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African Trade Insurance Agency

**THE AFRICAN TRADE INSURANCE AGENCY**  
**L'AGENCE POUR L'ASSURANCE DU**  
**COMMERCE EN AFRIQUE**  
**P.O. Box 10620 - 00100 GPO**  
**NAIROBI, KENYA.**

Date: 09.10.23

**AGREEMENT ESTABLISHING  
THE AFRICAN TRADE INSURANCE AGENCY**

**Adopted at Grand Bay in the Republic of Mauritius on the Eighteenth Day of May in the Year 2000.**

**Amended:**

- (1) On the 20th day of January in the Year Two Thousand and Seven, following the entry into force of Resolution 7 adopted by the General Assembly in Nairobi, Republic of Kenya on the Twenty-Eighth day of July in the Year Two Thousand and Six.**
- (2) On the 1st day of July in the Year Two Thousand and Nine, following the entry into force of Resolutions 4 and 9 adopted by the Ninth Annual General Meeting in Nairobi, Republic of Kenya on the Nineteenth day of May in the Year Two Thousand and Nine.**
- (3) On the 16th day of May in the year Two Thousand and Twelve, following the entry into force of Resolution 6 adopted by the Twelfth Annual General Meeting in Nairobi, Republic of Kenya.**
- (4) On the 11th day of May in the year Two Thousand and Seventeen, following the entry into force of Resolution 4 (3) adopted by the Seventeenth Annual General Meeting, in Nairobi, Republic of Kenya.**
- (5) On the 23<sup>rd</sup> day of June in the year Two Thousand and Twenty-Two, following the entry into force of Resolution 5 adopted by the 22<sup>nd</sup> Annual General Meeting, in Accra, Republic of Ghana.**

**The Agreement and the Agency are registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations under Certificate of Registration Number 49593 and as a Multilateral No. 39012 respectively.**

TABLE OF CONTENTS

Preamble	Page
Article 1 Interpretation.....	2
Article 2 Establishment of the Agency .....	4
Article 3 Legal Capacity of the Agency .....	5
Article 4 Objectives and Purpose of the Agency .....	5
Article 5 Membership.....	6
Article 6 Authorized Capital Stock of the Agency and Allocation of Shares.....	9
Article 7 Subscription for Shares .....	10
Article 8 Operations of the Agency .....	12
Article 9 Financial Management of the Agency .....	13
Article 10 Organization and Management of the Agency .....	13
Article 11 General Meeting .....	14
Article 12 Board of Directors.....	16
Article 13 Chief Executive Officer.....	21
Article 14 Permanent Headquarters and Offices .....	23
Article 15 Immunities, Exemptions and Privileges .....	24
Article 16 Legal Process and Regime.....	27
Article 17 Relations with other Organizations and Institutions .....	27
Article 18 Suspension or Termination of Operations.....	28
Article 19 Settlement of Disputes .....	29
Article 20 Supplementary Agreements .....	30
Article 21 Amendments.....	30
Article 22 Signature .....	31
Article 23 Ratification .....	31
Article 24 Accession or Acceptance.....	31
Article 25 Entry into Force.....	32
Article 26 Reservations.....	32
Article 27 Suspension and Withdrawal from Membership.....	32
Article 28 Depository.....	33
Article 29 Authentic Texts .....	34

## **PREAMBLE**

### **THE PARTIES TO THE PRESENT AGREEMENT,**

**COGNIZANT** of the fact that lack of adequate political, non-commercial and commercial risk insurance is a significant impediment to the availability of finance for investments in Africa and the expansion of African foreign trade and intra-Africa trade,

**ACKNOWLEDGING** previous multilateral efforts made by African States towards regional economic integration through co-operation in trade liberalization and development so as to attain sustainable growth, promote economic activity and create an enabling environment for foreign trade, as well as cross-border and domestic investments,

**RECALLING** the economic objectives and aims of the African Union, the Treaty Establishing the African Economic Community and the other several African Treaties on regional economic integration, including the Treaty Establishing the Common Market for Eastern and Southern Africa, the Treaty Establishing the Southern African Development Community and the Treaty Establishing the Economic Community of West African States,

**RECOGNIZING** the significant role played by both the private sector and multilateral development institutions in trade, investments and other productive activities in Africa,

**DESIROUS** of the economic and social benefits, more particularly poverty reduction, which increased partnership among African States, multilateral development institutions and the private sector regarding trade, investments and other productive activities, would bring to African peoples,

**CONVINCED** that the establishment of an African trade insurance agency would increase the availability of financial resources for trade, investments and other productive activities and reduce the cost of trade finance in Africa by mitigating the associated political, non-commercial and commercial risks,

**HAVE HEREBY AGREED AS FOLLOWS:**

**ARTICLE 1  
INTERPRETATION**

**1.1 General**

- (a) Any reference to this Agreement shall include any amendments or modifications thereto as may be made after the date on which this Agreement enters into force.
- (b) Words signifying the singular number only shall include the plural number and vice versa. Words importing the masculine gender include the feminine gender.
- (c) The use of headings in this Agreement is for convenience of reference only. The headings do not confer any special meaning or emphasis whatsoever and this Agreement is to be read in its entirety. This Agreement is divided into Articles, paragraphs, sub-paragraphs and clauses, in hierarchical order.

**1.2 Definitions**

Except where the context otherwise requires, the following terms shall have the following meanings:

**"African Public Institution"** means any institution established by one or more African States or any institution in which one or more African States directly or indirectly own at least fifty one percent (51 %) of the voting stock;

**"African State"** means any State which is, or which is qualified to become, a member of the African Union;

**"Agency"** means the African Trade Insurance Agency established under paragraph 2.1 of this Agreement;

**"Alternate Director"** means a person appointed by the General Meeting under paragraph 12.3 of this Agreement to be an alternate to the member of the Board of Directors of the Agency for the time being;

**"Annual General Meeting"** means the meeting of the Members convened each Financial Year for the purposes of considering the accounts prepared in accordance with sub-paragraph 12.7(b)(vii) of this Agreement and the election of Directors and Alternate Directors under paragraphs 12.1 and 12.3 of this Agreement;

**"Articles of Association of the Agency"** means the Articles of Association of the Agency as adopted by the General Meeting and as may be amended from time to time;

**"Board of Directors"** means the board of directors of the Agency composed in accordance with ARTICLE 12 of this Agreement;

**"Chief Executive Officer"** means the person appointed by the General Meeting under ARTICLE 13 of this Agreement to be the chief executive officer of the Agency for the time being;

**"Depository"** means the Chair of the Commission of the African Union or such other Person to whom the power to act as depository may be delegated pursuant to ARTICLE 29 of this Agreement;

**"Director"** means a person appointed by the General Meeting under Article 12 of this Agreement to be a member of the Board of Directors of the Agency for the time being;

**"Early Member or Early Members"** means Members other than Founding Members that subscribed to the minimum share subscriptions to qualify for membership on or before the date on which the (fifth) Amendment to this Agreement entered into force;

**"Export Credit Agency"** means an entity duly established or registered under the laws of a Member State or in any other State and mandated to support the exports and investments of the parent State by: (i) providing insurance or guarantees against political and commercial risks associated with payments to exporters for goods and services and credits extended by banks or other financial institutions under export related transactions; or (ii) providing direct lending facilities to the foreign buyers of goods and services from exporters of the parent State;

**"Extraordinary General Meeting"** means a meeting of the Members other than an Annual General Meeting;

**"Financial Year"** means, in respect of the Agency, the period between the first day of the month of January and the last day of the month of December in each calendar year or such other period as may be determined by a General Meeting;

**"Founding Member or Founding Members"** means individually or collectively, as the case may be, the Republic of Burundi, the Republic of Kenya, the Republic of Malawi, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda and the Republic of Zambia;

**"General Meeting"** means the organ established under ARTICLE 10 of this Agreement and includes any meetings of the Members, whether ordinary or extraordinary as the context requires, as set out under paragraph 11.5 of this Agreement;

**"Member"** means an African State or a Non-African State, a Regional Economic Organization, an African Public Institution, a Non-African Public Entity, an Export Credit Agency or a Private Corporation, which is a member of the Agency in good standing under the terms of this Agreement;

**"Members present and voting"** means Members present whether in person or remotely connected electronically at the session at which voting takes place and casting an affirmative or negative vote. Members abstaining from voting shall be considered as present but not voting;

**"Member State"** means an African State or a Non-African State which is a Member of the Agency in good standing;

**"Non-African State"** means any state which is, or which is qualified to become, a member of the United Nations but which is not an African State;

**"Non-African Public Entity"** means any entity established by one or more Non-African States or any entity in which one or more Non-African States directly or indirectly own at least fifty one percent (51 %) of the voting stock;

**"Participation Agreement"** means each agreement, as more fully described in paragraph 5.4 of this Agreement, between the Agency and any African State and

signed by that African State as a condition for membership of the Agency pursuant to sub-paragraph 5.1(b)(iv) of this Agreement;

**"Person"** means any natural or juridical person, and includes, without limitation, a Regional Economic Organization, an African Public Institution, an Export Credit Agency, a non-African Public Entity or a Private Corporation

**"Private Corporation"** means a corporation duly established or registered under the laws of any State and which is majority owned and controlled by private persons;

**"Regional Economic Organization"** means a multilateral organization or institution constituted by sovereign States of a given region upon which those member States have conferred competence in respect of matters relating to economic and social development within the region;

**"State"** means any state which is, or which is qualified to become, a member of the United Nations;

**"Substantive Director"** means a Director other than an Alternate Director;

**"Substantive Directors present and voting"** means Directors present whether in person or remotely connected electronically at the session at which voting takes place and casting an affirmative or negative vote. Directors abstaining from voting shall be considered as present but not voting; and

**"UNCITRAL Arbitration Rules"** means the United Nations Commission on International Trade Law Arbitration Rules adopted by the General Assembly of the United Nations on December 15, 1976, as amended from time to time.

## ARTICLE 2

### ESTABLISHMENT OF THE AGENCY

#### 2.1 Establishment

An organization whose legal name is the African Trade Insurance Agency is hereby established with international legal personality.

As of the date on which the (fifth) Amendment to this Agreement enters into force, the African Trade Insurance Agency will also operate under the commercial name of African Trade & Investment Development Insurance (ATIDI).

#### 2.2 Autonomy

The Agency shall be autonomous and shall enjoy administrative and financial independence in the discharge of its functions.

## **ARTICLE 3**

### **LEGAL CAPACITY OF THE AGENCY**

#### **3.1 International and Corporate Character**

The Agency possesses international legal personality and is deemed to be a legally constituted body corporate with perpetual succession and a common seal under the national laws of each Member State.

#### **3.2 Legal Capacity**

The Agency has all the powers necessary or expedient for the performance of its functions and is possessed of full juridical personality and, in particular, it has the legal capacity to:

- (a) institute and be a party to judicial, arbitral or any other legal or administrative proceedings;
- (b) acquire and dispose of any property by any means;
- (c) enter into contracts and conclude agreements;
- (d) borrow funds in the manner that the Board of Directors, guided by sound and prudent financial principles, may consider appropriate to achieve its objectives and purpose;
- (e) open and maintain accounts in any bank or other financial institution, in any State or elsewhere, in domestic or foreign currency;
- (f) accept gifts, grants, donations or benefactions from any Person;
- (g) act as an agent for any Member or Person or authorize any Person to act as its agent;
- (h) take such steps and do all such things as may appear to it necessary or desirable to protect its interests; and
- (i) generally, do all such things as are incidental or conducive to the attainment of its objectives and purpose, the exercise of its powers and the conduct of its business as are conferred or prescribed by this Agreement.

## **ARTICLE 4**

### **OBJECTIVES AND PURPOSE OF THE AGENCY**

#### **4.1 Objectives and Purpose**

The objectives and purpose of the Agency is to provide, facilitate, encourage and otherwise develop the provision of, or the support for, insurance, including coinsurance and reinsurance, guarantees, and other financial instruments and services, for purposes of trade, investment and other productive activities in African States in supplement to those that may be offered by the public or private sector, or in cooperation with the public or private sector.



The Agency shall be guided in all its decisions by the provisions of the preceding paragraph.

#### **4.2 Functions**

To serve its objectives and purpose, the Agency shall:

- (a) facilitate the development of trade, investments and other productive activities in African States through the provision of, or support for, insurance, coinsurance, reinsurance or guarantees against political, non-commercial and commercial risks;
- (b) establish and administer, on behalf and with the concurrence of Member States, whether jointly or severally, insurance, coinsurance, reinsurance or guarantee schemes and facilities for promoting trade, investments and other productive activities in African States;
- (c) mobilize financial resources necessary or useful to achieve its objectives and purpose; and
- (d) undertake such other activities and provide such other services as it may consider incidental or conducive to the attainment of its objectives and purpose.

#### **4.3 National Legislative and Administrative Action**

Each Member State shall, within a reasonable period and in any case within eighteen (18) months of admission into the membership of the Agency, or such longer period as may be approved by the General Meeting take all legislative action under its national law and all administrative measures necessary to enable the Agency to fully and effectively fulfil its objectives, purpose and functions. To this end, each Member State shall accord to the Agency in its territory the status, immunities, exemptions, privileges, facilities and concessions set forth in this Treaty and whenever requested by the Agency, promptly inform the Agency in writing of the specific action which it has taken for the aforementioned purpose.

### **ARTICLE 5**

#### **MEMBERSHIP**

##### **5.1 Membership**

- (a) Membership in the Agency is open to any:
  - (i) African State or a fully owned government entity nominated or designated by such African State to be a Member on its behalf;
  - (ii) Non-African State or any public entity nominated or designated by any such Non-African State to be a Member on its behalf;
  - (iii) Regional Economic Organizations and African Public Institution ;
  - (iv) Export Credit Agency and Non-African Public Entity ; or
  - (v) Private Corporation.

If a government entity nominated or designated by an African State to be a Member on its behalf in accordance with sub-paragraph 5.1(a)(i) ceases to be fully owned by the nominating African State, such government entity shall cease to hold membership on behalf of the African State and the African State shall nominate or designate forthwith another fully owned government entity to be a Member on its behalf.

- (b) Membership in the Agency shall be acquired by:
- (i) a resolution of the General Meeting approving the application for membership;
  - (ii) in the case of a Founding Member, signature and ratification of this Agreement;
  - (iii) in the case of a State other than a Founding Member, depositing with the Depository an instrument of accession to this Agreement;
  - (iv) in the case of an African State, entering into a Participation Agreement with the Agency;
  - (v) in the case of a Regional Economic Organization, an African Public Institution, an Export Credit Agency, a Non-African Public Entity or a Private Corporation, executing and depositing with the Depository a letter of acceptance of the provisions of this Agreement; and
  - (vi) subscribing for the capital stock of the Agency on such terms and conditions as may be prescribed by the resolution of the General Meeting approving the application for membership (or as may be prescribed by the Board of Directors under authority delegated to it by the General Meeting) and by paying in full:
    - (A) the par value or such value as may be determined by the Board of Directors of all the shares allotted/allocated to the Member; or
    - (B) where such resolution is in respect of a Class "A" Shareholder and it provides for the shares to be issued to such shareholder by way of instalments of whole shares, the par value or such value as may be determined by the Board of Directors of the shares comprising each such instalment.
- (c) Membership in the Agency may be held in:
- (i) the name of a State; or
  - (ii) in the case of an African State, in the name of a fully owned government entity nominated or designated by such African State in accordance with sub-paragraph 5.1(a)(i); or
  - (iii) in the case of a Non-African State, the name of a public entity nominated or designated by such State as having the authority and power to bind the State and act on its behalf; and
  - (iv) the official or corporate name of a Regional Economic Organization, an African Public Institution, an Export Credit Agency, a Non-African Public Entity or a Private Corporation.

## **5.2 Separate Memberships**

With the exception of where a fully owned government entity is nominated under sub-paragraph 5.1(c)(ii) to act on behalf of an African State or where a public entity is nominated under sub-paragraph 5.1(c)(iii) to act on behalf of a Non-African State, nothing in this Article shall be deemed to restrict the ability of a Member State, a Regional Economic Organization, an African Public Institution, an Export Credit Agency a Non-African Public Entity or a Private Corporation to acquire and hold separate memberships in the Agency.

For the avoidance of doubt, where membership is held in the name of a Member State, such Member State shall not also nominate or designate a fully owned government entity or a public entity to hold its membership.

## **5.3 State Guarantee of the Obligations of a fully owned Government Entity**

Where a Member State has nominated or designated a fully owned government entity under sub-paragraph 5.1(c)(ii) or a public entity under sub-paragraph 5.1(c)(iii) to be a Member of the Agency, that Member State shall be deemed to be a guarantor, as principal and not merely as a surety, of all the obligations of the fully owned government entity or public entity (as the case may be) towards the Agency.

## **5.4 Participation Agreement**

- (a) Any African State admitted into membership of the Agency shall, within thirty (30) days of paying in full, or in instalments of whole shares in accordance with sub-paragraph 5.1(b)(vi) of this Agreement, the par value or such value as determined by the Board of Directors of any of the Class "A" shares allotted/allocated to it, execute and deliver to the Agency a Participation Agreement in form and substance satisfactory to the Agency;
- (b) The Participation Agreement shall, among other things, provide for the following:
  - (i) the obligation of the African State as a Member of the Agency to reimburse the Agency, within one eighty (180) days, for any and all losses (before the application of any reinsurance recoveries or recoveries under contracts of insurance or guarantees and all costs related to such recoveries) paid by the Agency under contracts of insurance or guarantees relating to transactions within the jurisdiction of the relevant African State except for losses caused by War or Civil Disturbance, Civil Commotion, Embargo (as those terms are defined in that Participation Agreement) or the financial default of the private obligor which is not proximately or directly attributable to the actions or inactions of the governing authority of the relevant African State or any of its organs, including but not limited to the legislature, revenue authorities, police department, armed forces, regulatory authorities, central bank and other similar institutions;
  - (ii) that where a claim has been paid out and a loss incurred by the Agency (before the application of any reinsurance recoveries or recoveries under contracts of insurance or guarantees and all costs related to such recoveries), the African State within whose jurisdiction the loss has occurred may, at the discretion of the Agency, be required to forfeit to the Agency without any compensation a portion of its shares equal to the loss. The forfeited shares may only be reinstated on full reimbursement of the loss to Agency;

- (iii) that any reimbursement to the Agency following a payment of a claim shall not amount to a new share subscription by the relevant African State;
- (iv) nominating by office a senior official (at cabinet level) of the relevant African State for the purposes of attending to matters relating to claims avoidance and reimbursement to the Agency of any loss; and
- (v) that the Participation Agreement shall subsist and continue in full force and effect until the later of: (i) the date the relevant African State withdraws from the membership of the Agency under the terms of this Agreement and the Articles of Association of the Agency; and (ii) the date on which all liabilities the Agency may have to third parties under contracts of insurance or guarantees for which the relevant African State may be liable under the Participation Agreement have been extinguished (and, for the avoidance of doubt, the Agency has recovered any claim so paid).

## **ARTICLE 6**

### **AUTHORIZED CAPITAL STOCK OF THE AGENCY AND ALLOCATION OF SHARES**

#### **6.1 Authorized Capital Stock**

The Agency has an open-ended capital stock based on an initial authorized nominal capital stock of United States Dollars one billion (US Dollars 1,000,000,000) divided into ten thousand (10,000) shares having a par value of United States Dollars one hundred thousand (US Dollars 100,000) each, which is available for subscription by Members in accordance with this Agreement.

#### **6.2 Classes of Shares**

Shares of the Agency are divided into five classes as follows:

- (a) Class "A" shares, which are to be offered, allotted and issued to African States or their duly nominated or designated fully owned government public entities;
- (b) Class "B" shares which are to be offered, allotted and issued to Non- African States or their duly nominated or designated public entities;
- (c) Class "C" shares which are to be offered, allotted and issued to Private Corporations;
- (d) Class "D1" shares which are to be offered, allotted and issued to Regional Economic Organizations and African Public Institutions; and
- (e) Class "D2" shares which are to be offered, allotted and issued to Export Credit Agencies and Non-African Public Entities.

#### **6.3 Increase of Authorized Capital Stock**

The initial authorized nominal capital stock and any subsequent authorized capital stock of the Agency may be increased by a resolution of the General Meeting adopted by a two-thirds majority vote of the voting power represented at the meeting. Any increase of the authorized capital stock of the Agency shall be undertaken in compliance with the relevant provisions of this Agreement. No Member shall be obliged to subscribe for additional shares following an increase of the capital stock of the Agency.

**6.4 Limitation of Members' Liability**

**6.5 No Member shall be liable for the obligations of the Agency by reason of its membership in the Agency. Shares not to be Pledged or Encumbered**

A Member shall not, except as provided for in sub-paragraph 5.4(b)(ii) of this Agreement, pledge or cause to be encumbered in any manner whatsoever the shares of the Agency's capital stock. Any pledge or other encumbrance made in contravention of this paragraph shall be null and void *ab initio*.

**ARTICLE 7**

**SUBSCRIPTION FOR SHARES**

**7.1 Determination of Subscriptions**

Subject to this Agreement, the Board of Directors shall determine the allotment of and subscription for shares of the capital stock of the Agency by its Members.

**7.2 Minimum Share Subscriptions**

(a) Subject to Article 5.1(b)(vi), the minimum share subscriptions to qualify for membership in the Agency shall be as follows:

- (i) for African States, a minimum of seventy-five (75) shares having a par value of United States Dollars one hundred thousand (US Dollars 100,000) each;
- (ii) for Regional Economic Organizations and African Public Institutions, a minimum of ten (10) shares having a par value of United States Dollars one hundred thousand (US Dollars 100,000) each;
- (iii) for Non-African States, a minimum of one hundred (100) shares having a par value of United States Dollars one hundred thousand (US Dollars 100,000) each;
- (iv) for Export Credit Agencies and Non-African Public Entities, a minimum of seventy-five (75) shares having a par value of United States Dollars one hundred thousand (US Dollars 100,000) each; and
- (v) for Private Corporations, a minimum of one hundred (100) shares having a par value of United States Dollars one hundred thousand (US Dollars 100,000).

(b) The minimum share subscriptions to qualify for membership as set out in sub-paragraphs (ii) and (iv) shall not apply to:

- (i) the Founding Members and Early Members in respect of shares already subscribed to by those Members based on the minimum share subscription requirements at the time of subscription of those shares (to the extent different from those in paragraphs (ii) and (iv)); and
- (ii) the subscription of new shares until twelve (12) months after the date of entry into force of the (fifth) Amendment to this Agreement.

(c) The requirement to comply with sub-paragraph 7.2(a) may be postponed or deferred by the General Meeting, or the Board of Directors under authority delegated to it by

the General Meeting, for such period as may be considered reasonably necessary for that Member to comply. Notwithstanding such postponement or deferral, such Member shall have the full rights and obligations of membership under this Agreement.

- (d) The Board of Directors with respect to an application for membership by an African State may prescribe an amount larger than the minimum share subscription required under sub-paragraph 7.2(a)(i) of this Agreement in proportion to the gross national product of such African State.

### **7.3 Extent of Shareholding by Member States**

- (a) the aggregate number of Class "A" shares held by all African States shall at all times represent not less than fifty-one per cent (51%) of the Agency's issued capital stock;
- (b) the aggregate number of Class "A" shares indirectly held by a single African State through its duly nominated or designated public entity shall not at any time exceed twenty-five per cent (25%) of the Agency's issued capital stock; and
- (c) no single Member of Class "B" or Class "C" or Class "D1" or Class "D2" shares shall hold shares representing more than fifteen per cent (15%) of the Agency's issued capital stock.

### **7.4 Payment of Subscriptions for Class "A" Shares**

Subject always to the application of sub-paragraph 5.1(b)(vi) of this Agreement payment for Class "A" shares subscribed for by an African State shall be made in United States Dollars, or in any convertible currency acceptable to the Agency at the rate of exchange prevailing on the date of payment for the shares as may be determined by the Board of Directors: (a) within sixty (60) days of depositing an instrument of ratification with the Depository, in the case of a Founding Member; and (b) within sixty (60) days of depositing an instrument of accession with the Depository, in the case of an African State other than a Founding Member.

### **7.5 Payment of Subscriptions for Class "B", Shares**

Payment for the Class "B" shares subscribed for by a Non-African State shall be made in United States Dollars, or in any convertible currency acceptable to the Agency at the rate of exchange prevailing on the date of payment for the shares as may be determined by the Board of Directors, within sixty (60) days of depositing an instrument of accession with the Depository.

### **7.6 Payment of Subscriptions for Class "C", Class "D1" and Class "D2"**

Payment for Class "C", Class "D1" and Class "D2" shares subscribed for by a Regional Economic Organization, an African Public Institution, a Non-African Public Entity, , an Export Credit Agency or a Private Corporation shall be made in United States Dollars, or in any convertible currency acceptable to the Agency at the rate of exchange prevailing on the date of payment for the shares as may be determined by the Board of Directors, within sixty (60) days of depositing a letter of acceptance of this Agreement with the Depository.

### **7.7 Payment of Subscriptions Following Increase of Authorized Capital Stock**

The requirements of, paragraphs 7.2, 7.2(d), 7.3, 7.4, 7.5, 7.6 and 7.7 of this Agreement shall apply with the necessary modifications to any shares allotted and issued following an increase in the authorized capital stock of the Agency.

### **7.8 Regulation of Shares**

Matters relating to share registers and certificates, the Agency's lien on shares, the transfer of shares and other matters related to shares in general shall be regulated by the Board of Directors in accordance with the provisions of the rules and regulations contained in the Articles of Association of the Agency.

## **ARTICLE 8**

### **OPERATIONS OF THE AGENCY**

#### **8.1 General**

- (a) The resources and the facilities of the Agency shall be used exclusively to achieve the objectives, purpose and functions specified in paragraphs 4.1 and 4.2 of this Agreement.
- (b) To this end, the Agency shall operate in accordance with the provisions of this Agreement and the rules and regulations, including internal operational procedures approved by the Members in General Meetings or the Board of Directors pursuant to this Agreement and the Articles of Association of the Agency.

#### **8.2 Business Procedures**

Subject always to such policies as the Board of Directors shall adopt from time to time, the management of the Agency shall have the authority to:

- (a) determine what risks, transactions and persons are eligible for support by the Agency;
- (b) set the terms and conditions of policies of insurance, coinsurance and reinsurance or contracts of guarantee issued or supported by the Agency;
- (c) establish the rates of premiums, fees and other charges, if any, applicable to each policy of insurance, coinsurance and reinsurance, and each contract of guarantee, issued or supported by the Agency; and
- (d) bind the Agency under contracts of insurance, coinsurance, reinsurance and contracts of guarantee and to deal with all matters relating to claims under such contracts.

#### **8.3 Political Interference Prohibited**

The Agency, its officers and its staff shall not interfere in the political affairs of any Member State, nor shall they be influenced in their decisions by the political character of the Member State or States concerned.

**ARTICLE 9  
FINANCIAL MANAGEMENT OF THE AGENCY**

**9.1 Reserves, Dividends and Investments**

- (a) The Agency shall carry out its activities in accordance with sound business and prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.
- (b) The General Meeting shall, based on the recommendations of the Board of Directors, decide whether, and to what extent, the Agency's net income shall be allocated to reserves, be distributed to the Agency's Members or be used otherwise.
- (c) Any distribution of net income to the Agency's Members shall be made only after the Agency has fully provisioned for its liabilities and shall be in proportion to the fully paid up shares of each Member in the issued capital stock of the Agency.
- (d) The management of the Agency may, with the approval of the Board of Directors or, in accordance with and subject to the Agency's investment policy as may be determined by the Board of Directors from time to time, invest funds not immediately needed in its operations, provided that such investments shall:
  - (i) not be speculative in nature;
  - (ii) be such that the capital thereof is not susceptible to depreciation or otherwise at risk of loss; and
  - (iii) be liquid in nature to ensure that funds are available to meet the financial obligations of the Agency.

**9.2 Budget**

The Chief Executive Officer shall prepare an annual budget of revenues and expenditures of the Agency for approval by the Board of Directors.

**9.3 Annual Report and Financial Statements**

The Agency shall publish an annual report which shall include statements of its accounts, as audited by independent external auditors. The Agency shall circulate to Members at each Annual General Meeting and such other appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations. The Agency shall also publish such information on the Agency's website.

**ARTICLE 10  
ORGANIZATION AND MANAGEMENT OF THE AGENCY**

The Agency has a General Meeting, a Board of Directors, and it may create such other organs as the General Meeting may determine. It shall also have a Chief Executive Officer and such other officers and staff as the Board of Directors may determine are necessary for the Agency to carry out its functions efficiently.



**ARTICLE 11**  
**GENERAL MEETING**

**11.1 Composition**

Every Member of the Agency shall be a member of the General Meeting. Each Member of the Agency shall appoint one representative and one alternate to represent it at General Meetings.

**11.2 Functions and Powers**

- (a) Subject to the provisions of this Agreement, all the powers of the Agency shall be vested in the General Meeting.
- (b) In addition to the other functions and powers set out and conferred upon it by this Agreement, the General Meeting shall have the power to:
- (i) admit new Members and, in the case of Members other than African States, determine the conditions of their admission;
  - (ii) determine the remuneration of the Directors;
  - (iii) appoint and remove, on the recommendation of the Board of Directors, the Chief Executive Officer and determine his or her remuneration and terms and conditions of service;
  - (iv) appoint the external auditors of the Agency and determine their mandate and remuneration;
  - (v) consider, approve or reject the annual accounts of the Agency;
  - (vi) subject always to sub-paragraphs 9.1(b) and (c) of this Agreement, determine and authorize, on the recommendation of the Board of Directors, the allocation and distribution of net income;
  - (vii) suspend or terminate the operations of the Agency and determine the distribution of the assets of the Agency in the event of dissolution;
  - (viii) consider and determine any matter which the Board of Directors may refer to it;
  - (ix) generally provide guidance to the Board of Directors in the discharge of its functions; and
  - (x) perform such other functions and exercise such other powers as may be incidental or conducive to the discharge of any of the functions or exercise of any of the powers provided under this Agreement.

**11.3 Delegation of Powers**

- (a) Subject to this Agreement, the General Meeting may, by a resolution, either generally or in any particular case, delegate to one or more officials of the General Meeting or to the Board of Directors the exercise of any of its powers or the performance of any of its functions under this Agreement with the exception of the powers and functions set out in sub-paragraphs 11.2(b)(ii) through (x) of this Agreement.

- (b) The General Meeting shall retain full power to exercise authority over any matter delegated to the Board of Directors under paragraph 11.3(a) of this Agreement.

#### **11.4 Officials of the General Meeting**

- (a) The officials of the General Meeting shall include a Chair, a vice Chair and a secretary, elected by the Members at an ordinary meeting, who collectively shall be the bureau of the General Meeting.
- (b) The officials of the General Meeting elected at an ordinary meeting shall remain in office until they are re-elected, or their successors are elected at the next ordinary General Meeting and they shall serve in that capacity at any intervening extraordinary General Meeting.
- (c) The officials of the General Meeting shall be eligible to stand for re-election for only one further term.

#### **11.5 Meetings**

An ordinary General Meeting shall be held at least once in every Financial Year and extraordinary General Meetings may be held at the request of the Board of Directors or any Member provided that such a request is supported by at least one-third of all Members. All General Meetings shall be held at any place designated by resolution of the General Meeting and can be held by electronic conferencing subject to the Chair's approval.

#### **11.6 Quorum**

For the purposes of transacting any business under this Agreement, a quorum for the General Meeting, whether the meeting is ordinary or extra-ordinary, shall consist of not less than fifty percent (50%) plus one of all representatives of Members eligible to vote, provided always that of those representatives of Members present and eligible to vote, not less than fifty percent (50%) shall be representatives of Members holding Class "A" shares.

#### **11.7 Voting**

- (a) Each fully paid up share held by a Member shall carry one vote at any ordinary or extraordinary General Meeting.
- (b) Members shall vote by consensus (by show of hands or oral confirmation or as the Chair of the General Meeting may determine). A formal vote will only take place (in lieu of consensus) if Members representing one-third of the voting power of Members present and voting request a formal vote
- (c) In instances where a formal vote is required, and save as expressly provided by this Agreement, all decisions of any ordinary or extraordinary General Meeting shall be by way of simple majority of the voting power of Members present and voting.

#### **11.8 General Meeting Vetting and Nominations Committees**

- (a) At each annual General Meeting, Members shall be appointed, respectively, to:
  - (i) the AGM Vetting and Nomination Committee for Class "A" shares; and

- (ii) the AGM Vetting and Nomination Committee for Class "B", Class "C", Class "D1" and Class "D2".

The appointment of Members to the AGM Vetting and Nomination Committees shall be carried out in accordance with the Terms of Reference of the Committee. A nominating Member shall not be eligible for appointment to the AGM Vetting and Nomination Committees.

- (b) The mandate of each AGM Vetting and Nominations Committee shall be to:
  - (i) receive and review nominations from nominating Members for the appointment of new Directors for Class "A" Shares and for Class "B", Class "C", Class "D1" and Class "D2" shares, respectively;
  - (ii) vet each nominated candidate's qualifications and suitability for the Board position in accordance with paragraph 12.5 of this Agreement and mindful of previous board and senior leadership experience as well as Board succession planning; and
  - (iii) submit its recommendations to the AGM through the Chair of the General Meeting.
- (c) The constituencies representing Class "A", Class "B", Class "C", Class "D1" and Class "D2" shares shall meet regularly and, in any case, at least once annually to discuss matters relating to their constituencies including the nomination of Directors.

#### **11.9 Articles of Association, Rules, Regulations and Procedure**

Subject to this Agreement, the General Meeting is hereby empowered, either on its own motion or on the recommendation of the Board of Directors, to establish the Articles of Association of the Agency, and make any other rules and regulations prescribing for matters that are required or permitted by this Agreement to be prescribed or are necessary or convenient to be prescribed in order to give full effect to the provisions of this Agreement, including, without limiting the generality of the foregoing, its own procedure.

### **ARTICLE 12**

#### **BOARD OF DIRECTORS**

##### **12.1 Composition of the Board of Directors**

- (a) The Board of Directors shall comprise up to thirteen (13) Substantive Directors. The General Meeting may, from time to time, review the size and composition of the Board of Directors, and may increase or decrease the size or revise the composition as appropriate.
- (b) The thirteen (13) Substantive Directors shall be comprised as follows:
  - (i) Six (6) of the thirteen (13) Substantive Directors shall be nominated by Members holding fully paid up Class "A" shares for appointment by the General Meeting;

- (ii) Three (3) of the six (6) Substantive Directors to be nominated by the Members holding fully paid up Class "A" shares under sub-paragraph 12.1(b) of this Agreement shall be from the private sector;
  - (iii) One (1) of the thirteen (13) Substantive Directors shall be nominated by Members holding fully paid up Class "B" shares for appointment by the General Meeting;
  - (iv) One (1) of the thirteen (13) Substantive Directors shall be nominated by Members holding fully paid up Class "C" shares for appointment by the General Meeting;
  - (v) Two (2) of the thirteen (13) Substantive Directors shall be nominated by Members holding fully paid up Class "D1" shares for appointment by the General Meeting; and
  - (vi) One (1) of the thirteen (13) Substantive Directors shall be nominated by Members holding fully paid up Class "D2" shares for appointment by the General Meeting;
  - (vii) Up to two (2) of the thirteen (13) Substantive Directors shall be independent directors appointed by the General Meeting following a proposal by the Board of Directors.
- (c) Upon any increase in the size of the Board of Directors, the Class "A" shareholders shall be entitled to nominate half of the additional Directors while the Members holding Class "B", Class "C", Class "D1" and Class "D2" shares shall be entitled to nominate the other half.
  - (d) The Board of Directors may exercise the functions and powers conferred upon it by this Agreement notwithstanding any vacancy in their body provided that their number is not reduced below the number determined under paragraph 12.9 of this Agreement in relation to quorum.

## **12.2 Tenure of Directors**

- (a) Following nomination by the same Member or Members of the Agency, each Substantive Director shall be appointed by an ordinary General Meeting for a term of up to three (3) years and shall be eligible for re-election as a Substantive Director for one (1) more term only of up to three (3) years.
- (b) A Substantive Director may vacate office before the expiry of their term if they resign, become disqualified to continue to be a Substantive Director under this Agreement or if the Member or Members of the Agency who nominated the Substantive Director so decides and notifies the Agency in a manner to be prescribed in such rules and regulations as may be established by the General Meeting.
- (c) Where a Substantive Director vacates office before the expiry of their term by resignation, by reason of death, becomes disqualified to continue to be a Substantive Director under this Agreement, or if the Member or Members of the Agency who nominated the Substantive Director so decide, then the Member or Members of the Agency who nominated the concerned Substantive Director may nominate a person to be appointed by the next ordinary General Meeting to serve for the remainder of the original Substantive Director's term.

- (d) At the expiry of the term of service of a Substantive Director, the concerned Substantive Director shall continue to serve on the Board of Directors pending renewal of their tenure or appointment of a successor by the next ordinary General Meeting.

### **12.3 Alternate Directors**

- (a) Each Substantive Director, other than the independent directors, shall have an Alternate Director who, following nomination by the same Member or Members of the Agency, shall be appointed by the General Meeting (at an ordinary General Meeting) for a term of up to three (3) years and shall be eligible for re-election as an Alternate Director for one (1) more term only of up to three (3) years.
- (b) An Alternate Director shall have full power to act for the Substantive Director to whom that person is an alternate if such Substantive Director is not present at a meeting of the Board. Any Alternate Director may participate in the meetings of the Board of Directors but may vote only in the absence of the Substantive Director to whom that person is an alternate.
- (c) An Alternate Director may vacate office before the expiry of their term if they resign, become disqualified to continue to be an Alternate Director under this Agreement or if the Member or Members of the Agency who nominated the Alternate Director so decides and notifies the Agency in a manner to be prescribed in such rules and regulations as may be established by the General Meeting.
- (d) Where an Alternate Director vacates office before the expiry of their term by resignation, by reason of death, becomes disqualified to continue to be an Alternate Director under this Agreement, or if the Member or Members of the Agency who nominated the Alternate Director so decide, then the Member or Members of the Agency who nominated the concerned Alternate Director may nominate a person to be appointed by the next ordinary General Meeting to serve for the remainder of the original Alternate Director's term.
- (e) At the expiry of the term of service of an Alternate Director, the concerned Alternate Director shall continue to serve on the Board of Directors pending renewal of their tenure or appointment of a successor by the next ordinary General Meeting.

### **12.4 Qualifications of Directors**

The Chair, the Directors and the Alternate Directors shall be persons with internationally recognized qualifications and extensive practical experience in at least one of the following fields: insurance; trade finance and banking; commercial law; or economics.

### **12.5 Disqualification of Directors**

- (a) No person shall be appointed as the Chair, a Director or an Alternate Director if the person:
  - (i) does not have the qualifications prescribed by paragraph 12.4 of this Agreement;

- (ii) has been convicted of any offence in which dishonesty is an element, or of any offence for which they are sentenced to a term of imprisonment without the option of a fine; or
  - (iii) has been declared financially insolvent or bankrupt by a court of competent jurisdiction.
- (b) No person shall continue in office as the Chair, a Director or an Alternate Director if the person:
- (i) is unable to perform the functions of their office by virtue of mental or physical infirmity;
  - (ii) is declared financially insolvent or bankrupt by a court of competent jurisdiction;
  - (iii) is convicted of any offence in which dishonesty is an element, or of any offence for which they are sentenced to a term of imprisonment without the option of a fine;
  - (iv) is absent without valid reason from three (3) consecutive meetings of the Board of Directors of which they have received notice and without the consent of the Chair;
  - (v) fails to comply with the requirements of paragraph 12.11 of this Agreement; or
  - (vi) was nominated for appointment under paragraph 12.1 of this Agreement by a Member who for the time being is suspended from exercising any rights attaching to its shares in the Agency or otherwise ceases to be a Member of the Agency.

## **12.6 Chair and Vice Chair-of the Board**

The Board of Directors shall elect a Chair and a Vice-Chair of the Board. The Chair and Vice Chair shall always be Substantive Directors.

## **12.7 Functions and Powers of the Board**

- (a) The Board of Directors shall be responsible for managing the business and general operations of the Agency and for this purpose shall discharge all the functions and exercise all the powers conferred upon it under this Agreement or delegated to it by the General Meeting.
- (b) Without limiting the generality of sub-paragraph 12.7(a), the Board of Directors shall have the power to:
  - (i) subject to the provisions of the Agency's staff manual, suspend for due cause the Chief Executive Officer for a period of up to three months and make appropriate recommendations to the General Meeting. Following consultations with the Chair of the General Meeting, the Board may extend the suspension of the Chief Executive Officer up to the date of the next ordinary General Meeting unless the Chair of the General Meeting objects to the extension. If the Chair of the General Meeting objects to the extension, the Chair of the General Meeting shall convene an extraordinary meeting of

the General Meeting within thirty (30) days of the date of objection or before the period of suspension of the CEO expires;

- (ii) administer the organizational structure of the Agency;
- (iii) oversee and approve the recruitment process, appointment, terms and conditions of service and termination of employment contracts of senior management;
- (iv) ensure that the role of Chief Executive Officer is reserved for individuals of African nationality in accordance with sub-paragraph 13.1(b);
- (v) cause the Chief Executive Officer to control, supervise and administer the property and other assets of the Agency in such manner as best promotes the objectives and purpose for which the Agency is established;
- (vi) approve the annual budget of revenues and expenditures of the Agency prepared by the Chief Executive Officer;
- (vii) cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Agency;
- (viii) cause to be prepared within a period of three (3) months from the end of each Financial Year and to be submitted to the General Meeting within a period of six (6) months from the end of each Financial Year for approval, the annual accounts of the Agency together with a statement of the income and expenditure of the Agency during the year in reference and a statement of the assets and liabilities of the Agency on the last day of the year in reference;
- (ix) consider and recommend to the General Meeting for approval the annual report of the Agency prepared by the Chief Executive Officer; and
- (x) provide secretarial services to the General Meeting and any other services that the General Meeting may require.

## **12.8 Meetings**

The Board of Directors shall meet in person or via electronic conferencing as often and in such places within Africa as the business of the Agency may require, but not less than once every three (3) months in any Financial Year. The Chief Executive Officer shall attend the meetings of the Board of Directors but shall have no vote in respect of any matter before the Board of Directors.

## **12.9 Quorum**

The quorum for the transaction of any business by the Board of Directors shall consist of a simple majority of the members of the Board including the Chair, provided always that of those Substantive Directors, or their Alternates, present and eligible to vote representing Members holding Class "A" shares, shall consist of at least two (2) (while the total number of Substantive Directors remains at thirteen (13)), or three (3) (when the total number of Substantive Directors increases following a review by the General Meeting ), in accordance with sub-paragraph 12.1(c).

### **12.10 Voting**

- (a) Save as provided herein, each Substantive Director shall be entitled to cast the number of votes of those Members whom he represents; such votes need to be cast as unit. Each share shall carry one vote.
- (b) Notwithstanding paragraph (a) of this Article 12.10, the business of the Board of Directors will be decided by consensus (by show of hands or oral confirmation or as the Chair may determine). In the absence of consensus, the Chair may invite the Board to proceed to a formal vote by show of hands at which point each Substantive Director present and voting will have one vote. The voting provided for in paragraph (a) of this Article 12.10 shall only apply if prior to or following such vote by show of hands Substantive Directors present and voting and representing at least one third of the voting power of the Agency so request at the same meeting at which the vote is being taken.
- (c) In instances where a formal vote is carried out in accordance with paragraph b) of this Article 12.10, all decisions of the Board of Directors shall be by resolution passed by a simple majority of the Substantive Directors present and voting. In the case of an equality of votes, the Chair shall have a casting vote.

### **12.11 Disclosure of Personal Interest**

A member of the Board of Directors who has a direct or indirect personal interest in a matter being considered or to be considered by the Board of Directors shall, as soon as possible after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Board of Directors, and shall not be present during any deliberations on the matter by the Board of Directors or vote on such matter. Any disclosure under this paragraph shall be recorded in the minutes of the meeting in question.

### **12.12 Procedure**

Subject to this Agreement and any directives of the General Meeting, the Board of Directors shall regulate its own procedure.

### **12.13 Transitional Arrangements**

Until such time as the membership of the Agency is fully representative of the five classes of shareholders under paragraph 6.2 of this Agreement, the provisions of ARTICLE 12 of this Agreement relating to the composition of the Board of Directors shall apply with such modifications as the Board of Directors may deem necessary and expedient for the constitution of the Board of Directors and the performance of its functions.

## **ARTICLE 13**

### **CHIEF EXECUTIVE OFFICER**

#### **13.1 Qualifications of the Chief Executive Officer**

- (a) The Chief Executive Officer shall be a person of integrity and of the highest competence with internationally recognized qualifications and extensive practical



experience in matters pertaining to the activities, management and administration of the Agency.

- (b) The Chief Executive Officer shall be a national of an African Member State but not a national of a state where the headquarters of the Agency is located, and if a dual national, the other nationality must also be that of an -African State.

### **13.2 Conduct of the Chief Executive Officer**

The Chief Executive Officer shall not, while in office, engage in any activities that in the opinion of the Board of Directors are incompatible with his or her office in the Agency.

### **13.3 Responsibilities of the Chief Executive Officer**

- (a) The Chief Executive Officer shall be the chief executive officer of the Agency and shall, subject to this Agreement, be responsible to the Board of Directors for the day-to-day management of the affairs of the Agency.
- (b) Subject to sub-paragraph 12.7(b)(iii) above, the Chief Executive Officer shall be responsible for the appointment, discipline and dismissal of all staff members of the Agency, in accordance with the Agency's staff manual or other regulations prescribed by the Board of Directors. The Chief Executive Officer shall ensure the highest standards of efficiency, technical competence and integrity of the staff of the Agency, who shall also be required to refrain from engaging in any activities that, in the opinion of the Chief Executive Officer, are incompatible with their functions.
- (c) The Agency shall, in the exercise of its legal personality, be represented by the Chief Executive Officer.

The Chief Executive Officer shall perform such functions as are conferred by this Agreement and such additional duties as the Board of Directors may direct.

### **13.4 Tenure of Office for the Chief Executive Officer**

The Chief Executive Officer shall hold office for a term of five (5) years and shall be eligible for reappointment by the General Meeting of Shareholders, at the recommendation of the Board of Directors, for one (1) further term of five (5) years. However, no person shall serve as Chief Executive Officer for more than two (2) successive terms of five (5) years each.

### **13.5 Independence**

The Chief Executive Officer, the officers and staff of the Agency, in the discharge of their functions, owe their duty exclusively to the Agency and shall neither seek nor receive instructions in regard to the discharge thereof from any authority external to the Agency. Each Member shall respect the international character of this duty and shall refrain from any action to influence the Chief Executive Officer, the officers or the staff in the discharge of their functions.

### **13.6 Disqualification**

The provisions of paragraph 12.5 of this Agreement, regarding disqualification of Directors shall, with the necessary modifications and in compliance with the staff manual, apply to the Chief Executive Officer.

### **13.7 Acting Chief Executive Officer**

If the Chief Executive Officer is suspended by the Board of Directors in accordance with sub-paragraph 12.7(b) or incapacitated or the office of the Chief Executive Officer becomes vacant for any reason, the Board of Directors shall designate an Acting Chief Executive Officer and shall permit the interim arrangement of Acting Chief Executive Officer for a period of up to three months. Following consultations with the Chair of the General Meeting, the Board may extend the interim arrangement of Acting Chief Executive Officer up to the date of the next ordinary General Meeting unless the Chair of the General Meeting objects to the extension. If the Chair of the General Meeting objects to the extension, the Chair of the General Meeting shall convene an extraordinary meeting of the General Meeting within thirty (30) days of the date of objection. The Acting Chief Executive Officer in the meantime shall exercise the powers and duties of the office of the Chief Executive Officer. The nationality requirements of the Chief Executive Officer shall not apply to the Acting Chief Executive Officer.

## **ARTICLE 14**

### **PERMANENT HEADQUARTERS AND OFFICES**

#### **14.1 Permanent Headquarters**

- (a) The permanent headquarters of the Agency shall be located within the territory of an African State selected by the General Meeting.
- (b) Any transfer of the permanent headquarters temporarily to the territory of another African State shall not constitute a removal thereof unless there is an express decision by the General Meeting to that effect.
- (c) The African State hosting the permanent or temporary headquarters shall recognize its extraterritoriality. The permanent and temporary headquarters shall be inviolable.

#### **14.2 Headquarters Agreement**

The African State selected by the General Meeting to host the permanent headquarters of the Agency shall, as soon as practicable following notification of its selection and, in any event, within thirty (30) days of such notification, conclude a headquarters agreement with the Agency, and take all necessary measures to render the headquarters agreement effective.

#### **14.3 Branch or Representative Offices**

- (a) In discharging its functions under this Agreement, the Agency may establish branch or representative offices in any State, whether or not that country is a Member State, as the Board of Directors may deem necessary for the fulfilment of the Agency's objectives and purpose.
- (b) The Member State in whose territory a branch or representative office of the Agency is located shall, as soon as practicable following notification of the decision to locate a branch or representative office in its territory, conclude appropriate agreements

with the Agency in respect of such branch or representative office, taking into account the provisions of ARTICLE 15 of this Agreement.

## **ARTICLE 15**

### **IMMUNITIES, EXEMPTIONS AND PRIVILEGES**

#### **15.1 Immunities, Exemptions and Privileges**

Each Member State shall take all legislative action and all administrative measures under its national laws necessary to enable the Agency to fully and effectively fulfil its objectives and purpose, and to carry out the functions entrusted to it. To this end, each Member State shall accord to the Agency, in its territory, the status, immunities, exemptions and privileges set forth in this Agreement, and shall promptly inform the Agency in writing of the specific action which it has taken for that purpose.

#### **15.2 Immunity of Property and Assets**

The property and other assets of the Agency, wherever located and by whomsoever held, shall be immune from:

- (a) search, requisition, confiscation, expropriation, nationalization or any other forms of seizure, taking or foreclosure by executive or legislative action; and
- (b) seizure, attachment or execution before the delivery of final judgement or award against the Agency in any proceedings.

#### **15.3 Immunity of Archives**

The archives of the Agency and, in general, all documents belonging to, or held by it shall be inviolable and immune from seizure wherever they may be located, except that the immunity provided for in this paragraph 15.3 of this Agreement shall not extend to documents required to be produced in the course of judicial or arbitral proceedings to which the Agency is a party or proceedings arising out of transactions concluded by the Agency.

#### **15.4 Freedom from Restrictions**

- (a) To the extent necessary to fulfil the objectives and purpose of the Agency and carry out its functions, each Member State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that would hinder in any manner the efficient functioning of the Agency or impair its operations.
- (b) To this end, the Agency, its property, other assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative, executive, administrative and monetary restrictions of any nature.

#### **15.5 Freedom from Taxation**

- (a) The Agency, its property, other assets, income, and its operations and transactions, shall be exempt from all taxation.
- (b) The Agency, and any of its receiving, fiscal and paying agents, shall also be exempt from any obligation relating to, or liability for, the payment, withholding or collection of any tax or duty.

- (c) Articles imported and exported by the Agency for official purposes shall be exempt from all custom duties and other levies, and from prohibitions and restrictions on imports and exports.
- (d) The exemptions hereby granted shall be applied without prejudice to the right of the Member States to tax their legal persons in the manner each Member State deems appropriate provided that a Member State shall not levy any form of taxation in respect of the salaries, emoluments, indemnities and pensions received by such legal persons solely in their capacity as officers or servants of the Agency.

#### **15.6 Privilege for Communications**

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

#### **15.7 Waiver of Immunities, Exemptions and Privileges of the Agency**

The immunities, exemptions and privileges granted to the Agency in this Agreement are in the interest and for the benefit of the Agency. The Board of Directors may waive, to such extent and upon such conditions as it may determine, such immunities, exemptions and privileges in cases where such waiver would, in its opinion, further the interests of the Agency.

#### **15.8 Personal Immunities, Exemptions and Privileges**

All Directors, Alternate Directors, the Chief Executive Officer, staff of the Agency and their spouses, their dependent children and other members of their households shall enjoy within and with respect to Member States the following immunities, exemptions and privileges:

- (a) immunity from legal process of any kind in respect of words spoken or written, and of acts performed, by them in their official capacity, such immunity to continue notwithstanding that the persons concerned may have ceased to be officials of the Agency;
- (b) immunity from seizure of their personal and official baggage;
- (c) exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the Agency for services past and present or in connection with their service to the Agency;
- (d) exemption from any form of taxation on income derived by them from sources outside a Member State;
- (e) exemption, with respect to themselves, their spouses, their dependent relatives and other members of their households from immigration restrictions and alien registration requirements and national service obligations, and the same facilities as regards exchange regulations as are accorded by each Member State to representatives, officials and employees of comparable rank of other states or international organizations;
- (f) freedom to acquire or maintain within a host Member State or elsewhere foreign securities, foreign currency accounts, and other movables and the right to take or

transfer the same out of a host Member State through authorized channels without prohibition or restriction;

- (g) the same protection and repatriation facilities with respect to themselves, their spouses, their dependant relatives and other members of their households as are accorded in time of national or international crisis to members having comparable rank of the missions accredited to the concerned Member State; and
- (h) immunity from personal arrest or detention, except that this immunity shall not apply to civil liability arising from a road traffic accident or a traffic offence.

#### **15.9 Representatives, Experts, Consultants and others**

The representatives of Members to a meeting of or convened by the Agency, technical experts or advisors (other than officials of the Agency) performing missions authorized by or serving on committees or other subsidiary organs of, or consulting at its request in any way with the Agency, shall, while exercising their functions within a Member State, enjoy the following immunities, exemptions and privileges:

- (a) immunity in respect of themselves, their spouses, their dependent children and other members of their households from personal arrest or detention and from seizure of their personal and official baggage;
- (b) immunity from legal process of any kind with respect to words spoken or written, and of acts done, by them in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions or serving on committees of, or acting as consultants for the Agency, or may no longer be present at the permanent or temporary headquarters or attending meetings convened by the Agency;
- (c) inviolability for all papers and documents relating to the business or functions of the Agency;
- (d) exemption with respect to themselves, their spouses, their dependent children and other members of their households from immigration restrictions, alien registration requirements and national service obligations;
- (e) the same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of national or international crises to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to a host Member State;
- (f) the same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions; and
- (g) the same exemptions from taxes and customs duties, including exemption from income tax in respect of emoluments received by them for services rendered in performing services past and present for or on behalf of the Agency, as are accorded to representatives of foreign Governments on temporary official missions, save that the relief allowed from customs and excise duties shall be limited to goods imported as part of their personal baggage.

#### **15.10 Waiver of Personal Immunities**

The Chief Executive Officer shall have the right and duty to waive the immunity of any officer, employee, representative, expert, advisor or consultant of the Agency in cases where in his or her opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive the immunity of the Chief Executive Officer of the Agency.

#### **15.11 Nationals of Member States**

Nothing in this Article shall be construed as requiring any Member State to accord any of the immunities, privileges, or exemptions provided for under paragraphs 15.8 and 15.9 of this Agreement to any of its nationals or persons ordinarily resident within its jurisdiction, except solely for the purpose of being an employee of, or working exclusively for, the Agency.

### **ARTICLE 16**

#### **LEGAL PROCESS AND REGIME**

Actions may be brought against the Agency only in a court of competent jurisdiction in the territory of a Member State in which the Agency has its permanent or temporary headquarters, or in the territory of any State where it has appointed an agent for the purpose of accepting service or notice of process or has otherwise agreed to be sued. No such action against the Agency may be brought by (a) a Member or a former Member of the Agency or persons acting for, or deriving claims from, a Member or a former Member or (b) by natural or legal persons in respect of:

- (i) any matters governed by arbitration agreements;
- (ii) matters pending before an arbitral tribunal; or
- (iii) personnel matters.

### **ARTICLE 17**

#### **RELATIONS WITH OTHER ORGANIZATIONS AND INSTITUTIONS**

#### **17.1 Co-operation**

Subject to approval by the General Meeting, the Agency may, in furtherance of its objectives and purpose, and within the limits of its functions as set forth in this Agreement, cooperate with private and public organizations or institutions of national, regional or international character engaged in the fields of development, insurance, coinsurance, reinsurance, financing and guarantees.

#### **17.2 Agreements of Co-operation**

For the purposes of paragraph 17.1 of this Agreement, the Agency may conclude agreements of co-operation with the organizations or institutions aforementioned or

approved thereunder and the Chief Executive Officer shall promptly advise the Board of Directors of all such agreements entered into.

### **17.3 Delegation of Non-core Functions**

The Agency may, on a competitive basis entrust some of its non-core functions to private or public organizations or institutions. In this respect the Agency shall formally appoint the concerned organization or institution by way of a written agreement and the Chief Executive Officer shall promptly advise the Board of Directors of all such agreements entered into.

## **ARTICLE 18**

### **SUSPENSION OR TERMINATION OF OPERATIONS**

#### **18.1 Duration of Agreement**

This Agreement shall have indefinite duration.

#### **18.2 Suspension of Operations**

- (a) The Board of Directors may, whenever it deems it justified, suspend the issuance of new policies of insurance, coinsurance and reinsurance, or new contracts of guarantee, or suspend the provision of new support for such policies or contracts, for a specified period.
- (b) In an emergency, the Board of Directors may suspend all activities of the Agency for a period not exceeding the duration of such emergency, provided that necessary arrangements shall be made for the protection of the interests of the Agency and of third parties.
- (c) The decision to suspend operations shall have no effect on the obligations of the Members under this Agreement or on the obligations of the Agency towards holders of an insurance, coinsurance or reinsurance policy, or a contract of guarantee, or towards third parties.

#### **18.3 Termination of Operations**

- (a) Notwithstanding the provisions of paragraph 18.1 of this Agreement, the General Meeting may, by resolution approved by a vote of not less than two-thirds of the Members holding fully paid up shares, decide to terminate operations and to liquidate the Agency.
- (b) A resolution by the General Meeting to terminate the operations of the Agency shall be accompanied by a written agreement between the Members providing clear details as to how the Members shall, collectively and individually, meet all their financial obligations to the Agency as may be outstanding at the material time.
  - (i) A resolution by the General Meeting to terminate the operations of the Agency shall provide that while the termination of operations would prevent the Agency from issuing new contracts of insurance, reinsurance or coinsurance, or contracts of guarantees, such termination will not take effect and would not discharge any Member from its accrued or contingent liabilities to the Agency and it will not take effect until all actual and contingent

liabilities attaching to any contracts of insurance, reinsurance or coinsurance, or contracts of guarantee issued by the Agency have been terminated with or without the payment of a valid claim, and issues relating to recoveries have been conclusively determined in accordance with the terms of such contracts or in such a manner as may be agreed in writing by the Agency, its Members and the concerned counterparty and/or loss payees, as the case may be, and such counterparty and/or loss payee, as the case may be, shall have provided written confirmations releasing the Agency from all and any liability under the relevant contracts, where upon the operations of the Agency shall be deemed to have terminated.

#### **18.4 Cessation of Activities**

Upon decision of the General Meeting to terminate operations taken in accordance with the provisions of paragraph 18.3 of this Agreement, the Agency shall cease all activities, except those incidental to the orderly realization, conservation and preservation of its property and other assets and the settlement of its obligations. Until final settlement and distribution of property and other assets, the Agency shall remain in existence and all rights and obligations of Members under this Agreement shall continue unimpaired.

#### **18.5 Discharge of Liabilities**

No distribution of property or other assets shall be made to Members until all liabilities to holders of insurance, coinsurance and reinsurance policies and to holders of contracts of guarantee and all other creditors shall have been discharged or provided for and until the General Meeting shall have decided to make such distribution. No Member shall be entitled to share in the property or assets of the Agency unless that Member has settled all outstanding claims by the Agency against it.

#### **18.6 Distribution of Assets**

Subject to the preceding paragraphs of this ARTICLE 18, the property and other assets of the Agency shall be distributed amongst its Members in accordance with the rules and regulations made by the General Meeting. Every distribution of property and other assets shall be made at such times as the General Meeting shall determine and, in such manner, as it shall consider fair and equitable.

### **ARTICLE 19**

#### **SETTLEMENT OF DISPUTES**

##### **19.1 Disputes Avoidance**

Members shall fully comply with their obligations as stipulated herein and shall endeavour to avoid disputes.

##### **19.2 Settlement of Disputes between Members**

Members shall settle disputes concerning the interpretation or application of this Agreement by peaceful means, such as by negotiation, enquiry, mediation, conciliation, resort to regional agencies or arrangements or by any other peaceful means of their own choice.



If the Members who are party to a dispute do not reach an agreement on a solution or on a dispute settlement arrangement within six (6) calendar months from the date of notification by one party to the other with a copy to the bureau of the General Meeting, the Chair of the Board of Directors and the Chief Executive Officer that a dispute exists, the dispute shall, at the request of one of the concerned parties, be submitted for final and binding decision by:

- (i) a regional judicial body associated with a Regional Economic Organization to which all the parties to the dispute are members;
- (ii) arbitration under UNCITRAL Rules in a forum of the choice of the parties, the applicable law of which shall be the laws of England and Wales and the proceedings shall be held in the English language; or
- (iii) subject to the approval of the Board of Directors, arbitration under an alternative forum mutually agreed to by all parties to the dispute under procedural rules substantively similar to UNCITRAL Rules.

## **ARTICLE 20**

### **SUPPLEMENTARY AGREEMENTS**

#### **20.1 Supplementary Agreements Between Members**

Members may enter into multilateral or bilateral agreements that supplement this Agreement.

#### **20.2 Supplementary Agreements Between Members and the Agency**

A Member or a group of Members may enter into agreements with the Agency to the extent necessary to achieve the objectives and purpose of this Agreement.

## **ARTICLE 21**

### **AMENDMENTS**

#### **21.1 Proposals for Amendments**

Any Member may propose amendments to this Agreement. The text of any such proposed amendment shall be submitted to the Chair of the General Meeting who shall promptly provide a copy to the Board of Directors. The Chair of the General Meeting shall, within one (1) calendar month following receipt of the text of any such proposed amendment(s), transmit the proposed amendment(s) to all the Members together with a specific request that each Member indicates whether or not an extraordinary General Meeting should be convened to consider the proposed amendment. At the request of one-third of the Members, the Chair of the General Meeting shall call an extraordinary General Meeting to consider the proposed amendment.

#### **21.2 Amendments following Board Review**

Amendments to this Agreement may, from time to time as and when necessary, be proposed by the Board of Directors following a review of the Agency's practice. Any

proposed amendment to this Agreement must be considered by the General Meeting and any amendment passed by resolution in accordance with paragraph 21.3.

### **21.3 Adoption of Amendments**

The Members shall make every effort to reach agreement on any proposed amendment by consensus. If all efforts at reaching a consensus have been exhausted and no agreement reached, the amendment shall, subject to the requirements of paragraph 11.6 of this Agreement and as a last resort, be adopted by a two-thirds majority vote of the voting power represented at the ordinary or extraordinary General Meeting, as the case may be. The adopted amendment shall be communicated by the Chair of the General Meeting, who shall circulate it to all Members.

### **21.4 Entry into Force of Amendments**

Any amendment shall enter into force for all Members fifteen (15) days after the date of communication to the Members of the resolution adopting the amendment by the Chair of the General Meeting.

## **ARTICLE 22**

### **SIGNATURE**

This Agreement shall be open for signature from the eighteenth (18<sup>th</sup>) day of May, 2000.

## **ARTICLE 23**

### **RATIFICATION**

This Agreement shall be subject to ratification by Founding Members. Instruments of ratification shall be deposited with the Depository.

## **ARTICLE 24**

### **ACCESSION OR ACCEPTANCE**

#### **24.1 Accession**

This Agreement shall be open for accession by any State after its entry into force. Instruments of accession shall be deposited with the Depository.

#### **24.2 Acceptance**

- (a) This Agreement shall be open for acceptance by, Regional Economic Organizations, African Public Institutions , Export Credit Agencies, Non-African Public Entities and Private Corporations. Letters of acceptance of the provisions of this Agreement shall be executed and deposited with the Depository.
- (b) In their letters of acceptance, , Regional Economic Organizations, African Public Institutions , Export Credit Agencies, Non-African Public Entities and Private Corporations shall declare the extent of their competence with respect to the matters governed by this Agreement.

## **ARTICLE 25**

### **ENTRY INTO FORCE**

#### **25.1 Entry into Force on Ratification**

This Agreement entered into force on the twentieth (20<sup>th</sup>) day of January 2001 which was the fifteenth (15<sup>th</sup>) day after the deposit of the third instrument of ratification.

#### **25.2 Entry into Force on Accession**

For each State that accedes to this Agreement after the date upon which it shall have entered into force, this Agreement shall enter into force on the fifteenth (15<sup>th</sup>) day after the deposit by such State of its compliant instrument of accession.

#### **25.3 Entry into Force on Acceptance**

For each Regional Economic Organization, African Public Institution, Export Credit Agency, Non-African Public Entity or Private Corporation that accepts this Agreement after the date upon which it shall have entered into force, this Agreement shall enter into force on the fifteenth (15<sup>th</sup>) day after the deposit by such Regional Economic Organization, African Public Institution, Export Credit Agency, Non-African Public Entity or Private Corporation of its compliant letter of acceptance.

## **ARTICLE 26**

### **RESERVATIONS**

No reservations may be made to this Agreement.

## **ARTICLE 27**

### **SUSPENSION AND WITHDRAWAL FROM MEMBERSHIP**

#### **27.1 Suspension from Membership**

- (a) If it appears to the General Meeting, on the recommendation of the Board of Directors, that a Member has failed to fulfil any or all of its obligations to the Agency, that Member may be suspended from membership by resolution of the General Meeting approved by a vote representing not less than two-thirds of the total voting power of the Members of the Agency.
- (b) The decision to suspend a Member shall be subject to review by the General Meeting at any time. The General Meeting may rescind the suspension by the same majority as provided for in paragraph 27.1 of this Agreement.
- (c) A Member so suspended shall not, from the date of suspension, be entitled to exercise any rights under this Agreement or attaching to its shares but shall remain subject to all obligations hereunder.
- (d) A Member who remains suspended for a period of thirty six (36) calendar months shall at the end of that period automatically cease to be a Member of the Agency.

## **27.2 Withdrawal from Membership**

- (a) Subject to such waivers as may be approved by the General Meeting at the point of a Member's first subscription to shares, at any time after three (3) years from the date on which this Agreement has entered into force for a Member State, Regional Economic Organization, African Public Institution, Export Credit Agency, Non-African Public Entity or Private Corporation, that Member may withdraw from this Agreement by giving ninety (90) days written notification to the Depository with a copy to the Agency.
- (b) Subject to such waivers as may be approved by the General Meeting at the point of a Member's first subscription to shares, any such withdrawal shall become effective only upon the expiry of one (1) calendar year from the date on which the written notification of intention to withdraw was received by the Depository and the Agency, or on such later date as may be specified in the notification of the withdrawal provided that the concerned Member shall have fully discharged all of its accrued or contingent liabilities to the Agency as may be outstanding at the material time.
- (c) A Member holding Class "C", Class "D1", or Class "D2", shares and who is placed under a process of liquidation, is dissolved, or is wound up, or whose members have taken any action for its dissolution or disestablishment or for the suspension or termination of its operations shall automatically cease to be a Member of the Agency.

## **27.3 Effects of Suspension or Notice of Withdrawal from Membership**

Following the suspension or receipt of the withdrawal notice of an African State from the membership of the Agency, the Agency shall immediately bring to an orderly close all of its underwriting activities within the jurisdiction of that African State. Any subsequent dealings involving the transfer of the shares of the concerned African State in the stock of the Agency shall be in accordance with the rules prescribed in the Articles of Association.

## **ARTICLE 28**

### **DEPOSITORY**

#### **28.1 Name of Depository**

The Chair of the Commission of the African Union shall be the Depository of this Agreement. The Depository shall have the power to delegate its power to another body based in Africa.

#### **28.2 Functions and Powers of the Depository**

In addition to its other functions under this Agreement, the Depository shall:

- (a) upon the request of any African State, arrange for signature of this Agreement;
- (b) pronounce this Agreement to have entered into force in relation to a new Member;
- (c) register this Agreement and any amendments thereto with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations; and
- (d) notify all Members of the following:

- (i) signatures of this Agreement;
- (ii) deposits of instruments of ratification, accession and acceptance of this Agreement;
- (iii) any suspension or withdrawal of a Member from this Agreement and the Agency.

#### **ARTICLE 29**

##### **AUTHENTIC TEXTS**

The original of this Agreement, of which the English and French texts are equally authentic, shall be deposited with the Chair of the Commission of the African Union. The original of this Agreement shall be translated into Arabic, Portuguese and Spanish, which, following their authentication, shall be regarded as equally authentic to the English and French texts, and shall be deposited with the Chair of the Commission of the African Union.

**DONE at Grand Bay in the Republic of Mauritius on the Eighteenth Day of May in the Year 2000.**

**IN FAITH WHEREOF the undersigned have placed their signatures at the end of this Agreement.**