

No. 19020

MULTILATERAL

Agreement establishing the African Reinsurance Corporation (AFRICARE) (with annexes). Concluded at Yaoundé on 24 February 1976

Authentic texts: English and French.

Registered by the African Development Bank on 12 August 1980.

MULTILATÉRAL

Accord portant création de la Société africaine de réassurance (AFRICARE) [avec annexes]. Conclu à Yaoundé le 24 février 1976

Textes authentiques : anglais et français.

Enregistré par la Banque africaine de développement le 12 août 1980.

AGREEMENT¹ ESTABLISHING THE AFRICAN REINSURANCE CORPORATION (AFRICARE)

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¹ Came into force in respect of the following Parties on 31 January 1977, i.e., the date on which the Bank and 12 signatory States, whose initial subscriptions as set forth in annex A to this Agreement comprised in aggregate together with the Bank's subscription not less than 60 per cent of the capital stock of the Corporation available for subscription, had deposited their instruments of ratification, acceptance or approval, in accordance with article 59. Instruments of ratification, acceptance or approval were deposited as indicated:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>	<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
African Development Bank	30 March 1976	Mali	9 September 1976
Algeria	23 October 1976	Mauritius	10 November 1976
Benin	21 July 1976	Niger	28 June 1976
Burundi	22 December 1976	Nigeria	8 June 1976
Central African Republic	3 May 1976	Senegal	5 January 1977
Egypt	14 July 1976	Sierra Leone	30 June 1976
Ethiopia	20 December 1976	Somalia	24 June 1976
Gabon	28 August 1976	Swaziland	28 July 1976
Gambia	13 August 1976	Togo	1 December 1976
Ghana	20 August 1976	Tunisia	11 August 1976
Guinea	28 August 1976	United Republic of Cameroon	30 November 1976
Guinea-Bissau	21 June 1976	United Republic of Tanzania	14 September 1976
Ivory Coast	28 February 1976	Zaire	24 August 1976
Liberia	22 April 1976	Zambia	20 January 1977
Libyan Arab Jamahiriya	4 May 1976		

Subsequently, the Agreement came into force for the following States on the date of deposit of their instruments of ratification, acceptance or approval with the African Development Bank as indicated hereafter, in accordance with article 60 (1), with effect from the date of deposit:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>	<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Kenya	22 February 1977	Morocco	19 September 1977
Mauritania	23 February 1977	Upper Volta	19 April 1979
Sudan	12 September 1977		

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AGREEMENT ESTABLISHING THE AFRICAN REINSURANCE CORPORATION

The African States, members of the Organization of African Unity, on whose behalf this Agreement is signed, and the African Development Bank,

Aware of the importance of the insurance and reinsurance industry in the mobilization of valuable financial resources for economic development purposes;

Conscious of the need to invest in Africa funds of the insurance and reinsurance sector to help accelerate economic development;

Desirous of fostering development of the African insurance and reinsurance industry at national and regional levels, with a view to achieving a better spread of risks and continuously increasing the Continent's capacity to retain reinsurance premiums;

Realizing the benefits of regional co-operation for the healthy development of the insurance and reinsurance industry in Africa;

Have agreed to establish hereby the African Reinsurance Corporation which shall be governed by the following provisions:

CHAPTER I. DEFINITIONS

Article 1. DEFINITIONS

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

“Corporation” shall mean the African Reinsurance Corporation established by this Agreement.

“Bank” shall mean the African Development Bank.

“OAU” shall mean the Organization of African Unity.

“Member” shall mean any member State of OAU and the Bank which shall become a party to this Agreement in accordance with the provisions of article 60.

“General Assembly”, “Board of Directors”, “Chairman”, “General Manager” and “Secretary General” shall mean respectively the General Assembly, the Board of Directors, the Chairman of the Board of Directors, the General Manager and the Secretary General of the Corporation; and in the case of the Board of Directors and the Chairman shall include alternate directors and the Vice-Chairman when acting as directors and Chairman respectively.

“Signatory” shall mean a signatory to this Agreement.

“Representative” shall mean the representative of any member to the General Assembly of the Corporation.

“National Insurance and Reinsurance Institutions” shall mean insurance and reinsurance institutions with a majority indigenous share holding incorporated under the national laws of any of the member States and having their head offices in the territory of state of incorporation.

2. Reference to chapters, articles, paragraphs and schedules shall mean the chapters, articles, and paragraphs of, or schedules to, this Agreement.

3. The headings of the chapters and articles are inserted for convenience of reference only and are not part of this Agreement.

CHAPTER II. MEMBERSHIP

Article 2. MEMBERSHIP

1. Membership in the Corporation shall be open to the Bank and the member States of the Organization of African Unity.

2. Membership of the Corporation shall be acquired in accordance with the provisions of article 60.

CHAPTER III. PURPOSE AND FUNCTIONS

Article 3. PURPOSE

The purpose of the Corporation shall be to foster the development of the insurance and reinsurance industry in Africa, to promote growth of the national,

regional and sub-regional underwriting and retention capacities and to support African economic development.

Article 4. FUNCTIONS

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

- (a) To transact reinsurance business through treaty and facultative cessions in respect of all or some classes of insurance inside as well as outside Africa;
- (b) To create and administer pools for the various risks for the account and to the interest of African insurance and reinsurance markets;
- (c) To assist in the establishment and operation of national, regional and sub-regional insurance and reinsurance institutions, and to provide technical assistance to African insurance and reinsurance institutions;
- (d) To invest its funds in African countries in a manner that promotes African economic development. It may however invest abroad on short-term basis to meet its operational and/or technical requirements;
- (e) To provide whenever possible technical assistance to African countries in the field of insurance and reinsurance;
- (f) To promote contacts and business co-operation among national insurance and reinsurance institutions in Africa;
- (g) To undertake such other activities excluding the writing of direct insurance, and provide such other services as may advance its purpose.

2. In carrying out its functions, the Corporation shall seek to co-operate with national, regional and sub-regional insurance, reinsurance and 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 insurance and reinsurance industry in Africa.

CHAPTER IV. THE CAPITAL STOCK

Article 5. CAPITAL STOCK

1. The authorized capital of the Corporation shall be fifteen million United States dollars (US \$15,000,000). It shall be divided into 1,500 shares, of a par value of US \$10,000 each share.

2. Two thirds of the authorized capital stock, equivalent to one thousand shares, shall initially be available for subscription by the members in accordance with article 6 of this Agreement.

3. The Board of Directors may by a majority of the voting power represented at the meeting increase the subscribed capital stock to an amount not exceeding the amount of the authorized capital.

4. The authorized capital stock of the Corporation may be increased or decreased by a resolution adopted by two-thirds majority of the voting power of the Corporation in the General Assembly.

Article 6. SUBSCRIPTION TO THE CAPITAL STOCK

1. Subscription to the capital stock of the Corporation shall be open only to members.

2. A member State may nevertheless authorize a national entity or agency acting on its behalf to represent it in all matters relating to this Agreement including subscription to the capital stock of the Corporation, with the exception of the matters referred to in article 58.

3. The initial number of shares to be subscribed by a State which acquired membership in accordance with article 58 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 member States shall be determined by the General Assembly.

4. The initial subscription of the Bank to the capital stock shall be 100 shares. However, the Bank shall, on an appropriate resolution of the Board of Directors, transfer a portion of its holding, upon such terms and conditions as the Board may determine, to any State which, having been admitted to the OAU after the coming into force of this Agreement, seeks membership of the Corporation, provided, however, that such transfer shall not have the effect of reducing the Bank's holding at any time to less than six per cent of the shares available for subscription.

5. In the event of an increase of the capital stock initially available for subscription, or of the authorized capital, for a purpose other than solely to provide for an initial subscription of a member State, each member shall have the right to subscribe on such uniform terms and conditions as the General Assembly, on the recommendation of the Board of Directors, 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 Corporation. No member, however, shall be obligated to subscribe to any part of such increased stock.

Article 7. ISSUING AND TRANSFER OF, AND LIABILITY ON, SHARES

1. Shares of the capital stock initially subscribed by members shall be issued at par. The issue price and other terms of subscription to shares of the capital stock which shall be subscribed other than on initial subscription shall be determined by the Board of Directors.

2. Shares shall not be pledged or encumbered in any manner. Any member State shall be free to transfer its shares to national finance institutions. Transfer of shares outside of any member shall be made only to the Corporation and at a price fixed by the Board of Directors. In the event of such transfer, the Corporation shall, as soon as possible, make the shares involved available to members, in accordance with article 6, paragraph 5, above.

3. Liability of members on shares shall be limited to the unpaid portion of their issue price.

4. No member shall be liable, by reason of its membership in the Corporation, for acts or obligations of the Corporation.

Article 8. PAYMENT OF SUBSCRIPTIONS

1. Payment of subscriptions to the capital stock of the Corporation by members shall be made as follows:

- (i) Fifty per cent of the value of each share shall be paid upon subscription, and payment thereof shall be made in US dollars;

- (ii) The remaining fifty per cent of the subscription to the capital stock of the Corporation shall be subject to call only as and when required by the Corporation to meet its obligations which cannot otherwise be met;
- (iii) Such call shall be decided by the Board of Directors and payment shall be made in US dollars.

2. The Board of Directors shall determine the date, place and modes of payment of the amounts to be paid in respect of subscriptions to the capital stock other than those initially subscribed.

CHAPTER V. ORGANIZATION AND MANAGEMENT

Article 9. STRUCTURE

The Corporation shall have a General Assembly, a Board of Directors, a Chairman of the Board of Directors, a General Manager, one or more Deputy General Managers, a Secretary General, and such other officers and staff to perform such duties as the Corporation may determine.

Article 10. GENERAL ASSEMBLY: POWERS

1. All the powers of the Corporation shall be vested in the General Assembly.

2. The General Assembly may delegate to the Board of Directors authority to exercise any of its powers, except the power to:

- (i) Increase or decrease the authorized capital stock of the Corporation;
- (ii) Elect and remove directors and determine their allowances as well as that of their alternates;
- (iii) Adjust upwards the percentage of the reinsurance treaties to be ceded to the Corporation with a view to ensuring adequate volume of business which enables it to meet viability requirements;
- (iv) Authorize the conclusion of general agreements other than arrangements of a temporary or administrative character for co-operation with the insurance and reinsurance authorities of OAU member countries which have not yet acquired membership of the Corporation, as well as of such agreements with other national, regional and international bodies and organizations concerned with the promotion of the insurance and reinsurance industry;
- (v) Select external auditors to audit the accounts of the Corporation, and to certify the balance sheet and the statement of profit and loss of the Corporation;
- (vi) Approve, after reviewing the report of the auditors, the balance sheet and the statement of profit and loss of the Corporation;
- (vii) Decide on the allocation of the net profit of the Corporation;
- (viii) Amend this Agreement;
- (ix) Decide on the terms of dissolution of the Corporation, appoint a liquidation committee, and authorize the distribution of assets to members upon liquidation;

- (x) Exercise such other powers as are expressly assigned to the General Assembly in this Agreement;
 - (xi) Admit new members and determine the conditions of their admission.
3. The General Assembly may at any time revoke the delegation of any power to the Board of Directors.

Article 11. GENERAL ASSEMBLY: COMPOSITION

1. Each member shall be represented on the General Assembly and shall have one representative. All representatives shall be nationals of member States.
2. Any member may be represented by another provided the latter is duly delegated to do so. The representatives shall serve as such without payment of remuneration or expenses by the Corporation.

Article 12. GENERAL ASSEMBLY: PROCEDURE

1. The General Assembly shall hold an annual ordinary meeting within six months following the end of the Corporation's financial year.
2. The annual ordinary meeting of the General Assembly shall take place at the Headquarters of the Corporation. However, any member may host such meeting in accordance with terms and conditions to be agreed upon with the Corporation.
3. An extraordinary meeting of the General Assembly may be called by the Board of Directors, or by members representing at least twenty-five per cent (25%) of the total voting power of the Corporation. Such a meeting shall also be called when half of the capital on the basis of the last annual balance sheet shall have been impaired. The place and date of such a meeting shall be determined by the Chairman.
4. Notices for convening ordinary meetings of the General Assembly shall be sent to all members by registered airmail not less than six weeks before the date fixed for the meeting. The notice shall contain the agenda of the meeting.
5. Extraordinary meetings shall be convened by cable not less than seven days before the date of the meeting.
6. A quorum for any meeting of the General Assembly shall be sixty per cent of the total voting power of the Corporation. If a quorum is not attained, a second meeting shall be held twenty days after the first meeting in the case of the ordinary general meetings and seven days in the case of extraordinary meetings. The notice shall be sent in these cases within seven days after the first planned meeting. The members present at the second meeting shall have the right to pass valid resolutions whatever the number of shares they represent.
7. Meetings of the General Assembly shall be presided by the Chairman of the Board of Directors. In the absence of the Chairman and the Vice-Chairman, a representative shall be elected by the General Assembly to chair the meeting.
8. The General Assembly may by regulation establish a procedure whereby the Board of Directors may, when it deems such action advisable, obtain a vote of the representatives on a specific resolution without calling a meeting of the General Assembly.

9. The General Assembly, and the Board of Directors to the extent authorized by the General Assembly, may establish such subsidiary committees as may be necessary or appropriate to conduct the business of the Corporation.

10. The General Assembly, and the Board of Directors to the extent authorized by the General Assembly or by this Agreement, may adopt such regulations not inconsistent with this Agreement as shall be necessary or appropriate for the conduct of the business of the Corporation.

Article 13. GENERAL ASSEMBLY: VOTING

1. Each member shall have one vote for any one share on which the calls have been fully paid up.
2. Each representative shall be entitled to cast the votes of the member or members he represents.
3. Except as otherwise expressly provided in this Agreement, all matters before the General Assembly shall be decided by a majority of the voting power represented at the meeting.
4. In case of equality of votes, the Chairman shall have a casting vote.

Article 14. BOARD OF DIRECTORS: FUNCTIONS

The Board of Directors shall be responsible for the direction of the general activities of the Corporation and for this purpose shall exercise any functions expressly given to it in this Agreement or delegated to it by the General Assembly and, in particular, shall:

- (i) Elect, from among its members, the Chairman and a Vice-Chairman;
- (ii) Appoint the General Manager and determine terms and conditions of his service;
- (iii) Appoint from separate lists of candidates submitted by the General Manager one or more Deputy General Managers and the Secretary General to the Corporation and determine the terms and conditions of their service;
- (iv) Prepare the work of the General Assembly;
- (v) Determine the classes of reinsurance business to be transacted by the Corporation;
- (vi) Establish general principles for acceptance, retention and retrocession of business;
- (vii) Draw up guidelines for the investment of funds of the Corporation;
- (viii) Approve the setting up of branches, agencies and contact offices of the Corporation;
- (ix) Subject to article 9 of this Agreement, determine the general structure of the services of the Corporation;
- (x) Submit an annual report and the accounts for each financial year for approval to the General Assembly at each annual meeting; and
- (xi) Subject to article 39 of this Agreement, make proposals for the allocation of the annual net profit.

Article 15. BOARD OF DIRECTORS: COMPOSITION

1. The Board of Directors shall be composed of nine directors, one of whom shall be appointed by the Bank and eight to be elected in accordance with the procedure set out in annex B of this Agreement, which shall form an integral part thereof. In electing the Board of Directors, the General Assembly shall have due regard to the high competence in reinsurance, financial and economic matters required for the office.

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 for the remainder of the term by the General Assembly at its next session, in accordance with annex B to this Agreement by the same members who had elected his predecessor. While the office remains vacant the alternate of the former director shall exercise the powers of the latter.

Article 16. BOARD OF DIRECTORS: CHAIRMAN

1. The Chairman of the Board of Directors shall be *ex officio* Chairman of the General Assembly of the Corporation. He shall preside over meetings of the Board of Directors and shall discharge all specific functions entrusted to him in this Agreement.

2. The Chairman shall hold office on part-time basis. The term of office of the Chairman shall be three years. It may be renewed. He shall continue in office until his successor has been elected.

3. The Vice-Chairman shall act for the Chairman whenever the Chairman is absent or otherwise unable to act. He shall hold office for a term of three years. He may be re-elected.

Article 17. BOARD OF DIRECTORS: PROCEDURE

1. The Board of Directors shall meet as often as the business of the Corporation may require. The Chairman or the Vice-Chairman or, in the absence of both, the General Manager, acting on behalf of the Chairman, shall call a meeting of the Board.

2. The Board of Directors shall meet not less than three times in any one financial year.

3. Meeting of the Board of Directors shall be presided over by the Chairman or the Vice-Chairman, and in the absence of both, by a member of the Board designated by the meeting.

4. A quorum for any meeting of the Board of Directors shall be six (6) directors.

5. The Board of Directors may adopt such rules and regulations as may be necessary or appropriate for the conduct of the business of the Corporation.

6. The Board may establish such subsidiary bodies as are necessary or appropriate to facilitate the conduct of the general operations of the Corporation.

Article 18. BOARD OF DIRECTORS: VOTING

1. Each director shall have one vote.
2. Except as otherwise provided in this Agreement, all matters before the Board of Directors shall be decided by a simple majority of members present at the meeting. In case of equal votes, the Chairman shall have a casting vote.

Article 19. BOARD OF DIRECTORS: REMUNERATION AND RESTRICTIONS

1. Without prejudice to the provisions of article 10 (2) (ii) of this Agreement, the directors and alternates shall serve as such without remuneration, but the Corporation may pay them reasonable travel and subsistence allowances for the attendance of meetings, and any expenses incurred in the performance of special assignments which are not within the competence or functions of the Management of the Corporation.
2. The directors shall not borrow funds from the Corporation in any manner, nor obtain overdraft on current accounts or otherwise, nor avail themselves of the Corporation's guarantee or securities for their obligations towards third parties.

Article 20. GENERAL MANAGER: APPOINTMENT, DUTIES, AND POWERS

1. The Board of Directors shall, by a majority of all its members, appoint the General Manager of the Corporation. He shall be a person of the highest competence in matters pertaining to the activities, management and administration of the Corporation and shall be a national of a member State. While holding office, he shall not be a representative or a director or alternate director. The term of office of the General Manager shall be five years. It may be renewed. He shall, however, cease to hold office if the Board of Directors so decides by six votes.
2. The General Manager shall participate in meetings of the General Assembly and of the Board of Directors but shall not vote. He shall prepare the work of the Board of Directors.
3. The General Manager shall be the chief executive of the Corporation and shall conduct the current business of the Corporation. Subject to paragraph 4 of this article, he shall be responsible for the organization of the officers and staff of the Corporation, whom he shall appoint and release and fix the terms of their employment in conformity with regulations adopted by the Board of Directors.
4. The General Manager shall prepare separate lists of candidates for the posts of Deputy General Manager and Secretary General to the Corporation and submit for appointment by the Board of Directors.
5. The General Manager shall be the legal representative of the Corporation.
6. In appointing the officers and staff, the General Manager shall make it his foremost consideration to secure the highest standards of efficiency, technical competence and integrity. He shall pay full regard to the recruitment of personnel from among nationals of African countries. He shall recruit them on as wide a geographical basis as possible.

Article 21. DEPUTY GENERAL MANAGER

The Deputy General Manager or the Deputy General Managers shall assist the General Manager and shall carry out such functions as the General Manager shall determine. The term of office of the Deputy General Manager or managers shall be five years. It may be renewed. They shall, however, cease to hold office if the Board of Directors so decides.

Article 22. SECRETARY GENERAL TO THE CORPORATION

1. The Secretary General to the Corporation shall serve as Secretary to the Board of Directors and the General Assembly.

2. The Secretary General shall keep the summary records of the proceedings of the two organs and full record of their decisions and recommendations.

3. The Secretary General shall circulate draft records to the Directors and their alternates as early as possible after each meeting. They shall be submitted to the Board for approval. Upon approval, the summary records and the text of the decisions of the Board shall be circulated to the Directors and their alternates.

4. The Secretary General shall have charge of the corporate books and records.

5. The Secretary General shall keep in safe custody the seal of the Corporation and when authorized by the Board of Directors affix the Seal to any instrument requiring the same.

6. In general, he shall perform all the duties incidental to his office.

7. The term of office of the Secretary General shall be five years. It may be renewed. He shall, however, cease to hold office if the Board of Directors so decides.

8. The Secretary General shall be responsible to the General Manager.

Article 23. HEADQUARTERS OF THE CORPORATION

1. The Headquarters of the Corporation shall be in the Federal Republic of Nigeria.

2. The member State in whose territory the Headquarters is to be located shall be bound by the provisions of the Headquarters Agreement.

3. The Headquarters agreement shall be concluded by the Corporation and the host country not later than thirty days from the inaugural meeting of the Corporation and shall immediately on signature become effective and binding.

Article 24. DEPOSITORIES

Each member shall designate its central bank or such depository in which the Corporation may keep holdings of such member's currency or other assets of the Corporation.

Article 25. CHANNEL OF COMMUNICATION

Each member shall designate an appropriate authority with which the Corporation may communicate in connexion with any matter arising under this Agreement.

Article 26. PUBLICATION OF REPORTS AND PROVISION OF INFORMATION

The Corporation shall publish an Annual Report containing an audited statement of accounts and shall circulate to the members such other reports and information as it deems useful to carry out its purpose.

CHAPTER VI. OPERATIONS

Article 27. FORMS OF CESSION

1. Each member State shall authorize the Corporation to carry out its functions in its territory in accordance with the provisions of this Agreement.

2. Each member State shall undertake to guarantee, upon the entry into force of this Agreement, that all insurance and reinsurance establishments operating in its territory shall offer to place with the Corporation a minimum of five per cent of each of their reinsurance treaties, both present and future including life treaties at terms accorded to most favoured reinsurers.

3. In cases where local insurance business is covered by global reinsurance treaties established outside Africa, each member State shall take all necessary action to ensure, upon the entry into force of this Agreement, that all national and foreign establishments engaged in direct insurance activities in its territory conclude separate reinsurance treaties for the local risks.

4. Nothing in the foregoing provisions shall prevent any insurance or reinsurance institution operating in the territory of a member State from entering into a direct treaty of reinsurance with the Corporation in respect of the whole or part of the risks undertaken by such institution or from making such other arrangements as are mutually acceptable to the Corporation and such institution.

Article 28. ACCEPTANCE

1. The Corporation shall have the right to accept or decline all or part of the business offered to be placed with it.

2. In case of offer of treaties in the form of a package deal, the percentage accepted by the Corporation shall apply to the treaties offered.

3. The Corporation shall have the right to extend its contractual acceptance to such limits and types of risks as the Board of Directors may determine. It may also write facultative reinsurance.

Article 29. RETROCESSIONS

The Corporation shall retain as much volume of business placed with it as its technical capacity will permit. It shall give priority in retrocession to African insurance and reinsurance institutions who shall have the right of first refusal to retrocessions.

Article 30. TECHNICAL RESERVES

The Corporation shall follow the conventional practice in respect of the administration of its technical reserves and shall, in particular, invest these reserves as much as possible in the countries of their origin.

Article 31. INVESTMENT POLICY

1. The Board of Directors shall determine the investment policy of the Corporation.
2. Subscription by the Corporation in the equity capital of other insurance and reinsurance companies shall not at any time exceed the total of its paid-up capital and statutory and general reserves.
3. Long-term investment of the Corporation shall be made in Africa.
4. The investment policy of the Corporation shall be formulated with due regard to requirements of security, liquidity and profitability.

Article 32. TECHNICAL ASSISTANCE

In furtherance of its purpose, the Corporation may provide technical assistance; but such assistance will normally be on a reimbursable basis if it is not provided from special technical assistance grants or other means made available to the Corporation for the purpose.

Article 33. MISCELLANEOUS OPERATIONS

In addition to the operations specified elsewhere in this Agreement, the Corporation shall have the power to:

1. Borrow funds, and in that connexion to furnish such collateral or other security therefor as it shall determine;
2. Invest funds not needed in financing its operations in such obligations as it may determine; and invest funds held by it for pension or similar purposes in marketable securities, without being subject to the restrictions imposed by other sections of this Agreement;
3. Buy and sell securities which it has issued or guaranteed or in which it has invested; and
4. Exercise such other powers incidental to its business as shall be necessary or desirable for the furtherance of its business.

Article 34. POLITICAL ACTIVITY PROHIBITED

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

**CHAPTER VII. FINANCIAL REGULATIONS; EXTERNAL AUDITORS;
AND NET PROFIT***Article 35. FINANCIAL YEAR*

1. The financial year of the Corporation shall begin on 1st January and end on 31st December of each year.
2. Notwithstanding the provisions of the foregoing paragraph, the first financial year of the Corporation shall include the period falling between the date

on which the Corporation commences operations and the 31st December of the following year.

Article 36. FINANCIAL REGULATIONS

The Board of Directors shall establish, in conformity with the financial principles set forth in this Agreement, financial regulations for the conduct of the business of the Corporation.

Article 37. FINANCIAL STATEMENTS

The Board of Directors shall prepare, in respect of each financial year and not later than six months from the end of the financial year, a balance sheet, a profit and loss account and an Annual Report. The balance sheet and the profit and loss account shall be drawn up in accordance with sound accounting principles.

Article 38. EXTERNAL AUDITORS

1. The General Assembly shall appoint one or more external auditors. In all cases, the Auditors shall be nationals of State members. If more than one auditor is appointed, they shall be of different nationalities.

2. The term of office of an auditor shall be one year. It may be renewed yearly to a maximum of three years.

3. If the office of the external auditor becomes vacant before the end of his term, the Board of Directors shall immediately inform the members, and appoint another external auditor to serve until the next General Assembly.

Article 39. ALLOCATION OF NET PROFIT

1. The annual net profit of the Corporation shall be allocated by the General Assembly on the recommendation of the Board of Directors.

2. Notwithstanding the provisions of this article, no dividend shall be paid during the first three years of operations of the Corporation. Any profit realized during the said three years shall be transferred to the various reserves in the manner the General Assembly shall direct.

3. The annual dividend shall be paid in U.S. dollars, and the Board of Directors shall determine the modes of such payment.

CHAPTER VIII. WITHDRAWAL; SUSPENSION OF MEMBERSHIP
AND TERMINATION OF OPERATIONS

Article 40. WITHDRAWAL BY MEMBERS

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

Article 41. SUSPENSION OF MEMBERSHIP

1. If a member fails to fulfil any of its obligations to the Corporation, such member shall be suspended by a decision of the General Assembly. The member so suspended shall automatically cease to be a member one year from the date of

its suspension unless a decision is taken by the General Assembly to restore that member to good standing.

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

Article 42. RIGHTS AND DUTIES OF FORMER MEMBERS

1. After the date on which a member ceases to have such a status, such former member shall remain liable for its direct obligations to the Corporation and for its contingent liabilities to the Corporation so long as any part of the business contracted before the termination date is outstanding, but it shall cease to incur liabilities with respect to contracts entered into thereafter by the Corporation and to share either in the income or the expenses of the Corporation.

2. At the time a member ceases to have such a status, the Corporation shall arrange for the repurchase of its shares as a part of the settlement of accounts with that former member 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 Corporation on the date its membership shall be terminated.

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

- (a) Any amount due to the former member concerned for its shares shall be withheld so long as that former member or any of its agencies remains liable in any capacity to the Corporation and such amount may, at the option of the Corporation, be applied on any such liability as it matures. In any event, no amount due to a former 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 authorities of the former member 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 business referred to in sub-paragraph (a) of this paragraph until the former member has received the full repurchase price.
- (c) If losses are sustained by the Corporation on any contracts 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 former member concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with sub-paragraph (1) 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 Corporation terminates its operations pursuant to article 43 of this Agreement within six months of the termination date, all rights of the former member concerned shall be determined in accordance with the provisions of articles 44 and 45.

Article 43. TERMINATION OF OPERATIONS

1. The Corporation may terminate its operations in respect of new business by a decision of the General Assembly exercising a majority of the total voting power of the members.

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

Article 44. LIABILITY OF MEMBERS AND PAYMENT OF CLAIMS

1. In the event of termination of the operations of the Corporation, the liability of all members for uncalled subscriptions to the capital stock of the Corporation 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 Corporation and then out of payments to the Corporation 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 judgement, to ensure a *pro rata* distribution among holders of direct and contingent claims.

Article 45. DISTRIBUTION OF ASSETS

1. In the event of termination of operations of the Corporation no distribution shall be made to members on account of their subscriptions to the capital stock of the Corporation until:

- (a) All liabilities to creditors have been discharged or provided for, and
- (b) The General Assembly has taken a decision to make a distribution. This decision shall be taken by the Assembly exercising a majority of the total voting power of the members.

2. After a decision to make a distribution has been taken in accordance with the preceding paragraph, the Board of Directors may, by two-thirds majority of all its members, make successive distributions of the assets of the Corporation to members until all assets have been distributed. This distribution shall be subject to the prior settlement of all outstanding claims of the Corporation 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 Corporation.

4. The Board of Directors shall value the assets to be distributed at the date of distribution and then proceed to distribute in the following manner:

- (a) There shall be paid to each member in its own obligations or those of its official agencies or legal entities within its territories to the extent that they are available for distribution, an amount equivalent in value of 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, up to an amount equivalent in value to such balance.

(c) Any remaining assets held by the Corporation after payments have been made to members in accordance with sub-paragraphs (a) and (b) of this paragraph shall be distributed *pro rata* among the members.

5. Any member receiving assets distributed by the Corporation in accordance with the preceding paragraph shall enjoy the same rights with respect to such assets as the Corporation enjoyed before their distribution.

CHAPTER IX. STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

Article 46. STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

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

Article 47. STATUS IN MEMBER COUNTRIES

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

- (i) To contract;
- (ii) To acquire, and dispose of, immovable and movable property; and
- (iii) To sue.

Article 48. LEGAL PROCESS

1. Legal actions may be brought against the Corporation in a court of competent jurisdiction in the territory of a country in which the Corporation has its Headquarters, or has appointed an agent for the purpose of accepting service or notice or process, or has otherwise agreed to be sued.

2. Disputes arising from reinsurance contracts entered into by the Corporation shall be subject to conventional practices or to ordinary legal processes applicable to comparable business as shall be agreed in the respective contracts. In all cases, the Corporation and its property and assets wherever located and by whomsoever held, shall be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Corporation.

Article 49. IMMUNITY OF ASSETS

Property and assets of the Corporation wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by the authorities of any member.

Article 50. IMMUNITY OF ARCHIVES

The archives of the Corporation and in general, all documents belonging to it or held by it, shall be immune from seizure wherever located in member States except in cases of disputes arising from reinsurance contracts.

Article 51. FREEDOM OF ASSETS FROM RESTRICTION

To the extent necessary to carry out the purpose and functions of the Corporation and subject to the provisions of this Agreement, each member

State shall undertake to waive and to refrain from imposing any administrative, practical and financial restrictions that would hinder in any manner the smooth functioning of the activities of the Corporation.

Article 52. PRIVILEGES FOR COMMUNICATIONS

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

Article 53. WAIVER OF THE CORPORATION

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Corporation. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this Chapter in cases where its action would in its opinion further the interests of the Corporation.

CHAPTER X. AMENDMENTS

Article 54. AMENDMENTS

1. Any proposal to introduce modifications to this Agreement, whether emanating from a member or the Board of Directors, shall be communicated to the Chairman who shall bring the proposal before the General Assembly. Amendments to the provisions of this Agreement shall be passed by two-thirds majority of the members having three quarters of the voting power of the Corporation. The procedure for the introduction of such amendments shall be determined by the General Assembly.

2. Notwithstanding paragraph 1 of this article, acceptance by all members shall be required for any amendment modifying:

- (a) The right secured by paragraph 5 of article 6 of this Agreement;
- (b) The limitation on liability provided in paragraph 3 of article 7; and
- (c) The right to withdraw from the Corporation provided in article 40 of this Agreement.

CHAPTER XI. INTERPRETATION AND ARBITRATION

Article 55. INTERPRETATION

1. The text of this Agreement in the working languages approved by the OAU shall be equally authentic.

2. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Corporation or between any members of the Corporation shall be submitted to the Board of Directors for decision. If there is no director of its nationality on that Board, a member State 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 General Assembly.

3. In any case, where the Board of Directors has given a decision under paragraph 2 of this article, any member may require that the question be referred to the General Assembly, whose decision shall be final. Pending the decision of

the General Assembly, the Corporation may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

Article 56. ARBITRATION

Subject to the provisions of the foregoing article, any dispute between members or between the Corporation and a member or members with respect to the interpretation or implementation of this Agreement shall, if possible, be settled by negotiation. Failing settlement by negotiation, and unless the parties agree to another method of settlement, any such dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Corporation, another by the member concerned, and the two parties shall appoint the third arbitrator, who shall be the Chairman of the tribunal. If within forty-five days of receipt of the request for arbitration either party has not appointed an arbitrator, or if within thirty days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the President of the Commission of Mediation, Conciliation and Arbitration of the OAU, or such other authority as may have been prescribed by regulations adopted by the General Assembly to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, but the third arbitrator shall have full power to settle all questions of procedure in any case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.

CHAPTER XII. FINAL PROVISIONS

Article 57

1. This Agreement, deposited with the African Development Bank (hereinafter called the "Founding Depository"), shall remain open until 30 June 1976 for signature by the Bank and Governments of States whose names are set forth in annex A to this Agreement.

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

3. After the date of commencement of operations of the Corporation, the Founding Depository shall transmit all relevant documents to the OAU who shall act as the Depository of this Agreement.

Article 58. RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Agreement shall be subject to ratification, acceptance or approval by the signatories.

2. Instruments of ratification, acceptance or approval shall be deposited with the Founding Depository before first September 1976, provided that if this Agreement shall not have entered into force by that date in accordance with article 59, the Depository may extend the period for the deposit of instruments of ratification, acceptance or approval by not more than six months.

Article 59. ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Bank and twelve signatory States, whose initial subscriptions, as set forth in annex A to this Agreement, comprise in aggregate together with the Bank's subscription not less

than sixty per cent of the capital stock of the Corporation available for subscription, have deposited their instruments of ratification, acceptance or approval; provided always that first June 1976 shall be the earliest date on which this Agreement may enter into force in accordance with the provisions of this article.

Article 60. ACCESSION AND ACQUISITION OF MEMBERSHIP

1. A party whose instrument of ratification, acceptance or approval is deposited before the date on which this Agreement enters into force shall become a member of the Corporation on that date. Any other signatory which complies with the provisions of article 58 shall become a member on the date on which its instrument of ratification, acceptance or approval is deposited.

2. States which do not acquire membership of the Corporation in accordance with the provisions of article 58 may become members after the Agreement has entered into force by accession thereto on such terms as the General Assembly shall determine. The Government of any such State shall deposit, on or before a date appointed by the Assembly, an instrument of accession with the Depositary, who shall notify such deposit and the date thereof to the Corporation and to the parties to this Agreement; upon the deposit, the State shall become member of the Corporation on the appointed date.

Article 61. COMMENCEMENT OF OPERATIONS

1. As soon as this Agreement enters into force, each member shall appoint a representative and the Bank in its capacity as the Founding Depositary of the Agreement shall call the inaugural meeting of the General Assembly.

2. At the inaugural meeting:

- (a) The Bank shall, in accordance with Article 15 (1), appoint a Director and the General Assembly shall elect eight Directors who shall be the Directors of the Corporation.
- (b) The General Assembly shall make such arrangements for the determination of the date on which the Corporation shall commence its operations and shall fix the date of the first meeting of the Board of Directors.

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

4. All expenses incurred by the Bank in establishing the Corporation shall be reimbursed by the Corporation.

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

DONE in Yaoundé this 24th day of February one thousand nine hundred and seventy-six in a single copy, in the English and French languages, which shall remain deposited with the Bank.

SIGNATORIES — SIGNATAIRES

Algeria/Algérie

[Signed — Signé]

LAMINE TITAH

Benin/[Bénin]

[Signed — Signé]

ELEGBE ALFRED

Botswana

Burundi

[Signed — Signé]

SERGE RWAVYUMA

Cameroon/Cameroun

[Signed — Signé]

MARCEL YONDO

Central African Republic/République centrafricaine

[Signed — Signé]

MARCEL DIOUABA

Chad/Tchad

[Signed — Signé]

BEREMANDJI MADENGAR

Congo

[Signed — Signé]

NDIAYE MAMADOU

Egypt/Egypte

[Signed — Signé]

MOHAMED EL ASHRY

Equatorial Guinea/Guinée équatoriale

Ethiopia/Ethiopie

[Signed — Signé]
SAMUEL MENGISTU

Gabon

[Signed — Signé]
ANTOINE NGOUA

Gambia/Gambie

[Signed — Signé]
HOUSAINOU MOMODOU MUSA NJAI

Ghana

[Signed — Signé]
Dr. AMON NIKOI

Guinea/Guinée

[Signed — Signé]
IBRAHIMA CAMARA

Guinea-Bissau/Guinée-Bissau

[Signed — Signé]
Dr. MARIA LUIZA DOS SANTOS

Ivory Coast/Côte d'Ivoire

[Signed — Signé]
MOBIOH BECKET VICTOR

Kenya

[Signed — Signé]
SHEIKH MOHAMED BALALA

Lesotho

Liberia/[Libéria]

[*Signed — Signé*]
D. FRANKLIN NEAL

Libya/Libye

[*Signed — Signé*]
FAKHRI ANEIZI

Madagascar

Malawi

Mali

[*Signed — Signé*]
AMADOU OMAR SY

Mauritius/Maurice

[*Signed — Signé*]
KADRESS VENCATACHELLUN

Mauritania/Mauritanie

[*Signed — Signé*]
ABDALLAHI OULD SIDYA

Morocco/Maroc

[*Signed — Signé*]
HASSAN KAGHAD

Niger

[*Signed — Signé*]
WRIGHT ANDRE
(30 mars 1976)

Nigeria/[Nigéria]

[*Signed — Signé*]

Major General MOHAMMED SHUWA

Rwanda

Senegal/[Sénégal]

[*Signed — Signé*]

ABDULAYE SOW

Sierra Leone/[Sierra Léone]

[*Signed — Signé*]

EDWARD JOHN KARGBO

Somalia/Somalie

[*Signed — Signé*]

YUSUF OMAR AL AZHARI

Sudan/Soudan

[*Signed — Signé*]

ABDELAAL ELDAWI ABDELAAL

Swaziland

[*Signed — Signé*]

DOUGLAS LUKELE

Tanzania/Tanzanie

[*Signed — Signé*]

IDRIS ABDUL WAKIL

Togo

[*Signed — Signé*]

KOMLA SIGI KOUDO

Tunisia/Tunisie

[*Signed — Signé*]

FERID SOUDANI

Uganda/Ouganda

[*Signed — Signé*]

Lt. Colonel M. O. AZIZ

Upper Volta/Haute-Volta

[*Signed — Signé*]

MICHEL KOMPAORE

Zaire/[Zaire]

[*Signed — Signé*]

TUMA-WAKU DIA BAZIKA

Zambia/Zambie

[*Signed — Signé*]

P. K. KASUTU

African Development Bank/Banque africaine de développement

[*Signed — Signé*]

ABDELWAHAB LABIDI

ANNEX A
[ANNEXE A]

ALLOCATION OF THE CORPORATION'S SHARE CAPITAL
RÉPARTITION DU CAPITAL-ACTIONS DE LA SOCIÉTÉ

<i>Country Pays</i>	<i>Number of Shares Nombre des actions</i>
Algeria/Algérie	60
Benin/Bénin	10
Botswana	10
Burundi	10
Cameroon/Cameroun	30
Central African Republic/République centrafricaine	10
Chad/Tchad	12
Congo	13
Egypt/Egypte	60
Equatorial Guinea/Guinée équatoriale	10
Ethiopia/Ethiopie	28
Gabon	16
Gambia/Gambie	10
Ghana	33
Guinea/Guinée	10
Guinea-Bissau/Guinée-Bissau	10
Ivory Coast/Côte d'Ivoire	25
Kenya	26
Lesotho	10
Liberia/Libéria	10
Libya/Libye	60
Madagascar	18
Malawi	10
Mali	10
Mauritius/Maurice	14
Mauritania/Mauritanie	12
Morocco/Maroc	60
Niger	10
Nigeria/Nigéria	60
Rwanda	10
Senegal/Sénégal	21
Sierra Leone/Sierra Léone	13
Somalia/Somalie	12
Sudan/Soudan	30
Swaziland	11
Tanzania/Tanzanie	24
Togo	11
Tunisia/Tunisie	25
Uganda/Ouganda	22
Upper Volta/Haute-Volta	11
Zaire/Zaïre	19
Zambia/Zambie	34
African Development Bank/Banque africaine de développement	100
TOTAL	1,000

ANNEX B

ELECTION OF DIRECTORS

1. One member of the Board of Directors shall be nominated by the African Development Bank.
 2. At the election of the remaining eight (8) Directors, each representative of a member State on the General Assembly shall cast all his votes for a single person. The African Development Bank shall not participate in the election of the eight (8) Directors.
 3. The eight (8) persons receiving the highest number of votes shall be Directors, except that no person who received at the first ballot less than ten per cent (10%) of the total voting power of the members shall be considered as elected.
 4. If eight (8) persons are not elected at the first ballot, a second ballot shall be held to complete the number of members of the Board. The person who received the highest number of votes shall be considered as duly elected.
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