

MINISTRY OF FOREIGN & DIASPORA AFFAIRS

PARLIAMENTARY MEMORANDUM

ON

KENYA'S ACCESSION OF THE AGREEMENT FOR THE ESTABLISHMENT  
OF THE AFRICA FINANCE CORPORATION

SUBMITTED BY THE PRIME CABINET SECRETARY AND CABINET  
SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS

TREATY MEMO NO: ...../2024

**PARLIAMENTARY MEMORANDUM ON THE ACCESSION OF THE  
AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICA FINANCE  
CORPORATION**

**1. OBJECTIVE OF THE MEMORANDUM**

- 1.1 The purpose of this Parliamentary Memorandum is to appraise the National Assembly and seek approval for Kenya's accession of the Agreement for the Establishment of the Africa Finance Corporation.
- 1.2 Kenya's membership to the Africa Finance Corporation and the accession process was approved by the Cabinet in a meeting held on 7<sup>th</sup> April 2017.

**2. BACKGROUND**

- 2.1. The Africa Finance Corporation (hereinafter the Corporation) is multilateral development financial institution dedicated to infrastructure financing in Africa, primarily through debt and equity investments, project development and financial advisory services. It was established and commenced operations on 1<sup>st</sup> November, 2007 and has its headquarters in Lagos, Nigeria. The Corporation is focused on bridging Africa's large infrastructure deficit by financing projects that have high developmental impact on the economies of African countries.
- 2.2. Its primary goal is to be the leading African institution for infrastructure financing and facilitation of international trade in Africa.

- 2.3. The mission of the Corporation is to foster the economic growth and industrial development of African countries, while delivering a competitive return on investment to its shareholders.
- 2.4. As part of its mandate, the Corporation focuses on lending to and investing in the core infrastructure sectors of power, natural resources, transport, heavy industry and telecommunication, which it believes are critical pillars for economic growth across Africa. Since its inception, the Corporation has committed more than USD 2 Billion in major infrastructure projects in the power and energy, oil and gas sectors, telecommunication, transport and logistics, and heavy industries in Nigeria, Cote d'Ivoire, Ghana, Cape Verde, Kenya, DRC, Malawi, Zambia, Ethiopia, Chad, Cameroon, Congo, Morocco and South Africa.
- 2.5. The Corporation was created by two constitutive legal instruments:
- (i) the Establishment Agreement and
  - (ii) the Charter.
- 2.6. The Establishment Agreement is made among sovereign states, which sign an instrument of accession and acceptance of membership, giving the Corporation its "supranational" status. The Corporation currently has 14 (fourteen) member countries: Nigeria, Ghana, Guinea-Bissau, Sierra Leone, Gambia, Liberia, Guinea, Chad, Cabo Verde, Gabon, Cote d'Ivoire, Djibouti, Rwanda and Uganda. Member countries are African countries that have acceded to the Establishment Agreement and the Charter.
- 2.7. The Charter grants the Corporation certain immunities and privileges in member countries that are similar to other multilateral development banks, such as the African Development Bank.



2.8. Membership to the Corporation confers a supranational status and certain benefits such as “preferred creditor status,” which includes tax exemptions, preferential access to foreign currency and immunity from confiscation of its assets in its member countries. The Corporation has an authorized share capital of USD 1.1 Billion.

2.9. The Corporation is set up with a hybrid structure where the concepts of membership and shareholding are separate. Membership is only open to sovereign African countries while shareholding is open to both public and private sector investors. The Corporation’s capital has been principally provided by Nigeria, through the Central Bank of Nigeria (CBN), major commercial banks and financial institutions, other private sector commercial entities and individuals.

2.10. The Corporation acts as both a leading financier and advisor to its clients in Africa, offering project and structured debt finance, trade finance, greenfield and expansion equity, as well as acquisition capital. These products are complemented with advisory capabilities in areas such as project development, capital raisings and restructurings. The Corporation has several strategic partnerships aimed at establishing market presence and recognition, which also create deal flow for the Corporation. The Corporation’s principal assets are loans predominantly in US dollars to borrowers in Africa and investment securities.

### **3. OBJECTS AND SUBJECT MATTER OF AGREEMENT ESTABLISHING THE AFRICA FINANCE CORPORATION**

3.1. The Corporation's primary objective is to bridge Africa's infrastructure financing gap by mobilizing and providing funding for large-scale



infrastructure projects that are critical for economic growth and development.

The subject matter of the agreement revolves around:

**3.2. Facilitating the development of key infrastructure** by investing and funding development projects across sectors such as energy, transportation, telecommunications, natural resources, and heavy industries thereby fostering economic growth and industrial development in African countries.

**3.3. Promoting sustainable economic development** by creating jobs, enhancing trade, and improving the overall business environment on the continent.

**3.4. Encouraging private sector participation.** The Corporation aims to enhance the role of the private sector in growth of African economies through public-private partnerships (PPPs), thereby leveraging private investments alongside sovereign or public sector funding.

**3.5. Ensuring regional integration.** The Corporation fosters cooperation among member states by developing infrastructure that connects African economies and facilitates cross-border trade.

#### **4. OBLIGATIONS IMPOSED BY THE AGREEMENT ESTABLISHING THE AFRICA FINACE CORPORATION**

4.1. The Agreement Establishing the Africa Finance Corporation, imposes the following obligations:

- i) **Support for the Corporation's Projects.** As a member state, Kenya is obliged to support the Corporation's initiatives, particularly those that involve regional infrastructure projects. This includes providing

legal, policy, and regulatory support to ensure smooth implementation of projects in Kenya and across Africa.

- ii) **Upholding Governance Principles.** Kenya would be obligated to adhere to the governance principles set forth by the Corporation. This includes nominating representatives to participate in AFC's decision-making bodies and ensuring transparency and accountability in projects related to or financed by the Corporation.
- iii) **Legal Privileges and Immunities.** The Establishing Agreement provides for certain legal privileges and immunities for the corporation and its employees, akin to those enjoyed by other international financial institutions. Kenya would be obliged to recognize and implement these privileges, ensuring that the Corporation can operate freely and independently within its borders.
- iv) **Cooperation with Other Member States.** Kenya would be obligated to cooperate with other member states in joint infrastructure projects and initiatives that promote regional integration and economic development.

## **5. PROBLEM ANALYSIS**

**5.1. Africa's Infrastructure Deficit.** One of the major challenges that African countries face is an infrastructure gap that significantly hampers economic growth and sustainable development. Poor infrastructure leads to high production costs, limits access to global markets, and weakens competitiveness. According to the African Development Bank (AfDB), Africa's infrastructure financing gap stands between USD 68 billion and

USD 108 billion annually, which means the continent would need significant investment each year just to maintain basic services. Key sectors affected include transportation, energy, water, and information and communication technology (ICT).

**5.2. Limited Access to Private Financing for Infrastructure.** African countries have traditionally struggled to attract sufficient private sector investment for large-scale infrastructure development. Global investors often view African infrastructure projects as high-risk due to political instability, regulatory hurdles, and the lack of legal frameworks that guarantee returns on investments. Despite the potential for high returns, Africa's share of global private infrastructure investment is minimal. According to the World Bank, between 2010 and 2020, Africa attracted only 2% of global private sector investment in infrastructure. This gap underscores the need for a more attractive investment climate. The Corporation tackles this issue by acting as a public-private partnership (PPP) platform that offers private investors both guarantees and risk-sharing mechanisms.

**5.3. High Sovereign Debt Burden in African Countries.** To finance infrastructure development, many African nations have resorted to borrowing, leading to unsustainable sovereign debt levels. This debt burden limits the capacity of governments to spend on crucial services such as education, healthcare, and social welfare. As of 2023, 23 African countries are either in or at risk of debt distress (according to the International Monetary Fund, IMF), with external debt service payments eating up a significant portion of government revenues. For example, Kenya's debt-to-GDP ratio stands at over 65%, while Ghana's



is at 76%. The Corporation provides an alternative to debt-heavy financing by allowing African countries to tap into its equity financing and debt structuring mechanisms, reducing the need for countries like Kenya to take on large-scale borrowing for infrastructure development. By bringing in private sector funding, it alleviates the pressure on national budgets and sovereign debt levels.

#### **5.4. Regional Infrastructure Disparities and Inadequate Cross-border**

**Connectivity.** Africa suffers from disjointed infrastructure networks, with countries developing their infrastructure in silos, often without considering regional integration. This has led to inefficiencies in cross-border trade and poor regional connectivity, limiting intra-African trade. Intra-African trade constitutes only 17% of Africa's total exports, compared to over 60% in Europe and Asia. This is largely attributed to poor cross-border infrastructure such as roads, railways, and energy grids.

#### **5.5. Lack of Technical Expertise and Project Management Capacity.**

African countries often face challenges related to the design, planning, and execution of infrastructure projects. Many projects are delayed or suffer from cost overruns due to inefficiencies and lack of proper management. According to a World Bank study, about 50% of large infrastructure projects in Africa face significant delays and cost overruns, with an average of 39% over budget. The Corporation fills this gap by offering technical expertise and project management support to its member countries. The corporation's staff consists of specialized teams with expertise in project finance, risk management, engineering, and legal affairs, ensuring that projects are well-executed

and financially viable. This has been demonstrated by the Corporation's successful management of projects such as the Cabeólica Wind Farm in Cape Verde, which reduced energy costs and reliance on fossil fuels.

**5.6. Sustainable Development and Climate Change Resilience.** African countries are particularly vulnerable to climate change due to their reliance on agriculture and natural resources. Infrastructure development in Africa must therefore incorporate sustainable practices to mitigate environmental impact and build climate resilience. Africa's energy generation is heavily reliant on fossil fuels, which contribute to greenhouse gas emissions. However, Africa also has immense potential for renewable energy, including solar, wind, and hydropower. The Corporation is committed to sustainable infrastructure development, and over 50% of its projects have a strong environmental or social impact. For example, the AFC has invested in renewable energy projects like the Djermaya Solar Plant in Chad, which helps diversify Africa's energy mix and reduce greenhouse gas emissions, contributing to the continent's sustainable development agenda.

## **6. JUSTIFICATION**

**6.1. Access to Infrastructure Financing.** By joining the Corporation, Kenya would gain access to a steady and significant source of capital for large-scale infrastructure projects. This could alleviate some of the financial pressure on the national budget and help accelerate Kenya's development agenda, particularly under Vision 2030.

- 6.2. Promoting Economic Growth.** Infrastructure development is key to economic growth. With better roads, energy, and communication networks, Kenya could attract more foreign direct investment, improve trade, and create jobs, ultimately enhancing living standards.
- 6.3. Regional Integration.** The Corporation's facilitates the development of regional infrastructure projects, such as cross-border transportation corridors and energy-sharing networks. By being a part of this agreement, Kenya would strengthen its role in regional integration, promoting intra-African trade under frameworks like the African Continental Free Trade Area (AfCFTA).
- 6.4. Private Sector Involvement.** The Corporation emphasizes the need for public-private partnerships, meaning that Kenya's private sector would have new opportunities to participate in and benefit from large infrastructure projects.
- 6.5. Risk Mitigation for Projects.** The Corporation has a high credit rating and a solid governance framework, which helps mitigate investment risks for infrastructure projects. This means Kenya could see more foreign investors willing to participate in projects that would otherwise be considered risky, particularly in sectors like energy or transportation.
- 6.6. Technical Expertise.** The Corporation's team of specialists provides technical advice and support to member states in the planning and execution of infrastructure projects. Kenya would benefit from this expertise, helping to avoid common pitfalls in large-scale project management.
- 6.7. Sovereign Debt Relief.** By leveraging the Corporation's ability to blend private and public financing, Kenya could potentially avoid taking on



large amounts of sovereign debt for infrastructure development, helping to manage the country's debt sustainability.

**6.8. Reputation and Influence.** Joining the Corporation would position Kenya as a key player in the continent's infrastructure agenda, enhancing its political and economic influence within Africa.

## **7. COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATION**

7.1. The Agreement is consistent with the Constitution and promotes constitutional values and provisions.

## **8. IMPLICATION RELATING TO COUNTIES**

8.1. The obligations imposed under the Agreement are under the purview of the National Government.

## **9. FINANCIAL IMPLICATION**

9.1. Accession will not attract any new financial requirements as the implementation of the Agreement only necessitates membership to the Corporation and not a shareholding.


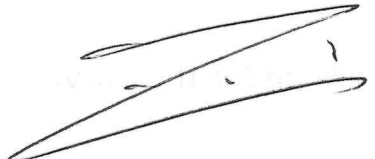
## **10. MINISTERIAL RESPONSIBILITY**

10.1. The Ministry responsible for the implementation of the Agreement establishing the Africa Finance Corporation is the National Treasury and Economic Planning.

## **11. RECOMMENDATION**

11.1. In consideration of the above, the National Assembly is invited to:

- i. Note the contents of the Memorandum;
- ii. Consider and approve for accession the Agreement Establishing the Africa Finance Corporation; and
- iii. Direct the Cabinet Secretary for Foreign and Diaspora Affairs to prepare and deposit the relevant instruments to the Depository.

SIGNED  DATED this 28<sup>th</sup> DAY of Oct, 2024  


**H.E. DR. MUSALIA MUDAVADI, EGH**  
**PRIME CABINET SECRETARY & CABINET SECRETARY**  
**MINISTRY OF FOREIGN & DIASPORA AFFAIRS**

**AGREEMENT FOR THE  
ESTABLISHMENT  
OF THE  
AFRICA FINANCE CORPORATION**

**DATED THE 28<sup>th</sup> DAY OF May 2007**



**THE STATES AND INTERNATIONAL ORGANISATIONS PARTIES TO THE PRESENT AGREEMENT:**

COGNIZANT of the fact that lack of adequate finance for investment has been an impediment to infrastructure development and expansion of foreign trade in Africa;

KNOWING the importance of closer economic co-operation as a means for achieving the most efficient utilization of resources and for accelerating development;

RECOGNISING the significant roles played by both public and private sectors, including multilateral development institutions in trade, investments and other productive activities in Africa;

REALISING the significance of making additional investment finance available in Africa and seeking to create and foster conditions conducive to greater flow of investment funds into the Continent for increased infrastructure development and export-oriented industrialisation;

AFFIRMING the desirability of promoting the harmonious growth of the economies of African States and the expansion of external trade of their countries;

CONVINCED that the establishment of a financial institution for catalyzing industrial development in Africa and promoting Infrastructure development would serve the foregoing purposes;

**HAVE AGREED AS FOLLOWS:**

### **Article 1: Establishment**

1. There shall be established an international financial institution to be known as the Africa Finance Corporation (hereinafter called the Corporation) which shall operate in accordance with the provisions of the Charter appended to this Agreement (hereinafter referred to as the Charter).
2. The Charter, which may be amended from time to time, in accordance with its provisions shall derive its legal force from this Agreement and shall be valid and operative among all the shareholders of the Corporation.
3. Capitalized terms used herein, unless defined in this Agreement shall have the respective meanings ascribed thereto in the Charter.

### **Article 2: Purpose**

The Corporation is established to foster economic growth and industrial development of African countries, collectively and individually, and more specifically, to:

- a. support and promote infrastructure development in Africa through the provision of investment funds;
- b. facilitate African trade generally and export-oriented trade by African countries;
- c. contribute to the development of the energy and extractive industries in Africa;
- d. provide on-lending and refinancing facilities to African financial institutions; and
- e. generally engage in any kind of banking and financial business intended to promote investments in Africa.

### **Article 3: Functions**

1. To facilitate the attainment of its purposes, the Corporation shall perform any and all of the functions stated below:
  - a. grant direct loans and extend credit guaranteed by commercial documents, sovereign instruments, credit instruments or by any other form of security ;
  - b. guarantee transactions made by other reputable financial institutions;
  - c. give open-ended or transaction-specific lines of credit to other reputable financial institutions;
  - d. own, hold, purchase, sell, withdraw, make, draw, accept, endorse, discount and carry out any operation with promissory notes, bills of exchange, option certificates for the acquisition of shares and any other securities or credit instruments in any member country or country approved by the Board of Directors;
  - e. act as an international financial agent;
  - f. provide equity financing on such terms as may be approved by the Board of Directors;

- g. provide technical assistance for the preparation, financing and execution of development projects and programmes, including the formulation of specific project proposals;
  - h. meet requests from African Countries to assist them in the coordination of their development policies and plans with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, and in particular, intra-regional trade;
  - i. co-operate, in such manner as the Corporation may deem appropriate, within the terms of this Agreement, with the United Nations, its organs and subsidiary bodies, and with other public and private international organisations and other international institutions, as well as national entities whether public or private, which are concerned with the investment of development funds in Africa, and to interest such institutions and entities in new opportunities for investment and assistance; and
  - j. generally carry out any kind of banking, securities and financial operations.
2. Without prejudice to the foregoing provisions of this Article, the Corporation shall have the power to carry out the following functions in the territory of Member States:
- a. carry on all forms of banking business and financial services authorized under this Agreement;
  - b. purchase, hold and dispose of national currencies;
  - c. purchase, hold and dispose of convertible currencies, securities, bills of exchange and negotiable instruments, and transfer the same to, from or within the territory of any Member State;
  - d. open, maintain and operate accounts in national currencies in the territories of the Member States;
  - e. open, maintain and operate convertible currency accounts in the territories and outside the territories of the Member states;
  - f. raise funds and make loans in convertible currencies; and
  - g. carry out any operation authorized under this Agreement.
3. The Corporation shall also undertake such other activities and provide such other services as are incidental to the foregoing, and which may advance its purpose.

#### Article 4: Legal Status

- 1. The Corporation shall be deemed a legally constituted body corporate under the laws of each Member State.
- 2. In each Member State, the Corporation shall enjoy the most extensive legal capacity accorded to legal persons under the law, particularly the capacity to:
  - a. institute and be a party to any judicial, legal or administrative proceedings;



- b. enter into contracts;
  - c. acquire and dispose of property whether movable or immovable;
  - d. take such steps and do all such things as may appear necessary or desirable to protect its interests; and
  - e. take such steps and do all such things as are incidental or conducive to the attainment of its objects and purpose, the exercise of its powers and the conduct of its business.
3. Each Member State shall, immediately upon becoming a signatory, do all such things and take all necessary legislative and administrative actions required to secure the effectiveness of this Article within its territory.
  4. The Corporation shall possess international legal personality.
  5. The Corporation shall not make or guarantee any loan or do or omit to do any act or thing that could in any way prejudice, limit, deflect or otherwise alter its purpose or functions or in any way suggest an affiliation with any political cause.

#### **Article 5: Membership**

1. Membership of the Corporation shall be open to:
  - a. independent African states, represented by their respective central banks;
  - b. African regional and sub-regional financial institutions;
  - c. African public and private banks, financial institutions and private investors; and
  - d. international private investors
2. The conditions governing eligibility to membership shall be determined by the General Meeting of Shareholders of the Corporation.
3. Membership of the Corporation shall be acquired upon subscribing to the Shares of the Corporation in accordance with the provisions of this Agreement. All Shareholders of the Corporation shall subscribe to this Agreement either by affixing their signatures thereto or depositing with the Provisional Depository or the Depository a letter of acceptance of the provisions of this Agreement.
4. A Member State shall subscribe for Shares in the Corporation through its central bank and designate the central bank for all matters relating to this Agreement including membership and subscription and the full exercise of rights attached to membership and the performance of the obligations of Shareholders set forth in this Agreement.
5. Any African state or international organisation which has not signed this Agreement before the date on which it comes into force shall as a condition precedent to membership adhere to this Agreement by depositing an instrument of accession with the Provisional Depository or the Depository.

#### **Article 6: Headquarters and Branch Offices**

1. The permanent headquarters of the Corporation shall be in Lagos, Nigeria

2. The Corporation may, in the discharge of its objectives as set out in this Agreement, establish branches or representative offices in other Member States selected by the Board of Directors.
3. The Government of Nigeria shall, within ninety days of notification of its selection as the host country, enter into a Headquarters Agreement with the Corporation, and take all necessary measures to render the Headquarters Agreement effective.
4. A Member State in whose territory a branch or representative office is located shall as soon as practicable after notification of its selection in that regard, conclude an agreement with the Corporation on terms similar to the Headquarters Agreement referred to above.
5. Each Member State shall designate the appropriate entity with which the Corporation may communicate in connection with any matter arising under this Agreement.
6. The working language of the Corporation shall be English and or such other language as the General Meeting may prescribe.

#### **Article 7: Immunities, Exemptions, Privileges, Facilities and Concessions**

Each Member State shall take all legislative action under its national law and all administrative measures, as is necessary, to enable the Corporation to effectively fulfil its purpose and carry out the functions entrusted to it. To this end, each Member State shall accord to the Corporation, in its territory, the status, immunities, exemptions, privileges, facilities and concessions set forth in this Agreement and shall promptly inform the Corporation of the specific action it has taken for this purpose.

#### **Article 8: Legal Process**

The Corporation shall enjoy immunity from every form of legal action or process except in respect of its operations where legal action may be brought against the Corporation in any court of competent jurisdiction in the territory of the state where the headquarters of the Corporation is situated or in which the Corporation has a representative or branch office or a subsidiary, or has appointed an agent for the purpose of accepting service or notice of process or in which it has issued securities or guaranteed same or has otherwise agreed to be sued. No such action against the Corporation shall be brought by:

- a. a Member State;
- b. a Shareholder or a former Shareholder of the Corporation or persons acting for or deriving claims from a Shareholder or a former Shareholder; or
- c. any natural or legal persons in respect of:
  - i. transactions governed by arbitration agreements;
  - ii. matters pending before an arbitral tribunal; and
  - iii. personnel matters.

#### **Article 9: Immunity of Property and Assets**

1. The property and assets of the Corporation wherever located and by whomsoever held shall be immune from:



- a. search, requisition, expropriation, confiscation, nationalization and all other forms of seizure, taking or foreclosure by executive or legislative action; and
  - b. seizure, attachment or execution before the delivery of final judgment or award against the Corporation.
2. For the purpose of this Article and Article 10 of this Agreement, the term "property and assets of the Corporation" shall include property and assets owned or held by the Corporation and deposits and funds entrusted to the Corporation in the ordinary course of business.

#### **Article 10: Freedom of Property, Assets and Operations from Restriction**

1. To the extent necessary to implement the purpose of the Corporation and carry out its functions, each Member State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that are likely to hinder in any manner the smooth functioning of the Corporation or impair its operations.
2. To this end, the Corporation, its property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative executive, administrative, fiscal and monetary restrictions of any nature.

#### **Article 11: Immunity of Archives**

The archives of the Corporation and, in general, all documents belonging to, or held by the Corporation shall be inviolable wherever located, except that the immunity provided for in this Article shall not extend to documents required to be produced in the course of judicial or arbitral proceedings to which the Corporation is a party or proceedings arising out of transactions concluded by the Corporation.

#### **Article 12: Privilege for Communications**

Official communications of the Corporation shall be accorded by each Member State the same treatment and preferential rates that it accords to the official communications of international organizations.

#### **Article 13: Personal Immunities, Privileges and Exemptions**

1. All Representatives, the Chief Executive Officer, Directors, officers and employees of the Corporation and consultants and experts performing missions for the Corporation:
  - a. shall be immune from legal process with respect to acts performed by them in their official capacity;
  - b. shall be accorded the same immunities from immigration restrictions and alien registration requirements, and, not being local nationals, shall be accorded the same immunities from national service obligations and the same facilities as regards exchange regulations, as are accorded by each Member State to representatives, officials and employees of comparable rank of other states or international organizations; and

- c. where they are not resident nationals, shall be granted the same treatment in respect of travelling facilities as is accorded by Member States to representatives, officials and employees of comparable rank of other states or international organizations.
2. The Chief Executive Officer, Directors, officers and employees of the Corporation:
  - a. shall be immune from personal arrest or detention; and
  - b. shall be exempt from any form of direct or indirect taxation on salaries, emoluments, indemnities and compensation paid by the Corporation.

#### **Article 14: Waiver of Immunities and Privileges**

The immunities and privileges provided in this Agreement are granted in the interest of the Corporation and may only be waived, to such extent and upon such conditions as the Board of Directors of the Corporation shall determine, in cases where such a waiver would not, in its opinion, prejudice the interests of the Corporation. The Chief Executive Officer of the Corporation shall have the right and the duty to waive the immunity of any officer, employee, consultant or expert of the Corporation in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Corporation. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive the immunity of the Chief Executive Officer or any Director of the Corporation.

#### **Article 15: Exemption from Taxation**

1. The Corporation, its property, assets, income, operations and transactions shall be exempt from all taxation and custom duties. The Corporation, and its receiving, fiscal and paying agents shall be exempt from any obligation relating to the payment, withholding or collection of any tax or duty out of funds owned by, or otherwise appertaining to, the Corporation.
2. Without prejudice to the generality of the provisions of paragraph 1 of this Article, each Member State shall take all necessary action to ensure that the property and assets of the Corporation, its capital, reserves and dividends, loans, credits, guarantees, securities, and other investments and transactions, interest, commissions, fees, profits, gains, proceeds of realization and other income, return and moneys of any kind, accruing, appertaining or payable to the Corporation from any source shall be exempt from all forms of taxes, duties, charges, levies, and imposts of any kind whatsoever, including stamp duty and other documentary taxes, heretofore levied or hereafter imposed in its territory.
3. The provisions of paragraphs 1 and 2 of this Article shall be applied without prejudice to the right of the Member States to tax their residents in the manner each Member State deems appropriate.

#### **Article 16: Fiscal Exemptions, Financial Facilities, Privileges and Concessions**

1. The Corporation shall be accorded by each Member State a status not less favourable than that of a non-resident corporation, and shall enjoy all fiscal exemptions, financial facilities, privileges and concessions granted to international organizations, banking establishments and financial institutions by the Member States.



2. Without prejudice to the generality of the provisions of Article 12 and paragraph 1 of this Article, the Corporation may freely and without any restriction, but to the extent necessary to implement its purpose carry out its functions, as contained in Article 3 of this Agreement.

#### **Article 17: Supplementary Agreements**

Each Member State may enter into a supplementary agreement with the Corporation to the extent necessary to attain the purpose of this Agreement.

#### **Article 18: Interpretation and Settlement of Disputes**

1. This Agreement shall be interpreted in the light of its primary purpose of enabling the Corporation to fully and efficiently discharge its functions and fulfil its purpose.
2. Any dispute among the parties to this Agreement or between the Corporation and a party to this Agreement regarding the interpretation or application of any of the provisions of this Agreement or any supplementary agreement shall be submitted to the General Meeting of the Shareholders of the Corporation whose decision shall be final.
3. In the case of a dispute between the Corporation and a Member State who has ceased to be a Shareholder of the Corporation, or whose nationals have ceased to be Shareholders of the Corporation, or a dispute between the Corporation and a party to this Agreement upon the termination of the operations of the Corporation, such dispute shall be referred for final decision to a tribunal consisting of three arbitrators, one arbitrator selected by the Corporation, the second arbitrator by the party to the dispute, and the Corporation and the party to the dispute shall jointly appoint the third arbitrator. If within a period of sixty (60) days of receipt of notice of arbitration either party has not appointed an arbitrator, or if within thirty (30) days of the appointment of the two arbitrators, the third arbitrator has not been appointed, the said arbitrator shall be appointed by the Secretary-General of the International Centre for the Settlement of Investment Disputes, at the request of either party. The procedure of arbitration shall be fixed by the arbitrators, but the third arbitrator shall have full power to settle all questions of procedure where the arbitrators are in disagreement with respect thereto. An award rendered by the majority of the arbitrators shall be final and binding on the Corporation and the party to the dispute.

#### **Article 19: Entry into Force**

1. This Agreement shall be open for signature on behalf of the contracting parties and shall be subject to ratification, acceptance or approval.
2. The present Agreement shall enter into force provisionally on the day when at least two Member States shall have signed this Agreement; and two instruments of acceptance or approval shall have been deposited with the Provisional Depository.
3. This Agreement shall take effect definitively for each contracting party on the date of deposit of its instrument of ratification, acceptance, approval or accession in accordance with its constitutional or other applicable statutory procedures.

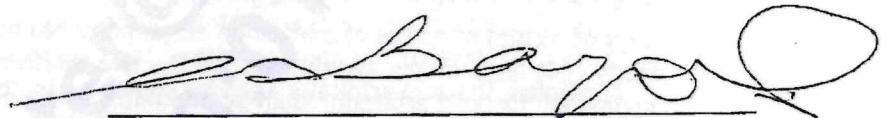
#### Article 20: Depository

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the Provisional Depository.
2. The Provisional Depository shall register this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the regulations thereunder adopted by the General Assembly of the United Nations and shall transmit certified copies of this Agreement to all contracting parties.
3. Upon commencement of operations of the Corporation, the Provisional Depository shall transmit the text of this Agreement and all relevant instruments and documents in his possession to the Secretary of the Corporation who shall then act as the Depository.

#### Article 21: Establishment of the Corporation

As soon as this Agreement comes into force pursuant to Article 19, the Corporation shall be established in accordance with the provisions of Article 41 of the Charter

Done in ABUJA this 28<sup>th</sup> day of May 2007 in a single copy in the English language



For the Federal Republic of Nigeria

For the Republic of The Gambia

For the Republic of Ghana

#### Article 20: Depository

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Done in Abuja this 28<sup>th</sup> day of May 2007 in a single copy in the English language.

(signed)

For the Federal Republic of Nigeria

For the Republic of The Gambia

For the Republic of Ghana

For the Republic of Guinea Bissau





30 SEP 2024



REPUBLIC OF KENYA  
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921  
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THE NATIONAL TREASURY  
P.O. Box 30007 -00100  
NAIROBI

When replying please quote

Ref: TNT/CONF/36/031/A/(26)

Date: 25<sup>th</sup> September 2024

**DR. A. KORIR SINGOEL, CBS**  
Principal Secretary  
State Department for Foreign Affairs  
Ministry of Foreign and Diaspora Affairs  
**NAIROBI**

Dear *PS,*

**RATIFICATION OF THE AGREEMENT FOR THE ESTABLISHMENT OF THE  
AFRICA FINANCE CORPORATION**

Reference is made to the letter Ref. Ref. MFA/RT/TCA 7/VOL.2 dated 12<sup>th</sup> June, 2024 copy herewith attached, on the above subject.

We have noted the request to the National Treasury to furnish the Registrar of Treaties with the Cabinet Memorandum that led to the Cabinet decision of 7<sup>th</sup> April 2017 that approved Kenya's membership to the Africa Finance Corporation.

The purpose of this letter is to forward copies of the Cabinet decision of 7<sup>th</sup> April 2017 and the referenced Cabinet Memorandum.

Yours

*Sincerely*

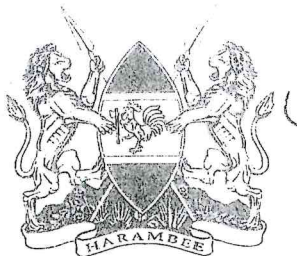
*Samson P. Wangusi*

**SAMSON P. WANGUSI, OGW**  
**PRINCIPAL ADMINISTRATIVE SECRETARY**  
**FOR: PRINCIPAL SECRETARY/THE NATIONAL TREASURY**

Encls.



Telephone: +254-20-318888  
Fax: +254-20-2240066/341935/344333  
Email: communication@mfa.go.ke  
Website: www.mfa.go.ke  
When replying please quote Ref. No. and date



HARAMBEE AVENUE  
P.O Box 30551-00100  
NAIROBI KENYA

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS  
STATE DEPARTMENT FOR FOREIGN AFFAIRS

25 JUN 2024

18.

Ref. No. **MFA/RT/TCA 7/VOL.2**

Date: **12<sup>th</sup> June 2024**

The Principal Secretary  
National Treasury  
**NAIROBI**

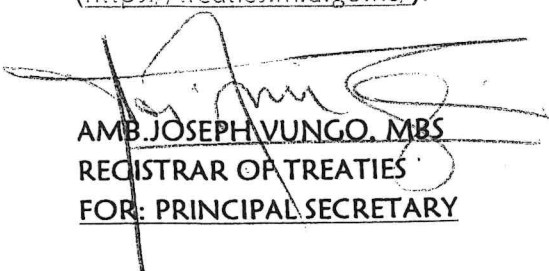
**RE: RATIFICATION OF THE AGREEMENT FOR THE ESTABLISHMENT OF  
THE AFRICA FINANCE COOPERATION**

Reference is made to the above subject matter.

We are in receipt of communication from the Africa Finance Cooperation dated 5<sup>th</sup> June 2024, addressed to the Cabinet Secretary, National Treasury and Economic Planning, and copied to the Prime Cabinet Secretary and Cabinet Secretary Ministry of Foreign and Diaspora Affairs. The communication is a follow up on the ratification of the Agreement for the Establishment of the Africa Finance Cooperation which it indicates Kenya's accession to the Agreement was ratified by Cabinet on 7<sup>th</sup> April 2017.

We have perused our records; however, we do not seem to have any information related to this issue. Since the subject matter of the Agreement falls within your State Department, kindly furnish the Registrar of Treaties with the referenced Cabinet Memorandum that led to Cabinet decision of 7<sup>th</sup> April 2017, a copy of the Cabinet decision and any other relevant documentation. This will enable us further action for approval of the ratification by Parliament in line with the provisions of Section 7 of the Treaty Making and Ratification Act Cap 4D.

Enclosed herewith are the correspondences received from the Africa Finance Cooperation and the Agreement for your information. Additionally, a list of treaties ratified, acceded to, or accepted by Kenya are available on the Kenya treaty Website (<https://treaties.mfa.go.ke/>).

  
**AMB. JOSEPH VUNGO, MBS**  
**REGISTRAR OF TREATIES**  
**FOR: PRINCIPAL SECRETARY**

Encl.





11 APR 2017 67



12

THE PRESIDENCY  
EXECUTIVE OFFICE OF THE PRESIDENT  
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address  
Telephone: +254-20-2227436  
When replying please quote

SECRET

STATE HOUSE  
P.O. Box 40530-00100  
NAIROBI, KENYA

Ref. No. OP/CAB.58/4A  
and date

7th April, 2017, 20.....

Dr. Kamau Thugge, CBS  
Principal Secretary  
The National Treasury  
NAIROBI

Amb. Monica K. Juma, DPhil, CBS  
Principal Secretary  
Ministry for Foreign Affairs  
NAIROBI

Dear

RE: THE PROPOSED KENYA'S MEMBERSHIP TO AFRICAN  
FINANCE CORPORATION

I refer to the Second Cabinet Meeting of 2017, held on 6th April, 2017, during which Cabinet Memorandum CAB(17)28 submitted by the Cabinet Secretary for the National Treasury was presented and discussed.

I wish to inform you that Cabinet considered the Memorandum and:

- (i) Noted the contents of the Memorandum;
- (ii) Approved Kenya's membership to the Africa Finance Corporation;
- (iii) Directed the Cabinet Secretary for National Treasury to immediately make an application for Kenya to become a Member of the Asian Infrastructure Investment Bank; and

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- (iv) Directed the Cabinet Secretary for the National Treasury; and the Cabinet Secretary for Foreign Affairs to take appropriate action.

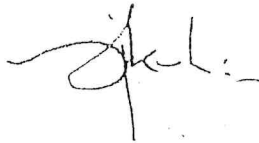
Please proceed and initiate action as directed by Cabinet.

Yours

JOSEPH K. KINYUA, EGH  
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Copy to:

Mr. Henry K. Rotich, EGH  
Cabinet Secretary  
The National Treasury  
NAIROBI



Amb. (Dr.) Amina C. Mohamed, CBS, CAV  
Cabinet Secretary  
Ministry of Foreign Affairs  
NAIROBI

SECRET



**REPUBLIC OF KENYA**

**CABINET MEMORANDUM ON  
THE PROPOSED KENYA'S MEMBERSHIP TO AFRICA FINANCE  
CORPORATION**

**MARCH 2017**

**CAB. NO .....2017**



## **1. OBJECTIVE OF THE MEMORANDUM**

The purpose of this memorandum is to brief the Cabinet on a request for Kenya to become a member of the Africa Finance Corporation (AFC), and to request the Cabinet to approve Kenya's membership to the Corporation.

## **2. THE BACKGROUND OF THE SUBJECT MATTER**

The Africa Finance Corporation (the "Corporation") is a multilateral development financial institution dedicated to infrastructure financing in Africa, primarily through debt and equity investments, project development and financial advisory services. It was established and commenced operations on 1<sup>st</sup> November 2007 and has its headquarters in Lagos, Nigeria. The Corporation is focused on bridging Africa's large infrastructure deficit by financing projects that have high developmental impact on the economies of African countries. Its primary goal is to be the leading African institution for infrastructure financing and facilitation of international trade in Africa.

The mission of the Corporation is to foster the economic growth and industrial development of African countries, while delivering a competitive return on investment to its shareholders. As part of its mandate, the Corporation focuses on lending to and investing in the core infrastructure sectors of power, natural resources, transport, heavy industry and telecommunication, which it believes are critical pillars for economic growth across Africa. The Corporation has since inception, committed more than US\$ 2 billion in major infrastructure projects in the power and energy, oil and gas sectors, telecommunication, transport and logistics, and heavy industries in Nigeria, Cote d'Ivoire, Ghana, Cape Verde, Kenya, DRC, Malawi, Zambia, Ethiopia, Chad, Cameroun, Congo, Morocco and South Africa.

The Corporation was created by two constitutive legal instruments: (i) the Establishment Agreement and (ii) the Charter. The Establishment Agreement is made among sovereign states, which sign an instrument of accession and acceptance of membership, giving the Corporation its

supranational" status. The Corporation currently has fifteen (15) Member Countries: Nigeria, Ghana, Guinea-Bissau, Sierra Leone, The Gambia, Liberia, Guinea, Chad, Cape Verde, Gabon, Cote d'Ivoire, Djibouti, Rwanda and Uganda. Member Countries are African countries that have acceded to the Establishment Agreement and Charter, which grants the Corporation certain immunities and privileges in those countries. Similar to other multilateral development banks, such as the African Development Bank, membership confers a supranational status and certain benefits such as "preferred creditor status," which includes tax exemptions, preferential access to foreign currency and immunity from confiscation of its assets in its Member Countries.

The Corporation has an authorised share capital of U.S. \$2 billion, of which U.S.\$1.1 billion was issued and fully paid in at the Corporation's inception in 2007. The Corporation is set up with a hybrid structure where the concepts of membership and shareholding are separate. Membership is only open to sovereign African countries while shareholding is open to both public and private sector investors. The Corporation's capital has been principally provided by Nigeria, through the Central Bank of Nigeria ("CBN"), major commercial banks and financial institutions, other private sector commercial entities and individuals.

The Corporation acts as both a leading financier and adviser to its clients in Africa, offering project and structured debt finance, trade finance, greenfield and expansion equity, as well as acquisition capital. These products are complemented with advisory capabilities in areas such as project development, capital raisings and restructurings. The Corporation has a number of strategic partnerships aimed at establishing market presence and recognition, which also create deal flow for the Corporation.

For example, partnerships have been established with the Nigerian Sovereign Investment Authority and *Banque Ouest Africaine de Development* to co-develop and finance infrastructure projects in Nigeria

and Francophone West Africa, respectively, as well as the U.S. Power Africa Initiative, which covers investments in the power sector across the Federal Democratic Republic of Ethiopia ("**Ethiopia**"), Ghana, the Republic of Kenya ("**Kenya**"), Liberia, Nigeria and the United Republic of Tanzania ("**Tanzania**").

The Corporation's principal assets are loans predominantly in U.S. dollars to borrowers in Africa and investment securities. The Corporation's total assets and interest income have increased from U.S.\$2,439.1 million and U.S.\$104.4 million for the year ended 31 December 2014 to U.S.\$3,309.7 million and U.S.\$158.7 million for the year ended 31<sup>st</sup> December, 2015 respectively.

### **3. MEMBERSHIP PROCEDURES**

Membership of AFC is open to African States, preferably through their respective Central Banks, Sovereign Wealth Funds, State Pension Funds or similar institutions, regional and sub-regional development financial institutions, private and public sector institutional shareholders (private banks, insurance companies, pension funds and other corporations).

#### **i. Membership Only**

A prospective Member State may join the AFC by signing the letter of Adherence and ratifying the constitutive instruments of AFC, namely the AFC Establishment Agreement and Charter through its cognitive/constituent authority.

#### **ii. Membership and Shareholding**

Member States are not required to make a financial commitment and or investment before joining the AFC. Member States may elect to make financial commitment/investment and become shareholders through their designated entities (Central Banks, Sovereign Wealth Funds, and State



Pension Funds or regional or sub-regional development financial institutions).

The minimum amount of subscription for AFC shares is 50,000 units of shares. There is only one class of shareholder. The rights and obligations of AFC shareholders is as stipulated in the AFC Establishment Agreement and AFC Charter. All the AFC shareholders have the same rights, including entitlement to attend the General Meetings, vote and dividend payment based on their pro rata shareholding.

Shareholders who have subscribed and paid for at least 50 million shares are entitled to nominate a Director through the Board Nomination and Governance Committee on to the Board of Directors of AFC. The minimum qualifying shareholding for a board seat translates to about US \$ 100 million.

It is important to note that membership and shareholding may not happen simultaneously. Members may elect to become shareholders at a later date.

#### **4. BENEFITS TO KENYA**

Given its high rating, AFC is able to mobilize finance at very competitive rates which can then be passed on to borrowers at favorable rates. Kenya is already benefiting from AFC which has financed infrastructure projects in the country as well as a mining operation.

AFC is also looking at Kenya as a key strategic partner and there are indications that Nairobi could host a regional branch office. This is supportive of our plan to establish Nairobi as an International Financial Centre. The Nairobi International Financial Centre (NIFC) will be launched as soon as Parliament passes the Nairobi International Financial Centre Bill, 2017 which is now at the Second Reading stage.



Kenya is also establishing a Sovereign Wealth Fund and AFC could be a strategic partner through which part of the resources could be invested.

## 5. WAY FORWARD

Following the request from the Africa Finance Corporation for Kenya to consider becoming a member of the Corporation, it is recommended that Kenya becomes a member of the Corporation, in view of the potential benefits.

## 6. FINANCIAL IMPLICATIONS

There are no financial implications on the part of the Government as the option being recommended is membership only and does not therefore include shareholding. However, there will be financial implications in future when Kenya decides to take up shares in the Corporation.

## 6. REQUEST TO THE CABINET

The Cabinet is requested to:

- (i) Take note of the contents of this memorandum;
- (i) Approve Kenya's membership to the Africa Finance Corporation; and
- (ii) Direct the Cabinet Secretary for The National Treasury and the Cabinet Secretary to the Ministry of Foreign Affairs and International Trade to take necessary action.

.....  
HENRY K. ROTICH, EGH

CABINET SECRETARY/THE NATIONAL TREASURY

.....  
Date

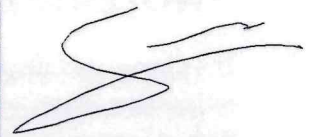
I hereby certify that this is a true copy of the original document

Date: 12/02/2024

Name: Amadou Soumano

Signature:

Title: Head, Legal & Corporate Secretariat (Ag.)



## **CHARTER OF THE AFRICA FINANCE CORPORATION**

(Adopted in Lagos, Nigeria on 7th May 2007 and became effective on 28th May 2007)

(As amended in Lagos, Nigeria by Resolution AFC/AGM/2009/09/002 adopted by the First Annual General Meeting on 14th September 2009- the "First Amendment")

(As amended in Lagos, Nigeria by Resolution AFC/AGM/2011/03/011 adopted by the Third Annual General Meeting on 28th June 2011- the "Second Amendment")

(As amended in Lagos, Nigeria by Resolution AFC/AGM/2012/04/017 adopted by the Fourth Annual General Meeting on 26th June 2012- the "Third Amendment")

(As amended in Lagos, Nigeria by Resolution AFC/EGM/2020/02/04 adopted by the Extraordinary General Meeting on 30th December 2020 – the "Fourth Amendment")

(As amended in Lagos, Nigeria by Resolution AFC/AGM/2022/14/08 adopted by the Fourteenth Annual General Meeting on 1st April 2022 – the "Fifth Amendment")



## NOTE TO THE CHARTER

The Charter was adopted by the First Meeting of Founders/Shareholders held in Lagos, Nigeria on 7th May 2007 and became effective on 28th May 2007, following the signature of the Agreement for the establishment of Africa Finance Corporation (to which the Charter is appended).

The Charter was amended at the First Annual General Meeting of Shareholders ("**First AGM**") held in Lagos, Nigeria on 14th September 2009 by Resolution AFC/AGM/2009/09/002.

The following amendments were approved by the First Amendment:

- (i) **Article 12.3:** The Board of Directors shall by regulation prescribe the procedure applicable to the transfer of shares.
- (ii) **Article 20.1:** "The Board of Directors shall be composed of a minimum of eight (8) and a maximum of twenty one (21) Directors provided that at least two (2) are independent directors." The Chief Executive Officer and Executive Directors shall by virtue of their offices be members of the Board of Directors.
- (iii) **Article 20.2:** Subject to the provisions of paragraphs (4) and (5) of "Article 24", Directors including the Chairman shall be elected for a renewable term of three years.
- (iv) **Article 20.5:** If the office of a Director becomes vacant, a successor shall be elected in accordance with the provisions of paragraph 1 of this Article. Any deficiency in the number of Directors pending the filling of a vacancy shall not invalidate the composition of the Board of Directors or any act done by the Board of Directors provided their number does not at any time fall below "**eight (8)**".
- (v) **Article 24.4:** The Board of Directors shall appoint such number of Executive Directors, not exceeding a maximum of four, as it may deem necessary, to assist the Chief Executive Officer and carry out such functions as the Chief Executive Officer may determine. The terms and conditions of service of the Executive Directors, including their remuneration and retirement, shall be as may be prescribed from time to time by regulations issued by the Board of Directors. "**The Board of Directors may designate one of the Executive Directors the Deputy Chief Executive Officer of the Corporation.**"
- (vi) **Article 42:** Pending the final establishment of the Corporation pursuant to "**Article 41**" of this Charter and commencement of its operations;
- (vii) Deletion of the Tracking ["Updated 29 November 2006"] on the top right corner of the Charter.

The Charter was amended at the Third Annual General Meeting of Shareholders ("**Third AGM**") held in Lagos, Nigeria on 28th June 2011 by Resolution AFC/AGM/2011/03/011.

The following amendments were approved by the Second Amendment:

**Article 22.1:** The Board of Directors shall meet at least "**quarterly**" and as often as the business of the Corporation may require at the place of the headquarters of the Corporation or at any given place specified in the convening notice.

The Charter was amended at the Fourth Annual General Meeting of Shareholders ("**Fourth AGM**") held in Lagos, Nigeria on 26th June 2012 by Resolution AFC/AGM/2012/04/017.



The following amendments were approved by the Third Amendment::

- i. **Article 24.2:** The Chief Executive Officer shall be the chief executive **"and legal representative"** of the Corporation and shall, subject to the provisions of this Charter, conduct, under general control and direction of the Board of Directors, the day-to-day business of the Corporation.
- ii. **Article 31.1:** The General Meeting may, by affirmative votes of Shareholders **"holding not less than seventy-five percent of the issued share capital of the Corporation"**, suspend or terminate the operations of the Corporation.
- iii. **Article 40.1:** Subject to the provisions of paragraph 2 of this Article, any provision contained in this **"Charter"** may be amended from time to time by a resolution passed by a majority of votes of Shareholders present or represented at a General Meeting.
- iv. **Article 40.2:** Notwithstanding any provision contained in this Charter, any resolution to modify or change the purpose, functions or the fundamental structure of the Corporation stated in Articles 5, 7, 8, 11, 13, 14, 20, 28, as well as Article 40 of this **"Charter"** shall require a majority of votes of at least two-thirds of the holders of all issued Shares; **"and any resolution to merge, consolidate or, dissolve the Corporation or to suspend its operations, shall require the affirmative votes of Shareholders holding not less than seventy-five percent of the issued share capital of the Corporation."**

The Charter was amended at the Extraordinary General Meeting of Shareholders (**"EGM"**) held in Lagos, Nigeria on 30th December 2020 by Resolution No: AFC/EGM/2020/02/004.

The following amendments were approved by the Fourth Amendment:

- i. **Article 3.1:** Shares means ordinary shares and **any other type of shares with such rights or restrictions as may be determined by the Corporation from time to time pursuant to Articles 7, 8, or 11 of this Charter.**
- ii. **Article 7.3:** except as **otherwise** provided in this Charter, Shares shall rank *pari passu* in all respects.
- iii. **New Article 7.6:** The General Meeting may, by a two-thirds majority of votes of holders of issued Shares, determine that new shares be created with a paid-in component and a callable component on such terms as it considers appropriate. The callable shares shall only be subject to call for the purpose defined in paragraph 4(a) of Article 9 of this Charter.
- iv. **Article 8.2:** The Corporation may by a resolution passed by the General Meeting:
  - a. consolidate and divide all or any portion of the Share capital into Shares of a larger amounts than its existing Shares;
  - b. sub-divide its existing Shares, or any of them, into Shares of smaller denominations than is fixed by this Charter;
  - c. modify the proportions in which the Shares shall be created, allotted and issued; or
  - d. **create share warrants, share options and other securities capable of being converted into Shares in the Corporation on such terms as the General Meeting shall determine.**
- v. **New Article 9.4:**
  - 4.a. **Payment of the amounts subscribed to the callable capital of the Corporation shall be subject to call only as and when required by the Corporation to meet its obligations incurred pursuant to paragraph 1(a), (b) and (f) of Article 3 of the Agreement, or on borrowing of funds pursuant to Article 13 of this Charter, where the Corporation is unable to meet such obligations from its own funds.**



- b. The determination that a call on callable capital is required for the Corporation to meet its obligations shall be made by the Board of Directors. Any decision made in this regard shall be taken by a resolution of the Board of Directors passed by a two-thirds majority of Directors present at a duly constituted meeting of the Board of Directors, or, notwithstanding paragraphs 1 and 10 of Article 22, by a written resolution signed by at least two-thirds of the Directors.
- c. The Board of Directors may differentiate between classes of Shares as to when calls are made on each class of shares, and any such differentiation shall not be a variation of any right attaching to a class of Shares.
- d. The obligation of each Shareholder to pay its callable capital is independent of that of the other Shareholders. If any Shareholder should fail to meet its obligations, the Corporation shall have the right to make successive calls until the full amount required is obtained, provided that no Shareholder shall be required to pay more than the unpaid balance of its capital subscription.
- e. In the event of such calls, payment may be made in United States Dollars or such other convertible currency as the Board of Directors may determine.
- f. Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.
- v. **New Article 9.5:** No dividend shall be payable and no right, including voting rights, or privilege may be exercised in relation to any Share for which a payment, whether in respect of a call or otherwise, is due and remains outstanding.
- vi. **Article 10.1:** Unless the Board of Directors shall otherwise decide, all unissued Shares (whether in the initial authorized Share capital or any increases thereof) and warrants, options or other rights to unissued Shares shall, before issue, be offered to all Shareholders in the proportion of their existing Shareholding. Every such offer shall give details of the Shares which the Corporation desires to issue and the proposed terms of issuance thereof and shall invite each Shareholder to apply in writing for such number of the Shares on offer as the Shareholder intends to take, within such period as shall be specified in that regard, being a date expiring not less than ninety (90) days from the date of dispatch of the offer.
- vii. **Article 11.2:** The rights attached to any class of Shares may, whether or not the Corporation is being dissolved, be varied with the consent in writing of the holders of three-fourths of the issued Shares of the class thereof, or by a resolution passed at a separate meeting of the holders of the Shares of that class. The provisions of this Charter relating to an Extraordinary General Meeting shall apply to every such separate meeting except that the quorum for such meeting shall be persons representing Shareholders holding at least one-third of the issued Shares of that class and if no member of the Board is present, the Representatives present shall choose the person to act as Chairman of the meeting from amongst themselves.
- viii. **Article 15.1:** The Shareholders shall hold an annual meeting (the "Annual General Meeting") and such other meetings as may be provided for by the General Meeting or called by the Board of Directors. The Board of Directors shall convene a General Meeting whenever requested by holders of at least one-quarter in nominal value of the Shares. General Meetings may be held by electronic or other technological means enabling participation without the physical presence of participants at a single location.

- ix. **Article 22.1:** The Board of Directors shall meet at least quarterly and as often as the business of the Corporation may require at the place of the headquarters of the Corporation or at any place specified in the convening notice, **provided, however, that Board of Directors meetings may be held by electronic or other technological means enabling participation without the physical presence of participants at a single location.**
- x. **Article 23.3:** The Executive Committee shall meet as often as the business of the Corporation may require and, **notwithstanding paragraph 1 of this Article, meetings of the Executive Committee may be held by electronic or other technological means enabling participation without the physical presence of participants at a single location, whether at the headquarters of the Corporation or otherwise.**

The following was the amendment approved in the Fifth Amendment:

- i. **Article 26.5:** The financial statements of the Corporation shall be complied and presented in conformity with generally accepted international accounting standards and shall be made available to all shareholders not less than **twenty-one days** before the date of the Annual General Meeting.



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## PREAMBLE

We the several persons whose names and addresses are set out in the Schedule hereto have, pursuant to the provisions of the Agreement (as herein-below defined), agreed to establish an international institution, to foster the economic growth and industrial development of African countries collectively and individually, which is hereby constituted and shall operate in accordance with the provisions of this Charter.



# Charter of the Africa Finance Corporation





## CHAPTER 1: NAME, LEGAL STATUS, DEFINITIONS, INTERPRETATION, HEADQUARTERS/BRANCH OFFICES, PURPOSE AND FUNCTIONS

### ARTICLE 1: NAME

The name of the institution is Africa Finance Corporation.

### ARTICLE 2: LEGAL STATUS

The Corporation shall be an international institution with full juridical personality and legal capacity to carry out its operations. It shall have the legal status and enjoy the immunities, privileges, facilities and concessions provided in the Agreement.

### ARTICLE 3: DEFINITIONS AND INTERPRETATION

1. In this Charter, except where the context otherwise requires:

<b>Assets</b>	includes land, machines, buildings, money owed, stock, investments, goodwill, trade marks, patents, cash at hand or in the bank.
<b>Board of Directors</b>	means the Board of Directors of the Corporation.
<b>Chairman</b>	means the Chairman of the Board of Directors.
<b>Chief Executive Officer, Executive Directors, Secretary and External Auditors</b>	means respectively, Chief Executive Officer, Executive Directors, Secretary, however designated, and External Auditors of the Corporation.
<b>Corporation</b>	means the AFRICA FINANCE CORPORATION.
<b>Director</b>	means a member, for the time being, of the Board of Directors of the Corporation.
<b>Financial Institution</b>	means a bank, corporation, organisation or institution having juridical personality and whose sole or principal object as defined in its constitutive instrument or enabling statute is the provision of financial services in any form.
<b>General Meeting</b>	means the General Meeting of the Shareholders of the Corporation.
<b>Person</b>	includes a natural person or government, corporation and any organisation or institution having juridical personality.
<b>Provisional Depositary</b>	means the Secretary to the Board of the Central Bank of Nigeria who shall hold all instruments of ratification, acceptance, approval or accession and other important documents of the Corporation until the appointment of the Secretary.
<b>Representative</b>	means the representative of any Shareholder at a General Meeting.



<b>Shareholder</b>	means a holder of Shares in the Corporation.
<b>Shares</b>	means the ordinary and any other type of shares with such rights or restrictions as may be determined by the Corporation from time to time pursuant to Articles 7, 8 or 11 of this Charter.
<b>Member State</b>	means any African State that signs the Agreement or executes an instrument of accession in respect thereof.
<b>The Agreement</b>	means the Agreement among certain African States and international organisations providing for the establishment of the Africa Finance Corporation concluded on the 28th day of May 2007 at Abuja in the Federal Republic of Nigeria.

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

- a. a reference to a particular article is to an article of this Charter;
- b. a reference in a particular article to a paragraph is to a paragraph of that article;
- c. the table of contents and the headings of articles are for convenience only, and shall be ignored in construing this Charter;
- d. references to the masculine gender include the feminine and references to the singular include the plural and vice versa;
- e. the word **"include"** shall be construed to mean "include without limitation";
- f. a reference to **"person"** includes any individual, partnership, firm, company, corporation (statutory or otherwise), joint venture, trust, association, organization, State or other entity, in each case whether or not having separate legal personality; and
- g. a derivative of any term or expression defined or interpreted in this Charter shall be construed in accordance with the relevant definition or interpretation.

## ARTICLE 4: HEADQUARTERS AND BRANCH OFFICES

1. The permanent headquarters of the Corporation shall be in Lagos, Nigeria.
2. The Corporation may, in the discharge of its objectives as set out in the Agreement and this Charter, establish branches or representative offices in other Member States selected by the Board of Directors.
3. The Government of Nigeria shall, within ninety days of notification of its selection as the host country, enter into a Headquarters Agreement with the Corporation, and take all necessary measures to render the Headquarters Agreement effective.
4. A Member State in whose territory a branch or representative office is located shall as soon as practicable after notification of its selection in that regard, conclude an agreement with the Corporation on terms similar to the Headquarters Agreement referred to above.

## ARTICLE 5: PURPOSE

The Corporation is established to foster economic growth and industrial development of African countries, collectively and individually, and more specifically, to:

- a. support and promote infrastructure development in Africa through the provision of investment funds;
- b. facilitate African trade generally and export-oriented trade by African countries;
- c. contribute to the development of the energy and extractive industries in Africa;
- d. provide on-lending and refinancing facilities to African financial institutions; and
- e. generally engage in any kind of banking and financial business intended to promote investments in Africa.



## ARTICLE 6: FUNCTIONS

1. To facilitate the attainment of its purposes, the Corporation shall perform any and all of the functions stated below:
  - a. grant direct loans and extend credit guaranteed by commercial documents, sovereign instruments, credit instruments or by any other form of security;
  - b. guarantee transactions made by other reputable financial institutions;
  - c. give open-ended or transaction-specific lines of credit to other reputable financial institutions;
  - d. own, hold, purchase, sell, withdraw, make, draw, accept, endorse, discount and carry out any operation with promissory notes, bills of exchange, option certificates for the acquisition of shares and any other securities or credit instruments in any member country or country approved by the Board of Directors;
  - e. act as an international financial agent;
  - f. provide equity financing on such terms as may be approved by the Board of Directors;
  - g. provide technical assistance for the preparation, financing and execution of development projects and programmes, including the formulation of specific project proposals;
  - h. meet requests from African countries to assist them in the coordination of their development policies and plans with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, and in particular, intra-regional trade; co-operate, in such manner as the Corporation may deem appropriate, within the terms of this Charter, with the United Nations, its organs and subsidiary bodies, and with other public and private international organisations and other international institutions, as well as national entities whether public or private, which are concerned with the investment of development funds in Africa, and to interest such institutions and entities in new opportunities for investment and assistance; and
  - j. generally carry out any kind of banking, securities and financial operations.
2. Without prejudice to the foregoing provisions of this Article, the Corporation shall have the power to carry out the following functions in the territory of Member States:
  - a. carry on all forms of banking business and financial services authorized under this Charter;
  - b. purchase, hold and dispose of national currencies;
  - c. purchase, hold and dispose of convertible currencies, securities, bills of exchange and negotiable instruments, and transfer the same to, from or within the territory of any Member State;
  - d. open, maintain and operate accounts in national currencies in the territories of the Member States;
  - e. open, maintain and operate convertible currency accounts in the territories and outside the territories of the Member states;
  - f. raise funds and make loans in convertible currencies; and
  - g. carry out any operation authorized under this Charter.
3. The Corporation shall also undertake such other activities and provide such other services as are incidental to the foregoing, and which may advance its purpose.

## CHAPTER 2: CAPITAL

### ARTICLE 7: AUTHORISED CAPITAL

1. The initial authorized Share capital of the Corporation is Two Billion United States Dollars (US\$2,000,000,000) divided into Two Billion Shares of one United States Dollar (US\$ 1) each.
2. The initial number of Shares to be subscribed by each founding Shareholder shall be that set forth against its name in Annexure "A" to this Charter, and the number of Shares to be allotted to other Shareholders shall be determined from time to time by the Board of Directors.



3. Except as otherwise provided in this Charter, Shares shall rank *pari passu* in all respects.
4. Shares shall be indivisible and issued in any form as the Board of Directors may from time to time determine.
5. The liability of Shareholders shall be limited to the unpaid portion, if any, of their Shares.
6. The General Meeting may, by a two-thirds majority of votes of holders of issued Shares, determine that new shares be created with a paid-in component and a callable component on such terms as it considers appropriate. The callable shares shall only be subject to call for the purpose defined in paragraph 4(a) of Article 9 of this Charter.

## ARTICLE 8: ALTERATION OF CAPITAL

1. The authorized Share capital of the Corporation may be increased as and when the General Meeting, acting upon the recommendation of the Board of Directors, deems such increase advisable. Unless the authorized Share capital is increased solely to provide for the initial subscription of a Member State, the resolution of the General Meeting authorising the increase shall be passed by a two-thirds majority of votes of holders of the issued Shares.
2. The Corporation may by a resolution passed by the General Meeting:
  - a. consolidate and divide all or any portion of the Share capital into Shares of larger amount than its existing Shares;
  - b. sub-divide its existing Shares, or any of them, into Shares of smaller denominations than is fixed by this Charter;
  - c. modify the proportions in which the Shares shall be created, allotted and issued; or
  - d. create share warrants, share options and other securities capable of being converted into shares in the Corporation on such terms as the General Meeting shall determine.
4. The Corporation may, by a resolution of the General Meeting by the majority of votes stated in paragraph 1 of this Article, reduce its Share capital to such extent and in any manner, deemed expedient.
5. An increase required solely to provide for the initial subscription of a Member State shall only require a simple majority vote.

## ARTICLE 9: PAYMENT FOR SHARES

1. Payment for the Shares subscribed to in the capital of the Corporation shall be made upon subscription or as soon thereafter as may otherwise be specified by the promoters or the Board of Directors.
2. The payment referred to in paragraph 1 above, shall be made in United States Dollars or in such other convertible currency specified in that regard by the promoters or the Board of Directors at the rate of exchange then prevailing.
3. The modalities, terms and dates of payment for unissued Shares and new issues of Shares shall be determined by the Board of Directors.
4.
  - a. Payment of the amounts subscribed to in the callable capital of the Corporation shall be subject to call only as and when required by the Corporation to meet its obligations incurred pursuant to paragraph 1(a), (b) and (f) of Article 3 of the Agreement, or on borrowing of funds pursuant to Article 13 of this Charter, where the Corporation is unable to meet such obligations from its own funds.
  - b. The determination that a call on callable capital is required for the Corporation to meet its obligations shall be made by the Board of Directors. Any decision made in this regard shall be taken by resolution of the Board of Directors passed by a two-thirds majority of Directors present at a duly constituted



meeting of the Board of Directors, or, notwithstanding paragraphs 1 and 10 of Article 22, by a written resolution signed by at least two-thirds of the Directors.

- c. The Board of Directors may differentiate between classes of Shares as to when calls are made on each class of shares, and any such differentiation shall not be a variation of any right attaching to a class of Shares.
  - d. The obligation of each Shareholder to pay its callable capital is independent of that of the other Shareholders. If any Shareholder should fail to meet its obligations, the Corporation shall have the right to make successive calls until the full amount required is obtained, provided that no Shareholder shall be required to pay more than the unpaid balance of its capital subscription.
  - e. In the event of such calls, payment may be made in United States Dollars or such other convertible currency as the Board of Directors may determine.
  - f. Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.
5. No dividend shall be payable and no right, including voting rights, or privilege may be exercised in relation to any Share for which a payment, whether in respect of a call or otherwise, is due and remains outstanding.

#### ARTICLE 10: UNISSUED AND NEW SHARES

1. Unless the Board of Directors shall otherwise decide, all unissued Shares (whether in the initial authorized Share capital or any increases thereof) and warrants, options or other rights to unissued Shares shall, before issue, be offered to all Shareholders in the proportion of their existing shareholding. Every such offer shall give details of the Shares which the Corporation desires to issue and the proposed terms of issuance thereof and shall invite each Shareholder to apply in writing for such number of the Shares on offer as the Shareholder intends to take, within such period as shall be specified in that regard, being a date expiring not less than ninety (90) days from the date of dispatch of the offer.
2. At the expiration of the said period, the Shares so offered, or so many of them as the Shareholders applied for, shall be allotted to or amongst the Shareholders who have applied for them, and if more than one Shareholder have so applied, the Shares shall be divided between them pro rata, as far as possible, according to the number of Shares theretofore held by each Shareholder.
3. The Board of Directors may dispose of any Share not applied for or taken up by Shareholders on such terms and in such manner as it may deem most beneficial to the Corporation.
4. If new Shares are issued for the purpose solely of providing for the initial subscription of a new Member State, the pre-emptive rights of existing Shareholders provided for herein shall not apply.

#### ARTICLE 11: SPECIAL RIGHTS ATTACHING TO SHARES/VARIATION OF RIGHTS

1. Without prejudice to any special rights previously conferred on the holders of any existing Shares or classes of Shares, any Share may be issued with such preferred, deferred or other rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the General Meeting may from time to time determine.
2. The rights attached to any class of Shares may, whether or not the Corporation is being dissolved, be varied with the consent in writing of the holders of three-fourths of the issued Shares of the class thereof, or with the sanction of resolution passed at a separate meeting of the holders of the Shares of that class. The provisions of this Charter relating to an Extraordinary General Meeting shall apply to every such separate meeting except that the quorum for any meeting shall be persons representing Shareholders holding at least one-third of the issued Shares of that class and if no member of the Board is present, the Representatives present shall choose the person to act as Chairman of the meeting from amongst themselves.



3. The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking pari-passu therewith.

## ARTICLE 12: TRANSFER OF SHARES

1. Unless otherwise decided by the Board of Directors, Shares shall be transferable subject to the restrictions and limitations set forth in this Article, by means of lodging with the Corporation a duly signed and stamped instrument of transfer in any usual form or in any form prescribed by the Board of Directors.
2. The instrument of transfer of any Share shall be executed by, or on behalf of, the transferee and the transferor shall be deemed to remain a holder of the Share until the name of the transferee is entered in the Register of Shareholders in respect of that Share.
3. The Board of Directors shall by regulation prescribe the procedure applicable to the transfer of Shares.
4. The Corporation shall keep and maintain a book to be called the "register of transfers" which shall be kept by the Secretary under the control of the Board of Directors, and in which there shall be entered the particulars of every transfer of any Share in the capital of the Corporation. The Corporation may keep and maintain subsidiary registers of transfers at any place where a transfer agent has been appointed by the Corporation. The Board of Directors shall cause all instruments of transfer which have been registered and cancelled Share certificates to be destroyed at any time after six years from the date of registration of the transfer.
5. The Board of Directors may decline to recognize any instrument of transfer unless:
  - a. the instrument of transfer is accompanied by the certificate of the Shares to which it relates and such other evidence as the Board of Directors may reasonably require to show the right of the transferor to make the transfer; and
  - b. evidence is furnished as to the authority of the persons signing the instrument of transfer for the prospective transferor and the purchaser of the relevant Shares.

## CHAPTER 3: BORROWING AND OTHER POWERS

### ARTICLE 13: BORROWING

The Corporation may source and borrow funds from any capital or financial market, as the Board of Directors deems necessary for the performance of its functions.

### ARTICLE 14: INVESTMENT OF EXCESS FUNDS

The Corporation may invest any available funds in any money or capital market instruments or in performing any other financial operation linked with its objectives.



## CHAPTER 4: ADMINISTRATION OF THE CORPORATION

### ARTICLE 15: GENERAL MEETING

1. The Shareholders shall hold an annual meeting (the **"Annual General Meeting"**) and such other meetings as may be provided for by the General Meeting or called by the Board of Directors. The Board of Directors shall convene a General Meeting whenever requested by holders of at least one-quarter in nominal value of the Shares. General Meetings may be held by electronic or other technological means enabling participation without the physical presence of participants at a single location.
2. All General Meetings other than the Annual General Meeting shall be called Extraordinary General Meetings.
3. The first General Meeting shall be called by the Provisional Depository, upon the fulfillment of the condition set forth in paragraph (a) of Article 41, at such venue and date, as shall be determined by the Provisional Depository.
4. Each holder of Shares in the capital of the Corporation shall have or be entitled to one Representative at the General Meeting.
5. Each Representative shall serve for such period or periods as shall be determined at the pleasure of the appointing Shareholder. Representatives shall serve as such without remuneration from the Corporation.

### ARTICLE 16: GENERAL MEETING – POWERS

1. The General Meeting shall exercise the following powers:
  - a. subject to the provisions of Article 24 of this Charter, elect and remove the Directors including the Chairman of the Board of Directors and determine their remuneration. In the election of Directors, the Shareholders shall have due regard to high competence in economic, financial and trade matters required for the office;
  - b. appoint and remove the external auditors and determine their remuneration;
  - c. approve, after reviewing the report of the External Auditors, the annual financial statements of the Corporation and adopt the annual report;
  - d. determine and authorize, on the recommendation of the Board of Directors, the distribution of dividends;
  - e. increase or decrease the authorized capital of the Corporation;
  - f. suspend or terminate the operations of the Corporation at an Extra-ordinary General Meeting or Annual General Meeting convened in accordance with the provisions of this Agreement;
  - g. consider any matter referred to it by the Board of Directors; and
  - h. subject to the provisions of this Agreement, exercise such other powers as are not expressly reserved to the Board of Directors.
2. Without prejudice to the provisions of sub-paragraph (a) of paragraph 1 of this Article, and by way of a transitional measure, the first Chief Executive Officer of the Corporation and the Executive Directors shall be appointed at the first General Meeting by the founding Shareholders and if appointed earlier by the promoters, their appointment shall be ratified at the first General Meeting.

### ARTICLE 17: NOTICE OF GENERAL MEETINGS

1. Every Annual General Meeting shall be called by twenty-one days' notice in writing at the least, and a General Meeting other than an Annual General Meeting shall be called by fifteen days' notice in writing at the least.



2. The notice shall be exclusive of the day on which it is served or deemed to have been served and of the day for which it is given, and shall specify the provisional agenda, the place, the day and the hour of the meeting, and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by a resolution passed by the Shareholders at a General Meeting, to such persons as are, under this Charter, entitled to receive such notices from the Corporation, provided always that a General Meeting shall, notwithstanding that it is called by shorter notice than that specified in this Charter, be deemed to have been duly called if it is so agreed:
  - a. in the case of the Annual General Meeting, by all the Representatives entitled to attend and vote thereat; and
  - b. in the case of any other meeting, by a majority in number of the Representatives having the right to attend and vote at the meeting, being a majority holding not less than ninety-five per cent (95%) in nominal value of the Shares giving that right.
3. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### **ARTICLE 18: PROCEEDINGS AT GENERAL MEETINGS**

1. All business that is transacted at an Extraordinary General Meeting and at an Annual General Meeting shall be deemed special, with the exception of the matters referred to in paragraphs (a) to (h) of paragraph 1 of Article 16.
2. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. Save as otherwise provided in this Charter, the quorum for any meeting shall be a majority of Representatives representing or acting as proxies for Shareholders holding not less than sixty per cent (60%) of the nominal value of the issued Shares.
3. If a quorum is not present for an Extra-ordinary General Meeting, including a meeting convened on the requisition of Shareholders, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the fourth day (excluding non-working days) thereafter at the same time and place, and if at such adjourned meeting a quorum is not present, Representatives of Shareholders holding an aggregate not less than thirty percent (30%) of the issued Shares, shall be a quorum. The Chairman shall adjourn any such meeting if so requested by holders of not less than fifty per cent (50%) of the issued Shares.
4. The Chairman of the Board of Directors shall preside at every General Meeting. If at any meeting the Chairman shall not be present, or if he is unable or unwilling to act as Chairman, the Representatives present shall choose the person to act as chairman of the meeting from amongst the Directors present.
5. The Chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no Shareholder shall be entitled to any notice of an adjourned meeting.

#### **ARTICLE 19: VOTES OF REPRESENTATIVES AND REPRESENTATION BY PROXY**

1. Without prejudice to any special rights and privileges of any Shareholder provided for in this Charter and subject to restrictions as to voting for the time being attached to any class of Shares, every Shareholder represented at a General Meeting shall, subject to paragraph 3 of this Article, have one vote for every Share of which he is the holder.



2. Except as otherwise provided in this Charter, all matters before a General Meeting shall be decided by a simple majority of votes of Shareholders represented at the meeting.
3. At any General Meeting, a poll may be demanded by any one or more Representatives of Shareholders holding not less than one-tenth of the total voting power of all the Shareholders having the right to vote at the meeting. The demand for a poll may be withdrawn.
4. Unless a poll be so demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Corporation shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
5. If a poll is duly demanded it shall be taken in such manner as the Chairman of the General Meeting directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
6. In the case of equal division of votes, the Chairman shall be entitled to a casting vote.
7. No person other than the Representative of a Shareholder duly registered shall be entitled to be present at a General Meeting or to vote on any question either personally or by proxy, or to be counted in a quorum at any General Meeting.
8. Votes may be given either by a Representative or a proxy. A proxy need not be a Representative.
9. The appointment of a proxy shall be by an instrument in common form or in any form approved by the Board of Directors and shall be in writing under the hand of some officer or attorney duly authorized to act in that behalf for the appointing Representative or Shareholder, but any Shareholder whose address as shown in the Register of Shareholders is outside the country where the headquarters of the Corporation is situated may appoint a proxy by telecopier or cable. The instrument or cable appointing a proxy may contain a direction to the proxy to vote for or against a particular resolution or resolutions but unless such a direction is given, the proxy may vote as he thinks fit.
10. The instrument appointing a proxy, together with the power of attorney (if any) under which it is signed or a copy thereof certified by a notary, or a cable or telecopier message appointing a proxy pursuant to paragraph (9) of this Article shall be respectively deposited or received at the principal office of the Corporation or such other place as is specified for that purpose in the notice convening the meeting not less than forty-eight hours before the time appointed for holding the meeting or an adjourned meeting or the taking of a poll at which the person named in such instrument proposes to vote in respect thereof.
11. A resolution passed by correspondence by Shareholders for the time being entitled to vote shall be as valid and effectual as if the same had been passed at a General Meeting duly convened and held.

## ARTICLE 20: BOARD OF DIRECTORS – COMPOSITION AND TENURE

1. The Board of Directors shall be composed of a minimum of eight (8) and a maximum of twenty one (21) Directors provided that at least two (2) are independent directors. The Chief Executive Officer and Executive Directors shall by virtue of their offices be members of the Board of Directors.
2. Subject to the provisions of paragraphs (4) and (5) of Article 24, Directors including the Chairman shall be elected for a renewable term of three years.
3. Directors shall continue in office until their successors are elected.



4. The Chairman shall preside at every meeting of the Board of Directors. If the Chairman is not present within one hour after the time appointed for holding a meeting or is for any reason unable or unwilling to act, the Directors present shall choose any Director other than the Chief Executive Officer or the Executive Directors, to chair the meeting.
5. If the office of a Director becomes vacant, a successor shall be elected in accordance with the provisions of paragraph 1 of this Article. Any deficiency in the number of Directors pending the filling of a vacancy shall not invalidate the composition of the Board of Directors or any act done by the Board of Directors provided their number does not at any time fall below eight (8).
6. The Shareholders shall by regulations adopted at a General Meeting define the material causes, reasons or incidents justifying the removal by the Corporation, at any time, of any Director elected pursuant to this Article. Such regulations shall be adopted by a resolution passed by a majority holding not less than two-thirds of the total voting power of the Shareholders.

## ARTICLE 21: BOARD OF DIRECTORS - POWERS AND DUTIES

1. Subject to the provisions of this Charter, the Board of Directors shall have responsibility for the general conduct of the business of the Corporation.
2. The Board of Directors shall at all times exercise independent judgment, act in the best interest of the Corporation and be responsible only to the General Meeting.
3. Subject to paragraph 1 of this Article, the Board of Directors shall have full powers to manage the business of the Corporation. It shall provide for its management in such manner as the Board of Directors may deem expedient. Without prejudice to the general powers conferred on it under this Charter, the Board of Directors shall:
  - a. prepare the work of the General Meeting;
  - b. submit to the Shareholders for consideration at each Annual General Meeting, the annual report of the Corporation and the annual financial statements, together with the report of the External Auditors relating thereto;
  - c. in conformity with the general directives of the Shareholders issued in a General Meeting, take decisions concerning particular trade-financing proposals, direct loans, guarantees, investments, the borrowing of funds and other operations of the Corporation;
  - d. establish, transfer and close down branch offices, representative offices agencies and subsidiaries;
  - e. establish subsidiary organs or committees and delegate thereto any of its powers;
  - f. approve the annual budget of the Corporation;
  - g. appoint and remove, on the recommendation of the Chief Executive Officer, officers of the Corporation and fix their conditions of service in accordance with universally recognized principles; and
  - h. upon the recommendation of the Chief Executive Officer, determine the organizational structure, staffing level, remuneration and compensation of the Corporation and prescribe the staff regulations.
4. In appointing the officers and staff of the Corporation, the Board of Directors shall make it its foremost consideration to secure the highest standards of efficiency, technical competence and integrity.
5. A Director who has a direct personal interest in any matter being, or to be considered by the Board of Directors, shall disclose the nature of his interest to the Board of Directors as soon as possible after the relevant facts concerning the matter have come to his knowledge, and shall not be present during any deliberation on the matter by the Board of Directors or vote on such matter.



## ARTICLE 22: BOARD OF DIRECTORS – PROCEDURE

1. The Board of Directors shall meet at least quarterly and as often as the business of the Corporation may require at the place of the headquarters of the Corporation or at any place specified in the convening notice, provided, however, the Board of Directors meetings may be held by electronic or other technological means enabling participation without the physical presence of participants at a single location.
2. The Chairman, in consultation with or upon the request of one-third in number of the Directors, shall summon a meeting of the Board of Directors at any time.
3. Fifteen clear days notice of every meeting of the Board of Directors shall be given to every Director. Every such notice shall specify the place, the day and the hour of the meeting and the provisional agenda of the meeting.
4. A quorum for any meeting of the Board of Directors shall not be less than sixty percent of the total number of Directors, provided that a majority present at that meeting shall be non- Executive Directors.
5. A committee established by the Board of Directors shall, in the exercise of the powers delegated to it, conform to any regulations governing its composition, functions, responsibilities and procedures as may be prescribed by the Board of Directors.
6. Subject to any regulations prescribed by the Board of Directors, a committee of the Board of Directors, may meet and adjourn as it thinks proper. Questions arising at any meeting of a committee shall be decided by a majority of votes of members of the committee. Each member shall have one vote and in case of an equal division of votes, the Chairman shall have a casting vote. Resolutions duly adopted by a committee shall have the full force of resolutions adopted by the Board of Directors, except as otherwise expressly provided in the regulations constituting, or delegating powers to, the committee.
7. All acts done in good faith at any meeting of the Board of Directors or of a committee or a subsidiary organ of the Board of Directors shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or member of the committee or the subsidiary organ acting as aforesaid, or any of them was disqualified be as valid as if such person had been duly appointed and was qualified to be a Director or a member of that committee or subsidiary organ.
8. The Board of Directors shall cause minutes to be made in books provided for the purpose:
  - a. of the names of the Directors present at each meeting of the Board of directors, and of members of a committee or subsidiary organ of the Board of Directors present at each meeting of that committee or subsidiary organ; and
  - b. of all proceedings of, and resolutions adopted at, all General Meetings, meetings of the Board of Directors and meetings of committees and subsidiary organs of the Board of Directors.
9. Any such Minute of any meeting, if purporting to be signed by the Chairman of such meeting or of the next meeting shall, unless contested by the majority of attendants at the meeting, be conclusive evidence without any proof of the facts therein stated.
10. Each Director shall have one vote, and resolutions of the Board of Directors shall be passed by a majority of votes cast by the Directors present. In the event of equal division of votes, the Chairman shall be entitled to a casting vote.



11. Subject to paragraph 10 of this Article, a resolution adopted by postal vote or by any means of communication in the form of one or more documents signed or approved in writing by Directors, shall be as valid and effectual as if it had been passed at a meeting of the Board of Directors duly convened and held. The Board of Directors shall at its next meeting following adoption of such resolution take note thereof and direct that the resolution be recorded in the minutes of the said meeting.

## CHAPTER 5: MANAGEMENT

### ARTICLE 23: EXECUTIVE COMMITTEE

1. The Board of Directors shall set up at the headquarters of the Corporation, an Executive Committee which shall exercise such functions and powers as may be delegated to it from time to time by the Board of Directors, including in particular commitment authority in respect of financing, guarantee and investment proposals.
2. The Executive Committee shall be composed of the Chief Executive Officer and the Executive Directors and such other persons as may be designated from time to time by the Board of Directors. The Chief Executive Officer shall be the Chairman of the Executive Committee.
3. The Executive Committee shall meet as often as the business of the Corporation may require and, notwithstanding paragraph 1 of this Article, meetings of the Executive Committee may be held by electronic or other technological means enabling participation without the physical presence of participants at a single location, whether at the headquarters of the Corporation or otherwise.

### ARTICLE 24: CHIEF EXECUTIVE OFFICER AND EXECUTIVE DIRECTORS

1. The Board of Directors shall, by a simple majority of all its elected members, appoint the Chief Executive Officer. The Chief Executive Officer shall be a person of the highest competence in matters pertaining to the operations, management and administration of an international financial institution.
2. The Chief Executive Officer shall be the chief executive and legal representative of the Corporation and shall, subject to the provisions of this Charter, conduct, under the general control and direction of the Board of Directors, the day-to-day business of the Corporation.
3. If the Chief Executive Officer is incapacitated or his office should become vacant for any reason, the Board of Directors shall designate an Acting Chief Executive Officer from among the Executive Directors and shall within four months appoint a new Chief Executive Officer.
4. The Board of Directors shall appoint such number of Executive Directors, not exceeding a maximum of four, as it may deem necessary, to assist the Chief Executive Officer and carry out such functions as the Chief Executive Officer may determine. The terms and conditions of service of the Executive Directors, including their remuneration and retirement, shall be as may be prescribed from time to time by regulations issued by the Board of Directors. The Board of Directors may designate one of the Executive Directors the Deputy Chief Executive Officer of the Corporation.
5. The term of office of the Chief Executive Officer shall be five years each, renewable once for a second and final term of five years.
6. The Board of Directors may remove the Chief Executive Officer or any of the Executive Directors from office.



## ARTICLE 25: USE OF THE OFFICIAL SEAL

1. The Corporation shall have an official seal which shall only be used by the authority of the Board of Directors or of a committee of the Board of Directors duly authorized by the Board of Directors in that behalf.
2. Every instrument to which the seal shall be affixed shall be signed by the Chief Executive Officer and shall be countersigned by the Secretary of the Corporation or by some other person appointed by the Board of Directors for the purpose.

## CHAPTER 6: ACCOUNTS, SUPERVISION AND CONTROL

### ARTICLE 26: ACCOUNTS

1. The Board of Directors shall cause proper books of account to be kept with respect to:
  - a. all sums of money received and expended by the Corporation and the matters in respect of which the receipts and expenditure take place;
  - b. all sales and purchases by the Corporation; and
  - c. the assets and liabilities of the Corporation.
2. Proper books shall not be deemed to have been kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Corporation's affairs and to explain its transactions.
3. The books of account shall be kept in United States Dollars, or any currency specified by the Board of Directors, at the headquarters of the Corporation or at such other place or places, as the Board of Directors, may deem fit, and shall always be open to the inspection of the Directors and the Shareholders. The procedure for inspection by the Shareholders shall be established by the Board of Directors.
4. The Board of Directors, shall at the end of each financial year, cause to be prepared and be laid before the Annual General Meeting the annual financial statements of the Corporation, including the consolidated accounts (if any) and the reports of the External Auditors relating thereto.
5. The financial statements of the Corporation shall be compiled and presented in conformity with generally accepted international accounting standards and shall be made available to all shareholders not less than twenty-one days before the date of the Annual General Meeting.

### ARTICLE 27: EXTERNAL AUDIT

1. The accounts of the Corporation shall be audited each financial year by External Auditors appointed by the General Meeting upon the recommendation of the Board of Directors. The External Auditors shall be appointed for a term of one year, which may be renewed.
2. The External Auditors shall, subject to any special directives that the General Meeting may issue from time to time, carry out their audit responsibilities in accordance with international auditing guidelines and standards and the terms of their engagement letter. They shall, in particular, carry out such tests and checks of the Corporation's records as they shall deem appropriate and certify whether or not:
  - a. the annual financial statements, including the balance sheet and the profit and loss account of the Corporation is in accordance with its books and records;
  - b. the financial transactions reflected in the annual financial statements have been recorded in accordance with the applicable rules, regulations and financial decisions;
  - c. the securities and monies on deposit and in hand have been verified by certificates received from the Corporation's depositories or by actual count; and



- d. the physical assets of the Corporation are in existence and are attributed proper valuation.
- 3. The report of the External Auditors shall be annexed to the financial statements of the Corporation for the relevant financial year and shall be laid by the Board of Directors before the Annual General Meeting. In their report the External Auditors shall state whether or not:
  - a. all the information and explanations required by the External auditors have been obtained;
  - b. in their professional opinion, the financial statements present fairly the financial position of the Corporation, the result of its operations and generally the state of affairs of the Corporation at the end of the relevant period; and
  - c. the financial situation of the Corporation during the period covered by the audit is in conformity with the provisions of this Charter and the applicable resolutions, rules, regulations and financial decisions.
- 4. The External Auditors shall have right of access at all times to the books of account, registers and vouchers of the Corporation and to all other supporting evidence of transactions that they consider necessary to consult for the effective discharge of their duties. The Board of Directors, the Chief Executive Officer and all the officers and staff of the Corporation shall furnish to the External Auditors such information and explanations as they may require.
- 5. The External auditors shall receive notice of, and may attend any meeting of the Board of Directors or the General Meeting at which the financial statements of the Corporation for any financial year is to be presented and considered.

## ARTICLE 28: AUDIT AND COMPLIANCE COMMITTEE

- 1. The Board of Directors shall set up an audit and compliance committee which shall exercise such functions and powers as may be delegated to it from time to time by the Board of Directors, including in particular the power to review, examine and verify the proper applications of the Corporation's internal control and financial reporting policies and procedures and the power to propose the appointment and remuneration of External Auditors of the Corporation. The Audit and Compliance Committee shall have access to all accounts, documents, registers and records in the custody or under the control of the Corporation.
- 2. The Audit and Compliance Committee shall be composed of three non-Executive Directors designated by the Board of Directors.
- 3. The Audit and Compliance Committee shall meet at least three times a year or as often as its business may require. The Audit and Compliance Committee shall submit to the Board of Directors and to the General Meeting an annual report and such other reports as often as it deems necessary.

## CHAPTER 7: DIVIDENDS AND CAPITALIZATION OF PROFITS

### ARTICLE 29: DIVIDENDS AND RESERVES

- 1. Subject to any preferential right or other special right for the time being attached to any Shares, the Annual General Meeting may declare dividends.
- 2. The General Meeting may from time to time on the recommendation of the Board of Directors cause the payment of dividends out of the profits of the Corporation as appear to the Board of Directors to be justified by the financial position of the Corporation, after making adequate provision for losses and reserves; provided that the amount paid shall not exceed the amount recommended by the Board of Directors.
- 3. No dividend shall bear interest.



### ARTICLE 30: CAPITALIZATION OF PROFITS

1. The Corporation in General Meeting may resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the Corporation's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly, that such sum be set free for distribution amongst the Shareholders who would have been entitled thereto if distributed by way of dividend in proportion to their Shareholding on condition that the same shall not be paid in cash but applied either in or towards paying up any amounts payable on any Shares or debentures of the Corporation to be allotted and distributed, credited as fully paid up to and amongst such Shareholders in the proportion aforesaid, or partly in one way and partly in the other.
2. Whenever a resolution is passed at a General Meeting pursuant to paragraph 1 of this Article, the Board of Directors shall give effect to such resolution and shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby and all allotments and issues of fully-paid Shares or debentures, if any, and generally shall do all acts and things required to give effect to such resolution.

## CHAPTER 8: GENERAL PROVISIONS

### ARTICLE 31: SUSPENSION OF OPERATIONS AND DISSOLUTION

1. The General Meeting may, by the affirmative votes of Shareholders holding not less than seventy-five percent of the issued share capital of the Corporation, suspend or terminate the operations of the Corporation.
2. In the event of termination of operations of the Corporation, the liquidator may, with the sanction of a resolution of the General Meeting, divide among the Shareholders in specie or in kind the whole or any part of the assets of the Corporation and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out among the Shareholders. No distribution shall, however, be made to the Shareholders as aforesaid until all liabilities to creditors and employees shall have been discharged or properly provided for.

### ARTICLE 32: FINANCIAL YEAR

The financial year of the Corporation shall begin on 1st January and end on 31st December of each year, except that the first financial year of the Corporation shall begin on the date on which the Corporation commences operations and end on 31st December of the following year.

### ARTICLE 33: ANNUAL REPORT

The Corporation shall within 6 months of the end of each financial year of the Corporation, publish a report on the operations and activities of the Corporation. The annual report shall contain the financial statements of the Corporation for the preceding financial year, including the balance sheet and the profit and loss account, together with the corresponding report of the External Auditors.

### ARTICLE 34: INDEMNIFICATION

The Chief Executive Officer, every Director, the External Auditors and any other officer, employee and agent for the time being of the Corporation shall be indemnified out of the assets of the Corporation against any liability arising out of the exercise of his functions, or costs incurred by him in defending any civil or criminal proceedings pertaining thereto.



### ARTICLE 35: REGISTER OF SHAREHOLDERS

1. The Secretary shall keep and maintain a Register of Shareholders which shall be open for inspection by Shareholders. The Register of Shareholders shall contain such particulars as the Board of Directors may from time to time prescribe. It shall be maintained at the principal office of the Corporation or any other place as determined by the Board of Directors.
2. The Register of Shareholders shall contain the following particulars:
  - a. the names and postal addresses of Shareholders, and a statement of the Shares held by each Shareholder distinguishing each Share by its number and the amount paid thereon;
  - b. the date on which each person was entered in the register as a Shareholder; and
  - c. details of any Share transfer.
3. In order to facilitate transfer of Shares, the Board of Directors may at any time appoint transfer agents to undertake the transfer and registration of Shares.

### ARTICLE 36: SHARE CERTIFICATES

1. Every Shareholder shall be entitled, without payment, to receive one certificate for all his Shares or several certificates each for one or more of his Shares. Every Certificate shall be under the Seal of the Corporation and shall specify the Shares to which it relates and the amount paid up thereon, provided that in respect of a Share or Shares held jointly by several persons, delivery of a certificate for a Share or several certificates each for one or more Shares to one of the several joint-holders shall be sufficient delivery to all such holders.
2. Worn out, defaced, destroyed or lost Share certificates shall be replaced on such terms as to evidence and indemnity and the payment of expenses and fees as the Board of Directors shall from time to time determine.

### ARTICLE 37: RULES AND REGULATIONS

The Board of Directors may adopt such rules and regulations, including financial regulations, as may be necessary or appropriate in order to conduct the business of the Corporation.

### ARTICLE 38: WORKING LANGUAGE

The working language of the Corporation shall be English and or such other language as the General Meeting may prescribe.

### ARTICLE 39: SETTLEMENT OF DISPUTES

Any question of interpretation or application of the provisions of this Charter arising among Shareholders inter se or between a Shareholder and the Corporation shall be submitted to the Board of Directors for decision. In any case where the Board of Directors has given a decision, the Shareholder concerned may require that the question be referred to the General Meeting, whose decision shall be final and binding. Pending the decision of the General Meeting the Corporation may act on the basis of the decision of the Board of Directors. The foregoing procedure shall be applicable in lieu of any judicial or arbitral procedure for the settlement of disputes and neither the Corporation nor any Shareholder or former Shareholder may bring action in court in respect thereof, except in order to enforce a decision of the Board of Directors or the General Meeting.

#### ARTICLE 40: AMENDMENT

1. Subject to the provisions of paragraph 2 of this Article, any provision contained in this Charter may be amended from time to time by a resolution passed by a majority of votes of Shareholders present or represented at a General Meeting.
2. Notwithstanding any provision contained in this Charter, any resolution to modify or change the purpose, functions or the fundamental structure of the Corporation stated in Articles 5, 7, 8, 11, 13, 14, 20, 28, as well as Article 40 of this Charter shall require a majority of votes of at least two-thirds of the holders of all issued Shares; and any resolution to merge, consolidate or, dissolve the Corporation or to suspend its operations, shall require the affirmative votes of Shareholders holding not less than seventy-five percent of the issued share capital of the Corporation.

#### ARTICLE 41: ESTABLISHMENT OF THE CORPORATION

The Corporation shall be deemed finally established only after:

- a. Shares corresponding to at least ten percent of the initial authorized Share capital have been subscribed and paid for in accordance with the provisions of Article 9 by eligible subscribers;
- b. the first General Meeting of the Corporation has been convened pursuant to the provisions of paragraph 3 of Article 15 of this Charter; and
- c. the General Meeting has elected the Directors and appointed the first Chief Executive Officer and the External Auditors of the Corporation.

#### ARTICLE 42: TRANSITIONAL PROVISIONS

Pending the final establishment of the Corporation pursuant to Article 41 of this Charter and commencement of its operations;

- a. the text of this Charter shall be deposited with the Provisional Depository and shall be open for signature by eligible subscribers; and
- b. each Shareholder shall have at least one month before the date fixed for the first General Meeting appoint a Representative and communicate his name and address to the Provisional Depository.

IN WITNESS WHEREOF THE UNDERSIGNED BEING THERE  
UNTO DULY AUTHORISED, HAVE SIGNED THIS AGREEMENT.

Done in Lagos this 7th day of May 2007 in a single copy in the English language









