof shall be amended to read:

“(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;”;

(ii) Sub-paragraph 1(d) thereof shall be amended to read:

“(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;”.

4. Article 3 (which specifies the membership and geographical area of the Bank) shall be amended as follows:

(i) Paragraph 1 thereof shall be amended to read:

“(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.”;

(ii) Paragraph 2 thereof shall be amended to read:

“(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.”; and

(iii) There shall be added thereto a new paragraph 3, which shall read:

“(3) Nonregional 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 nonregional members, representing not less than three fourths of the total voting power of the member countries.”.

5. Article 5 (concerning the Bank’s authorized capital) shall be amended as follows:

(i) Paragraph 3 thereof shall be amended to read:

“(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.”; and

(ii) There shall be added thereto a new paragraph 4, which shall read:

“(4) The authorized capital stock and any increases thereof shall be allocated for subscription to regional and nonregional 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 two thirds of the total voting power and nonregional members one third of the total voting power.”

6. Article 14 (concerning Recipients and methods of operations) shall be amended in the first sentence of paragraph 1 thereof to read as follows:

“(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.”

7. Article 17 (which specifies the operational principles of the Bank) shall be amended as follows:

(i) Sub-paragraph 1(a)(i) thereof shall be amended to read:

“(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) Sub-paragraph 1(d) thereof shall be substituted for by the following new sub-paragraph:

“(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, by a vote of the directors representing not less than two thirds of the total voting power, 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; provided, however, that with respect to any increase of capital stock, the Board of Governors may provide that procurement of goods and services with the proceeds of such increase be restricted to those countries which participate in such increase;” and

(iii) The present sub-paragraph 1(d) thereof shall be deleted.

8. Article 24 (concerning the special borrowing powers of the Bank) shall be amended as follows:

(i) Paragraph 1 thereof shall be amended to read:

“(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.”

(ii) Paragraph 2 thereof shall be amended to read:

“(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 designated to finance.” and

(iii) Paragraph 3 thereof shall be amended to read:

“(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.”.

9. Article 28 (which makes provision for the maintenance of value of the currency holdings of the Bank) shall be amended as follows:

(i) Paragraph 1 thereof shall be amended to read:

“(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 of its currency required to maintain the value of all such currency held by the Bank on account of its subscription.”; and

(ii) Paragraph 2 thereof shall be amended to read:

“(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.”.

10. Article 29 (which specifies the powers of the Board of Governors) shall be amended as follows:

(i) There shall be substituted for sub-paragraph 2(d) thereof the following new sub-paragraph 2(d):

“(d) Determine, on the recommendation of the Board of Directors, the remuneration and conditions of service of the President of the Bank”; and

(ii) The present sub-paragraphs *d*, *e*, *f*, and *g* of the said paragraph shall be newly designated sub-paragraphs *e*, *f*, *g*, and *h*, respectively.

11. Article 31 (which prescribes the procedures for meetings of the Board of Governors) shall be amended to read as follows:

(i) Paragraph 1 thereof shall be amended to read:

“(1) The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors. 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. All meetings of the Board of Governors shall be held in regional member countries.”;

(ii) Paragraph 2 thereof shall be amended to read:

“(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 two thirds of the total voting power of the members. Such quorum shall include a majority of the governors or their alternates of regional members and at least two governors or their alternates of nonregional members. If the Board of Governors is unable to achieve the sub-quorum requirement respecting the presence of nonregional governors or their alternates within two days of the date set for the meeting, the said sub-quorum requirement may be waived.”.

12. Article 32 (which specifies the powers of the Board of Directors) shall be amended in paragraph *a* thereof to read as follows:

“(a) On recommendation of the President of the Bank, appoint one or more Vice-Presidents of the Bank and determine their terms of service;”.

13. Article 33 (which deals with the composition of the Board of Directors) shall be amended in paragraph 1 thereof to read as follows:

“(1) The Board of Directors shall be composed of eighteen members who shall not be governors or alternate governors. Twelve members shall be elected by the governors of the regional members and six members shall be elected by the governors of the nonregional 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 nonregional member countries, by a two-thirds majority of the governors of nonregional members.”.

14. Article 34 (which prescribes the quorum for meetings of the Board of Directors) shall be amended in paragraph 2 thereof to read as follows:

“(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 two thirds of the total voting power of the members. Such quorum shall include at least one director of nonregional members. If the Board of Directors is unable to achieve the sub-quorum requirement respecting the presence of at least one director of the nonregional members, the said sub-quorum requirement may be waived at the next session.”.

15. Article 35 (which prescribes the manner of allocation of votes to members of the Bank) shall be amended in paragraph 1 thereof to read as follows:

“(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 preemptive rights established in paragraph 2 of article 6 of this Agreement.”.

16. Article 36 (concerning the appointment of the President of the Bank) shall be amended to read as follows:

“The Board of Governors, on the recommendation of the Board of Directors, 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, neither he nor any Vice-President shall be a governor or a director or alternate for either. The term of office of the President shall be five years. It may be renewed. He shall, however, be suspended from office if the Board of Directors so decides by a two-thirds majority of the voting power of the members including a two-thirds majority of the voting power of the regional members. The Board of Directors shall appoint an Acting President and promptly inform the Board of Governors of such decision and of its reasons therefor. The Board of Governors shall make a final decision on the matter at its next Annual Meeting, if such suspension occurs not more than ninety days before that meeting, otherwise at a special meeting to be called by its Chairman. The Board of Governors may remove the President from office by a resolution adopted by a majority of the voting power of the members, including a majority of the voting power of the regional members.”.

17. Article 37 (which prescribes guidelines to be followed by the President in the recruitment of the staff of the Bank) shall be amended in paragraph 5 thereof to read as follows:

“(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.”.

18. Article 39 (which prescribes the location of the principal office of the Bank) shall be amended in paragraph 1 thereof to read as follows:

“(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.”.

19. Article 44 (which prescribes the conditions and procedure for the suspension of a member of the Bank) shall be amended in paragraph 1 thereof to read as follows:

“(1) If it appears to the Board of Directors that a member fails to fulfil any of its obligations to the Bank, that member shall be suspended by that Board by a majority of the directors exercising a majority of the total voting power; including, in the case of a regional member, a majority of the total votes of regional members, and in the case of a nonregional member, a majority of the total votes of nonregional members. The decision to suspend a member shall be subject to review by the Board of Governors at a subsequent meeting which the Board of Directors shall convene for that purpose or the next Annual Meeting of the Board of Governors, whichever comes earlier, and the Board of Governors may decide to reverse the suspension by the same majorities as provided above.”.

20. Article 47 (concerning the procedure to be adopted for the termination of the Bank's operations) shall be amended in paragraph 1 thereof to read as follows:

“(1) The Bank may terminate its operations in respect of new loans and guarantees by a decision of the Board of Governors exercising a majority of the total voting power of the members, including a majority of the total voting power of the regional members.”.

21. Article 49 (which prescribes the majority requirement on a distribution of the Bank's assets) shall be amended in sub-paragraph 1(ii) thereof to read as follows:

“(ii) 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.”.

22. Article 56 (concerning personal immunities and privileges) shall be amended as follows:

(i) Paragraph 1 thereof shall be amended to read:

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

“(i) Shall be immune from legal process with respect to acts performed by them in their official capacity;

“(ii) 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

“(iii) 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.”; and

(ii) Paragraph 2 thereof shall be deleted.

23. Article 60 (which sets forth the procedure for amendments of the Bank Agreement) shall be amended as follows:

(i) Paragraph 1 thereof shall be amended to read:

“(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 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 certify the fact by formal communication addressed to the members.”;

(ii) There shall be added thereto a new paragraph 2, which shall read:

“(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.”; and

(iii) The present paragraphs 2, 3 and 4 shall be redesignated paragraphs 3, 4, and 5, respectively.

24. Article 64 (concerning ratification, acceptance, accession and acquisition of membership) shall be amended to read as follows:

(i) Paragraph 2 thereof shall be amended to read:

“(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 Depository 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 member of the Bank on the appointed date.”; and

(ii) There shall be added thereto a new paragraph 3, which shall read:

“(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.”.

25. Annex B to the Agreement (which sets forth the rules for the election of directors) shall be amended as follows:

(i) Paragraphs 1, 2, 3, 3(a) and (b), 4(a) and (b), and 5 of the present annex B shall be redesignated 1, 2(a), 2(b), 2(b)(i) and (ii), 2(c)(i) and (ii), and 2(d), respectively;

(ii) A new paragraph 3 shall be added thereto; and

(iii) Annex B, as amended, shall read as follows:

“ELECTION OF DIRECTORS

“1. *Nondivisible 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
- “(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. *Nonregional Directors*

“(a) The six persons receiving the highest number of votes of the governors representing the nonregional members shall be directors, except that no person who receives less than fourteen* per cent of the total voting power of the nonregional members shall be considered as elected.

“(b) If six 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 nonregional 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.”.

* GENERAL COUNSEL'S NOTE. 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 nonregional members, necessitated the establishment in annex B to the Agreement of separate rules for the election of the regional and nonregional 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 nonregional 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.

RESOLUTION No. 06-79 CONCERNING THE GENERAL INCREASE IN THE CAPITAL STOCK OF THE AFRICAN DEVELOPMENT BANK AND SUBSCRIPTIONS THERETO IN CONNECTION WITH THE ADMISSION OF NONREGIONAL MEMBER COUNTRIES (ADOPTED AT THE FIFTH PLE-NARY SITTING OF THE FIFTEENTH ANNUAL MEETING ON 17 MAY 1979)

The Board of Governors

Having regard to articles 5, 6, 7 and 29 of the Agreement Establishing the African Development Bank (“the Bank Agreement”);

Recalling its Resolution No. 05-79 by which it adopted amendments to the Bank Agreement to enable non-African States to become members of the Bank;

Recognizing the need to increase the authorized capital of the Bank to enable shares of capital stock to be allocated to such non-African States as may desire to become members of the Bank in accordance with the Bank Agreement as amended;

Further recognizing the need that the present members of the Bank should accept a sufficient portion of the new increase of stock to enable the African character of the Bank to be maintained in accordance with the terms and the spirit of their Resolution No. 02-78 adopted on 4 May 1978 at Libreville;

Decides as follows:

1. The authorized capital stock of the Bank is hereby authorized to be further increased from 1,220,000,000 Units of Account to 5,250,000,000 Units of Account by the creation of 403,000 new shares of a par value of 10,000 Units of Account* each share.

2. The total authorized stock of the Bank shall be allocated for subscription by the regional and nonregional members of the Bank in such a manner that the total amount of stock to be allocated to regional members of the Bank shall not exceed 3,500,000,000 Units of Account, and the total amount of stock to be allocated to nonregional members shall not exceed 1,750,000,000 Units of Account.

3. One quarter of the total capital stock held by each member after the entry into force of this Resolution shall consist of paid-up shares, and three quarters shall consist of callable shares.

* In determining the equivalence to Bank Units of Account of the several currencies in which subscriptions are made under this Resolution, national currencies are translated at the rates prevailing on May 17, 1979, as provided by the International Monetary Fund and appended to this Resolution, and then converted into Bank Units of Account at the rate of one Bank Unit of Account being equal to U.S.\$1,20635.

4. Out of the stock available for allocation to nonregional members, there shall be allocated for subscription by the states listed in appendix I to this Resolution the numbers of shares appearing opposite the name of each such state.

5. Out of the stock available for allocation to regional members, shares shall be allocated for subscription in accordance with the provisions of paragraph 2 of article 6 of the Bank Agreement; that is to say, each member shall be allocated a proportion thereof equivalent to the proportion which its stock bore to the total subscribed capital stock of the Bank immediately before the entry into force of this Resolution.

6. Regional members shall pay for the paid-up stock subscribed by them by exercising one of the following options:

- (a) Payment in five equal annual instalments in cash. At least fifty percent of each such instalment shall be in convertible currency and the balance in the currency of the member; or
- (b) Payment in five equal annual instalments, each of which shall consist of twenty percent in convertible currency in cash and eighty percent in the form of a non-negotiable, non-interest-bearing debt instrument denominated in the Bank's Units of Account which shall be redeemable in convertible currency in ten equal annual payments, commencing on the fifth anniversary of the due date fixed for the first instalment.

Each regional member shall inform the Bank, prior to the first instalment date, which option it intends to exercise. The first instalment shall be due and payable within 30 days from the date of subscription.

7. Nonregional members shall subscribe and pay for the shares allocated to them in accordance with the Rules Governing the Admission of Nonregional Countries to Membership of the Bank, which rules shall apply concurrently with the terms of this Resolution to the extent that the terms of this Resolution are not inconsistent with the Rules.

8. Each country shall be entitled to cast the votes representing the aggregate number of shares to which such country has subscribed; provided, however, that in the event of a partial or total shortfall in the payment of an instalment of the subscription for paid-up capital stock, the number of votes such member shall be entitled to cast shall be reduced by the proportion which that shortfall bears to the total subscription of paid-up capital, until such time as the shortfall has been made up.

9. The allocations of shares hereby authorized to be made shall take effect on the dates of deposit at the Headquarters of the Bank by 1 January 1981, or such later date as the Board of Directors shall determine, of Acts of Subscription by virtue of which member States shall accept their several allocated shares.

10. Such increase shall become effective only if, by 1 January 1981, or on such later date as the Board of Directors shall determine, the following conditions shall have been fulfilled:

- (a) The amendments to the Agreement Establishing the Bank provided for in the resolution concerning amendments to the Agreement Establishing the Bank with respect to the admission of nonregional countries shall have entered into force;
- (b) The General Rules provided for in the resolution entitled "General Rules Governing the Admission of Nonregional Countries to Membership of the Bank" shall have entered into force;
- (c) At least 34 members shall have agreed to the deposit of appropriate instruments with the Bank to subscribe at least 204,000 shares of the increase of the authorized capital stock in accordance with section 9 of this Resolution.

11. If the amendment making the Special Drawing Right (SDR) the Unit of Value for the African Development Bank (Resolution No. 06-78) is not ratified before 19 May 1979, its ratification procedure will be deferred for two years from the date on which this resolution shall have entered into force. No maintenance of value obligation will be incurred on paid-up or on callable capital stock until such time as the Board of Directors of the African Development Bank shall determine that the SDR is being definitively applied as the Unit of Value applicable to member subscriptions in the IBRD for purposes of the maintenance of value provisions of its Charter. To the extent that there is no maintenance of value, an adjustment of votes will be discussed at the next capital increase, notwithstanding the preemptive rights.

12. The President of the Bank, in close consultation with the Board of Directors, shall take all appropriate steps to implement this Resolution.

APPENDIX I. INITIAL SUBSCRIPTION OF NONREGIONAL COUNTRIES* TO THE AUTHORIZED CAPITAL STOCK OF THE BANK

(1) Members	(2) % of sub- scriptions	(3) No. of shares sub- scribed	(4) Number of shares		(6) Subscriptions in U.A.	(7) Total subscription in US dollars (1 U.A. = 1.20635)	(8) Exchange rate (May 17, 1979) as provided by IMF (units of national currency per U.S. dollar)	(9) Total subscription in national currency
			Paid-up 1/4	Callable 3/4				
1. Argentina	1.14	1,996	499	1,497	19,960,000	24,078,746	1,239.5 pesos	29,845,605,667 pesos
2. Austria	1.14	1,996	499	1,497	19,960,000	24,078,746	14.0475 schillings	338,246,184 schillings
3. Belgium	1.64	2,872	718	2,154	28,720,000	34,646,372	30.5225 francs	1,057,493,889 francs
4. Brazil	1.14	1,996	499	1,497	19,960,000	24,078,746	24.635 cruzeiros	593,179,908 cruzeiros
5. Canada	9.60	16,800	4,200	12,600	168,000,000	202,666,800	1.1556 dollars	234,201,754 dollars
6. Denmark	2.96	5,180	1,295	3,885	51,800,000	62,488,930	5.3695 krone	335,534,310 krone
7. Finland	1.25	2,188	547	1,641	21,880,000	26,394,938	3.988 markkas	105,263,013 markkas
8. France	9.60	16,800	4,200	12,600	168,000,000	202,666,800	4.40775 francs	893,304,588 francs
9. Germany	10.54	18,444	4,611	13,833	184,440,000	222,499,194	1.9074 marks	424,394,963 marks
10. Italy	6.19	10,832	2,708	8,124	108,320,000	130,671,832	851.0 lira	111,201,729,032 lira
11. Japan	14.04	24,568	6,142	18,426	245,680,000	296,376,068	215.1 yen	63,750,492,227 yen
12. Korea	1.14	1,996	499	1,497	19,960,000	24,078,746	485.0 won	11,678,191,810 won
13. Kuwait	1.14	1,996	499	1,497	19,960,000	24,078,746	0.27765 dinars	6,685,464 dinars
14. Netherlands	1.95	3,412	853	2,559	34,120,000	41,160,662	2.078 guilders	85,531,856 guilders
15. Norway	2.96	5,180	1,295	3,885	51,800,000	62,488,930	5.197** krone	324,754,969 krone
16. Spain	1.50	2,624	656	1,968	26,240,000	31,654,624	66.064 pesetas	2,091,231,080 pesetas
17. Sweden	3.95	6,912	1,728	5,184	69,120,000	83,382,912	4.385 krona	365,634,069 krona
18. Switzerland	3.75	6,560	1,640	4,920	65,600,000	79,136,560	1.727 francs	136,668,839 francs
19. United Kingdom	6.19	10,832	2,708	8,124	108,320,000	130,671,832	0.485578 pounds	63,451,367 pounds
20. U.S.A.	17.04	29,820	7,455	22,365	298,200,000	359,733,570	1.0 dollars	359,733,570 dollars
21. Yugoslavia	1.14	1,996	499	1,497	19,960,000	24,078,746	19.1523 dinars	461,163,367 dinars
Unissued shares	—	—	—	—	—	—	—	—
	100%	175,000	43,750	131,250	1,750,000,000	2,111,112,500		

* GENERAL COUNSEL'S NOTE. The list of percentage subscriptions to the capital stock of the Bank by the prospective nonregional members shown in the second column of this chart was submitted to the Board of Governors alongside the Resolution containing the General Rules for the admission of nonregional countries to membership of the Bank and was considered as part of that Resolution. Following the formula established for working out the amounts to be subscribed, the Director of Finance established provisionally the figures indicated in columns 3 to 7 of the chart.

** Rate as of May 16, 1979.

RESOLUTION No. 07-79

Annex

GENERAL RULES GOVERNING ADMISSION OF NONREGIONAL COUNTRIES TO MEMBERSHIP OF THE BANK

Section 1. CONDITIONS FOR NONREGIONAL MEMBERSHIP

Nonregional 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 become original nonregional members of the Bank, provided that, on 1 January 1981, or on such later date as the Board of Directors shall determine, the following conditions shall have been fulfilled:

- (a) The amendments to the Bank Agreement provided for in the resolution concerning amendments to the Bank Agreement with respect to the entry of nonregional countries shall have entered into force;
- (b) The increase in the authorized ordinary capital stock provided for in the resolution concerning the increase in the authorized capital stock and subscriptions thereto in connection with the admission of nonregional member countries shall have come into effect;
- (c) At least ten nonregional countries, including not less than four countries whose individual contributions to the African Development Fund total not less than UA 40,000,000 each, through the deposit of appropriate instruments with the Bank, shall have agreed to subscribe to an aggregate amount of 90,000 shares of capital stock in accordance with section 2 hereof. Subscriptions to the capital stock by each of the nonregional countries shall bear a reasonable relation to their respective contributions to the African Development Fund, and shall be in the amounts set forth in appendix I attached hereto.

Section 2. SUBSCRIPTIONS TO CAPITAL STOCK

(a) The nonregional countries listed in appendix I attached hereto may subscribe up to an aggregate of 175,000 shares of capital stock.

(b) Each country may agree to subscribe up to the number of shares assigned to the respective country in appendix I hereto, and each subscribing country shall represent to the Bank that it has taken all necessary action to authorize its subscription and shall furnish to the Bank such information thereon as the latter may request. In an exceptional case, where agreement to subscribe cannot be given by a country due to its legislative practice, the Bank may accept an agreement to subscribe which contains the qualification that subscription is subject to budgetary appropriation.

(c) The subscription of each country to the paid-up stock shall be on the following terms and conditions:

- (i) The subscription price per share shall be UA 10,000 as provided in sub-paragraph I(a) of article 5 of the Bank Agreement;
- (ii) Payment of the amount of paid-up capital stock to which each country has agreed to subscribe shall be made in five equal annual instalments in convertible currencies in cash or in notes immediately payable on demand by the Bank. The first payment shall be made within thirty days upon accession of membership and the balance in four other annual instalments;
- (iii) Each instalment shall be paid entirely in the currency of the contributing country which shall make arrangements satisfactory to the Bank to assure that such currency

shall be freely convertible into the currencies of other countries for the purposes of the Bank's operations.

(d) The subscription of each country to the callable capital stock shall be on the following terms and conditions:

- (i) The subscription price per share shall be UA 10,000 as provided in sub-paragraph 1(a) of article 5 of the Bank Agreement;
- (ii) The subscription of each country to the callable capital stock shall become effective upon the deposit of an Instrument of Subscription which certifies the unqualified commitment to respond to any call made by the Bank pursuant to the provisions of the Bank Agreement. In an exceptional case, where an unqualified commitment cannot be given by a country due to its legislative practice, the Bank may accept an Instrument of Subscription which contains the qualification that subscription to callable capital stock is subject to budgetary appropriation. Such a subscription shall be called a Qualified Subscription for the purposes of these General Rules, but shall be deemed to be unqualified to the extent that a country informs the Bank that appropriations have been obtained.

(e) Each country shall be entitled to cast the votes representing the aggregate number of shares to which such country has subscribed; provided, however, that in the event of a partial or total shortfall in the payment of an instalment of the subscription for paid-up capital stock, the number of votes such member shall be entitled to cast shall be reduced by the proportion which that shortfall bears to the total subscription of paid-up capital, until such time as the shortfall has been made up.

Section 3. REQUIREMENTS FOR NONREGIONAL MEMBERSHIP

A nonregional country shall become a member of the Bank when:

- (a) The Board of Directors shall have determined that all the conditions of section 1 hereof have been fulfilled;
- (b) These General Rules have entered into force pursuant to section 8 hereof; and
- (c) The President shall have declared that the country has fulfilled all the following requirements:
 - (i) Its duly authorized representative has signed the original of the Bank Agreement, as amended, deposited with the Secretary General of the United Nations;
 - (ii) It has deposited with the Depositary of the Bank Agreement an instrument stating that it has accepted or ratified, in accordance with its law, the Bank Agreement and all the terms and conditions prescribed in these General Rules and that it has taken the steps necessary to fulfil all of its obligations under the Bank Agreement and under these General Rules; and
 - (iii) It has represented to the Bank that it has taken all action necessary to sign the Bank Agreement and to deposit the instrument of acceptance or ratification as contemplated by paragraphs (i) and (ii) above, and it shall have furnished to the Bank such information in respect of such action as the Bank may have requested.

Section 4. ADDITIONAL NONREGIONAL COUNTRIES

Additional nonregional countries not listed in appendix I hereof may become nonregional members of the Bank in accordance with such terms as the Board of Governors shall establish. The subscriptions of such additional nonregional countries and their respective contributions to the African Development Fund shall be such number of shares of paid-up and callable capital stock and such contributions to the African Development Fund as shall be determined by the Board of Governors with due regard to the conditions of the subscriptions and contributions of the nonregional countries listed in appendix I hereof.

Section 5. UNSUBSCRIBED STOCK

Capital stock provided for by section 2(a) of these General Rules which has not been subscribed by the nonregional countries listed in appendix I hereof or by additional nonregional countries as provided in section 4 hereof within two years from the date on which these General Rules shall have entered into force may then be subscribed by the nonregional member countries which are members at that time. Each such nonregional member shall have the right to subscribe to a proportion of the available stock equivalent to the proportion which its stock already subscribed bears to the total subscribed capital stock available to nonregional members. In each subscription there shall be maintained the ratio of paid-up to callable capital as well as a fair relation between the contributions to the African Development Fund and subscriptions to capital stock established in these General Rules.

Section 6. SPECIAL QUORUM, VOTING POWER AND REPRESENTATION

(a) The agreement of a majority of the total number of governors of nonregional members representing not less than three fourths of the total voting power of the nonregional member countries shall be required for the approval of any amendment of the Bank Agreement modifying:

- (i) The number of governors who shall be appointed by the nonregional member countries;
- (ii) The ratio of the regional to nonregional directors; and
- (iii) The number of directors who shall be elected by the governors of the nonregional member countries as provided in paragraph 1 of article 33 of the Bank Agreement.

(b) The proportion of voting stock available for subscription by the nonregional members shall not exceed 33 1/3 per cent of the total voting power of the member countries; provided that, notwithstanding the provisions of paragraph 4 of article 5 of the Bank Agreement, any resolution of the Board of Governors for an increase in the capital stock of the Bank shall specify that:

- (i) In order to prevent the voting power of the regional members as a group from falling below the set percentage, any member of the group may subscribe to shares allocated to another member of the group if the latter member does not wish to subscribe to such shares; and
- (ii) Any member of the group of the nonregional members may subscribe to shares allocated to another member of the group if the latter member does not wish to subscribe to such shares.

(c) Provision shall be made in the General By-Laws or the Rules of Procedure of the Board of Directors for the appointment of a temporary director who may act for the director when the director and his alternate are not available to attend a meeting of the Board of Directors.

Section 7. MAINTENANCE OF VALUE*

If the amendment making the Special Drawing Right (SDR) the Unit of Value for the African Development Bank (Resolution 06-78) is not ratified before 19 May 1979, its

* In determining the equivalence to Bank Units of Account of the several currencies in which subscriptions are made under these Rules, national currencies are translated at the rates prevailing on May 17, 1979, as provided by the International Monetary Fund and annexed to these Rules, and then converted into Bank Units of Account at the rate of one Bank Unit of Account being equal to U.S.\$1.20635.

ratification procedure will be deferred for two years from the date on which these General Rules shall have entered into force. No maintenance of value obligation will be incurred on paid-up or on callable capital stock until such time as the Board of Directors of the African Development Bank shall determine that the SDR is being definitively applied as the Unit of Value applicable to member subscriptions in the IBRD for purposes of the maintenance of value provisions of its Charter. To the extent that there is no maintenance of value, an adjustment of votes will be discussed at the next capital increase, notwithstanding the preemptive rights.

Section 8. ENTRY INTO FORCE

These General Rules shall enter into force only after the Board of Directors shall have determined that all the conditions of section 1 hereof have been fulfilled and after the President shall have declared that at least ten nonregional countries have satisfied all of the requirements of section 3(c) hereof.

APPENDIX I. INITIAL SUBSCRIPTION OF NONREGIONAL COUNTRIES* TO THE AUTHORIZED CAPITAL STOCK OF THE BANK

(1) <i>Members</i>	(2) <i>% of sub- scriptions</i>	(3) <i>No. of shares sub- scribed</i>	(4) <i>Number of shares</i>		(6) <i>Subscriptions in U.A.</i>	(7) <i>Total subscription in US dollars (1 UA = 1.20635)</i>	(8) <i>Exchange rate (May 17, 1979) as provided by IMF (units of national currency per U.S. dollar)</i>		(9) <i>Total subscription in national currency</i>
			<i>Paid-up 1/4</i>	<i>Callable 3/4</i>					
1. Argentina	1.14	1,996	499	1,497	19,960,000	24,078,746	1,239.5	pesos	29,845,605,667 pesos
2. Austria	1.14	1,996	499	1,497	19,960,000	24,078,746	14.0475	schillings	338,246,184 schillings
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4. Brazil	1.14	1,996	499	1,497	19,960,000	24,078,746	24.635	cruzeiros	593,179,908 cruzeiros
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8. France	9.60	16,800	4,200	12,600	168,000,000	202,666,800	4.40775	francs	893,304,588 francs
9. Germany	10.54	18,444	4,611	13,833	184,440,000	222,499,194	1.9074	marks	424,394,963 marks
10. Italy	6.19	10,832	2,708	8,124	108,320,000	130,671,832	851.0	lira	111,201,729,032 lira
11. Japan	14.04	24,568	6,142	18,426	245,680,000	296,376,068	215.1	yen	63,750,492,227 yen
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14. Netherlands	1.95	3,412	853	2,559	34,120,000	41,160,662	2.078	guilders	85,531,856 guilders
15. Norway	2.96	5,180	1,295	3,885	51,800,000	62,488,930	5.197**	krone	324,754,969 krone
16. Spain	1.50	2,624	656	1,968	26,240,000	31,654,624	66.064	pesetas	2,091,231,080 pesetas
17. Sweden	3.95	6,912	1,728	5,184	69,120,000	83,382,912	4.385	krona	365,634,069 krona
18. Switzerland	3.75	6,560	1,640	4,920	65,600,000	79,136,560	1.727	francs	136,668,839 francs
19. United Kingdom	6.19	10,832	2,708	8,124	108,320,000	130,671,832	0.485578	pounds	63,451,367 pounds
20. U.S.A.	17.04	29,820	7,455	22,365	298,200,000	359,733,570	1.0	dollars	359,733,570 dollars
21. Yugoslavia	1.14	1,996	499	1,497	19,960,000	24,078,746	19.1523	dinars	461,163,367 dinars
Unissued shares	—	—	—	—	—	—	—	—	—
	100%	175,000	43,750	131,250	1,750,000,000	2,111,112,500			

* GENERAL COUNSEL'S NOTE. The list of percentage subscriptions to the capital stock of the Bank by the prospective nonregional members shown in the second column of this chart was submitted to the Board of Governors alongside the Resolution containing the General Rules for the admission of nonregional countries to membership of the Bank and was considered as part of that Resolution. Following the formula established for working out the amounts to be subscribed, the Director of Finance established provisionally the figures indicated in columns 3 to 7 of the chart.

** Rate as of May 16, 1979.