

AGREEMENT

ON THE OPERATIONALISATION

OF THE SADC REGIONAL DEVELOPMENT FUND

PREAMBLE

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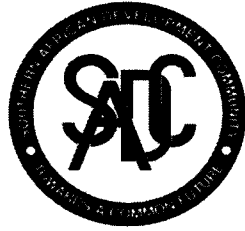
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AGREEMENT ON THE OPERATIONALISATION OF THE SADC REGIONAL DEVELOPMENT FUND

PREAMBLE

WE, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Madagascar
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

MINDFUL of Article 26A of the Treaty of the Southern African Development Community (the SADC Treaty) concluded on 17 August 1992 and as subsequently revised, which establishes the SADC Regional Development Fund

DESIROUS of operationalising ;Article 26A of the SADC Treaty;

ALSO DESIROUS of adopting regulations and rules for the management of the Regional Development Fund made in accordance with Article 30 of the SADC Treaty;

RECOGNISING that there is a need for SADC, as a priority, to strengthen and further develop infrastructure and industrial development;

RECOGNISING that project preparation and development is a crucial prerequisite and priority to unlocking the region's potential; and

AWARE that there is a need to promote, to the extent possible, social development in the region and to address any adverse social, economic and financial imbalances that may occur from the implementation of the SADC integration agenda;

HEREBY AGREE as follows:

CHAPTER I DEFINITIONS

Article 1 Definitions

1. In this Agreement, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless otherwise expressly stated:

2. In this Agreement, unless the context otherwise requires:

“A Director” has the meaning given to it in Article 23(5);

“Approved Accounting Standards” means the International Financial Reporting Standards (IFRS) developed and maintained by the International Accounting Standards Board (IASB) or such other international accounting standards as may be adopted by the Board of Governors from time to time;

“Authorised Capital” means the amount of capital that the Fund is allowed to raise;

“B Director” has the meaning given to it in Article 23(7);

“Board of Directors” means the body responsible for directing the day-to-day operations of the Fund whose members shall be appointed to office in accordance with the provisions of Article 23 hereof;

“Board of Governors” means the body comprising of all of the Members of the Fund responsible for oversight of the strategy and operations of the Fund whose members shall be appointed to office in accordance with the provisions of Article 19 hereof;

"CEO"	means the Chief Executive Officer of the Fund appointed in accordance with the provisions of Article 28;
"DFI"	means those financial institutions designated or classified as "Development Finance Institutions" by a Member State;
"Force Majeure Event"	means any event not within the reasonable control of the Fund which would prevent, severely hinder or severely delay the Fund in undertaking its intended activities in any Member State including, but not limited to: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority; the collapse of buildings, fire, explosion or accident; any strikes, industrial action or lock outs;
"Fund"	means the SADC Regional Development Fund as established by paragraph 1 of Article 26A of the SADC Treaty;
"International Cooperating Partners" or "ICPs"	means bilateral and multilateral organisations that provide development assistance to SADC for its economic development and social progress;
"Investment Committee"	means the Committee established in Article 27;
"Member State"	means a state which is a member of SADC; means a Member State or an International Cooperating Partner which

"Member of the Fund"	meets the conditions for membership as prescribed in Article 3 of this Agreement and which agrees to subscribe for shares in the capital of the Fund in accordance with the provisions of this Agreement;
"Offer Period"	has the meaning given to it in Article 4(6);
"Operating Policies and Procedures"	means the operating policies and procedures so entitled that define, regulate and inform how the Fund operates including any amendments which may, from time to time, be made thereto and including, but not limited to, the: (i) investment policy; (ii) the investment guidelines; (ii) the procurement policy; (iii) the conflict of interest policy; (iv) the anti-corruption and integrity policy; (v) the environmental, social and corporate governance policy; (vi) the risk management policy; (vii) the financial and treasury management policy; (viii) the disclosure and transparency policy; (ix) the remuneration policy; (x) the travel and expense reimbursement policy; (xi) the anti-money laundering and combatting the financing of terrorism policy; and (xii) the data protection policy;
"Ordinary Resolution"	means a resolution of the Board of Governors which must be passed by the Members of the Fund holding more than 50% of the total voting rights of the Members of the Fund who, being entitled to vote, do so either in person or by proxy;
"Prevailing Value"	has the meaning given to it in Article 36(2);
"Private Sector Entities"	means all entities other than Member States, Public International, Regional or Sub-Regional Organisations, other publicly funded entities and International Cooperating Partners and

therefore including, but not limited to, commercial banks, investment funds and pension funds;

“Public International, Regional or Sub-Regional Organisation”	means an organisation established by an agreement between sovereign states whose membership consists either exclusively or predominantly of sovereign states or governments and whose scope is either international, regional or sub-regional in its focus;
“Purchase Price”	has the meaning given to it in Article 36(2);
“Special Facilities”	means those Facilities set up by the Fund to deal with special needs as and when they arise within the region in support of the regional integration agenda;
“Special Resolution”	means a resolution of the Board of Governors which must be passed by the Members of the Fund holding at least 75% of the total voting rights of the Members of the Fund who, being entitled to vote, do so either in person or by proxy;
“Subscription Capital”	has the meaning attributed to it in Article 4(2);
“SADC PPDF”	means the SADC Project Preparation and Development Facility;
“Unpaid Shares”	has the meaning given to it in Article 6(7);
“Unsubscribed Shares”	has the meaning given to it in Article 6(7); and
“Withdrawing Member”	has the meaning given to it in Article 34(1);

**CHAPTER II
PURPOSE, AND MEMBERSHIP**

**Article 2
Purpose and Operationalisation**

1. The overall purpose of the Fund is to create a regional financing mechanism for economic development and sustainable growth in SADC. In order to give effect to its purpose, the Fund may have the following windows:
 - (a) infrastructure development ;
 - (b) industrial development;
 - (c) integration and economic adjustment; and
 - (d) social development.
2. The Fund is to be operationalised in two distinct phases: first Phase 1 and, subsequently, Phase 2. The nature of each phase is described in Annex 3 to this Agreement.
3. The operationalisation of Phase 1 will commence on the date upon which this Agreement enters into force in accordance with the provisions of Article 53.
4. The timing of the operationalisation of Phase 2 will be determined by the Board of Governors by means of a Special Resolution.

**Article 3
Membership**

Members of the Fund shall be:-

- (a) Member States that have become parties to this Agreement through ratification pursuant to Article 52;
- (b) Member States that have become parties to this Agreement through accession pursuant to Article 54;
- (c) International Cooperating Partners which have become Members of the Fund pursuant to the provisions of Article 55; and
- (d) Private Sector Entities which have become Members of the Fund pursuant to the provisions of Article 55 .

CHAPTER III CAPITAL

Article 4 Capital

1. The initial Authorised Capital of the Fund shall be thirteen billion dollars (US\$13,000,000,000).
2. The total capital of the Fund that shall be available to be issued in the form of shares (the Subscription Capital) shall be one billion two hundred million dollars (US\$1,200,000,000). This shall be divided into one hundred and twenty thousand (120,000) shares having a nominal value of ten thousand dollars (US\$10,000) each.
3. The Subscription Capital of the Fund shall be available for subscription by Members of the Fund only.
4. The initial commitments from the initial Members of the Fund to subscribe for Subscription Capital shall be one hundred and twenty million dollars (US\$120,000,000) in aggregate in accordance with the provisions of Article 6.
5. At such time and under such terms and conditions as the Board of Governors may deem advisable, the Board of Governors may increase the Authorised Capital or the Subscription Capital of the Fund beyond the limits set out in Sub-article 1 and 2 respectively by means of a Special Resolution.
6. Save where the Board of Governors decides to the contrary by Special Resolution and subject as provided in Sub-article 7, the Fund may not issue new shares to any person on any terms unless: (i) it has first made an offer open for no fewer than 30 days (the Offer Period) to each person who holds shares in the capital of the Fund to allot to him on the same or on more favourable terms a proportion of those shares that is as nearly as practicable equal to the proportion in nominal value held by him of the total issued share capital of the Fund; and (ii) the Offer Period has expired or the Fund has received notice of the acceptance or refusal of every offer so made.
7. The provisions of Sub-article 6 shall not apply in respect of the issue of any shares in accordance with the provisions of Articles 6(1), (2), (3) and (4).

Article 5
Subscriptions of shares

1. Subject to the provisions of Article 6, Member States shall subscribe for shares of the subscribed capital of the Fund in the amounts set out in Annex 1 and for such other amounts as may be agreed from time to time by any Member State in accordance with such modalities of subscription as may be agreed by any such Member State with the Board of Directors from time to time.
2. The Board of Directors shall determine the modalities of subscription for shares as among Members other than Member States (i.e. as among International Co-operating Partners and Private Sector Entities).
3. No subscriptions shall be authorised which would have the effect of reducing, at any time, the percentage of Subscription Capital held by Member States in aggregate below 51 % of the total Subscription Capital for the time being in issue.
4. Shares shall be issued at their nominal value.
5. Shares for the time being in issue shall not be pledged or encumbered in any manner whatsoever and they shall be transferable, whether to the Fund or otherwise, subject to the provisions of this Agreement and to the approval of the Board of Governors.
6. The liability of the Members of the Fund in respect of shares shall be limited to the unpaid portion, if any, in respect of such shares.
7. No Member of the Fund shall be liable, by reason only of its membership of the Fund, for any obligations or liabilities of any nature of the Fund.

Article 6
Payment of Subscriptions

1. Subscription of, and payment for, the total number of shares set out against the name of each Member of the Fund in Annex 1 shall be made in three (3) equal annual instalments in the amounts set out in Annex 1 in accordance with the remaining provisions of this Article.
2. For all Members of the Fund who have ratified this Agreement by the date upon which it enters into force, the first subscription shall be made by written subscription request submitted to the

Fund of each relevant Member of the Fund on the date of the entry into force of this Agreement, and the first corresponding payments shall be paid, by each relevant Member of the Fund, within one (1) year after the entry into force of the Agreement.

3. For all Members of the Fund who have ratified this Agreement by the date upon which it enters into force, the remaining two (2) subscriptions shall each be made successively by written subscription request submitted to the Fund of each relevant Member of the Fund on the date which falls one (1) year from the date upon which the preceding subscription was made and the corresponding payments shall be paid, by each relevant Member of the Fund, within one (1) year of the date upon which the corresponding subscription was made.
4. Subject to Sub-article 1, Members of the Fund whose name is set out in Annex 1 who subsequently accede to this Agreement also subscribe and pay for their aggregate number of shares in three (3) equal annual instalments in such corresponding amounts as is set out in Annex 1 and shall subscribe for their first tranche of shares by written subscription request submitted to the Fund on the date of their accession to this Agreement and shall pay their first corresponding payment within one (1) year of acceding to the Agreement. The remaining two (2) subscriptions shall be made written subscription request submitted to the Fund on the date which falls successively one (1) year from the date upon which the preceding subscription was made, and the corresponding payments shall be paid, by each relevant Member of the Fund, within one (1) year of the date upon which the corresponding subscription was made.
5. Payments of the amounts subscribed by the Members of the Fund to the Subscription Capital shall be made in US Dollars or in such other convertible currency as the Board of Directors may approve.
6. On receipt by the Fund of a subscription request in accordance with the provisions of this Article, the Board of Directors shall promptly issue the relevant shares to the relevant Member of the Fund (subject to the undertaking to pay up such shares in accordance with the provisions of this Article).
7. To the extent that, at the end of any year, any Member of the Fund has for whatever reason failed to subscribe for or pay for any shares allocated to it in respect of such year in accordance with the provisions of this Article, any such shares being the Unsubscribed Shares or Unpaid Shares respectively, then, without prejudice to any sanctions or other obligations to which such Member of the Fund may be subject in accordance with

the provisions of this Agreement (including, but not limited to, in accordance with Article 35) the Unpaid Shares (if any) shall be repurchased by the Fund (at a purchase price equal to the amount that has actually been paid for each such share) and such number of shares as is equal to the aggregate of the Unpaid Shares actually repurchased by the Fund and the Unsubscribed Shares that have not been taken up shall be offered for subscription to the other Members of the Fund pro-rata to their shareholding in the Fund on such basis as shall be determined by the Board of Directors from time to time. Any such offer and the resulting reallocation shall, under no circumstances, have the effect of reducing the aggregate shareholding of the Member States to below 51% of the total issued share capital of the Fund.

Article 7 Ordinary Capital Resources

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

- (a) Subscribed capital of the Fund from Member States, International Co-operating Partners and Private Sector Entities pursuant to Article 5.
- (b) Resources raised from borrowing by the Fund by virtue of powers conferred in paragraph (b) of Article 9.
- (c) Resources received in the repayment, liquidation or other realisation of any investments made by the Fund.
- (d) Any other funds (including, but not limited to, any grants) or income received by the Fund.

Article 8 Special Facilities

- 1. Subject to the prior approval of the Board of Governors, the Fund may establish or administer Special Facilities which are designed to promote the objectives of the Fund and may receive, hold, use, commit or otherwise dispose of resources appertaining to such Special Facilities.
- 2. The Board of Directors shall make such regulations as may be necessary for the administration and use of the Special Facilities
- 3. The resources of such Special Facilities shall be kept separate from the ordinary capital resources of the Fund and shall include:

- (a) resources initially contributed to any Special Facilities;
- (b) retained earnings or reserves from the Special Facilities;
- (c) funds borrowed for the purposes of any Special Facilities;
- (d) income received in respect of loans or guarantees financed from the resources of any Special Funds; and
- (e) any other resources at the disposal of any Special Facilities.

Article 9
Powers of the Fund

1. Subject to the prior approval of the Board of Governors, the Fund shall have powers to borrow funds in the manner that the Board of Directors, guided by sound financial principles in the context of the activities to be undertaken by, and the resources available to, the Fund, may deem appropriate to achieve the objects of the Fund, and to that effect, the Fund:
 - (a) shall, when borrowing funds, give preference to concessional funds whenever they are available on acceptable terms and conditions; and
 - (b) may:
 - (i) borrow funds from any source for the purpose of financing projects and programmes falling within the scope of its activities; and
 - (ii) obtain special funds for specific projects and programmes.
2. Subject to the approval of its Board of Directors, the Fund shall have powers to invest and in doing so it shall be guided by the following:
 - (a) the Fund may invest surplus funds as the Board of Directors may determine in accordance with the provisions of the Operating Policies and Procedures;
 - (b) the Fund's policy on investment shall be guided by sound investment and credit principles as well as by the need to ensure sufficient liquidity for its operations;
 - (c) the Fund may invest funds not immediately needed in its operations as it may determine.

- (d) the Fund may guarantee securities in which it has invested in order to facilitate their sale; and
- (e) subject to the provisions of Article 14, the Fund may enter into joint ventures of any nature with other regional and international institutions.

CHAPTER IV OPERATIONS

Article 10 Use of Resources

1. The resources and facilities of the Fund shall be used exclusively for the purpose and functions set forth in Article 2. The Fund may provide such financing for the projects which require such financing to be on concessional and non-concessional terms.
2. Financing provided by the Fund shall be for purposes which, in the opinion of the Fund, are of high developmental priority in light of the needs of the area or areas concerned and shall be for specific projects or groups of projects, particularly those forming part of regional or sub-regional programme as decided by the Board of Directors from time to time.

Article 11 Conditions of Financing

1. The Fund shall not provide financing for any project in the territory of a Member State if that Member State objects thereto, except that it shall not be necessary for the Fund to assure itself that individual Member States do not object in the case of any financing provided to a Public International, Regional or Sub-Regional Organization which conducts its activities within such Member State(s).
2. The Fund shall not provide financing for any project if such financing is actually available from other sources on terms that the Fund considers are reasonable for the recipient.
3. In identifying, appraising and approving any funding in respect of any project and in managing the development, financing and disposal of any project and otherwise in conducting all of its activities, the Fund shall at all times adhere to the requirements set out in the Operating Policies and Procedures.
4. In conducting its activities, the Fund shall make arrangements to ensure that any financing made available by it is used only for the purposes for which the financing was provided, with due attention to considerations of economy, efficiency and competitive

international trade and without regard to political or other non-economic influences or considerations.

Article 12 **Form and Terms of Financing**

1. Financing by the Fund from resources provided under Articles 7 and 8 shall take the form of loans, mezzanine finance and equity financing. The Fund may provide other financing out of resources received pursuant to arrangements under Article 8 or as may be otherwise approved by the Board of Governors. Further details upon the nature, and terms and conditions, of the instruments that may be made available by the Fund will be set out in the Operating Policies and Procedures
2. Subject to the provisions of the foregoing paragraph, any financing or other investment decision by the Fund shall be on such terms and conditions as determined by the Board of Directors following recommendation by the Investment Committee all conducted in accordance with the provisions of the Operating Policies and Procedures.

Article 13 **Review and Evaluation**

A regular and comprehensive review and evaluation, including, but not limited to, the provision of the annual report referred to in Article 32(8) of this Agreement shall be carried out on all projects, programmes, and activities financed by the Fund and of their development impact to aid the Board of Governors and the Board of Directors in determining the effectiveness of the Fund in accomplishing its objectives. The Board of Directors shall procure that the Management Team shall make arrangements for carrying out this review and evaluation and its results shall be reported to the Board of Directors.

Article 14 **Co-operation with Other International Organizations, Institutions and States**

1. Subject to Sub-article 2, in furtherance of its purposes, the Fund shall seek to co-operate, and may enter into arrangements for co-operation with other international organizations, regional and sub-regional organizations, other institutions and States.
2. An approval by a Special Resolution of the Board of Governors shall be required in order for the Fund to enter into such arrangements with other international organizations, regional and sub-regional organizations, other institutions and States.

Article 15
Governance Principles

Without prejudice to the express provisions of this Agreement, the Fund, through its management team and the Board of Directors, shall ensure that at all times the use and management of resources of the Fund shall be undertaken in compliance with best global practice based on the principles of transparency, accountability, financial prudence and good corporate governance. The ultimate custodian of these principles shall be the Board of Governors.

Article 16
Miscellaneous Operations

In addition to the powers provided for in this Agreement, the Fund may undertake such other activities incidental to its operations as shall be necessary or desirable in furtherance of its purposes and consistent with the provisions of, and the restrictions set out in this Agreement.

Article 17
Non-interference in Political Affairs

1. Pursuant to this Agreement, the Fund or any officials or other persons acting on its behalf, shall not directly or indirectly interfere in the political affairs of any Member State or be influenced in their decisions by the political character of the Member State concerned.
2. Only considerations relevant to the purpose of the Fund as set out in Article 2 shall be relevant to decisions referred to in Sub-article 1 and these considerations shall be weighed impartially to achieve the purpose stated in this Agreement.

CHAPTER V
ORGANIZATION AND MANAGEMENT

Article 18
Structure

1. The governance structure of the Fund shall consist of the following elements:
 - (a) Board of Governors;
 - (b) Board of Directors;
 - (c) Committees of the Board of Directors; and
 - (d) The Chief Executive Officer.

2. The Board of Governors and the Board of Directors may, to the extent expressly authorized to do so by the Board of Governors, establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Fund.

Article 19 **Board of Governors**

1. Each Member State who is a Member of the Fund shall be represented on the Board of Governors by the Minister responsible for Finance or Investment.
2. In circumstances where the relevant Minister responsible for Finance or Investment in any Member State is unable to attend any meeting(s) then such Minister may, by notice in writing to the Chairperson of the Board of Governors, or if the relevant Minister is the Chairperson, to all other members of the Board of Governors, served not less than 24 hours before the relevant meeting, appoint an alternate who shall be entitled to attend and vote at such meeting as the representative of the relevant Member State in place of the relevant Minister. Any such alternate shall have no rights to designate a further person as an alternate.
3. Members of the Fund other than the Member States shall also be represented in meetings of the Board of Governors by their respective appointed representatives. In circumstances where any such Appointed Representative is unable to attend any meeting(s) of the Board of Governors then such Appointed Representative may, by notice in writing to the Chairperson of the Board of Governors, or if the relevant Appointed Representative is the Chairperson, to all other members of the Board of Governors, served not fewer than 24 hours before the relevant meeting, appoint one alternate who shall be entitled to attend and vote at such meeting as the representative of the relevant Member of the Fund in place of the relevant Appointed Representative. Any such alternate shall have no rights to designate a further person as an alternate.
4. At their annual meeting, the Board of Governors shall, by Ordinary Resolution, appoint one of their number as Chairperson who shall hold office until the next annual meeting of the Board of Governors.
5. Members of the Board of Governors, their representatives and their alternates (as appointed in accordance with this Article 19) shall serve as such without remuneration from the Fund but the Fund shall reimburse them for costs and expenses duly and properly incurred in attending meetings of the Board of Governors.

Article 20
Board of Governors: Powers

1. The Fund shall, in the exercise of its powers, be represented by the Board of Governors.
2. The Board of Governors may delegate to the Board of Directors any of its powers, except the following:
 - (a) admit new Members of the Fund and determine the conditions of their admission;
 - (b) increase or decrease the Authorized Capital of the Fund or the Subscription Capital of the Fund;
 - (c) suspend a Member of the Fund;
 - (d) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
 - (e) authorize the conclusion of general agreements for co-operation with other States, regional and international organizations;
 - (f) appoint the initial A Directors and the B Directors in accordance with the provisions of Article 23;
 - (g) remove any A Director or B Director pursuant to a Special Resolution;
 - (h) determine the remuneration of the Directors and their alternates;
 - (i) approve, after considering the auditor's report, the general balance sheet and the statement of profit and loss of the Fund;
 - (j) determine the reserves of the Fund;
 - (k) amend this Agreement (other than any minor amendments which are of a purely typographical nature);
 - (l) approve the adoption of, and any material amendments, variations or modifications to, or derogations from, the Operating Policies and Procedures;
 - (m) decide to terminate the operations of the Fund and to wind-up the Fund and distribute its assets; and

- (n) exercise such other powers as are expressly assigned to the Board of Governors elsewhere in this Agreement.
3. Notwithstanding the provisions of Sub article 2, the Board of Governors may, by Special Resolution, on such terms and conditions as they may consider to be appropriate, elect to add, remove, vary or modify any of the powers delegated to the Board of Directors.

Article 21
Board of Governors: Proceedings

1. The Board of Governors shall hold annual meetings and such other extraordinary meetings as may be provided for by the Board of Governors or called by the Board of Directors in order to consider, or make any decision in respect of, any matter. All meetings of the Board of Governors shall be promptly called by the Board of Directors whenever requested by Members of the Fund holding at least 10% of the total voting rights of the Members of the Fund. In calling any meeting of the Board of Governors, a written notice of not less than 21 days shall be given to each Member of the Fund and to the auditor of the Fund specifying the time, date, place and agenda for the meeting.
2. At the annual meeting the Board of Governors shall, inter alia,
 - (a) review the progress of the Fund;
 - (b) evaluate the operations of the Fund; and
 - (c) receive and, if deemed fit, approve the audited financial statements of the Fund and associated reports.
3. Not more than 18 months may lapse between successive annual meetings.
4. The holders of not less than 50% of the total voting rights of the Members of the Fund shall constitute a quorum for any meeting of the Board of Governors. If no quorum is present within one hour of the time appointed for the relevant meeting [...] then the meeting shall be adjourned to such time and place as the Chairperson shall determine. If a quorum is not present at the reconvened meeting within one hour of the time appointed for it then the Members of the Fund then present in person or by proxy shall form a quorum for such meeting provided that any such meeting shall not constitute a quorum for the purposes of passing any Special Resolution.
5. The Board of Governors may, by Special Resolution, establish procedures whereby the Board of Directors may, when the latter deems such action advisable, obtain a vote of the Board of Governors on a specific question by written resolution signed on

behalf of all of the Members of the Fund without calling a meeting of the Board of Governors.

6. The Executive Secretary of SADC shall convene the first meeting of the Board of Governors.

Article 22

Board of Governors: Decision-making

1. In respect of decision-making relating to the Board of Governors and subject to the provisions of Sub article 2, each Member of the Fund shall have one vote for each and every share of which it is the holder and the initial votes amongst the initial Members of the Fund shall be distributed amongst them, subject to fulfilment of their corresponding subscription obligations, in accordance with Annex 1.
2. Notwithstanding the provisions of Sub-article 1, regardless of the number of shares that any Member of the Fund may hold at any given time, no Member of the Fund may under any circumstances exercise more than 40% of the total voting rights of the Members of the Fund at any point in time. To the extent that, and for so long as, any Member of the Fund holds such number of shares as shall, but for the operation of this Sub-article, entitle it to exercise more than 40% of the total voting rights of the Members of the Fund (the amount of shares causing a shareholder's total voting rights to exceed 40% of the total voting rights shall be the Excess Shares) then the Excess Shares shall be deemed to be disregarded for the purposes of decision making by the Board of Governors.
3. Decisions by the Board of Governors shall be taken by Ordinary Resolution in all circumstances save where this Agreement expressly provides for a decision to be taken by Special Resolution.
4. In the event of a tie in respect of any decision of the Board of Governors, the Chairperson of the Board of Governors shall have a single casting vote.

Article 23

Board of Directors

1. The Board of Directors shall be composed of seven (7) members.
2. The Board of Directors shall be independent of Member States and of any other Member of the Fund, and shall be divided into

two classes namely, A Directors and B. Directors. There shall be five (5) A directors and two(2) B Directors.

3. The A Directors shall not be ministers or other office holders of, employees of, or consultants or formal advisers to, or holders of any other similar or analogous position of any Member State or any part thereof and shall possess the skills, experience and track record necessary to ensure the effective operation of the Fund.
4. To the greatest extent possible, A Directors shall be highly experienced persons in:
 - (a) the conception, identification, preparation, development and financing of infrastructure projects within Sub-Saharan Africa; and
 - (b) the design, implementation and operation of enabling environments within which infrastructure may be readily developed by the public and/or private sectors.
5. The A Directors shall be appointed by a vote of the Board of Governors and shall be appointed for randomly assigned initial terms of three or four years with the intention that their terms do not end at the same time.
6. Subject to the provisions of Article 20(2)(vii), the appointment of any replacement A Directors shall be undertaken by resolution of the Board of Directors subject to prior approval by the Board of Governors.
7. The B Directors shall be individuals elected by vote of the Members of the Fund and may be ministers or other officeholders or, employees of, or consultants or formal advisers, or holders of any other similar or analogous position to any Member of the Fund or any part thereof.
8. In electing the B Directors, Members of the Fund shall take into account the high levels of competence required of the potential candidates:
 - (a) in economic and financial matters; and
 - (b) in infrastructure development.
9. Each Director shall, by notice in writing to the Chairperson of the Board of Directors, appoint an alternate with full powers to act for him or her when he or she is unable to be present at any meeting. Any such alternate must also satisfy the eligibility criteria in respect of their relevant appointor set out in sub-article

4 or 7. Any such alternate shall have no rights to designate a further person as an alternate.

10. The Board of Governors and the Board of Directors shall seek to ensure that no two or more Directors holding office at the same time may be of the same nationality and no two or more alternatives holding office at the same time may be of the same nationality.
11. Subject to Sub- article 5, Directors shall hold office for an initial term of three (3) years and may each be re-elected on two consecutive occasions for a further period of three (3) years.
12. The Board of Directors shall, from amongst themselves, elect the Chairperson of the Fund's Board of Directors who shall preside over the meetings of the Board of Directors.
13. The Executive Secretary or his or her duly appointed representative shall be an *ex-officio* Member of the Board of Directors but shall not be entitled to vote.

Article 24 **Board of Directors: Powers**

The Board of Directors shall be responsible for the direction of the general operations of the Fund and, for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

- (a) oversee the activities of the Management Team;
- (b) prepare the work of the Board of Governors;
- (c) prepare the initial Operating Policies and Procedures for the approval by the Board of Governors and regularly review the Operating Policies and Procedures to ensure that the Fund is in compliance with them and that they are appropriate, up-to-date and fit-for-purpose;
- (d) following recommendations by the Investment Committee and in conformity with the Operating Policies and Procedures, take decisions concerning the approval of any project for preparation and development by the Fund and concerning the making and disposal of investments by the Fund whether by way or equity, loan or otherwise;
- (e) in conformity with the Operating Policies and Procedures, approve any borrowings by the Fund;

- (f) ensure that the Fund is served in the most efficient, prudent and economical manner;
- (g) submit the accounts for each financial year for approval of the Board of Governors at each annual meeting; and
- (h) approve the annual budget of the Fund, subject to the approval of the Board of Governors.

Article 25
Board of Directors: Proceedings

- 1. The Directors shall meet as often as the business of the Fund may require and not fewer than 4 times in any year.
- 2. At the request of any two (2) Directors, the Chairperson of the Board of Directors shall call a meeting of the Board of Directors by the giving of not less than 7 days' written notice to each other Director or such other notice period as all Directors in office may agree.
- 3. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors.

Article 26
Board of Directors: Decision-making

- 1. Each Director shall have one vote in respect of any decision of the Board of Directors.
- 2. In the event of a tie in respect of any decision of the Board of Directors, the Chairperson of the Board of Directors shall have a casting vote.
- 3. Save where expressly provided to the contrary by the provisions of this Agreement, all decisions in the Board of Directors shall be taken by a simple majority of the votes cast.

Article 27
Committees of the Board of Directors

- 1. The Board of Directors shall establish the Investment Committee and such other committees as it may deem necessary for the discharge of its functions; and it shall, subject to the provisions of this Agreement, specify the composition and functions of every committee appointed under this section and the terms and conditions upon which the committee shall exercise its functions.

2. Each Committee shall report to the Board of Directors at its next regular meeting on all the proceedings and actions of the Committee, and the Board of Directors may approve, vary or reverse any decision of the Committee or may give such directions affecting any action of the Committee as the Board of Directors may deem fit in the circumstances of each case.
3. Subject to the provisions of this Agreement and to any directions given by the Board of Governors in that regard, each Committee shall regulate its proceedings.
4. The Investment Committee shall be responsible, *inter alia*, for:
 - (a) controlling the Fund's investment process and ensuring that the integrity of that process is maintained;
 - (b) making recommendations to the Board of Directors concerning the approval of any project for preparation and development by the Fund and concerning the making and disposal of investments by the Fund whether by way of equity, loan or otherwise;
 - (c) retaining oversight over the composition, nature and weighting of the Fund's portfolio of investments and ensuring that it remains consistent with the Fund's Operating Policies and Procedures; and
 - (d) ensuring that objective, consistently high investment standards and standards of documentation, are maintained within the Fund.
5. The Investment Committee shall have a minimum of 3 members who shall all possess the skills, experience and track record necessary to ensure the making of effective investment decisions by the Fund. To the greatest extent possible, during Phase 1, all members of the Investment Committee shall be highly experienced in the conception, identification, preparation, development and financing of infrastructure projects within Sub-Saharan Africa and in the design, implementation and operation of enabling environments within which infrastructure may be readily developed by the public and/or private sectors.
6. The Investment Committee shall not include any B Directors.

Article 28
Chief Executive Officer

1. The Board of Directors shall, with the approval of the Board of Governors, appoint a Chief Executive Officer (the CEO) of the Fund and the CEO shall engage such other persons as it shall consider necessary from time to time in order to enable it to conduct the day-to-day operations of the Fund.
2. Subject to Article 24 of this Agreement, the CEO shall conduct the ordinary business of the Fund and, in particular, shall:
 - (a) propose the annual operating and administrative budgets;
 - (b) propose the annual business plan;
 - (c) propose the overall financing programme;
 - (d) undertake appraisal of projects and programmes for preparation, development and financing by the Fund;
 - (e) be responsible to the Board of Directors for leading and for ensuring and controlling the proper organization, staffing and services provided by the Management Team;
 - (f) engage the services of such personnel, including consultants and experts, as may be needed by the Fund; and
 - (g) perform any other duties that may be assigned by the Board of Directors from time to time.
3. The Board of Directors may, on a majority of two-thirds of the total number at the meeting, suspend the CEO and appoint an acting CEO in his/her place.
4. Suspension of the CEO shall be in accordance with the Operating Policies and Procedures and such contract as may be entered into by the Fund and the CEO.
5. The Board of Directors shall have the power to dismiss the CEO by a two-thirds majority of the Directors present and eligible to vote and subject to the No Objection of the Board of Governors.

Article 29
Headquarters

1. The permanent headquarters of the Fund shall be determined by the Summit and shall be located in a Member State of the Fund.

2. Notwithstanding the provisions of Sub-article 1, and subject to a decision of the Board of Governors, the Fund may be temporarily hosted in a DFI within the Region which meets the criteria set out in Annex 2 of this Agreement for a period of no more than 3 years renewable once for a further three year period, from the time this Agreement enters into force.

Article 30

Account Holders in each Member State

Each Member State shall designate its Central Bank or such other institution as may be proposed by a Member State and as may be acceptable to the Board of Directors as an account holder in which the Fund may keep holdings denominated in such Member State's currency or any other assets of the Fund as may be located in, or may arise from, such Member State.

Article 31

Channel of Communication

1. Each Member of the Fund shall designate an appropriate authority with which the Fund may communicate in connection with any matter arising under this Agreement.
2. The CEO shall be the designated person for communication with the Fund.

Article 32

Auditing, Reports and Statements

1. The Board of Directors shall ensure that an auditor, the identity of whom shall be subject to the approval of the Board of Governors, is appointed to the Fund at all times. No firm of auditors shall be entitled to continue in post as auditor of the Fund for a consecutive period of longer than 3 years.
2. The Fund shall maintain accounts adequate to record all of its operations and to reflect, in accordance with generally accepted accounting principles, the status of the Fund showing the income and the projects and programmes financed thereby.
3. All financial reporting of the Fund shall be prepared in accordance with the Approved Accounting Standards.
4. The accounts of the Fund shall be audited at the close of each financial year by the auditor who shall prepare a report of such accounts. The auditor shall include in the report a statement as to whether, in the auditor's opinion: (i) the income and

expenditure for the financial year under review gave a true and fair view of the income and expenditure of the Fund during the course of the relevant financial year; and (ii) the balance sheet for the financial year under review gives a true and fair view of the financial affairs of the Fund as at the end of the relevant financial year.

5. The auditor of the Fund shall have the right to access, at all reasonable times, the books, accounts, vouchers and other records of the Fund and shall be entitled to require from the CEO and the Management Team such information and explanations as he considers necessary for the proper performance of his duties as the auditor.
6. The audited financial statements referred to in Sub-article 4 above shall be prepared by the Management Team and shall be submitted to the Board of Directors and to the annual meeting of the Board of Governors for their respective approval.
7. On a quarterly basis, the Fund shall provide each of the Members of the Fund with an unaudited (but prepared on the bases consistent with those used in the preparation of the audited financial statements of the Fund) summary statement of its financial position and an income and expenditures statement showing the results of its operations for the relevant quarter and for the relevant year to date.
8. The Fund shall, on an annual basis, provide the Members of the Fund with a review and evaluation of all projects, programmes and activities financed by the Fund during the course of the immediately preceding year and of their development impact.
9. The Board of Directors shall undertake a detailed in-depth evaluation of the operations of the Fund which shall include: (i) the financial situation of the Fund; (ii) the uses for which the resources of the Fund have been committed; (iii) details of the projects prepared and developed by the Fund; and (iv) the anticipated (and, to the extent relevant, the actual) development impact of the projects that are being/have been prepared and developed by the Fund.
10. The evaluation referred to in Sub-article 9 shall be completed and distributed to each of the Members of the Fund at least 3 months prior to every third annual meeting of the Board of Governors.
11. Any Member of the Fund may, at any time, request the Fund to commission an audit of any entity, project or programme that is funded by the Fund provided that the costs incurred by the Fund

in connection with any such audit shall be for the account of, and shall following receipt of the associated invoice be promptly paid by, the relevant Member of the Fund who requested that it be undertaken.

12. The Fund may publish such other reports as it deems desirable to carry out its purposes.
13. Copies of all reports, statements and publications made under this Article shall be distributed to all Members of the Fund.

Article 33 Allocation of Net Income

1. The Board of Governors, shall determine annually what part of the net income of the Fund, including the net income accruing to Special Funds, shall be allocated to reserves and what part, if any, shall be distributed amongst the Members of the Fund pro rata to the number of shares that they hold as at the relevant record date.
2. Any distribution of the net income of the Fund shall be made in proportion to the number of shares held by each Member of the Fund.
3. Payments shall be made in such manner and in such currency as shall be determined by the Board of Governors.

CHAPTER VI WITHDRAWAL, SUSPENSION OF MEMBERSHIP AND TERMINATION OF OPERATIONS

Article 34 Withdrawal by Members of the Fund

1. A Member of the Fund wishing to withdraw from the Fund (the Withdrawing Member) shall serve notice of its intentions in writing, not less than 12 months in advance, to the Chairperson of the Board of Governors, who shall inform the other Members of the Fund accordingly.
2. At the expiration of the period of notice, the Withdrawing Member shall, unless the notice is withdrawn by it, cease to be a Member of the Fund.
3. During the period of notice referred to in paragraph 1 of this Article, the Withdrawing Member shall comply with the provisions of this Agreement, and shall continue to be bound by its rights and obligations under this Agreement up to the date of

its withdrawal. Thereafter, a Withdrawing Member shall cease to have any rights and obligations in respect of the Fund save to extent expressly provided to the contrary in this Agreement.

Article 35
Suspension of Membership

1. If a Member of the Fund fails to fulfil any of its obligations to the Fund, its membership may be suspended by a Special Resolution of the Board of Governors. Any Member of the Fund so suspended shall automatically cease to be a Member of the Fund on the date which falls one year from the date of its suspension save in circumstances where a decision is taken by the Board of Governors by Special Resolution to restore the relevant Member of the Fund to good standing following full compliance with all of its outstanding obligations to the Fund.
2. While under suspension in accordance with the provisions of Sub-article 1, a Member of the Fund shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, and shall remain subject to all obligations falling upon it thereunder.

Article 36
**Rights and Obligations of Members Ceasing to
be Members of the Fund**

1. Where a Member of the Fund ceases to be a Member of the Fund under the provisions of Articles 34 or 35, it shall remain liable for all its obligations to the Fund, so long as any part of the investments or funding commitments of the Fund contracted before it ceased to be a Member of the Fund are outstanding. However, such former Member of the Fund shall cease to incur any such liability with respect to new investments or funding commitments entered into by the Fund after the date upon which it ceased to be a Member of the Fund and shall cease to share either in its income or expenses appertaining to such investments and/or funding commitments.
2. Where a Member ceases to be a Member of the Fund, the Fund shall, subject to the provisions of Sub-article 3 purchase the shares of such Member to the extent that the Board of Directors, acting reasonably, considers that the Fund has sufficient resources available in order to do so. The purchase price of the shares shall be the value shown by the books of the Fund (the Prevailing Value) or the amount actually paid for such shares when subscribed, whichever is less, the lower value being Purchase Price.

3. Any such repurchased shares will then be redistributed by selling them to the remaining Members of the Fund on the basis of criteria to be determined by the Board of Directors, subject to the approval of the Board of Governors, while ensuring that the aggregate shareholding of Member States remains at a minimum of 51%.
4. To the extent that the Board of Directors, acting reasonably, considers that the Fund does not have sufficient resources available to it in order to purchase the shares held by any Member of the Fund in accordance with the provisions of Sub-article 2 then the relevant shares shall be offered for sale to the Members of the Fund pro rata to their shareholdings at the Prevailing Value whilst ensuring that the aggregate shareholding of Member States remains at a minimum of 51%. To the extent that any of the relevant shares remain unsold following such period of time as the Board of Directors shall consider to be reasonable, then such residual shares may be offered for sale at the Prevailing Value to such person as shall be approved by the Board of Governors whilst ensuring that the aggregate shareholding of Member States remains at a minimum of 51%.
5. The payment for any shares purchased by the Fund under Sub-article 2 or by any other person under Sub-article 4 shall be governed by the following conditions:
 - (a) The Fund shall retain any amount due to the Member of the Fund for its shares insofar as such Member of the Fund remains liable to the Fund. The Fund shall be entitled to withhold and apply the amount retained in settlement of outstanding obligations owed to it. In any event, no amount due to a Member of the Fund shall be paid until the lapse of at least six months after the date on which it ceased to be a Member of the Fund;
 - (b) The Fund may pay to the Member of the Fund for its shares a portion of the amount retained, equal to that recovered by the Fund in respect of outstanding amounts; and
 - (c) If any loss is sustained by the Fund as a result of the operations undertaken by it under this Agreement and is still outstanding on the date the Member of the Fund ceases to be a Member, and the amount of the loss exceeds the amount of the reserve provided against such loss on the aforesaid date, then such Member of the Fund shall be liable to repay, upon demand, the amount by which the purchase price of its shares would have been

reduced, if the loss had been taken into account when the purchase price was determined.

Article 37

Suspension of the Operations of the Fund and disposition of its Assets

The Board of Directors may, following the occurrence of a Force Majeure Event which is continuing, temporarily suspend the Fund's operations in a Member State. It shall call the Board of Governors to an extraordinary meeting to consider the matter and take a decision in this respect.

Article 38

Termination of the Operations of the Fund and Disposal of Assets

1. The Fund may terminate its operations by Special Resolution of the Board of Governors. Withdrawal by all Members of the Fund pursuant to Articles 34 or 35 shall constitute a termination of operations by the Fund.
2. After such termination, the Fund shall continue to exist, and all reciprocal rights and obligations between the Fund and the Members of the Fund under this Agreement shall remain in effect until the final settlement of its obligations and the distribution of its assets. During this period, no Member of the Fund may be suspended, nor may it withdraw, and no assets may be distributed to Members of the Fund except under the provisions of this Article of the Agreement.
3. No distribution of the assets of the Fund may be made until all creditors' claims have been settled. Such assets shall be distributed *pro rata* to the Members of the Fund in proportion to the shares held by each such Member of the Fund. Distribution shall be effected in cash or in the form of other assets at such times and in such currencies as the Board of Directors, subject to the approval of the Board of Governors, shall deem appropriate.
4. Any Member of the Fund receiving assets distributed by the Fund pursuant to Sub-article 3 shall be subrogated to all the rights pertaining to such assets as the Fund enjoyed prior to their distribution.

**CHAPTER VII
STATUS, IMMUNITIES AND PRIVILEGES**

**Article 39
Purpose of Chapter**

To enable the Fund 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 Fund in the territory of each Member State.

**Article 40
Legal Status and Proceedings**

1. The Fund shall possess juridical personality and, in particular, the capacity to:
 - (a) contract;
 - (b) acquire immovable and movable property and to dispose of the same; and
 - (c) sue or be sued.
2. Actions may be brought against the Fund only before the courts of competent jurisdiction in the place where it is hosted and, in addition, may be brought against it in the place where the dispute has arisen if the Fund has a branch office or has an agent authorized to accept notice of process.
3. No action may be brought against the Fund by Members of the Fund or persons acting for or, or deriving claims from, Members of the Fund. However, Members of the Fund shall have recourse to such special procedures for the settlement of disputes between the Fund and its Members as may be prescribed by this Agreement or in the Operating Policies and Procedures of the Fund or in contracts entered into with the Fund.
4. All property and assets of the Fund, wherever located and by whomsoever held in the Member States, shall be immune from all forms of provisional measures prior to any judgment of the court against the Fund becoming final.

Article 41
Immunity of Assets

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 42
Immunity of Archives

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

Article 43
Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Fund and subject to the provisions of this Agreement, all property and other assets of the Fund shall be free from restriction by financial controls, regulations, or moratoria of any kind.

Article 44
Privilege for Communications

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

Article 45
Immunities and Privileges of Officials and Personnel

All Members of the Fund, their representatives, their alternates, the Directors, their alternates, the CEO, the Management Team and all other personnel of the Fund (including, but not limited to, expert consultants undertaking work for, and on behalf of, the Fund):

- (a) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (b) when they are not local nationals, shall be accorded no less favourable immunities from immigration restrictions, alien registration requirements and national service obligations, and no less favourable facilities as regards exchange regulations, than are accorded by the Member State participant concerned to the representatives, officials and employees of comparable rank of any other international financial institution of which it is a member; and

- (c) shall be granted no less favourable treatment in respect of travelling facilities than is accorded by the Member State concerned to representatives, officials and employees of comparable rank of any other international organisation of which it is a member.

Article 46
Exemption from Taxation

1. The Fund, its assets, property, income, operations and transactions, shall be exempt from all direct taxation and from all customs duties, or taxes having equivalent effect, on goods imported or exported for its official use. The Fund shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. Notwithstanding the provisions of Sub-article 1, the Fund shall not claim exemption from taxes which are no more than charges for services rendered.
3. Articles imported under an exemption provided for by Sub-article 1 shall not be sold in the territory of the Member State which granted the exemption except under conditions agreed with that Member State.
4. No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to the CEO, the Management Team and any other personnel of the Fund, including, but not limited to, expert consultants undertaking work for and on behalf of the Fund who are not citizens of the host country.

Article 47
Waiver by the Fund

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Fund. 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 and in its absolute discretion, further the interests of the Fund or in cases where its failure to act would impede the course of justice.

Article 48
Amendment of Provisions of the Agreement

1. Any proposal to introduce any amendments to this Agreement, other than modifications which are of a purely typographical nature and which may be approved by the Board of Directors, whether emanating from a Member of the Fund, the Board of

Directors or an individual Director shall be communicated to the Chairperson of the Board of Governors, who shall bring the proposal before the Board of Governors.

2. The Board of Governors shall make every effort to reach agreement on any proposed amendment to this Agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted when the holders of no fewer than 75% of the total voting rights of the Members of the Fund have accepted the proposed amendment. The Fund shall formally communicate the adopted amendment to the Depositary, who shall circulate it to all the Members of the Fund.
3. Amendments shall enter into force for all Members three months after the date of the formal communication provided for in Article Sub-article 2 unless the Board of Governors specifies a different period or date.
4. Notwithstanding the provisions of Sub-article 1, acceptance by all Members of the Fund is required in the case of any amendment seeking to modify:
 - (a) the purpose, powers, functions and operations of the Fund as contained under the corresponding Articles of this Agreement;
 - (b) the right to withdraw from the Fund provided in Article 34 of this Agreement;
 - (c) the limitation of the members' liability in respect of the unpaid portion of their shares as provided in Article 5 of this Agreement; and
 - (d) the voting majority requirements contained in this Agreement.

CHAPTER VIII INTERPRETATION AND DISPUTE RESOLUTION

Article 49 Interpretation

1. Any question of interpretation or application of the provisions of this Agreement arising between any Member of the Fund and the Fund or between any Members of the Fund shall be submitted to the Board of Directors for decision.
2. In any case where the Board of Directors has given a decision under Sub-article 1 any Member of the Fund may require that

the question be referred to the Board of Governors whose decision shall be final. Pending the decision of the Board of Governors, the Fund may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

Article 50
Resolution of Disputes

1. Any dispute between or among Members to this Agreement concerning its interpretation or application which cannot be settled within six (6) months by amicable means shall, unless the Board of Directors has otherwise agreed, be submitted to an Arbitral Tribunal composed of three (3) members. Each Party to the dispute shall appoint one (1) arbitrator and such two (2) arbitrators shall then select a national from another Member State (which Member State is a Member of the Fund but which is not otherwise involved in the dispute) who shall be appointed Chairman of the Tribunal.
2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two (2) months after an invitation from the other Party to make such appointment, then the Board of Directors shall invite the President of the Permanent Court of Arbitration to make the necessary appointment.
3. If the two (2) arbitrators are unable to reach agreement on the choice of the third arbitrator in the two (2) months following their appointment, then the Board of Directors shall invite the President of the Permanent Court of Arbitration to make the necessary appointment.
4. If, in the cases provided for Sub-article 2 and 3 of this Article, the President of the Permanent Court of Arbitration is prevented from discharging the said function for whatever reason, the Vice-President of the Permanent Court of Arbitration shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function the most senior member of the Permanent Court of Arbitration available shall be invited to make the necessary appointments.
5. Subject to the provisions of Sub-article 6 below, the Arbitral Tribunal shall decide in accordance with:
 - (a) the provisions of this Agreement; and
 - (b) general principles of international law.

6. Before the Arbitral Tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.
7. Unless the Parties agree otherwise, the Arbitral Tribunal shall determine its own procedure.
8. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.
9. Each Party shall bear the cost of its own arbitrator in the Arbitral Tribunal as well as its representation in the arbitral proceedings. The costs of the Chairman and all other remaining costs shall be borne equally by the Parties. The Arbitral Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and such a ruling shall be binding and be executed by both Parties.

CHAPTER IX FINAL PROVISIONS

Article 51 Signature

The original text of this Agreement shall be open for signature by the Member States whose names are set forth in the Preamble.

Article 52 Ratification

This Agreement shall be subject to ratification by the Member States in accordance with their constitutional procedures.

Article 53 Entry into Force

This Agreement shall enter into force one month after the deposit of the instruments of ratification by a two-thirds majority of the Member States.

Article 54 Accession

A Member State which has not ratified this Agreement by the date upon which this Agreement enters into force in accordance with Article 53, will accede to this Agreement following ratification by the relevant Member State by addressing a notification to the Executive Secretary

of SADC who shall notify their accession to all of the Members of the Fund.

Article 55
Accession by International Cooperating Partners and Private Sector Entities

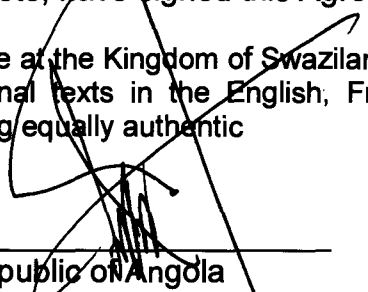
International Cooperating Partners and Private Sector entities may accede to this Agreement, following the approval of the Board of Governors and the satisfaction of such conditions as shall be set for accession by the Board of Governors in giving such approval, by addressing a notification to the Executive Secretary of SADC who shall notify their accession to all of the Members of the Fund.

Article 56
Depositary

1. The original texts of this Agreement and all Instruments of Ratification and Accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.
2. The Executive Secretary of SADC shall notify the Member States of the dates on which Instruments of Ratification and Accession have been deposited under Article 56(1).
3. The Executive Secretary of SADC shall register the Agreement with the Secretariat of the United Nations and the Commission of the African Union.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement on the dates indicated.

Done at the Kingdom of Swaziland, this 31st day of August, 2016, in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic

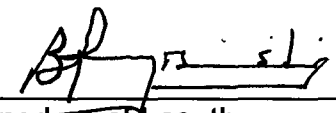


Republic of Angola



Democratic Republic of Congo

Republic of Botswana



Kingdom of Lesotho

Republic of Madagascar

Republic of Mauritius

Republic of Malawi

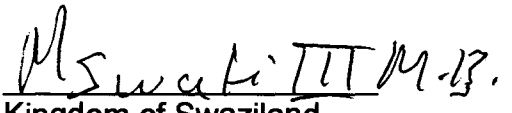


Republic of Mozambique

Republic of Namibia

Republic of South Africa

Republic of Seychelles




Kingdom of Swaziland



United Republic of Tanzania

Republic of Zambia



Republic of Zimbabwe

Annex 1

ALLOCATION OF SHARES PER THE PROVISIONS OF ARTICLE 4

Distribution of Initial Shares Among Member States

Country	Allocation Per SADC Formula	Year 1 No. Shares	Year 2 No. Shares	Year 3 No. Shares	Total No. Shares
Angola	8.70%	348	348	348	1044
Botswana	6.25%	250	250	250	750
DRC	6.25%	250	250	250	750
Lesotho	6.25%	250	250	250	750
Madagascar	6.25%	250	250	250	750
Malawi	6.25%	250	250	250	750
Mauritius	6.25%	250	250	250	750
Mozambique	6.25%	250	250	250	750
Namibia	6.25%	250	250	250	750
Seychelles	3.52%	141	141	141	423
South Africa	13.00%	520	520	520	1560
Swaziland	5.85%	234	234	234	702
Tanzania	6.83%	273	273	273	819
Zambia	6.25%	250	250	250	750
Zimbabwe	5.85%	234	234	234	702
Total	100%	4000	4000	4000	12,000

Annex 2
Evaluation and Selection Criteria for hosting the Fund
 (if considered applicable by the Board of Governors under the provisions of
 Article 29)

A: Eligibility Criteria of the Host Country

	Criteria
i)	Whether the host country has a sound financial , legal and regulatory framework.
ii)	Whether the host country has a sound Information and Communications network infrastructure.

B: Eligibility Criteria of the Host DFI

	Criteria
i)	Whether the DFI is legally established, registered, operating in a SADC Member State and part of the SADC DFI Network.
ii)	Whether the host DFI's development mandate is in line with the objectives of the Fund.
iii)	Experience of the host DFI in financing and managing infrastructure and industrial projects. Managing of cross boarder projects will be an added advantage.
iv)	Experience of the host DFI in funding infrastructure and industrial projects with Cooperating Partners and Private Sector will be added advantage.
v)	Indicate the cost of services to be provided by the host DFI

C: Technical Competences

	Criteria
i)	Availability of staff with competences in project appraisal, monitoring and evaluation
ii)	Availability of qualified staff with competencies in : <ul style="list-style-type: none"> (i) Accounting and internal auditing (ii) Treasury services (iii) Legal services (iv) Procurement (v) Information and Communication technology areas

iii)	The level of resources in these areas to be dedicated to the operations of the Fund.
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D: Financial status

	Criteria
i)	Whether the accounts of the host DFI are in accordance with international accounting standards and in compliance with international best practice.
ii)	If the DFI's audited accounts are available within 4 months of the end of each fiscal year. The accounts should be unqualified and published; audited financial statements of last three years should also be provided.
iii)	Compliance of the Host DFI with prudential standards and guidelines.
iv)	Financial performance of the DFI in the last 5 years in terms of capital adequacy ratio, liquidity, and solvency.

Annex 3

Nature of Phase 1 and Phase 2 as per the provisions of Article 2

1. During the course of Phase 1, the Fund shall be engaged in the identification and preparation of regional infrastructure projects to support the sustainable economic development of the SADC Region. Consideration shall also be given to industrial development related projects including industrial research and development, commercialisation of technologies and technology transfer. As such, during the course of Phase 1, the Fund will act as the principal developer and co developer of eligible projects or,
2. During the course of Phase 2 the Fund shall also be engaged in the financing of infrastructure development, industrial development, integration and economic adjustment and social development projects.
3. As noted in Article 2, the operationalisation of Phase 1 will commence on the date upon which this Agreement comes into force in accordance with the provisions of Article 53
4. As noted in Article 2, the precise timing of the operationalisation of Phase 2 (which, once operationalised, is anticipated to operate parallel with Phase 1), the structure, membership, governance arrangements, management arrangements and funding mechanics (together the Phase 2 Timing and Characteristics) will be determined by the Board of Governors by means of a Special Resolution and will be dependent upon a wide range of factors including, but not limited to:
 - (a) the performance of Phase 1 in developing a pipeline of viable infrastructure projects over a period of at least 2 years;
 - (b) the appetite of funders (including the private sector whom it is hoped will provide a significant portion of the capital to fund Phase 2) at the relevant time to fund Phase 2 to a sufficient extent;
 - (c) the demand for financing from Phase 2 of the Fund at the relevant time; and the identification; and
 - (d) at the relevant time, of appropriately skilled human resources to manage and to operate Phase 2 of the Fund.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement on the dates indicated.

Done at the Kingdom of Swaziland, this 31st day of August, 2016, in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic



Republic of Angola



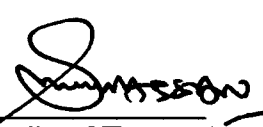
Democratic Republic of Congo

Republic of Madagascar


Republic of Mauritius

Republic of Namibia

Republic of South Africa



United Republic of Tanzania




Republic of Zimbabwe

Republic of Botswana



Kingdom of Lesotho

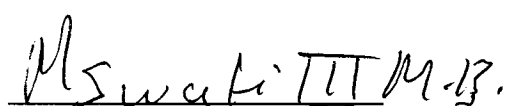


Republic of Malawi

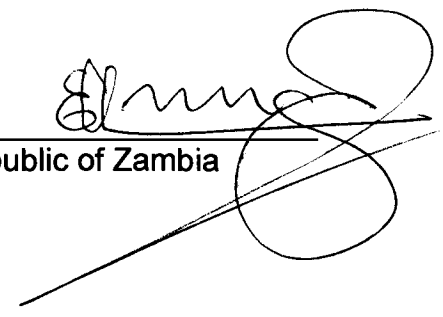


Republic of Mozambique

Republic of Seychelles



Kingdom of Swaziland



Republic of Zambia