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**PROTOCOL RELATING TO THE FUND FOR CO-  
OPERATION, COMPENSATION AND DEVELOPMENT  
OF THE ECONOMIC COMMUNITY OF WEST AFRICAN  
STATES**

## THE HIGH CONTRACTING PARTIES

**RECALLING** Article 50 of the Treaty of the Economic Community of West African States whereby the Fund for Co-operation, Compensation and Development was established; and

**RECALLING** further paragraph 3 of Article 51 of the said Treaty which requires that the method of determining the contributions to be paid by Member States, and administrative and other matters relating to the Fund for Co-operation, Compensation and Development should be set out in a Protocol to be annexed to the said Treaty;

### AGREE AS FOLLOWS:

#### ARTICLE 1

##### Definitions

In this Protocol:

**"Treaty"** means the Treaty of the Economic Community of West African States;

**"Community"** means the Economic Community of West African States established by Article 1 of the Treaty;

**"Member State" or "Member States"** means a Member State or Member States of the Community;

**"Authority"** means the Authority of Heads of State and Government of the Community established by Article 5 of the Treaty;

**"Council"** means the Council of Ministers of the Community established by Article 6 of the Treaty;

**"Executive Secretary"** means the Executive Secretary of the Community appointed under Article 8 of the Treaty;

**"Fund"** means the Fund for Cooperation, Compensation and Development established by Article 50 of the Treaty;

**"Board of Directors"** means the Board of Directors of the Fund;

**"Chairman"** means the Chairman of the Board of Directors of the Fund;

**"Managing Director"** means the Managing Director of the Fund;

## **ARTICLE 2**

### **Purposes of the Fund**

The Fund shall be used to:

- (a) provide compensation and other forms of assistance to Member States which have suffered losses as a result of the application of the provisions of this Treaty;
- (b) provide compensation to Member States which have suffered losses as a result of the location of Community enterprises;
- (c) provide grants for financing national or Community research and development activities;
- (d) grant loans for feasibility studies and development projects in Member States;
- (e) guarantee foreign investments made in Member States in respect of enterprises established in pursuance of the provisions of the Treaty on the harmonization of industrial policies;
- (f) provide means to facilitate the sustained mobilization of internal and external financial resources for the Member States and the Community; and
- (g) promote development projects in the less developed Member States of the Community.

## **ARTICLE 3**

### **Ordinary Capital Resources of the Fund**

In the Context of this Protocol, the term "ordinary capital resources" of the Fund shall include:

- a) the capital of the Fund, including both paid and unpaid contributions determined under Article 5 and authorised in pursuance of the provisions of Article 7 of this Protocol;
- b) income from enterprises either wholly or partly owned by the Community;
- c) receipts from bilateral and multilateral sources as well as other foreign sources;
- d) subsidies and contributions of all kinds and from all sources;
- e) income derived from loans made from the above mentioned resources or from guarantees given by the fund;
- f) borrowing by the fund; and
- g) any other resources or income received by the Fund which do not form part of its Special

Facilities referred to in Article 4 of this Protocol.

## **ARTICLE 4**

### **Special Facilities**

- 1 The Fund shall accept for administration the resources of any special facilities.
- 2 The term "Special Facilities" as used in this Protocol shall refer to the resources of any Special Facilities and shall include;
  - (a) funds contributed by Member States as may be determined by the Council for the provision of compensation and other forms of assistance to Member States;
  - (b) funds accepted by the Fund in any Special Facility;
  - (c) funds repaid in respect of loans or guarantees financed from any Special Facility which, under the regulations of the Fund covering that Special Facility, are received by such Special Facility;
  - (d) income derived from operations of the Fund in which any of the above-mentioned resources or funds are used or committed if, under the regulations of the Fund covering the Special Facilities concerned, that income accrued to such Special Facilities; and
  - (e) funds from such sources as the Fund may consider appropriate for the promotion of the purposes of the Fund including compensation to Member States.
- 3 Special Facilities, accepted by the Fund under paragraph 1 of this Article shall be used in such manner and on such terms and conditions as are not inconsistent with other objectives of the Fund and the agreement under which such resources are accepted by the Fund for administration and where so specified, to provide compensation and other forms of assistance to Member States.
- 4 Without prejudice to the provisions of paragraph 1 of Article 25 of the Treaty, the Board of Directors shall make such regulations as may be necessary for the administration and use of Special Facilities.

## **ARTICLE 5**

### **Contributions by Member States**

- 1 The contribution of each Member State excluding the contribution relating to compensation of loss of revenue referred to in Article 4 paragraph 2, sub paragraph (a) of this Protocol in respect of the other resources referred to in Articles 3 and 4 of this Protocol shall be assessed on the basis of a co-efficient



which takes into account the Gross Domestic Product and the Per Capita Income of all Member States. For this purpose, the co-efficient shall be calculated as one half of the ratio of the Gross Domestic Product of each Member State to the total Gross Domestic product of all Member States plus one-half of the ratio of the Per Capita Income of each Member State to the total Per Capita Income of all the Member States.

- 2 The statistics and other data on the Gross Domestic Product and population of the Member States published by the United Nations shall be used in calculating the co-efficient referred to in paragraph 1 of this Article.

## **ARTICLE 6**

### **Payment of Contributions**

- 1 Each Member State shall in such instalments as may be determined by the Council, pay into the Fund the amount assessed to be paid by it under the provisions of Article 5 of this Protocol.
- 2 Unless otherwise decided by the Council, 100 per cent of the amount assessed to be paid by Member States under this Article shall be paid in specified convertible currency.
- 3 The unit of account in which the budget of the Fund shall be prepared shall be the Special Drawing Rights of the International Monetary Fund.
- 4 For the purposes of this Article "Convertible Currency" shall be currency which is declared as such by the International Monetary Fund and such other currencies as the Council may from time to time designate.
- 5 The exchange value of the currencies of Member States for the purposes of paragraph 2 of this Article shall be the official declared rate to the International Monetary Fund on the date of payment. Where the currency of a Member State is floating the day's average of the selling and buying rates of the Central Bank of the Member State shall be used.
- 6 The Fund shall determine the place for any payment of contribution, provided that until the first meeting of the Board of Directors, payment shall be made to the Central Bank of the Member State where the Executive Secretariat of the Community is situated as Trustee to the Fund.
- 7 The liability of a Member State to the Fund shall be limited to the unpaid contributions due from them under the provisions of this Protocol.

## **ARTICLE 7**

### **Additional Resources**

The Board of Directors shall periodically review the adequacy of the resources of the fund and may, if it deems it desirable, propose for the approval of the Council an increase in the contributions to be paid Member States and the currencies and the way in which such payment should be made. The Board of Directors may also propose for the approval of the Council other methods of increasing the resources of the Fund.

## **ARTICLE 8**

### **Operation**

The resources of the Fund shall be used exclusively to implement the purposes of the Fund as set forth in Article 2 of this Protocol.

## **ARTICLE 9**

### **Other and Special Operations**

- 1 The operations of the Fund shall consist of ordinary operations and special operations. Ordinary operations shall be those financed from the ordinary capital resources of the Fund referred to in Article 3 of this Protocol and Special Operations shall be those financed from the Special Facilities referred to in Article 4 of this Protocol.
- 2 The ordinary capital resources and the Special Facilities of the Fund shall at all times and in all respects be held, used, committed, invested or otherwise disposed of entirely separately from each other.
- 3 The ordinary capital resources of the Fund shall not be charged with, or used to discharge, losses or liabilities arising out of special operations for which Special Facilities were originally used or committed.
- 4 Expenses relating directly to ordinary operations shall be charged to ordinary capital resources of the Fund and those relating to special operations shall be charged to the Special Facilities. Any other expenses shall be charged as the Board of Directors shall determine.

## **ARTICLE 10**

### **Methods of Operation**

1. Subject to the conditions set forth in this Protocol, and for the purposes of the Fund, the Fund may provide guarantees in respect of foreign investments, provide finances for and facilitate the financing of projects of Member States of the Community or promote development in the less developed Member States in any of the following ways to any agency, entity or enterprise which is subject to majority participation and control by nationals including Governments or Government or inter-governmentally-owned enterprises or corporations of Member States:
  - (a) by making or participating in direct subventions and loans with its unimpaired paid-up capital and, except in the case of its Special Reserve as defined in Article 11 this Protocol, with its reserves or undistributed surplus or with the unimpaired Special Facilities other than those designated for use in granting compensation to Member States in accordance with paragraph 2 of this Article;
  - (b) by making or participating in direct loans with funds, raised by the Fund in capital markets or borrowed or otherwise acquired by the Fund for inclusion in its ordinary resources;
  - (c) by the investment of funds referred to in sub-paragraphs (a) and (b) of this Article in equity capital of an institution or enterprise; or
  - (d) by guaranteeing in whole or in part, loans or foreign investments made in Member States in respect of enterprises established in pursuance of the provisions of this Treaty on the harmonisation of industrial policies.
  
2. The Special Facilities designated for that purpose, shall be used to provide compensation and other forms of assistance to Member States which have suffered losses as described in paragraphs (b) and (c) of Article 52 of the Treaty, in such manner and to such extent as the Council may decide.

## **ARTICLE 11**

### **Limitations on Operations**

1. The total amount outstanding of loans, equity investments and guarantees made by the Fund in its ordinary operations shall not at any time exceed such percentage of the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources, excluding the Special Reserve and any other reserve not available for ordinary operation as the Board of Directors may regard as prudent.

- 2 The total amount outstanding in respect of the special operations of the Fund relating to any Special Facility shall not at any time exceed the total amount of the unimpaired special resources appertaining to that Special Facility.
- 3 In the case of funds invested in equity capital out of the ordinary capital resources of the Fund, the total amount invested shall not exceed such percentage of the aggregate amount of the unimpaired paid-up capital of the Fund together with the reserves and surplus included in its ordinary capital resources, excluding the Special Reserve as the Board of Directors may determine.
- 4 The amount of any equity investment in any entity or enterprise shall not exceed such percentage of the equity capital of that entity or enterprise as the Board of Directors shall in each specific case determine to be appropriate. The Fund shall not seek to obtain by such investment a controlling interest in the entity or enterprise concerned, except where necessary to safeguard the investment of the Fund.
- 5 In the case of guarantees given by the Fund in the course of its ordinary operations the total amount guaranteed shall not exceed 10 per cent of the aggregate amount of the unimpaired paid-up capital together with the reserves and surplus included in its ordinary capital resources excluding the Special Reserve.

## **ARTICLE 12**

### **Provision of Currencies for Direct Loans**

In making direct loans or participating in them, the Fund may provide finance in the following ways:

- (a) by furnishing the borrower with currencies other than the currency of the Member State in whose territory the project is located, which are needed by the borrower to meet the foreign exchange costs of the project; and/or
- (b) by providing, when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, local currency but not exceeding a reasonable portion of the total local expenditure to be incurred by the borrower.

## **ARTICLE 13**

### **Operating Principles**

Apart from the compensation or other form of assistance to a Member State as may be determined by the Council, or where it may be inappropriate to do so, the other operations of the Fund shall be conducted in accordance with the following principles:

- (a) the Fund shall be guided by sound banking principles in its operations and shall not make loans or undertake any responsibility for the discharge or re-financing, of earlier commitments by borrowers;
- (b) in selecting projects, the Fund shall always be guided by the need to pursue the objectives set forth in Article 2 of this Protocol;
- (c) subject to Article 2 of this Protocol, the Fund shall ensure that it shall so conduct its operations as not to impede the balanced economic development of all Member States;
- (d) the operations of the Fund shall provide principally for the financing directly of specific projects within the Member States but may include loans to or guarantees of loan made to the national development agencies of the Member States so long as such loans or guarantees are in respect of and used for specific projects which are agreed to by the Fund;
- (e) the Fund shall seek to maintain a reasonable diversification of its investment;
- (f) the Fund shall seek to resolve its funds by selling its investments in equity capital to other investors wherever it can appropriately do so on satisfactory terms;
- (g) the Fund shall not finance any undertaking in the territory of a Member State if that Member State objects to such financing;
- (h) before a loan is granted or guaranteed or an investment made, the applicant shall have submitted an adequate proposal to the Fund, and the Managing Director shall have presented to the Board of Directors a written report regarding the proposal together with his recommendations;
- (i) in considering an application for a loan or guarantee, the Fund shall pay due regard to the ability of the borrower to obtain finance or facilities elsewhere on terms and conditions that the Fund considers reasonable for the recipient, taking into account all pertinent factors;
- (j) in making or guaranteeing a loan, the Fund shall pay due regard to the prospects that the borrower and its guarantor, if any, will be able to meet their obligations under the loan contract;
- (k) in making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall be such as are, in the opinion of the Fund, appropriate for the loan concerned;
- (l) in guaranteeing a loan made by other investors, the fund shall charge a suitable fee or commission for its risk;
- (m) in the case of a direct loan made by the Fund, the borrower shall be permitted by the Fund to draw the loan funds only to meet payments in connection with the project as they fall due;
- (n) the Fund shall take all necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Fund are used only for the purposes for

which the loan was granted and with due attention to considerations of economy and efficiency;

- (o) the Fund shall ensure that every loan contract entered into by it shall enable the Fund to exercise all necessary powers of entry, inspection and supervision of operation in connection with the project and shall further enable the Fund to require the borrower to provide information and to allow inspection of its books and records during such time as any part of the loan remains outstanding.

## **ARTICLE 14**

### **Prohibition of Political Activities**

- 1 The Fund, its Managing Director and officers and staff shall not interfere in the political affairs of any Member States, nor shall they be influenced in their decisions by the political character of a Member State. Only economic considerations shall be relevant to their decisions and such considerations shall be weighed impartially to achieve and carry out the purposes and functions of the Fund.
- 2 The Fund shall not accept loans, Special Facilities or assistance that may in any way prejudice, limit, deflect or otherwise alter its purposes or functions.

## **ARTICLE 15**

### **Terms and Conditions for Direct Loans and Guarantees**

- 1 In the case of direct loans made or participated in or loans guaranteed by the Fund, the contract shall establish in conformity with the operating principles set out above and subject to the other provisions of this Protocol the terms and conditions for the loan or the guarantee concerned, including payment of principal, interest, commitment fee and other charges, maturities, dates of payment in respect of the loan, or the fees and other charges in respect of the guarantee respectively and foreclosure.
- 2 The contract shall provide that all payments to the Fund under the contract shall be made in the currency loaned, unless, in the case of a loan made or guaranteed as part of special operations, the regulations of the Fund provide otherwise.
- 3 Guarantees by the Fund shall also provide that the Fund may terminate its liability with respect to interest if, upon default by the borrower, or any other guarantor, the Fund offers to purchase, at par and interest accrued to a date designated in the offer, the loans or other obligations guaranteed.

- 4 Whenever it considers it appropriate, the Fund may require as a condition of granting or participating in a loan that the Member State in whose territory a project is to be carried out, or a public agency or institution of that Member State acceptable to the Fund, guarantees the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.
- 5 The loan or guarantee contract shall specifically state the currency in which all payments to the Fund thereunder shall be made.

## **ARTICLE 16**

### **Commission and Fees**

- 1 In addition to interest, the Fund shall charge a commission on direct loans made or participated in as part of its ordinary operations at a rate to be determined by the Board of Directors and computed on the amount outstanding on each loan or participation.
- 2 In guaranteeing a loan as part of its ordinary operations, the Fund shall charge a guarantee fee at a rate determined by the Board of Directors payable periodically on the amount of the loan outstanding.
3. Other charges, including commitment fee, of the Fund in its ordinary operations and any commission, fees or other charges in relation to its special operations shall be determined by the Board of Directors.

## **ARTICLE 17**

### **Special Reserve**

The amount of commissions and guarantee fees, and such amount of the interest as the Board of Directors may determine, received by the Fund under the provisions of Article 16 of this Protocol shall be set aside as a Special Reserve which shall be kept for meeting liabilities of the Fund in accordance with Article 18 of this Protocol and the administrative expenses of the Fund. This Special Reserve shall be held in such liquid form as the Board of Directors may decide.

## **ARTICLE 18**

### **Defaults on Loans and Methods of Meeting Liabilities of the Fund**

- 1 In cases of default on loans made, participated in or guaranteed by the Fund in its ordinary operations, the Fund shall take such action as it considers appropriate to conserve its investment including modification of the terms of the loan, other than any term as to the currency of repayment.

- 2 Payments in discharge of the Fund's liabilities on borrowing or guarantees chargeable to the ordinary capital resources shall be charged firstly against the Special Reserve and then, to the extent necessary and at the discretion of the Fund, against other reserves, surplus and capital available to the Fund.
- 3 Whenever necessary to meet contractual payments of interest, other charges or amortization on borrowings of the Fund in its ordinary operations, or to meet its liabilities with respect to similar payments in relation to loans guaranteed by it, chargeable to its ordinary Resources, the Fund may in accordance with Article 7 of this Protocol, propose an increment in the resources of the Fund.

## **ARTICLE 19**

### **Miscellaneous Powers**

In addition to the powers specified elsewhere in this Protocol, the Fund shall be empowered:

- (a) to borrow funds in the territories of the Member States, or elsewhere, and in this connection to furnish such collateral or other security therefore as the Fund shall determine,

Provided that:

- (i) before selling its obligations or otherwise borrowing in the territory of a country, the Fund shall obtain the approval of the Government of that country to the sale; and
  - (ii) before deciding to sell its obligations or otherwise borrowing in a particular country, the Fund shall consider the amount of previous borrowing, if any, in that country with a view to diversifying its borrowing to the maximum extent possible;
- (b) to buy and sell securities which the Fund has issued or guaranteed their sale;
  - (c) to guarantee securities in which it has invested in order to facilitate their sale;
  - (d) to invest funds not immediately needed in its operations in such financial assets as it may determine and to invest funds held for pensions or similar purposes in marketable securities;
  - (e) to provide technical advice and assistance which may serve its purposes and come within its functions and where appropriate, for example, in the case of special feasibility studies, the Fund shall charge for such services;
  - (f) to study and promote the development and investment opportunities within the Member States.



## **ARTICLE 20**

### **Power to make regulations**

The Board of Directors may make such regulations including financial regulations as it considers necessary or appropriate to further the purposes and functions of the Fund, provided that such regulations shall not be inconsistent with the provisions of this Protocol.

## **ARTICLE 21**

### **Notice to be placed on securities**

Every security issued or guaranteed by the Fund shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government, unless it is in fact the obligation of a particular Government, in which case it shall be so stated.

## **ARTICLE 22**

### **Determination of convertibility**

Whenever it shall become necessary under this Protocol to determine whether any currency is convertible, the Fund shall submit recommendations to the Council which shall hold consultation with the International Monetary Fund.

## **ARTICLE 23**

### **Use of currencies**

1. The Member States may not maintain or impose any restriction on the holding or use by the Fund or by any recipient from the Fund for payments in any country of the following:
  - (a) Currencies received by the Fund in payment of contributions to its capital;
  - (b) Currencies purchased with the currencies referred to in sub-paragraph (a) of this paragraph;
  - (c) Currencies obtained by the Fund by borrowing for inclusion in its ordinary capital resources; and
  - (d) Currencies received by the Fund in payment of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraph (a), (b) and (c) of this paragraph or in payment of fees in respect of guarantees made by the Fund.

2. The Member States may not maintain or impose any restriction on the holding or use by the Fund or by any recipient from the Fund, for payments in any country, or currency received by the Fund which does not come within the provisions of paragraph 1 of this Article unless such currency forms part of the Special Facilities of the Fund and its use is subject to special regulations.
3. The Member States may not maintain or impose any restriction on the holding or use by the Fund for making amortization payments or for repurchasing in whole or in part the Fund's own obligations, of currencies received by the Fund in repayment of direct loans made out of its ordinary capital resources.
4. Each Member State shall ensure, in respect of projects within its territories, that the currencies necessary to enable payments to be made to the Fund in accordance with the provisions of the contracts referred to in Article 15 of this Protocol shall be made available in exchange for currency of the Member State concerned.

## **ARTICLE 24**

### **Organisation of the Fund**

The Fund shall have a Board of Directors, a Managing Director and other officers and staff as the Board of Directors may consider necessary.

## **ARTICLE 25**

### **Board of Directors**

- 1 All the powers of the Fund shall, subject to the provisions of this Protocol be invested in the Board of Directors.
- 2 The Board of Directors shall consist of Ministers who are members of the Council appointed one each for that purpose by each Member State.
- 3 The Board of Directors shall elect in rotation according to an order to be determined by the Board of Directors, one of its members to be its Chairman who shall hold office for a term of one year.
- 4 When a Chairman ceases to be a member of the Board of Directors before the end of his term as Chairman the person appointed in his place shall become Chairman for the remainder of that term.
- 5 The appointment of a member of the Board of Directors may be revoked by the Member State which appointed him.
- 6 Each Member State shall appoint an alternate to its representative on the Board of Directors who shall be a person possessing high competence and wide experience in

economic, financial and banking affairs.

- 7 The Authority may give directions of a general nature to the Board of Directors regarding the discharge of functions prescribed under this Protocol.

## **ARTICLE 26**

### **Procedure of the Board of Directors**

- 1 The Board of Directors shall normally meet at the headquarters of the Fund but may meet at other places as the Board of Directors may decide. The Board of Directors shall meet at least every three months or more frequently if the business of the Fund so requires.
- 2 Meetings of the Board of Directors shall be convened by the Managing Director on the directions of the Chairman or at the request of two-thirds of the members of the Board of Directors.
- 3 Two-thirds of the members of the Board shall constitute a quorum for any meeting of the Board of Directors.
- 4 Subject to the provisions of this Protocol, the Board of Directors may determine its own procedure.

## **ARTICLE 27**

### **Voting**

- 1 Each Member State on the Board of Directors shall have one vote.
- 2 All matters before the Board of Directors shall be decided by a simple majority.

## **ARTICLE 28**

### **Managing Director of the Fund**

- 1 There shall be a Managing Director of the Fund who shall be appointed by the Council and who, while he remains Managing Director, may not hold office as a Director or an alternate to a Director but may attend and participate at meetings of the Board of Directors without the right to vote.
- 2 Subject to the provisions of paragraphs 9 and 10 of Article 8 of the Treaty, the Managing Director shall be responsible for the day to day administration of the Fund.
- 3 The Executive Secretary shall attend meetings of the Board of Directors without the

right to vote.

4. Subject to paragraph 5 of this Article, the Managing Director shall hold office for a term of four years and may be re-appointed for another term of four years only.
5. The Managing Director shall vacate his office if the Council after consultation with the Board of Directors so decides.
6. If the office of Managing Director becomes vacant for any reason, a successor shall be appointed by the Council for a new term of four years.
7. The Managing Director shall be the legal representative of the Fund.
8. The Managing Director shall be the Chief Executive of the Fund and shall conduct the current business of the Fund under the direction of the Board of Directors. He shall be responsible for the organisation, appointment and dismissal of the officers and staff in accordance with regulations made by the Board of Directors.
9. In appointing officers and staff the Managing Director shall, subject to the paramount importance of securing the highest standard of efficiency and technical competence, pay due regards to the recruitment of citizens of the Member States.
10. There shall be a Deputy Managing Director appointed and dismissed in the same manner as the Managing Director and he shall assist the Managing Director in the performance of his duties.

## **ARTICLE 29**

### **Loyalties of Managing Director and officers and staff**

The Managing Director and other officers and staff of the Fund, in the discharge of their duties owe their duty and loyalty to the Fund. Each Member State shall respect the international character of this duty and loyalty and shall refrain from all attempts to influence the Managing Director or any of the officers and staff in the discharge of their duties.

## **ARTICLE 30**

### **Headquarters of the Fund**

The headquarters of the Fund shall be determined by the Authority. The Fund may establish offices or agencies elsewhere.

## **ARTICLE 31**

### **Channel of Communications, depositories**

1. Each Member State shall designate an appropriate official, entity or person with whom

the Fund may communicate in connection with any matter arising under this Protocol.

- 2 Each Member State shall designate its Central Bank, or such other agency as may be agreed upon with the Fund, as a depository with which the Fund may keep its holdings of currency and other assets.

## **ARTICLE 32**

### **Working languages**

The working languages of the Fund shall be such African languages so designated by the Authority and English and French.

## **ARTICLE 33**

### **Accounts and Reports**

- 1 The Board of Directors shall ensure that proper accounts and proper records are kept in relation to the operations of the Fund and such accounts shall be audited in respect of each financial year by auditors of high repute appointed by the Council.
- 2 The Fund shall prepare and transmit to the Council and to the Member States through the Executive Secretary, and shall also publish, an annual report containing an audited statement of its accounts.
- 3 The Fund shall prepare and transmit to Member States quarterly a summary statement of its financial position and a profit and loss statement showing the results of its operations.
- 4 All financial statements of the Fund shall show ordinary operations and the operations of each Special Facility separately.
- 5 The Fund may also publish such other reports as it considers desirable in carrying out its purposes and functions and such reports shall be transmitted to the Member States.

## **ARTICLE 34**

### **Withdrawal**

A Member State may not withdraw from the Fund except by withdrawing from the Community.

## **ARTICLE 35**

### **Termination of Operations**

The Authority may on the recommendation of the Council upon the proposal of the Board of Directors decide to terminate any of the operations of the Fund other than those in respect of the provision of compensation and other assistance to the Member States as prescribed in subparagraph 2 of Article 10 of this Protocol, and the Fund shall after such termination, forthwith cease all activities in respect of any such operation except those incidental to the orderly realisation, conservation and presentation of its assets and the settlement of its obligations.

## **ARTICLE 36**

### **Liabilities of Members and Payment of Claims**

- 1 In the event of termination of the operations of the Fund, under the provisions of Article 35 of this Protocol, the liability of all Member States for their unpaid contributions to the capital of the Fund shall continue until all claims of creditors, including all contingent claims, shall have been discharged.
- 2 All creditors holding direct claims shall first be paid out of the assets of the Fund and then out of payments to the Fund of contributions not yet paid. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a pro rata distribution among holders of direct and contingent claims.

## **ARTICLE 37**

### **Status, Immunities and Privileges**

- 1 The Fund is an international financial institution.
- 2 To enable the Fund effectively to fulfill its purposes and carry out the functions with which it is entrusted, the status, immunities, exemptions and privileges set forth in Articles 38, 39, 40, 41, 42, 43 and 44 of this Protocol shall be accorded to the Fund in the territories of each of the Member States.

## **ARTICLE 38**

### **Legal Status**

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

- (a) to contract;
- (b) to acquire, hold or dispose of, immovable and movable property; and
- (c) to institute legal proceedings.

## **ARTICLE 39**

### **Judicial Proceedings**

- 1 No action shall be brought against the Fund by Member States or persons acting for or deriving claims from Member States. Member States shall have recourse to such special procedures for the settlement of controversies between the Fund and its Member States as may be prescribed in this Protocol, in the regulations of the Fund or in contracts entered into with the Fund.
- 2 Actions may be brought against the Fund in the territories of the Member States only in a court of competent jurisdiction in a Member State in which the Fund has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

## **ARTICLE 40**

### **Immunity of Assets**

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

## **ARTICLE 41**

### **Freedom of assets from restriction**

To the extent necessary to carry out the purposes and functions of the Fund and subject to the provisions of this Protocol, all property and other assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

## **ARTICLE 42**

### **Personal immunities and privileges**

The immunities and privileges will be those provided for under paragraph 4 of Article 60 of the Treaty.

## **ARTICLE 43**

### **Exemption from taxation**

- 1 The Fund shall benefit from customs privileges usually granted to international organisations.
- 2 The Fund shall be exempted from income tax and all other taxes.

## **ARTICLE 44**

### **Implementation**

Each Member State shall promptly take such action as is necessary to make effective within that Member State the privileges and immunities set forth in Articles 40, 41, 42, 43 and the other provisions of this Protocol and shall inform the Fund of the action which it has taken on the matter.

## **ARTICLE 45**

### **Waiver of Immunities**

- 1 The Fund at its discretion may waive any of the privileges, immunities and exemptions conferred under this Protocol in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interest of the Fund.
- 2 The Fund shall take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Protocol are not abused and for this purpose shall establish such regulations as it may consider necessary and expedient.

## **ARTICLE 46**

### **Interpretation and Application**

Any question of interpretation and application of the provisions of this Protocol arising between any Member State and the Fund or between two or more Member States which cannot be settled in accordance with the provisions of Article 48 of this Protocol shall be submitted to the Tribunal of the Community for decision.



## **ARTICLE 47**

### **Arbitration**

Any disputes that may arise between any Member State and the Fund or between two or more Member States regarding the interpretation of this Protocol shall be amicably settled by direct agreement. In the event of failure to settle such disputes, the matter may be referred to the Tribunal of the Community by a party to such disputes and the decision of the Tribunal shall be final.

## **ARTICLE 48**

### **Commencement of operations**

- 1 As soon as this Protocol has been ratified by the requisite number of Member States in accordance with the provisions of paragraph 1 of Article 49 of this Protocol the Directors shall be appointed in accordance with the provisions of Article 25 of this Protocol and the Managing Director of the Fund shall call the first meeting of the Board of Directors.
- 2 At its first meeting, the Board of Directors shall elect its first Chairman and determine the date on which the Fund shall commence its operations.
- 3 The Fund shall notify all Member States of the date of the commencement of its operations.

## **ARTICLE 49**

### **Deposit and Entry into Force**

- 1 This Protocol shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitively upon ratification by at least seven Member States in accordance with the constitutional procedure applicable for each signatory State.
- 2 The Protocol and all the instruments of ratification shall be deposited with the Depository Government of the Treaty which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposits of the instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and such Organisations as the Council shall determine.
- 3 This Protocol shall be annexed to and shall form an integral part of The Treaty.

**IN FAITH WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT IN WEST AFRICA,  
HAVE SIGNED THIS PROTOCOL**

**DONE AT LOME THIS 5<sup>TH</sup> DAY OF NOVEMBER, 1976 IN SINGLE ORIGINAL IN THE  
ENGLISH AND FRENCH LANGUAGES, BOTH BEING EQUALLY AUTHENTIC.**

**H.E. Lt Mathieu KEREKOU**  
*President of People's Republic of Benin*

**H.E. Mr. A. M. CAMARA**  
*Vice-President  
for and on behalf of the  
President of the Republic of Gambia*

**Hon. Dr. K. A. GARDINER**  
*Commissioner for Economic Planning  
For and on behalf of the Head of State and  
Chairman of the National Redemption Council of  
the Republic of Ghana*

**H.E. Moktar Ould DADDAH**  
*President of the Islamic Republic of Mauritania*

**H.E. Dr. Lansana B EAVOGUI**  
*Prime Minister  
For and on behalf of the Head of State and  
Commander-in-Chief of the People's Revolutionary  
Armed Forces, President of the Republic of Guinea*

**H.E. Lt-Col. Seyni KOUNTCHE**  
*Head of State and Chairman of the Supreme  
Military Council of the Republic of Niger*

**H.E. Lt General Olusegun OBASANJO**  
*Head of the Federal Military Government,  
Commander-in-Chief of the Armed Forces of the  
Federal Republic of Nigeria*

**H.E. Mr. Leopold Sedar SENGHOR**  
*President of the Republic of Senegal*

**H.E. Mr. Luiz CABRAL**  
*President of the Republic of Guinea-Bissau*

**H.E. Dr. Siaka STEVENS**  
*President of the Republic of Sierra-Leone*

**H.E. Mr. Felix HOUPHOUET-BOIGNY**  
*President of the Republic of Ivory-Coast*

**H.E. General Gnassingbe EYADEMA**  
*President of the Togo Republic*

**H.E. Dr. William R. TOLBERT, Jnr.**  
*President of the Republic of Liberia*

**Hon. Mr. FOUNEKE KEITA**  
*Minister of Finance and Trade  
for and on behalf of the Chairman of the Military  
Committee of National Liberation President of the  
Republic of Mali*

**H.E. General A. Sangoule LAMIZANA**  
*President of the Republic of Upper Volta*