

PROTOCOL A/P2/12/01 RELATING TO THE ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT (EBID)

(A HOLDING COMPANY)

THE HIGH CONTRACTING PARTIES

Recalling Protocol A/P1/12/01 dated December 2001 amending Articles 1, 3, 6 and 21 of the Revised Treaty of the Economic Community of West African States (ECOWAS); and

Recalling further the new Article 21 paragraph 2 of the said Revised Treaty which requires that the status, objectives and functions of the holding company are defined in the Protocol annexed to the said Revised Treaty;

AGREE AS FOLLOWS:

ARTICLE 1 DEFINITIONS

In this Protocol:

"Authority" shall mean the Authority of Heads of State and Government of the Community

established by Article 7 of the Revised Treaty;

"Authorized Share Capital" shall mean the equity of ECOWAS BANK for Investment and Development;

"Bank" shall mean the ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT (hereinafter referred to as EBID, the Holding Company);

"Board of Governors" shall mean the Board of Governors of the Bank;

"Board of Directors" shall mean the Board of Directors of the Bank;

"Chairman" shall mean the Chairman of the Board of Directors of the Bank;

"Community" shall mean the Economic Community of West African States referred to under Article 2 of the revised Treaty;

"Executive Secretary" shall mean the Executive Secretary appointed in accordance with the provisions of Article 18 of the revised Treaty;

"Member" or **"Members"** shall mean "Regional and Non-Regional Member" or "Regional and Non-Regional Members";

"Non-Regional Member" or **"Non-Regional Members"** shall mean State or States or legal entities not members of the Community which subscribe to shares of the capital Stock of the ECOWAS BANK for INVESTMENT and DEVELOPMENT (EBID).

"President" shall mean the President of the BANK;

"Regional Member" or **"Regional Members"** shall mean a Member State or Member States of the Community;

"SDR" shall mean Special Drawing Right as defined by the International Monetary Fund;

"Treaty" shall mean the revised Treaty of the Economic Community of West African States. **ARTICLE 2**

PURPOSE OF THE EBID

The objects of the EBID shall be:

1. 1 to contribute to the realization of Community objectives by supporting regional integration infrastructure projects or any other development projects in the public and private sectors;
2. 2 to further support the development of the Community through the financing of Special Programmes or projects through its subsidiaries -the ECOWAS Regional Investment Bank (hereinafter referred to as ERIB) and the ECOWAS Regional Development Fund (hereinafter referred to as ERDF).

ARTICLE 3 CAPITAL

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1. (a) The initial authorised capital of the EBID shall be **603,000,000 Units of Account**. It shall be divided into 603,000 shares of a par value of 1,000 Units of Account per share;
2. (b) The value of the Unit of Account shall be 1SDR as defined by the International Monetary Fund.
2. 2 The initial authorised capital shall be divided into paid-up shares and callable shares. The equivalent of **211,050,000 Units of Account** shall be paid up, and the equivalent of **391,950,000 Units of Account** shall be callable for the purpose defined in Article 5 of this Protocol.
3. 3 Subject to the provisions of paragraph 4 of this Article, the authorised capital may be increased as and when the Board of Governors deems it advisable. Unless that capital is increased solely to provide for the initial subscription of a Member, the decision of the Board shall be adopted by a two-thirds majority of the total number of Governors representing not less than three-quarters of the total voting power of the Members.

4. 4 The initial authorised capital and any increases thereof shall be allocated for subscription to Regional and Non-Regional Members in such proportions that the respective groups shall have available for subscription that number of shares which

if fully subscribed, would result in Regional Members holding two-thirds of the total voting power and Non-Regional Members one-third of the total voting power.

ARTICLE 4 SUBSCRIPTION OF SHARES

1. Each Member shall subscribe initial shares of the EBID. The initial subscription of each Member shall consist of 35% paid-up and 65% of callable shares. The initial number of shares to be subscribed by a Regional Member which accepts and ratifies the EBID Protocol shall be that set forth in an Annex to this Protocol, which shall form an integral part thereof. The initial number of shares to be subscribed by Non-Regional Members shall be determined by the Board of Governors.
2. In the event of an increase in capital, each Member shall be entitled, subject to the conditions laid down by the Board of Governors, to subscribe to a fraction of the increase corresponding to the ratio which existed between the shares subscribed to by that Member and the capital of the EBID before the increase. No Member, however, shall be obliged to subscribe to any part of the increase in capital.
3. A Member may request the EBID to increase its subscription on such terms and conditions as the Board of Governors may determine.
4. Shares initially subscribed to by States which ratify and adopt the EBID Protocol shall be issued at par. Other shares shall be issued at par unless the Board of Governors, by a two-thirds majority of the Members, decides in special circumstances to issue them on other terms.
5. Shares shall not be pledged nor encumbered in any manner. They shall be transferable only in accordance with the Share Transfer Rules contained in **ANNEX 'A'** of this Protocol.
6. The subscribed capital of the EBID shall be paid in specified convertible currency, as defined by the International Monetary Fund.
7. The exchange value of the currencies of Regional Members for the purposes of paragraph 6 of this Article shall be the official rate declared to the International Monetary Fund on the date of payment. Where the currency of a Regional Member is floating, the day's average of the selling and buying rates of the Central Bank of the Regional Member shall be used.
8. In accordance with the terms laid down in this Protocol, each share shall confer rights in respect of ownership of the assets of the EBID, the sharing of net profit and where appropriate, the proceeds of liquidation pro rata to their proportion in the total capital of the EBID.

ARTICLE 5

SUBSCRIPTION OF SHARES BY REGIONAL MEMBERS

1. 1 The number of shares to be subscribed by Regional Members under Article 3 paragraph 1 (a) of this Protocol shall be determined on the basis of a co-efficient which takes into account the contribution of each Member State to the share capital of the ECOWAS Fund for Cooperation, Compensation and Development.
2. 2 The contribution of each Member State shall mean the amount allocated in the Called-up Capital of ECOWAS Fund.

ARTICLE 6

PAYMENT OF CALLED-UP CAPITAL

1. 1 Members shall pay up their called-up capital in accordance with the provisions annexed to this Protocol.
2. 2 The EBID shall determine the mode of payment of called-up capital to any account it shall indicate. Payment shall be made to the Central Bank of the Regional Member or any financial institution where the Holding Company shall open account.

ARTICLE 7

RESOURCES OF THE EBID

The resources of the EBID shall include:

1. a) The capital of the EBID subscribed pursuant to the provisions of Article 4 of this Protocol;
2. b) revenue from participation in the capital enterprises either wholly or partly owned by the EBID;
3. c) resources from bilateral and multilateral sources as well as other foreign sources;
4. d) borrowing by the EBID;
5. e) revenue derived from placement of funds, assets and other treasury operations;
6. f) revenue derived from provision of financial and investment advisory and other services;
7. g) revenue derived from provision of brokerage services; and
8. h) revenue derived from the rental of the Headquarters building;
9. i) resources from the proceeds of the Community Levy;
10. j) and any other resources.

ARTICLE 8

USE OF RESOURCES

1. 1 The resources of the EBID shall be used exclusively to implement the purpose of the EBID as set forth in Article 2 of the Protocol.
2. 2 Any disposable resources for which the EBID has no immediate use in carrying out its operations may be invested on the money and financial markets. In managing these investments, the EBID shall not engage in any currency arbitrage not directly required to carry out its operations, fulfil commitments entered into or safeguard the value of its assets.

ARTICLE 9 OPERATIONS

1. To achieve its corporate objectives as defined in Article 2 of this Protocol, the EBID shall undertake the following operations:
 1. acquire majority shareholdings in the equity of the ERIB and the ERDF;
 2. establish any subsidiaries that it may deem necessary;
 3. provide technical assistance and other services to its subsidiaries;
 4. mobilise internal and external resources;
 5. guarantee certain commitments or operations of its subsidiaries;
 6. place its cash resources in profitable financial products;
 7. provide financial and investment advisory services;
 8. provide brokerage services;
 9. receive and manage any special fund, including that of the Community, that may be entrusted to it;
 10. manage and maintain its office building located in Lome, Republic of Togo.
2. Furthermore, the EBID may undertake any other transaction secondary to its corporate objectives while being conducive to the realisation of that purpose.

ARTICLE 10 ORGANISATION OF THE EBID

The EBID shall have a Board of Governors, a Board of Directors, a President and other officers and staff as the Board of Governors may consider necessary.

ARTICLE 11 COMPOSITION OF BOARD OF GOVERNORS

1. 1 Each member shall be represented on the Board of Governors and shall appoint one governor and one alternative governor. The office of Governor representative of a Regional Member shall be held by the Minister in charge of ECOWAS Affairs or any other Minister from a Member State.
2. 2 The alternate governor shall be either a Minister or any other person designated by the Member.
3. 3 Each governor and alternate shall serve for four (4) years.
4. 4 At its Annual Meeting, the Board shall nominate one of its Members as Chairman who shall hold office until the election of the Chairman at the next Annual Meeting of the Board.

5. 5 Governors and alternates shall serve as such without remuneration from the EBID. However, EBID may pay them sitting allowances to defray the expenses incurred in attending meetings.
6. 6 The Executive Secretary or his representative shall attend meetings of the Board of Governors but shall have no voting rights.

ARTICLE 12 POWERS OF THE BOARD OF GOVERNORS

1. 1 The Board of Governors shall be the highest policy-making body.
 2. 2 The Board of Governors shall serve as a link between the EBID and the other Community Institutions and have all supervisory powers over the management, operation and administration of the EBID.
 3. 3 The Board of Governors shall delegate to the Board of Directors the powers conferred on it except the power to:
 1. a) increase or decrease the authorised capital of the EBID and make capital calls;
 2. b) authorise the signing of co-operation agreements with other organisations and institutions;
 3. c) determine, on the recommendation of the Board of Directors, the remuneration and conditions of service of the President of the EBID;
 4. d) determine the remuneration of Directors and their alternates;
 5. e) appoint the external auditors to certify the Financial Statements of the EBID and to appoint such other experts as may be necessary to examine and report on the general management of the EBID;
 6. f) approve the annual report of the EBID;
 7. g) approve, after reviewing the report of the external auditors, the Financial Statements of the EBID;
 8. h) propose to the Authority any amendment to the Protocol;
 9. i) determine the amounts of the reserves and the appropriation and distribution of the net profit of the EBID.
4. On the recommendation of the Board of Directors, the Board of Governors shall where it considers it necessary establish such subsidiary bodies and adopt such rules and regulations as may be necessary or appropriate to conduct the business of the EBID.

ARTICLE 13

PROCEDURE FOR THE BOARD OF GOVERNORS' MEETINGS

1. 1 The Board of Governors shall meet in an Ordinary Annual Session and, when circumstances so require, in an Extraordinary Session.
2. 2 The Ordinary Sessions shall be convened by the Chairman of the Board of Governors.

3. 3 The Extraordinary Sessions shall be convened by the Chairman of the Board of Governors or at the request of the Board of Directors. In this latter case, the convening of the session shall take place at the request of at least three (03) Members of EBID or of Members having one third of the total voting power of the Members. All meetings of the Board of Governors shall be held in the territory of Regional Members.
4. 4 The Board of Governors shall establish a procedure whereby the Board of Directors may, when it deems such an action advisable, obtain the vote of the Governors on a specific question without calling a meeting of the Board of Governors.
5. 5 A quorum for any meeting of the Board of Governors shall be a majority of the total number of Governors or their alternates, representing not less than two-thirds of total voting power of the Members. Such quorum shall include a majority of Governors or their alternates of Regional Members and at least two Governors or their alternates of Non-Regional Members.

If the Board of Governors is unable to achieve the sub-quorum requirement requesting the presence of Non-Regional Governors or their alternates within two days of the date set for the meeting, the meeting shall be postponed for a period of not more than fourteen (14) days in the first instance. Where the meeting is

reconvened and the sub-quorum mentioned above cannot be achieved within two days of the date set for the meeting, the deliberations of the Board of Governors shall be valid.

ARTICLE 14

VOTING AT MEETINGS OF BOARD OF GOVERNORS

1. The voting power of Regional Members shall be two-thirds of the total voting power of all the Members of the Board of Governors. The number of votes to which each Regional Member shall be entitled, shall be equivalent to the ratio of shares allocated to it and paid up. The voting power of Non-Regional Members shall be one-third of the total voting power of all Members of the Board of Governors and shall be divided among such Members in accordance with the value of their respective subscribed and paid-up shares. However, in the event of any increase in the authorised capital, the Board of Governors may determine that the capital authorised by such increase shall not have voting rights and that such increase in capital shall not be subject to any rights of pre-emption.
2. During voting at meetings of Board of Governors, each Governor shall be entitled to cast the votes of the Member he represents. No alternate may vote except in the absence of the substantive Governor. Exceptt as otherwise expressly provided in this Protocol, all matters before the Board of Governors shall be decided by a simple majority of the voting power represented at the meeting.

ARTICLE 15

COMPOSITION OF THE BOARD OF DIRECTORS

1. The Board of Directors shall be composed of eight (8) elected members who shall neither be Governors nor their alternates in addition to the President of the Bank who shall be Chairman of the Board. Five of the elected members shall be elected by Governors of the Regional members and three (3) of the elected members shall be elected by Governors of the Non-Regional Members.

Membership of the Board of Directors shall be related to weighted shares of each Member or Group of Members in conformity with the procedures to be spelt out by the Board of Directors, the Board of Governors shall take into account their expertise in economic and financial matters. The Board of Governors may decide to modify the number of elected members of the Board of Directors only by a three-quarters majority of the total number of votes. However, where the decisions concerns the modification of the number of elected Directors or their mode of election by the regionals, the said majority shall, in addition, include two thirds majority of Governors of the regionals. Where the said decision concerns the modification of the number of elected Directors or their mode of election by the Non-Regional, the above-mentioned majority shall include two-thirds majority of the Governors of the Non-Regionals.

2. Each Member or group of Members shall appoint for each elected Director an alternate who shall act for him when he is not present. The Alternate in a Group shall not be of the same nationality as the elected Director.
3. The Directors other than the President shall be elected for a tenure of four (4) years, renewable only once. However, at the end of the second financial year half of the members of the Board of Directors shall be replaced in alphabetical order of elected members, then every two years, in the order of expiry of their respective tenures. Elected Directors shall carry out their duties until their successors are appointed. In the event of vacancy of the post of an elected Director at least one hundred and eighty (180) days before the expiry of his tenure, the Board of Governors shall at its subsequent session appoint a successor for the rest of tenure in conformity with the procedure it shall institute for the purpose.
4. The President and the other members of the Board of Directors shall be persons of good moral standing, mentally and physically fit and must not have been declared bankrupt or have had a prior conviction for a criminal offence.

ARTICLE 16 POWERS OF THE BOARD OF DIRECTORS

Without prejudice to the powers of the Board of Governors as provided in Article 12 of this Protocol, the Board of Directors Shall be responsible for the conduct of the general operations of the EBID. For this purpose, they shall, in addition to the powers provided for it expressly in this Protocol, exercise all the powers delegated to it by the Board of Governors, and in particular:

1. a) prepare the work of the Board of Governors;
2. b) draw up proposals for submission to the Board of Governors;
3. c) in conformity with the general directives of the Board of Governors, take decisions concerning investments, equity participation capital and borrowing of funds by the EBID;

4. d) ensure that the EBID is managed in accordance with the provisions of this Protocol and with the general directives laid down by the Board of Governors;
5. e) submit the accounts for the last financial year ended and annual report on the activities of the EBID for approval to the Board of Governors at each Annual Meeting;
6. f) approve the Rules of Procedure of the EBID;
7. g) ensure implementation of its decisions and compliance with the rules of Procedure;
8. h) propose the amounts of the reserves and the appropriation and distribution of the net profit of the EBID;

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decide any increase in the shareholding of EBID in the authorised capital of ERIB, ERDF and any other equity participation;

determine the general structure of the services of the EBID and adopt its Staff Rules and Regulations; and

propose to the Board of Governors the candidates for the position of President of EBID.

ARTICLE 17

PROCEDURE FOR THE BOARD OF DIRECTORS' MEETINGS

1. 1 The Board of Directors shall meet in Ordinary Session once in a quarter and in Extraordinary Session as often as required by the interests of EBID. Its meetings shall be held at the seat of the EBID or in any of the Member States of the Community.
2. 2 Meetings of the Board of Directors shall be convened by its Chairman.
3. 3 A quorum for any meeting of Board of Directors shall be a simple majority of the total number of Directors. Such quorum shall include at least one Director of Non Regional Members. If the Board of Directors is unable to achieve the sub-quorum requirement requesting the presence of at least one director of the Non-Regional Members or his alternate within two days of the date set for the meeting, the meeting shall be postponed for a period not more than fourteen (14) days in the first instance.

Where the meeting is reconvened and the sub-quorum mentioned above cannot be achieved within two days of the date set for the meeting, the deliberations of the Board of Directors shall be valid.

4. 4 Meetings shall be convened and agendas drawn up in accordance with the Rule of Procedure.

ARTICLE 18
DELIBERATIONS OF THE BOARD OF DIRECTORS

1. Decisions of the Board shall be taken by consensus or failure to reach consensus by voting on absolute majority of members present or represented.
2. In the event of voting, each Director shall have one vote. However, in the event of equal tie, the Chairman shall have a casting vote.
3. An alternate Director may attend Board meetings, but shall be allowed to vote only when he acts for the substantive Director.

ARTICLE 19

APPROPRIATION AND DISTRIBUTION OF NET INCOME BY THE BOARD OF DIRECTORS

1. The Board of Directors shall determine annually what part of the net income of the EBID shall be appropriated to reserve or other purposes including dividends. However, prior to any appropriation, there shall be deducted each year from the net revenue of the EBID an amount at least equal to 10% of such revenue and which shall be appropriated towards building up a reserve. Such deduction shall cease to be made once the reserve amounts to 25% of subscribed capital and shall be reapplied as soon as the latter condition is no longer fulfilled.
2. The distribution of dividends referred to above shall be made in proportion to the number of shares held by each shareholder.

ARTICLE 20 APPOINTMENT OF THE PRESIDENT

1. The Board of Governors on the proposal of the Board of Directors shall appoint the President of the EBID by consensus or by a simple majority of the voting power of the members, including a simple majority of the total voting power of Regional Members.

However, with regard to the Commencement of the operations of the EBID, the first President shall be appointed by the Council of Ministers of ECOWAS.

2. The President shall be a person of the highest competence pertaining to economics, financial and banking activities, and shall be a national of a Regional Member. While he remains Presidents of the EBID he shall not hold office as a Governor, or an elected Director or an alternate for either.
3. The term of office of the President shall be five (5) years renewable only once.
4. The Board of Governors on the proposal of the Board of Directors may remove the President from office by a resolution adopted by a majority of the voting power of the members, including a two-thirds majority of the voting power of Regional Members.

ARTICLE 21

THE OFFICE OF THE PRESIDENT

1 The President of the EBID shall be the chief executive of the Bank. He shall conduct the day to day management of the Bank under the direction of the Board of Directors. He shall be responsible for the management of the staff of the EBID whom he shall appoint and may dismiss in accordance with the rules and regulations

adopted by the Board of Directors. He shall lay down the employment conditions in accordance with the rules of sound management and the financial policy of the institution.

2. 2 In appointing the staff, the President shall make it his paramount consideration to secure the highest standards of professional competence and integrity and recruit them on as wide a geographical basis as possible, paying full regard to the West African regional character of the EBID.
3. 3 The President of the EBID shall attend the meeting of the Board of Governors but shall have a voting right.
4. 4 The President shall be the legal representative of the EBID. The Rules and Regulations of EBID shall determine who acts in lieu and place of the President in the event of his absence and under what conditions.
5. 5 The President of EBID shall ensure that the activities of its subsidiaries conform to prescribed regulations, guidelines and directives. He shall present an Annual Report of the activities of the Holding and the subsidiaries to the Board of Governors.

ARTICLE 22

LOYALTIES OF PRESIDENT AND STAFF

The President and other staff of the EBID, in the discharge of their functions owe their loyalty to the EBID and the Community. Each Member shall respect the international character of this duty and loyalty and shall refrain from all attempts at influencing the President or any of the staff of the Bank in the discharge of their duties.

ARTICLE 23 HEADQUARTERS FOT HE EBID

The headquarters of the EBID shall be in Lome in the Togolese Republic. The EBID may establish offices or agencies elsewhere by a decision of the Board of Directors.

ARTICLE 24

CHANNEL OF COMMUNICATIONS, DEPOSITORY INSTITUTIONS

1. Each member shall designate an appropriate official, entity or person with whom the EBID may communicate in connection with matters arising under this Protocol.

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

ARTICLE 25 WORKING LANGUAGES

The working languages of the EBID shall be English, French and Portuguese.

ARTICLE 26 ACCOUNTS AND REPORTS

1. The Board of Governors shall ensure that proper accounts and records are kept in relation to the operation of the EBID and that such accounts shall be audited in respect of each financial year by external auditors of high repute appointed by the Board of Governors under Article 12(3)(e) of this Protocol.
2. The EBID shall prepare and transmit to the Members, and shall also publish an annual report containing an audited statement of its accounts.
3. The EBID shall prepare and transmit to Directors quarterly a summary of its financial position and a profit and loss statement showing the result of its operations.
4. The EBID may also publish any other reports concerning the implementation of assignments and such reports shall be transmitted to the Members.

ARTICLE 27 WITHDRAWAL

1. A Regional Member may not withdraw from the EBID except by withdrawing from the Community.
2. A Non-Regional Member may withdraw from the EBID at any time by giving notice in writing to the EBID at its headquarters.
3. Withdrawal by a Member shall become effective on the date specified in its notice but in no event less than six months after the date that notice shall have been received by the EBID.
4. The withdrawal of a Member shall not absolve it from its obligations to the Bank.

1. DISSOLUTION

ARTICLE 28 DISSOLUTION – LIQUIDATION

1. a) The EBID shall cease to exist:
 - - upon accomplishment or the extinction of the objective for which it has been set up;
 - - following the annulment of the Protocol and the Decision of the Authority A/DEC.4/12/99 relating to the Transformation of the ECOWAS Fund into a Regional Holding Company on the Recommendation of the Board of Governors;
 - - following its early dissolution pronounced by a Court of competent jurisdiction, at the request of a shareholder for valid reasons;

- - following a judgment ordering the sale of its assets.
- 2. b) The EBID shall not be dissolved in the event of simple bankruptcy or compulsory liquidation of a shareholder, regardless of the volume of the latter's share.

2. LIQUIDATION

1. a) The EBID shall retain its legal personality during its liquidation and for the purposes of same;
2. b) Liquidation shall be carried out in accordance with the legal provisions in force either by one or more liquidators chosen among the shareholders or not, by the Board of Governors, it being understood that in the event of disagreement, the liquidators shall be appointed by a Court of competent jurisdiction at the request of any interested party;
3. c) The decision to wind up the EBID and the decision appointing the liquidator(s) shall be published according to the procedure prescribed by the text in force;
4. d) The losses or profits on liquidation of the EBID shall be distributed in accordance with the provisions of Article 19(2) of this Protocol.

ARTICLE 29

LIABILITIES OF MEMBERS AND PAYMENT OF CLAIMS

1. In the event of termination of the operations of the EBID under the provisions of Article 28 of this Protocol, the liability of all Members for their unpaid subscriptions to the capital of the EBID 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 EBID and then out of payments to the EBID of shares not yet paid. Before making any payments to creditors holding direct claims, the Board of Governors shall make such arrangements as are necessary, in its judgement, to ensure a pro rata distribution among holders of direct and contingent claims.

ARTICLE 30

STATUS, IMMUNITIES AND PRIVILEGES

1. The EBID shall be an international financial institution.
2. To enable the EBID fulfill effectively its purposes and carry out the functions with which it is entrusted, the status, immunities, exemptions and privileges set forth in Article 31 to 37 of this Protocol shall be accorded to the EBID in the territories of each of the Members.

ARTICLE 31 LEGAL STATUS

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

1. a) contract;

2. b) acquire, hold or dispose of immovable and moveable property; and
3. c) to institute legal proceedings.

ARTICLE 32

JUDICIAL PROCEEDINGS

1. The EBID shall enjoy immunity from any form of prosecution except in matters mentioned in paragraph 2 below and matters relating to the exercise of its duties in the area of borrowing, where legal action may be taken against it only in a court of competent jurisdiction in the territory of the member State in which it has its headquarters or in the territory of a member or non-member State in which it has appointed an agent empowered to receive summons or notices or in which it has issued securities or guaranteed same. However, members or persons representing

them who have in their possession evidence of debt of the members can not take any legal action against the EBID.

2. Disputes between the EBID and its staff shall be settled in conformity with the provisions of the Staff Regulations and Staff rules.
3. The property and assets of the EBID, irrespective of where they are located and irrespective of their custodians, shall be exempt from any form of distraint, lien or sale except with the prior notification of a court decision which is not subject to appeal.

ARTICLE 33

INVIOABILITY OF ARCHIVES

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

ARTICLE 34

FREEDOM OF ASSETS FROM RESTRICTION

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

ARTICLE 35

STAFF IMMUNITIES AND PRIVILEGES

The privileges and immunities recognised and granted by the Members to the officials of the EBID and its subsidiaries shall be those provided under the Revised Treaty, the

General Convention on Privileges and Immunities of the Community and under the respective Headquarters Agreements.

ARTICLE 36

TAX AND CUSTOMS EXEMPTION

1. The EBID and its subsidiaries shall benefit from customs privileges usually granted to Diplomatic Missions and International organisations.
2. The EBID and its subsidiaries shall be exempted from income tax and all other taxes.

ARTICLE 37 IMPLEMENTATION

Each Member shall promptly take such action as is necessary to make effective within its territory the privileges and immunities set forth in Articles 33 to 36 and the other provisions of this Protocol and shall inform the EBID of the action which it has taken on the matter.

ARTICLE 38 WAIVER OF IMMUNITIES

The EBID 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 EBID.

ARTICLE 39 INTERPRETATION

Any question of interpretation and application of the provisions of this Protocol arising between any Member and the EBID or between two or more Members of the EBID which cannot be settled in accordance with the provisions of Article 40 of this Protocol shall be submitted to the Tribunal of the Community for decision.

ARTICLE 40 SETTLEMENT OF DISPUTES

1. Any dispute between the EBID and any of its Members or former Members shall be settled amicably through direct agreement between the parties;
2. Failing this, the dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the EBID, another by the Member concerned and the third arbitrator, (hereinafter called the Umpire) shall be appointed by two arbitrators. In the event that the two arbitrators disagree, the Umpire shall be appointed by such other authority as may have been prescribed by regulations adopted by the Board of Governors; The Umpire shall have full power to settle all questions concerning the dispute in any case where the parties are in disagreement with respect thereto. The decision of the arbitration tribunal shall be final.

3. Arbitration proceedings shall be conducted in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Rules and Procedures of Arbitration;
 4. The place of arbitrations shall be Lome, Togo, where the EBID is headquartered;
5. The arbitration proceedings shall be conducted in any of the official languages of the Community which are English, French and Portuguese.

ARTICLE 41

COMMENCEMENT OF OPERATIONS

1. As soon as this Protocol has been ratified by the requisite number of Regional Members in accordance with the provision of Article 42 paragraph 1 of this Protocol, the Board of Governors shall be constituted in accordance with the provisions of Article 11 Paragraph 1 of this Protocol and the FIRST President of the EBID appointed by the Council of Ministers under Article 20 paragraph 1 of this Protocol shall call the first meeting of the Board of Governors.
2. At its first meeting, the Board of Governors:
 - Shall elect its first Chairman and
 - Shall elect eight (8) Directors of the EBID in accordance with Article 15 paragraph 1 of this Protocol.

ARTICLE 42

DEPOSIT AND ENTRY INTO FORCE

1. This Protocol shall enter into force upon ratification by at least nine (9) Regional Members in accordance with the constitutional procedures of each signatory Regional Member.
2. This Protocol and all the relevant instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies of this Protocol to all Members and notify them of the dates of deposits of the instruments of ratification and shall register this Protocol with the Organisation of African Unity (OAU), the United Nations Organisation (UN) and such other organisations as the Board of Governors shall determine.

IN WITNESS WHEREOF WE THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS PROTOCOL.

DONE AT DAKAR THIS OF DECEMBER 2001

IN SINGLE ORIGINAL IN THE ENGLISH AND FRENCH LANGUAGES, THE TWO TEXTS BEING EQUALLY AUTHENTIC.

signed

H.E. Mathieu KEREKOU

President of the Republic of BENIN

signed

H.E. Jose Maria Pereira NEVES

Prime Minister and Head of Government of the Republic of CAPE VERDE

signed

H.E. Yahya A.J.J. JAMMEH

President of the Republic of The GAMBIA

signed

H.E. Lamine SIDIME

Prime Minister of the Republic of GUINEA

signed

H.E. Monie R. CAPTAN

*Minister of Foreign Affairs
For and on behalf of the President of the*

Republic of LIBERIA

signed

H.E. MINDAOUDOU Aichatou (Mrs)

*Minister of Foreign Affairs
For and on behalf of the President of the Republic of NIGER*

signed

H.E. Abdoulaye WADE

President of the Republic of SENEGAL

signed

H. E. Gnassingbe EYADEMA

President of the Togolese Republic

signed

H.E. Blaise COMPAORE

*President of FASO
Chairman of the Council of Ministers*

signed

H.E. Abou Drahamane SANGARE

*Minister of State
Minister of Foreign Affairs
For and on behalf of the President of the Republic of COTE D'IVOIRE*

signed

H.E. John Agyekum KUFUOR

President of the Republic of GHANA

signed

H.E. Koumba Yala Kobde NHANGA

President of the Republic of GUINEA-BISSAU

signed

H.E. Alpha Oumar KONARE

President of the Republic of MALI

signed

H.E. Olusegun OBASANJO

*President, Commander-in-Chief
of the Armed Forces of the Federal Republic of Nigeria*

signed

H.E. Alhaji Dr. Ahmad Tejan KABBAH

President of the Republic of SIERRA LEONE

SHARE TRANSFER RULES

ANNEX 'A'

1. SUBSCRIBED SHARES

1. 1.1 There shall be no transfer of subscribed and paid up shares between Regional Members.
2. 1.2 Subscribed and unpaid shares may be transferred between Regional Members, subject to approval by the Board of Governors.
3. 1.3 There shall be no transfer of subscribed and paid up shares between Non-Regional Members.
4. 1.4 Non-Regional Members shall not purchase subscribed and paid-up share from Regional Members.
5. 1.5 There shall be no transfer of subscribed and unpaid shares between Regional Members and Non-Regional Members.
6. 1.6 Regional Members may purchase subscribed and paid up shares from Non-Regional Members, subject to the approval of the Board of Governors.

2. UNSUBSCRIBED SHARES

1. 2.1 Any allocation of shares made pursuant to any Resolution in accordance with the EBID Protocol and which by a date specified in the Resolution shall not have been accepted by the Member receiving the allocation shall be deemed, as from the day next after the date stated therein, to have been renounced by the Member to which the allocation was made.
2. 2.2 The shares the subject matter of an allocation deemed renounced in the manner stated in paragraph 2.1 herein shall become available for subscription.

3. RENUNCIATION OF SUBSCRIPTION: TREASURY SHARES

3.1 Any Member who, having accepted an allocation of shares and subscribed for them, and which, ninety (90) days after the due date of the payment of an instalment payable pursuant to such subscription, shall not have notified EBID of the issue of its definitive order of payment shall be deemed, as from the day next after the expiration of the period stated herein, and subject to the conditions stated in paragraph 3.5 herein, to have reduced its original subscription by the number of shares to which the unpaid instalment corresponds.

2. 3.2 The shares released as the result of such reduction of subscription shall be deemed to have become Treasury Shares and shall be treated by EBID in the manner provided in paragraphs 3.3 to 3.7 of this Article.
3. 3.3 Treasury Shares created in the manner provided by paragraph 3.1 herein shall be deemed to have been transferred to EBID, by virtue of the EBID Protocol; and, for the purpose of effecting such transfer, the fact of non-payment on the day next after the period specified in paragraph 3.1 herein shall be sufficient. Such shares shall be known as Treasury Shares.
4. 3.4 Upon materialisation of the conditions of a transfer as specified in paragraph 3.1 herein, EBID shall issue two new share certificates: the first whereof, stating the new number of shares held by the affected Member subsequent to the reduction shall be transmitted to the said Member; and the second, stating the number of shares transferred to EBID.

5. 3.5 Treasury Shares shall be created and transferred to EBID only if at the time of their creation, there is no Member having previously made an offer to subscribe for additional shares which offer, at the time of reduction of subscription, is still outstanding and unsatisfied.
6. 3.6 No voting or other right attached by the EBID Protocol to the holding of shares in EBID shall be held or exercisable by the President on account of Treasury Shares held by EBID.
7. 3.7 Every Treasury Share shall be held by EBID for a maximum initial period of two years, unless prior to the expiration of such period it shall have been transferred to a Member. At the end of each two-year period, the Board of Directors shall advise the Board of Governors the state of the share deals account, in particular with a view to determining the advisability (or otherwise) of the cancellation of unsubscribed shares held thereon.

4 RE-ALLOCATION OF UNSUBSCRIBED SHARES AND TREASURY SHARES

1. 4.1 Provided that there is a demand to subscribe therefore the Board of Governors shall at the expiration of the first quarter of every financial year of the EBID, make an allocation of all unsubscribed and Treasury Shares.
2. 4.2 No unsubscribed shares shall be allocated unless all Treasury Shares have been allocated; and no proposal shall be made to increase the capital of EBID to provide for the admission of a new Member, Regional or Non-Regional, unless all unsubscribed and Treasury Shares capable of being subscribed for by such new Member have been allocated to the new Member; and in the event of there being any shortfall after such an allocation the proposal to increase the capital of EBID shall be limited to the amount required to make up for such shortfall and the

corresponding amount of stock required to maintain the ratio of Regional and Non-Regional stock prescribed by the EBID Protocol.

4.3 In the allocation of new shares, the Board of Governors shall observe the following rules and order of priority:.

4.4

i) ii)

iii)

iv) v)

new Members;

in ascending order of magnitude of shareholdings, Regional Members of EBID whose shares in EBID do not, on the date of allocation, exceed 5% of the total of shares held by the Regional Members; and provided that no single allocation shall result in a

Regional Member receiving an allocation acquiring shares in excess of a limitation to be determined by the Board of Governors from time to time;

in ascending order of magnitude of shareholding, Non-Regional Members of EBID whose shares in the EBID do not, on the date of the allocation, exceed 2% of the total of shares of Non-Regional Members; and provided that no single allocation shall result in a Non-Regional Member receiving an allocation acquiring shares in excess of a limitation to be determined from time to time by the Board of Governors;

Members whose shares have become unsubscribed pursuant to sub- paragraph 2.1 herein or a portion of whose shares have become Treasury Shares as a result of the operation of these rules;

subject to the proviso in sub-paragraphs (ii) and (iii) above (whichever shall be applicable to the Member) any other Member otherwise able to make an offer to subscribe for additional shares.

No re-allocation shall be made to any Member unless all payments due from that Member in respect of shares previously issued to it have, as at the date of the re-allocation, been made.

5 PAYMENT FOR FRESHLY-ALLOCATED UNSUBSCRIBED OR TREASURY SHARES

All shares allocated pursuant to these Rules shall be subscribed and paid for, at their par value, within ninety (90) days of allocation thereof being communicated by EBID to the Member to whom the allocation is made failing which the said allocation shall lapse and the said shares shall resume their character as specified in sub- paragraphs 2.1 and 3.2 here.