

## Appendix: Agreement Establishing the Common Fund for Commodities

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mjil>

---

### Recommended Citation

*Appendix: Agreement Establishing the Common Fund for Commodities*, 7 Md. J. Int'l L. 244 (1982).

Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol7/iss2/5>

This Article is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

## APPENDIX

### AGREEMENT ESTABLISHING THE COMMON FUND FOR COMMODITIES<sup>1</sup>

*The Parties,*

*Determined* to promote economic co-operation and understanding among all States, particularly between developed and developing countries, based on the principles of equity and sovereign equality and thereby to contribute to the establishment of a New International Economic Order,

*Recognizing* the need for improved forms of international co-operation in the field of commodities as an essential condition for the establishment of a New International Economic Order, aimed at promoting economic and social development, particularly of developing countries,

*Desirous* of promoting global action to improve market structures in international trade in commodities of interest to developing countries,

*Recalling* resolution 93 (IV) on the Integrated Programme for Commodities adopted at the fourth session of the United Nations Conference on Trade and Development (hereinafter referred to as UNCTAD),

*Have agreed* to establish hereby the Common Fund for Commodities, which shall operate in accordance with the following provisions:

#### CHAPTER I

#### DEFINITIONS

##### ARTICLE 1

##### *Definitions*

For the purposes of this Agreement:

1. "Fund" means the Common Fund for Commodities established by this Agreement.

2. "International Commodity Agreement or Arrangement" (hereinafter referred to as ICA) means any intergovernmental agreement or arrangement to promote international co-operation in a commodity, the parties to which include producers and consumers covering the bulk of world trade in the commodity concerned.

3. "International Commodity Organization" (hereinafter referred to as ICO) means the organization established by an ICA to implement the pro-

---

1. *Done* at Geneva on June 27, 1980. This is a reprint of the authentic English language text, with Schedules omitted. U.N. Doc. TD/IPC/CF/CONF/24 (1980).

visions of the ICA.

4. "Associated ICO" means an ICO which is associated with the Fund pursuant to article 7.

5. "Association Agreement" means the agreement entered into between an ICO and the Fund pursuant to article 7.

6. "Maximum Financial Requirements" (hereinafter referred to as MFR) means the maximum amount of funds that may be drawn and borrowed by an Associated ICO from the Fund, to be determined in accordance with article 17, paragraph 8.

7. "International Commodity Body" (hereinafter referred to as ICB) means a body designated in accordance with article 7, paragraph 9.

8. "Unit of Account" means the unit of account of the Fund as defined in accordance with article 8, paragraph 1.

9. "Usable Currencies" means (a) the deutsche mark, the French franc, the Japanese yen, the pound sterling, the United States dollar and any other currency which has been designated from time to time by a competent international monetary organization as being in fact widely used to make payments for international transactions and widely traded in the principal exchange markets, and (b) any other freely available and effectively usable currency which the Executive Board may designate by a Qualified Majority after the approval of the country whose currency the Fund proposes to designate as such. The Governing Council shall designate a competent international monetary organization under (a) above and shall adopt by a Qualified Majority rules and regulations regarding the designation of currencies under (b) above, in accordance with prevailing international monetary practice. Currencies may be removed from the list of Usable Currencies by the Executive Board by a Qualified Majority.

10. "Directly Contributed Capital" means capital specified in article 9, paragraph 1 (a) and paragraph 4.

11. "Paid-in Shares" means the shares of Directly Contributed Capital specified in article 9, paragraph 2 (a), and article 10, paragraph 2.

12. "Payable Shares" means the shares of Directly Contributed Capital specified in article 9, paragraph 2 (b), and article 10, paragraph 2 (b).

13. "Guarantee Capital" means capital provided to the Fund, pursuant to article 14, paragraph 4, by Members of the Fund participating in an Associated ICO.

14. "Guarantees" means guarantees provided to the Fund, pursuant to article 14, paragraph 5, by participants in an Associated ICO which are not Members of the Fund.

15. "Stock Warrants" means stock warrants, warehouse receipts or other documents of title evidencing ownership of commodity stocks.

16. "Total voting power" means the sum of the votes held by all the Members of the Fund.

17. "Simple Majority" means more than half of all votes cast.
18. "Qualified Majority" means at least two thirds of all votes cast.
19. "Highly Qualified Majority" means at least three fourths of all votes cast.
20. "Votes cast" means affirmative and negative votes.

## ARTICLE 2

### *Objectives*

The objectives of the Fund shall be:

- (a) To serve as a key instrument in attaining the agreed objectives of the Integrated Programme for Commodities as embodied in resolution 93 (IV) of UNCTAD;
- (b) To facilitate the conclusion and functioning of ICAs, particularly concerning commodities of special interest to developing countries.

## ARTICLE 3

### *Functions*

In fulfilment of its objectives, the Fund shall exercise the following functions:

- (a) To contribute, through its First Account as hereinafter provided, to the financing of international buffer stocks and internationally co-ordinated national stocks, all within the framework of ICAs;
- (b) To finance, through its Second Account, measures in the field of commodities other than stocking, as hereinafter provided;
- (c) To promote co-ordination and consultation through its Second Account with regard to measures in the field of commodities other than stocking, and their financing, with a view to providing a commodity focus.

## ARTICLE 4

### *Eligibility*

Membership in the Fund shall be open to:

- (a) All States Members of the United Nations or of any of its specialized agencies or of the International Atomic Energy Agency; and
- (b) Any intergovernmental organization of regional economic integration which exercises competence in fields of activity of the Fund. Such intergovernmental organizations shall not be required to undertake any financial obligations to the Fund; nor shall they hold any votes.

## ARTICLE 5

*Members*

The Members of the Fund (hereinafter referred to as Members) shall be:

- (a) Those States which have ratified, accepted or approved this Agreement in accordance with article 54;
- (b) Those States which have acceded to this Agreement in accordance with article 56;
- (c) Those intergovernmental organizations referred to in article 4 (b) which have ratified, accepted or approved this Agreement in accordance with article 54;
- (d) Those intergovernmental organizations referred to in article 4 (b) which have acceded to this Agreement in accordance with article 56.

## ARTICLE 6

*Limitation of Liability*

No Member shall be liable, by reason only of its membership, for acts or obligations of the Fund.

## ARTICLE 7

*Relationship of ICOs and ICBs with the Fund*

1. The facilities of the Fund's First Account shall be used only by ICOs established to implement the provisions of the ICAs providing for either international buffer stocks or internationally co-ordinated national stocks, and which have concluded an Association Agreement. The Association Agreement shall comply with the terms of this Agreement and of any rules and regulations consistent therewith to be adopted by the Governing Council.

2. An ICO established to implement the provisions of the ICA which provides for international buffer stocks may become associated with the Fund for the purposes of the First Account, provided that the ICA is negotiated or renegotiated on, and conforms to, the principle of joint buffer stock financing by producers and consumers participating therein. For the purposes of this Agreement, levy-financed ICAs shall be eligible for association with the Fund.

3. A proposed Association Agreement shall be presented by the Managing Director to the Executive Board and, with the recommendation of the Board, to the Governing Council for approval by a Qualified Majority.

4. In carrying out the provisions of the Association Agreement between

the Fund and an Associated ICO each institution shall respect the autonomy of the other. The Association Agreement shall specify the mutual rights and obligations of the Fund and the Associated ICO, in terms consistent with the relevant provisions of this Agreement.

5. An Associated ICO shall be entitled to borrow from the Fund through its First Account without prejudice to its eligibility to obtain financing from the Second Account, provided the Associated ICO and its participants have performed and are duly performing their obligations to the Fund.

6. An Association Agreement shall provide for a settlement of accounts between the Associated ICO and the Fund before any renewal of the Association Agreement.

7. An Associated ICO may, if the Association Agreement so provides and with the consent of the preceding Associated ICO covering the same commodity, succeed to the rights and obligations of the preceding Associated ICO.

8. The Fund shall not intervene directly in commodity markets. However, the Fund may dispose of commodity stocks only pursuant to article 17, paragraphs 15 to 17.

9. For the purpose of the Second Account, the Executive Board shall from time to time designate appropriate commodity bodies, including ICOs, whether or not they are Associated ICOs, as ICBs, provided that they meet the criteria set out in schedule C.

## ARTICLE 8

### *Unit of Account and currencies*

1. The Unit of Account of the Fund shall be as defined in schedule F.

2. The Fund shall hold, and conduct its financial transactions in, Usable Currencies. Except as provided in article 16, paragraph 5 (b), no Member shall maintain or impose restrictions on the holding, use or exchange by the Fund of Usable Currencies deriving from:

(a) Payment of subscriptions of Shares of Directly Contributed Capital;

(b) Payment of Guarantee Capital, cash in lieu of Guarantee Capital, Guarantees or cash deposits resulting from the association of ICOs with the Fund;

(c) Payment of voluntary contributions;

(d) Borrowing;

(e) Disposal of forfeited stocks, pursuant to article 17, paragraphs 15 to 17;

(f) Payment on account of principal, income, interest or other charges

in respect of loans or investments made out of any of the funds referred to in this paragraph.

3. The Executive Board shall determine the method of valuation of Usable Currencies, in terms of the Unit of Account, in accordance with prevailing international monetary practice.

#### ARTICLE 9

##### *Capital resources*

1. The capital of the Fund shall consist of:

(a) Directly Contributed Capital to be divided into 47,000 Shares to be issued by the Fund, having a par value of 7,566.47145 Units of Account each and a total value of 355,624,158 Units of Account; and

(b) Guarantee Capital provided directly to the Fund in accordance with article 14, paragraph 4.

2. The Shares to be issued by the Fund shall be divided into:

(a) 37,000 Paid-in Shares; and

(b) 10,000 Payable Shares.

3. Shares of Directly Contributed Capital shall be available for subscription only by Members in accordance with the provisions of article 10.

4. The Shares of Directly Contributed Capital:

(a) Shall, if necessary, be increased by the Governing Council upon the accession of any State under article 56;

(b) May be increased by the Governing Council in accordance with article 12;

(c) Shall be increased by the amount needed pursuant to article 17, paragraph 14.

5. If the Governing Council makes available for subscription the unsubscribed Shares of Directly Contributed Capital pursuant to article 12, paragraph 3, or increases the Shares of Directly Contributed Capital pursuant to paragraph 4 (b) or 4 (c) of this article, each Member shall have the right, but shall not be required, to subscribe such Shares.

#### ARTICLE 10

##### *Subscription of Shares*

1. Each Member referred to in article 5 (a) shall subscribe, as set forth in schedule A:

(a) 100 Paid-in Shares; and

(b) Any additional Paid-in and Payable Shares.

2. Each Member referred to in article 5 (b) shall subscribe:

(a) 100 Paid-in Shares; and

(b) Any additional Paid-in Payable Shares to be determined by the Governing Council by a Qualified Majority in a manner consistent with the allocation of Shares in schedule A and in accordance with the terms and conditions agreed pursuant to article 56.

3. Each Member may allocate to the Second Account a part of its subscription under paragraph 1 (a) of this article with a view to an aggregate allocation to the Second Account, on a voluntary basis, of not less than 52,965,300 Units of Account.

4. Shares of Directly Contributed Capital shall not be pledged or encumbered by Members in any manner whatsoever and shall be transferable only to the Fund.

#### ARTICLE 11

##### *Payment of Shares*

1. Payments of Shares of Directly Contributed Capital subscribed by each Member shall be made:

(a) In any Usable Currency at the rate of conversion between that Usable Currency and the Unit of Account as at the date of payment; or

(b) In a Usable Currency selected by that Member at the time of deposit of its instrument of ratification, acceptance or approval, and at the rate of conversion between that Usable Currency and the Unit of Account as at the date of this Agreement. The Governing Council shall adopt rules and regulations covering the payment of subscriptions in Usable Currencies in the case of designation of additional Usable Currencies or removal of Usable Currencies from the list of Usable Currencies in accordance with article 1, definition 9.

At the time of deposit of its instrument of ratification, acceptance or approval, each Member shall select one of the procedures above, which shall apply to all such payments.

2. When undertaking any review in accordance with article 12, paragraph 2, the Governing Council shall review the operation of the method of payment referred to in paragraph 1 of this article, in the light of exchange-rate fluctuations, and, taking into account developments in the practice of international lending institutions, shall decide by a Highly Qualified Majority on changes, if any, in the method of payment of subscriptions of any additional Shares of Directly Contributed Capital subsequently issued in accordance with article 12, paragraph 3.

3. Each Member referred to in article 5 (a) shall:

(a) Pay 30 percent of its total subscription of Paid-in Shares within 60 days after the entry into force of this Agreement, or within 30 days after the date of deposit of its instrument of ratification, acceptance or approval,



whichever is later;

(b) One year after the payment provided for in subparagraph (a) above, pay 20 per cent of its total subscription of Paid-in Shares and deposit with the Fund irrevocable, non-negotiable, non-interest-bearing promissory notes in an amount of 10 per cent of its total subscription of Paid-in Shares. Such notes shall be encashed as and when decided by the Executive Board;

(c) Two years after the payment provided for in subparagraph (a) above, deposit with the Fund irrevocable, non-negotiable, non-interest-bearing promissory notes in an amount of 40 per cent of its total subscription of Paid-in Shares.

Such notes shall be encashed as and when decided by the Executive Board by a Qualified Majority, having due regard to the operational needs of the Fund, except that the promissory notes in respect of Shares allocated to the Second Account shall be encashed as and when decided by the Executive Board.

4. The amount subscribed by each Member for Payable Shares shall be subject to call by the Fund only as provided in article 17, paragraph 12.

5. Calls on Shares of Directly Contributed Capital shall be made *pro rata* from all Members with respect to whichever class or classes of Shares are being called, except as provided for in paragraph 3 (c) of this article.

6. Special arrangements for payment of subscriptions of Shares of Directly Contributed Capital by the least developed countries shall be as set forth in schedule B.

7. Subscriptions of Shares of Directly Contributed Capital may, when relevant, be paid by the appropriate agencies of Members concerned.

## ARTICLE 12

### *Adequacy of subscriptions of Shares of Directly Contributed Capital*

1. In the event that 18 months after the entry into force of this Agreement subscriptions of Shares of Directly Contributed Capital fall short of the amount specified in article 9, paragraph 1 (a), the adequacy of the subscriptions shall be reviewed by the Governing Council as soon as possible thereafter.

2. The Governing Council shall further review, at such intervals as it may deem appropriate, the adequacy of the Directly Contributed Capital available to the First Account. The first such review shall take place not later than the end of the third year after the entry into force of this Agreement.

3. As a result of any review under paragraph 1 or 2 of this article, the Governing Council may decide to make available for subscriptions unsub-

scribed Shares or to issue additional Shares of Directly Contributed Capital on a basis of assessment to be decided by the Governing Council.

4. Decisions by the Governing Council under this article shall be taken by a Highly Qualified Majority.

#### ARTICLE 13

##### *Voluntary contributions*

1. The Fund may accept voluntary contributions from Members and other sources. Such contributions shall be paid in Usable Currencies.

2. The target for the initial voluntary contributions for use in the Second Account shall be 211,861,200 Units of Account, in addition to the allocation made in accordance with article 10, paragraph 3.

3. (a) The Governing Council shall review the adequacy of the resources of the Second Account not later than the end of the third year after the entry into force of this Agreement. In light of the activities of the Second Account, the Governing Council may also undertake such a review at such other times as it decides.

(b) In light of any such reviews, the Governing Council may decide to replenish the resources of the Second Account and make the necessary arrangements. Any such replenishments shall be voluntary for Members and in accordance with this Agreement.

4. Voluntary contributions shall be made without restrictions as to their use by the Fund, except as to their designation by the contributor for use in the First or Second Account.

#### ARTICLE 14

##### *Resources deriving from the association of ICOs with the Fund*

###### *A. Cash deposits*

1. Upon the association of an ICO with the Fund, the Associated ICO shall, except as specified in paragraph 2 of this article, deposit with the Fund in cash in Usable Currencies, and for the account of that Associated ICO, one third of its MFR. Such deposit shall be made in full or in installments as the Associated ICO and the Fund may agree, taking into account all relevant factors, including the Fund's liquidity position, the need for maximizing the financial benefit to be derived from the availability of cash deposits of Associated ICOs and the capacity of the Associated ICO concerned to raise the cash required for meeting its deposit obligation.

2. An Associated ICO which is holding stocks at the time of its association with the Fund may meet a part or all of its deposit obligation under

paragraph 1 of this article by pledging to, or assigning trust for, the Fund Stock Warrants of equivalent value.

3. An Associated ICO may deposit with the Fund, on mutually acceptable terms and conditions, any cash surplus, in addition to deposits made under paragraph 1 of this article.

#### *B. Guarantee Capital and Guarantees*

4. Upon the association of an ICO with the Fund, Members participating in that Associated ICO shall provide directly to the Fund Guarantee Capital on a basis determined by the Associated ICO and satisfactory to the Fund. The aggregate value of the Guarantee Capital, and any Guarantees or cash provided under paragraph 5 of this article shall equal two thirds of the MFR of that Associated ICO, except as provided for in paragraph 7 of this article. Guarantee Capital may, when relevant, be provided by the appropriate agencies of the Members concerned, on a basis satisfactory to the Fund.

5. If participants in an Associated ICO are not Members, that Associated ICO shall deposit cash with the Fund, in addition to the cash referred to in paragraph 1 of this article, in the amount of the Guarantee Capital which such participants would have provided had they been Members; except that the Governing Council may by a Highly Qualified Majority permit that Associated ICO to arrange either for the provision of additional Guarantee Capital of the same amount by Members participating in that Associated ICO, or for the provision of Guarantees of the same amount by participants in that Associated ICO, which are not Members. Such Guarantees shall carry financial obligations comparable to those of Guarantee Capital and shall be in a form satisfactory to the Fund.

6. Guarantee Capital and Guarantees shall be subject to call by the Fund only in accordance with article 17, paragraph 11 to 13. Payment of such Guarantee Capital and Guarantees shall be made in Usable Currencies.

7. If an Associated ICO is meeting its deposit obligation in installments pursuant to paragraph 1 of this article, such Associated ICO and its participants shall, upon the payment of each instalment, provide, as appropriate, Guarantee Capital, cash or Guarantees, in accordance with paragraph 5 of this article, which in the aggregate shall equal twice the amount of that instalment.

#### *C. Stock Warrants*

8. An Associated ICO shall pledge to, or assign in trust for, the Fund all Stock Warrants of commodities purchased with the proceeds of with-

drawals of cash deposits made under paragraph 1 of this article, or with the proceeds of loans obtained from the Fund, as security for the payment by the Associated ICO of its obligations to the Fund. The Fund shall dispose of stocks only in accordance with article 17, paragraphs 15 to 17. Upon the sale of the commodities evidenced by such Stock Warrants, the Associated ICO shall apply the proceeds of such sales first to repay the balance due on any loan to the Associated ICO from the Fund and then to meet its cash deposit obligation in accordance with paragraph 1 of this article.

9. All Stock Warrants pledged to, or assigned in trust for, the Fund shall be valued, for the purposes of paragraph 2 of this article, on a basis specified in rules and regulations adopted by the Governing Council.

#### ARTICLE 15

##### *Borrowings*

The Fund may borrow in accordance with article 16, paragraph 5 (a), provided that the total outstanding amount of borrowings by the Fund for its First Account operations shall not at any time exceed an amount representing the aggregate of:

- (a) The uncalled portion of Payable Shares;
- (b) The uncalled Guarantee Capital and Guarantees of participants in Associated ICOs under article 14, paragraphs 4 to 7; and
- (c) The Special Reserve established pursuant to article 16, paragraph 4.

#### ARTICLE 16

##### *General provisions*

##### *A. Use of resources*

1. The resources and facilities of the Fund shall be used exclusively to achieve its objectives and fulfil its functions.

##### *B. Two Accounts*

2. The Fund shall establish, and maintain its resources in, two separate Accounts: a First Account, with resources as provided for in article 17, paragraph 1, to contribute to the financing of commodity stocking; and a Second Account, with resources as provided for in article 18, paragraph 1, to finance measures in the field of commodities other than stocking, without jeopardizing the integral unity of the Fund. Such separation of accounts shall be reflected in the financial statements of the Fund.

3. The resources of each Account shall be held, used, committed, in-

vested or otherwise disposed of entirely separately from the resources of the other Account. The resources of one Account shall not be charged with losses, or used to discharge liabilities, arising out of the operations or other activities of the other Account.

*C. The Special Reserve*

4. The Governing Council shall establish, out of the earnings of the First Account, net of administrative expenses, a Special Reserve, not exceeding 10 per cent of Directly Contributed Capital allocated to the First Account, for meeting liabilities arising from First Account borrowings, as provided for in article 17, paragraph 12. Notwithstanding the provisions of paragraphs 2 and 3 of this article, the Governing Council shall decide by a Highly Qualified Majority how to dispose of any net earnings not allocated to the Special Reserve.

*D. General powers*

5. In addition to any powers set forth elsewhere in this Agreement, the Fund may exercise the following powers in connexion with its operations, subject to and consistent with general operating principles and the terms of this Agreement:

(a) To borrow from Members, international financial institutions and, for First Account operations, in capital markets, in accordance with the law of the country in which the borrowing is made, provided that the Fund shall have obtained the approval of such country and of any country in the currency of which the borrowing is denominated;

(b) To invest funds at any time not needed for its operations in such financial instruments as the Fund may determine, in accordance with the law of the country in whose territory the investment is made;

(c) To exercise such other powers necessary to further its objectives and functions and to implement the provisions of this Agreement.

*E. General operating principles*

6. The Fund shall operate according to the provisions of this Agreement and any rules and regulations which the Governing Council may adopt pursuant to article 20, paragraph 6.

7. The Fund shall make arrangements to ensure that the proceeds of any loan or grant made or participated in by the Fund is used only for the purposes for which the loan or grant was made.

8. Every security issued by the Fund shall bear on its face a conspicuous statement to the effect that it is not the obligation of any Member unless expressly stated otherwise on the security.

9. The Fund shall seek to maintain reasonable diversification in its investments.

10. The Governing Council shall adopt suitable rules and regulations for the procurement of goods and services from the resources of the Fund. Such rules and regulations shall conform, as a general rule, to the principles of international competitive bidding among suppliers in the territories of Members, and shall give appropriate preference to experts, technicians and suppliers from developing countries Members of the Fund.

11. The Fund shall establish close working relationships with international and regional financial institutions and may, as is practicable, establish such relationships with national entities of Members, whether public or private, which are concerned with investment of development funds in commodity development measures. The Fund may participate in co-financing with such institutions.

12. In its operations and within its sphere of competence, the Fund shall co-operate with ICBs and Associated ICOs in the protection of the interests of developing importing countries, if such countries are adversely affected by measures under the Integrated Programme for Commodities.

13. The Fund shall operate in a prudent manner, shall take actions it deems necessary to conserve and safeguard its resources and shall not engage in currency speculation.

## ARTICLE 17

### *The First Account*

#### A. *Resources*

1. The resources of the First Account shall consist of:

(a) Subscriptions by Members of Shares of Directly Contributed Capital, except such part of their subscriptions as may be allocated to the Second Account in accordance with article 10, paragraph 3;

(b) Cash deposits from Associated ICOs pursuant to article 14, paragraphs 1 to 3;

(c) Guarantee Capital, cash in lieu of Guarantee Capital and Guarantees provided by participants in Associated ICOs pursuant to article 14, paragraphs 4 to 7;

(d) Voluntary contributions allocated to the First Account;

(e) Proceeds of borrowings pursuant to article 15;

(f) Net earnings which may accrue from operations of the First Account;

(g) The Special Reserve referred to in article 16, paragraph 4;

(h) Stock Warrants from Associated ICOs pursuant to article 14, paragraphs 8 and 9.

**B. Principles of First Account operations**

2. The Executive Board shall approve the terms of borrowing arrangements for First Account operations.

3. Directly Contributed Capital allocated to the First Account shall be employed:

(a) To enhance the creditworthiness of the Fund in respect of its First Account operations;

(b) As working capital, to meet the short-term liquidity needs of the First Account; and

(c) To provide revenues to cover the administrative expenses of the Fund.

4. The Fund shall charge interest on loans made to Associated ICOs at rates as low as are consistent with its ability to obtain finance and with the need to cover its costs of borrowing for funds lent to such Associated ICOs.

5. The Fund shall pay interest on all cash deposits and other cash balances of Associated ICOs at appropriate rates consistent with the return on its financial investments, and taking into account the rate charged on loans to Associated ICOs and the cost of borrowing for First Account operations.

6. The Governing Council shall adopt rules and regulations laying down the operating principles within which it shall determine interest rates charged and paid in accordance with paragraph 4 and 5 of this article. In so doing the Governing Council shall be guided by the need to maintain the financial viability of the Fund and shall bear in mind the principle of non-discriminatory treatment as between Associated ICOs.

**C. The MFR**

7. An Association Agreement shall specify the MFR of the Associated ICO and the steps to be taken in the event of modification of its MFR.

8. The MFR of an Associated ICO shall include the acquisition cost of stocks, determined by multiplying the authorized size of its stocks as specified in the Association Agreement by an appropriate purchase price as determined by that Associated ICO. In addition, an Associated ICO may include in its MFR specified carrying costs, exclusive of interest charges on loans, in an amount not exceeding 20 per cent of the acquisition cost.

**D. Obligations to the Fund of Associated ICOs and of their participants**

9. An Association Agreement shall provide, *inter alia*:

(a) For the manner in which the Associated ICO and its participants shall undertake the obligations to the Fund specified in article 14 in respect of deposits, Guarantee Capital, cash in lieu of Guarantee Capital, and Guarantees, and Stock Warrants;

(b) That the Associated ICO shall not borrow from any third party for its buffer stocking operations, unless the Associated ICO and the Fund have reached mutual agreement on a basis approved by the Executive Board;

(c) That the Associated ICO shall at all times be responsible, and liable to the Fund, for the maintenance and preservation of stocks for which Stock Warrants have been pledged to, or assigned in trust for, the Fund, and shall maintain adequate insurance on, and appropriate security and other arrangements with respect to, the holding and handling of such stocks;

(d) That the Associated ICO shall enter into appropriate credit agreements with the Fund specifying the terms and conditions of any loan from the Fund to that Associated ICO, including the arrangements for repayment of principal and payment of interest;

(e) That the Associated ICO shall, as appropriate, keep the Fund informed of conditions and developments in the commodity markets with which the Associated ICO is concerned.

*E. Obligations of the Fund to Associated ICOs*

10. An Association Agreement shall also provide, *inter alia*:

(a) That, subject to the provisions of paragraph 11 (a) of this article, the Fund shall provide for withdrawal by the Associated ICO on demand, in whole or in part, of the amounts deposited pursuant to article 14, paragraphs 1 and 2;

(b) That the Fund shall make loans to the Associated ICO in an aggregate principal amount not exceeding the sum of the uncalled Guarantee Capital, cash in lieu of Guarantee Capital, and Guarantees provided by participants in the Associated ICO by virtue of their participation in that Associated ICO pursuant to article 14, paragraphs 4 to 7;

(c) That withdrawals and borrowings by each Associated ICO pursuant to subparagraph (a) and (b) above shall be used only to meet stocking costs included in the MFR in accordance with paragraph 8 of this article. Not more than any amount included in the MFR of each Associated ICO to meet specified carrying costs in accordance with paragraph 8 of this article shall be used to meet such costs.

(d) That, except as provided for in paragraph 11 (c) of this article, the Fund shall promptly make Stock Warrants available to the Associated ICO for use in its buffer stock sales;

(e) That the Fund shall respect the confidentiality of information provided by the Associated ICO.



*F. Default of Associated ICOs*

11. In the event of imminent default by an Associated ICO on any of its borrowings from the Fund, the Fund shall consult with that Associated ICO on measures to avoid such a default. To meet any default by an Associated ICO, the Fund shall have recourse to the following resources, in the following order, up to the amount of the default:

- (a) Any cash of the defaulting Associated ICO held in the Fund;
- (b) Proceeds of *pro rata* calls of Guarantee Capital and Guarantees provided by participants in the defaulting Associated ICO by virtue of their participation in that Associated ICO;
- (c) Subject to paragraph 15 of this article, any Stock Warrants pledged to, or assigned in trust for, the Fund by the defaulting Associated ICO.

*G. Liabilities arising from First Account borrowings*

12. In the event that the Fund cannot otherwise meet its liabilities in respect of its First Account borrowings, it shall meet such liabilities out of the following resources in the following order; provided that, if an Associated ICO shall have failed to meet its obligations towards the Fund, the Fund shall have already, to the fullest extent possible, made use of the resources referred to in paragraph 11 of this article;

- (a) The Special Reserve;
- (b) Proceeds of subscriptions of Paid-in Shares allocated to the First Account;
- (c) Proceeds of subscriptions of Payable Shares;
- (d) Proceeds of *pro rata* calls of Guarantee Capital; and Guarantees provided by participants in a defaulting Associated ICO by virtue of their participation in other Associated ICOs.

Payments made by participants in Associated ICOs in accordance with (d) above shall be reimbursed by the Fund as soon as possible from resources provided in accordance with paragraphs 11, 15, 16 and 17 of this article; any such resources remaining after such reimbursement shall be used to reconstitute, in reverse order, the resources referred to in (a), (b) and (c) above.

13. The proceeds of *pro rata* calls of call Guarantee Capital and Guarantees shall be used by the Fund, following recourse to the resources listed in paragraph 12 (a), (b) and (c) of this article, to meet any of its liabilities other than liabilities arising from the default of an Associated ICO.

14. To enable the Fund to meet any liabilities which may be outstanding after recourse to the resources mentioned in paragraphs 12 and 13 of this article, the Shares of Directly Contributed Capital shall be increased by the amount needed to meet such liabilities and the Governing Council

shall be convened in an emergency session to decide upon the modalities for such increase.

*H. Disposal by the Fund of forfeited stocks*

15. The Fund shall be free to dispose of commodity stocks forfeited to it by a defaulting Associated ICO pursuant to paragraph 11 of this article, provided that the Fund shall seek to avoid distress sales of such stocks by postponing the sales to the extent consistent with the need to avoid default on the Fund's own obligations.

16. The Executive Board shall at appropriate intervals review disposals of stocks to which the Fund has recourse in accordance with paragraph 11 (c) of this article, in consultation with the Associated ICO concerned, and shall decide by a Qualified Majority whether to postpone such disposals.

17. The proceeds of such disposals of stocks shall be used first to meet any liabilities of the Fund incurred in its First Account borrowings in respect of the Associated ICO concerned, and then to reconstitute, in the reverse order, the resources listed under paragraph 12 of this article.

ARTICLE 18

*The Second Account*

*A. Resources*

1. The resources of the Second Account shall consist of:

- (a) The part of Directly Contributed Capital allocated to the Second Account in accordance with article 10, paragraph 3;
- (b) Voluntary contributions made to the Second Account;
- (c) Such net income as may accrue from time to time in the Second Account;
- (d) Borrowings;
- (e) Any other resources placed at the disposal of, received or acquired by, the Fund for its Second Account operations pursuant to this Agreement.

*B. Financial limits for the Second Account*

2. The aggregate amount of loans and grants made, and of participations therein, by the Fund through its Second Account operations shall not exceed the aggregate amount of the resources of the Second Account.

*C. Principles of Second Account operations*

3. The Fund may make or participate in loans and, except for that portion of the Directly Contributed Capital allocated to the Second Ac-

count, grants for the financing of measures in the field of commodities other than stocking from the resources of the Second Account, subject to the provisions of this Agreement and in particular to the following terms and conditions:

(a) The measures shall be commodity development measures, aimed at improving the structural conditions in markets and at enhancing the long-term competitiveness and prospects of particular commodities. Such measures shall include research and development, productivity improvements, marketing and measures designed to assist, as a rule by means of joint financing or through technical assistance, vertical diversification, whether undertaken alone, as in the case of perishable commodities and other commodities whose problems cannot be adequately solved by stocking, or in addition to and in support of stocking activities.

(b) The measures shall be jointly sponsored and followed up by producers and consumers within the framework of an ICB.

(c) The operations of the Fund in the Second Account may take the form of loans and grants to an ICB or an agency thereof, or to a Member or Members designated by such ICB on terms and conditions which the Executive Board decides are appropriate, having regard to the economic situation of the ICB or the Member or Members concerned and the nature and requirements of the proposed operation. Such loans may be covered by governmental or other suitable guarantees from the ICB or the Member or Members designated by such ICB.

(d) The ICB sponsoring a project to be financed by the Fund through its Second Account shall submit to the Fund a detailed written proposal specifying the purpose, duration, location and cost of the project and the agency responsible for its execution.

(e) Before any loan or grant is made, the Managing Director shall present to the Executive Board a detailed appraisal of the proposal along with his recommendations and the advice of the Consultative Committee, as appropriate, in accordance with article 25, paragraph 2. Decisions with regard to the selection and approval of proposals shall be made by the Executive Board by a Qualified Majority in accordance with this Agreement and any rules and regulations for the operations of the Fund adopted pursuant thereto.

(f) For the appraisal of project proposals presented to it for financing, the Fund shall, as a general rule, use the services of international or regional institutions and may, where appropriate, use the services of other competent agencies and consultants specialized in the field. The Fund may also entrust to such institutions the administration of loans or grants and the supervision of the implementation of projects financed by it. Such institutions, agencies and consultants shall be selected according to rules and regulations adopted by the Governing Council.

(g) In making or participating in any loan, the Fund shall pay due regard to the prospects that the borrower and any guarantor shall be in a position to meet their obligations to the Fund in respect of such transactions.

(h) The Fund shall enter into an agreement with the ICB, an agency thereof, the Member of Members concerned, specifying the amounts, terms and conditions of the loan or grant and providing, *inter alia*, for any governmental or other appropriate guarantees in accordance with this Agreement and with any rules and regulations established by the Fund.

(i) Funds to be provided under any financing operation shall be made available to the recipient only to meet expenses in connexion with the project as they are actually incurred.

(j) The Fund shall not refinance projects initially financed from other sources.

(k) Loans shall be repayable in the currency or currencies loaned.

(l) The Fund shall as far as possible avoid duplication of its Second Account activities with existing international and regional financial institutions, but may participate in co-financing with such institutions.

(m) In determining its priorities for the use of the resources of the Second Account, the Fund shall give due emphasis to commodities of interest to the least developed countries.

(n) In considering projects for the Second Account due emphasis shall be given to the commodities of interest to developing countries, particularly those of small producers-exporters.

(o) The Fund shall pay due regard to the desirability of not using a disproportionate amount of its Second Account resources for the benefit of any particular commodity.

#### **D. *Borrowing for the Second Account***

4. The Fund's borrowing for the Second Account, under article 16, paragraph 5 (a), shall be in accordance with rules and regulations to be adopted by the Governing Council and shall be subject to the following:

(a) Such borrowing shall be on concessional terms to be specified in rules and regulations to be adopted by the Fund and its proceeds shall not be re-lent on terms which are more concessional than those on which they are acquired.

(b) For the purposes of accounting, the proceeds of the borrowing shall be placed in a loan account whose resources shall be held, used, committed, invested or otherwise disposed of, entirely separately from other resources of the Fund, including the other resources of the Second Account.

(c) The other resources of the Fund, including other resources of the Second Account, shall not be charged with losses, or used to discharge lia-

bilities, arising out of operations or other activities of such a loan account.

(d) The borrowings for the Second Account shall be approved by the Executive Board.

#### ARTICLE 19

##### *Structure of the Fund*

The Fund shall have a Governing Council, an Executive Board, a Managing Director and such staff as may be necessary to carry out its functions.

#### ARTICLE 20

##### *Governing Council*

1. All the powers of the Fund shall be vested in the Governing Council.

2. Each member shall appoint one Governor and one alternate to serve on the Governing Council at the pleasure of the appointing Member. The alternate may participate in meetings but may vote only in the absence of his principal.

3. The Governing Council may delegate to the Executive Board authority to exercise any powers of the Governing Council, except the power:

- (a) To determine the fundamental policy of the Fund;
- (b) To agree on terms and conditions for accession to this Agreement in accordance with article 56;
- (c) To suspend a Member;
- (d) To increase or decrease the Shares of Directly Contributed Capital;
- (e) To adopt amendments to this Agreement;
- (f) To terminate the operations of the Fund and to distribute the Fund's assets in accordance with chapter IX;
- (g) To appoint the Managing Director;
- (h) To decide appeals by Members on decisions made by the Executive Board concerning the interpretation or application of this Agreement;
- (i) To approve the audited annual statement of accounts of the Fund;
- (j) To take decisions pursuant to article 16, paragraph 4, relating to net earnings after provision for the Special Reserve;
- (k) To approve proposed Association Agreements;
- (l) To approve proposed agreements with other international organizations in accordance with article 29, paragraphs 1 and 2;
- (m) To decide on replenishments of the Second Account in accordance with article 13.

4. The Governing Council shall hold an annual meeting and such spe-

cial meetings as it may decide, or as are called for by 15 Governors holding at least one fourth of the total voting power, or as requested by the Executive Board.

5. A quorum for any meeting of the Governing Council shall be constituted by a majority of the Governors holding not less than two thirds of the total voting power.

6. The Governing Council shall by a Highly Qualified Majority establish such rules and regulations consistent with this Agreement as it deems necessary for the conduct of the business of the Fund.

7. Governors and alternates shall serve as such without compensation from the Fund, unless the Governing Council decides by a Qualified Majority to pay them reasonable per diem and travel expenses incurred in attending meetings.

8. At each annual meeting, the Governing Council shall elect a Chairman from among the Governors. The Chairman shall hold office until the election of his successor. He may be re-elected for one successive term.

#### ARTICLE 21

##### *Voting in the Governing Council*

1. Votes in the Governing Council shall be distributed among Member States in accordance with schedule D.

2. Decisions in the Governing Council shall, whenever possible, be taken without vote.

3. Except as otherwise provided in this Agreement, all matters before the Governing Council shall be decided by a Simple Majority.

4. The Governing Council may by rules and regulations establish a procedure whereby the Executive Board may obtain a vote of the Council on a specific question without calling a meeting of the Council.

#### ARTICLE 22

##### *Executive Board*

1. The Executive Board shall be responsible for the conduct of the operations of the Fund and shall report to the Governing Council thereon. For this purpose the Executive Board shall exercise the powers accorded to it elsewhere in this Agreement or delegated to it by the Governing Council. In the exercise of any delegated powers, the Executive Board shall take decisions by the same levels of majority that would apply were such powers retained by the Governing Council.

2. The Governing Council shall elect 28 Executive Directors and one alternate to each Executive Director in the manner specified in schedule E.

3. Each Executive Director and alternate shall be elected for a term of two years and may be re-elected. They shall continue in office until their successors are elected. An alternate may participate in meetings but may vote only in the absence of his principal.

4. The Executive Board shall function at the headquarters of the Fund and shall meet as often as the business of the Fund may require.

5. (a) The Executive Directors and their alternates shall serve without remuneration from the Fund. The Fund may, however, pay them reasonable per diem and travel expenses incurred in attending meetings.

(b) Notwithstanding subparagraph (a) above, the Executive Directors and their alternate shall be remunerated by the Fund if the Governing Council decides by a Qualified Majority that they shall serve on a full-time basis.

6. A quorum for any meeting of the Executive Board shall be constituted by a majority of Executive Directors holding not less than two thirds of the total voting power.

7. The Executive Board may invite the executive heads of Associated ICOs and of ICBs to participate, without vote, in the deliberations of the Executive Board.

8. The Executive Board shall invite the Secretary-General of UNCTAD to attend the meetings of the Executive Board as an observers.

9. The Executive Board may invite the representatives of other interested international bodies to attend its meetings as observer.

#### ARTICLE 23

##### *Voting in the Executive Board*

1. Each Executive Director shall be entitled to cast the number of votes attributable to the Members he represents. These votes need not be cast as a unit.

2. Decisions in the Executive Board shall, whenever possible, be taken without vote.

3. Except as otherwise provided in this Agreement, all matters before the Executive Board shall be decided by a Simple Majority.

#### ARTICLE 24

##### *Managing Director and staff*

1. The Governing Council shall by a Qualified Majority appoint the Managing Director. If the appointee is, at the time of his appointment, a Governor or an Executive Director, or an alternate, he shall resign from such position prior to taking up his duties as Managing Director.

2. The Managing Director shall conduct, under the direction of the Governing Council and the Executive Board, the ordinary business of the Fund.

3. The Managing Director shall be the chief executive officer of the Fund and the Chairman of the Executive Board, and shall participate in its meetings without the right to vote.

4. The term of office of the Managing Director shall be four years and he may be reappointed for one successive term. However, he shall cease to hold office at anytime the Governing Council so decides by a Qualified Majority.

5. The Managing Director shall be responsible for the organization, appointment and dismissal of the staff pursuant to staff rules and regulations to be adopted by the Fund. In appointing the staff the Managing Director shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to recruiting personnel on as wide a geographical basis as possible.

6. The Managing Director and staff, in the discharge of their functions, shall owe their duty entirely to the Fund and to no other authority. Each Member shall respect the international character of this duty and shall refrain from all attempts to influence the Managing Director or any of the staff in the discharge of their functions.

#### ARTICLE 25

##### *Consultative Committee*

1. (a) The Governing Council shall, taking into account the need to make the Second Account operational as soon as possible, establish as early as possible a Consultative Committee, in accordance with rules and regulations to be adopted by the Governing Council, to facilitate the operations of the Second Account.

(b) In the composition of the Consultative Committee, due regard shall be paid to the need for a broad and equitable geographical distribution, individual expertise in commodity development issues, and the desirability of a broad representation of interests, including of voluntary contributors.

2. The functions of the Consultative Committee shall be:

(a) To advise the Executive Board on technical and economic aspects of the programmes of measures proposed by ICBs to the Fund for financing and co-financing through the Second Account and on the priorities to be attached to such proposals;

(b) To advise, at the request of the Executive Board, on specific aspects connected with the appraisal of particular projects being considered for financing through the Second Account;



(c) To advise the Executive Board on guidelines and criteria for determining the relative priorities among measures within the scope of the Second Account, for appraisal procedures, for making grants and loan assistance, and for co-financing with other international financial institutions and other entities;

(d) To comment on reports from the Managing Director on the supervision, implementation and evaluation of projects being financed through the Second Account.

#### ARTICLE 26

##### *Budgetary and audit provisions*

1. The administrative expenses of the Fund shall be covered by revenues of the First Account.

2. The Managing Director shall prepare an annual administrative budget, which shall be considered by the Executive Board and be transmitted, together with its recommendations, to the Governing Council for approval.

3. The Managing Director shall arrange for an annual independent and external audit of the accounts of the Fund. The audited statement of accounts, after consideration by the Executive Board, shall be transmitted, together with its recommendations, to the Governing Council for approval.

#### ARTICLE 27

##### *Location of headquarters*

The headquarters of the Fund shall be located in the place decided upon by the Governing Council by a Qualified Majority, if possible at its first annual meeting. The Fund may, by a decision of the Governing Council, establish other offices, as necessary, in the territory of any Member.

#### ARTICLE 28

##### *Publication of reports*

The Fund shall issue and transmit to Members an annual report containing an audited statement of accounts. After adoption by the Governing Council, such report and statement shall also be transmitted for information to the General Assembly of the United Nations, to the Trade and Development Board of UNCTAD, to Associated ICOs and to other interested international organizations.

## ARTICLE 29

*Relations with the United Nations and other organizations*

1. The Fund may enter into negotiations with the United Nations with a view to concluding an agreement to bring the Fund into relationship with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. Any agreement concluded in accordance with Article 63 of the Charter shall require the approval of the Governing Council, upon the recommendation of the Executive Board.

2. The Fund may co-operate closely with UNCTAD and the organizations of the United Nations system, other intergovernmental organizations, international financial institutions, non-governmental organizations and governmental agencies concerned with related fields of activities and, if deemed necessary, enter into agreements with such bodies.

3. The Fund may establish working arrangements with the bodies referred to in paragraph 2 of this article, as may be decided by the Executive Board.

## ARTICLE 30

*Withdrawal of Members*

A Member may at any time, except as provided for in article 35, paragraph 2 (b), and subject to the provisions of article 32, withdraw from the Fund by transmitting a notice in writing to the Fund. Such withdrawal shall become effective on the date specified in the notice, which shall be not less than twelve months after receipt of the notice by the Fund.

## ARTICLE 31

*Suspension of membership*

1. If a Member fails to fulfil any of its financial obligations to the Fund, the Governing Council may, except as provided for in article 35, paragraph 2 (b), by a Qualified Majority, suspend its membership. The Member so suspended shall automatically cease to be a Member one year from the date of its suspension, unless the Governing Council decides to extend the suspension for a further period of one year.

2. When the Governing Council is satisfied that the suspended Member has fulfilled its financial obligations to the Fund, the Council shall restore the Member to good standing.

3. While under suspension, a Member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal and to arbitration during the termination of the Fund's operations, but shall re-

main subject to compliance with all its obligations under this Agreement.

## ARTICLE 32

### *Settlement of accounts*

1. When a Member ceases to be a Member, it shall remain liable thereafter to meet all calls made by the Fund before, and payments outstanding as of, the date on which it ceased to be a Member in respect of its obligations to the Fund. It shall also remain liable to meet its obligations in respect of its Guarantee Capital, until arrangements satisfactory to the Fund have been made which comply with article 14, paragraphs 4 to 7. Each Association Agreement shall provide that if a participant in the respective Associated ICO ceases to be a Member, the Associated ICO shall ensure that such arrangements are completed not later than the date on which the Member ceases to be a Member.

2. When a Member ceases to be a Member, the Fund shall arrange for the repurchase of its Shares consistent with article 16, paragraphs 2 and 3, as a part of the settlement of accounts with that Member, and shall cancel its Guarantee Capital provided that the obligations and requirements specified in paragraph 1 of this article have been met. The repurchase price of the Shares shall be the value shown by the books of the Fund as at the date the Member ceases to be a Member; provided that any amount thus due to the Member may be applied by the Fund to any liability outstanding to the Fund from that Member pursuant to paragraph 1 of this article.

## ARTICLE 33

### *Withdrawal of Associated ICOs*

1. An Associated ICO may, subject to the terms and conditions of the Association Agreement, withdraw from association with the Fund, provided that such Associated ICO shall repay all outstanding loans received from the Fund before the date on which such withdrawal becomes effective. The Associated ICO and its participants shall remain liable thereafter only to meet calls made by the Fund before that date in respect of their obligations to the Fund.

2. When an Associated ICO ceases to be associated with the Fund, the Fund shall, after the fulfilment of the obligations specified in paragraph 1 of this article:

(a) Arrange for the refund of any cash deposit and for the return of any Stock Warrants it holds for the account of that Associated ICO;

(b) Arrange for the refund of any cash deposited in lieu of Guarantee Capital, and cancel relevant Guarantee Capital and Guarantees.

## ARTICLE 34

*Temporary suspension of operations*

In an emergency, the Executive Board may temporarily suspend such of the Fund's operations as it considers necessary pending an opportunity for further consideration and action by the Governing Council.

## ARTICLE 35

*Termination of operations*

1. The Governing Council may terminate the Fund's operations by a decision taken by a vote of two thirds of the total number of Governors holding not less than three fourths of the total voting power. Upon such termination, the Fund shall forthwith cease all activities, except those necessary for the orderly realization and conservation of its assets and the settlement of its outstanding obligations.

2. Until final settlement of its obligations and final distribution of its assets, the Fund shall remain in existence, and all rights and obligations of the Fund and of its Members under this Agreement shall continue unimpaired, except that:

(a) The Fund shall not be obliged to provide for withdrawal on demand of Associated ICO deposits in accordance with article 17, paragraph 10 (a), or to make new loans to Associated ICOs in accordance with article 17, paragraph 10 (b); and

(b) No Member may withdraw or be suspended after the decision to terminate has been taken.

## ARTICLE 36

*Settlement of obligations: general provisions*

1. The Executive Board shall make such arrangements as are necessary to ensure the orderly realization of the Fund's assets. Before making any payments to creditors holding direct claims, the Executive Board shall, by a Qualified Majority, make such reserves or arrangements as are necessary, in its sole judgement, to ensure a distribution to holders of contingent claims *pro rata* with creditors holding direct claims.

2. No distribution of assets shall be made in accordance with this chapter until:

(a) All liabilities of the Account in question have been discharged or provided for; and

(b) The Governing Council has decided to make a distribution by a Qualified Majority.

3. Following a decision of the Governing Council under paragraph 2 (b) of this article, the Executive Board shall make successive distributions of any remaining assets of the Account in question until all such assets have been distributed. Such distribution to any Member or any participant in an Associated ICO which is not a Member shall be subject to the prior settlement of all outstanding claims of the Fund against that Member or participant and shall be effected at such times and in such currencies or other assets as the Governing Council shall deem fair and equitable.

#### ARTICLE 37

##### *Settlement of obligations: First Account*

1. Any loans outstanding to Associated ICOs in respect of First Account operations at the time of a decision to terminate the Fund's operations shall be repaid by the Associated ICOs concerned within 12 months of the decision to terminate. On repayment of such loans, Stock Warrants pledged to, or assigned in trust for, the Fund in respect of those loans shall be returned to the Associated ICOs.

2. Stock Warrants pledged to, or assigned in trust for, the Fund in respect of commodities acquired with cash deposits of Associated ICOs shall be returned to such Associated ICOs in a manner consistent with the treatment of cash deposits and surpluses specified in paragraph 3 (b) of this article, to the extent that such Associated ICOs have fully discharged their obligations to the Fund.

3. The following liabilities incurred by the Fund in respect of First Account operations shall be discharged *pari passu* through the use of the assets of the First Account, in accordance with article 17, paragraphs 12 to 14:

(a) Liabilities to creditors of the Fund; and

(b) Liabilities to Associated ICOs in respect of cash deposits and surpluses held in the Fund in accordance with article 14, paragraphs 1, 2, 3 and 8, to the extent that such Associated ICOs have fully discharged their obligations to the Fund.

4. Distribution of any remaining assets of the First Account shall be made on the following basis and in the following order:

(a) Amounts up to the value of any Guarantee Capital called from and paid by Members in accordance with article 17, paragraphs 12 (d) and 13, shall be distributed to such Members *pro rata* to their shares in the total value of such Guarantee Capital called and paid;

(b) Amounts up to the value of any Guarantees called from and paid by participants in Associated ICOs which are not Members in accordance with article 17, paragraphs 12 (d) and 13, shall be distributed to such par-

ticipants *pro rata* to their shares in the total value of such Guarantees called and paid.

5. Distribution of any assets of the First Account remaining after the distributions provided for in paragraph 4 of this article shall be made to Members *pro rata* to their subscriptions of Shares of Directly Contributed Capital allocated to the First Account.

#### ARTICLE 38

##### *Settlement of obligations: Second Account*

1. Liabilities incurred by the Fund in respect of Second Account operations shall be discharged through the use of the resources of the Second Account, pursuant to article 18, paragraph 4.

2. Distribution of any remaining assets of the Second Account shall be made first to Members up to the value of their subscriptions of Shares of Directly Contributed Capital allocated to that Account pursuant to article 10, paragraph 3, and then to contributors to that Account *pro rata* to their share in the total amount contributed pursuant to article 13.

#### ARTICLE 39

##### *Settlement of obligations: other assets of the Fund*

1. Any other asset shall be realized at a time or times to be decided by the Governing Council, in the light of recommendations made by the Executive Board and in accordance with procedures determined by the Executive Board by a Qualified Majority.

2. Proceeds realized by the sale of such assets shall be used to discharge *pro rata* the liabilities referred to in article 37, paragraph 3, and article 38, paragraph 1. Any remaining assets shall be distributed first on the basis and in the order specified in article 37, paragraph 4, and then to Members *pro rata* to their subscriptions of Shares of Directly Contributed Capital.

#### ARTICLE 40

##### *Purposes*

To enable the Fund to fulfil the functions with which it is entrusted, the status, privileges and immunities set forth in this chapter shall be accorded to the Fund in the territory of each Member.

## ARTICLE 41

*Legal status of the Fund*

The Fund shall possess full juridical personality, and, in particular, the capacity to conclude international agreements with States and international organizations, to enter into contracts, to acquire and dispose of immovable and movable property, and to institute legal proceedings.

## ARTICLE 42

*Immunity from juridical proceedings*

1. The Fund shall enjoy immunity from every form of legal process, except for actions which may be brought against the Fund:

(a) By lenders of funds borrowed by the Fund with respect to such funds;

(b) By buyers or holders of securities issued by the Fund with respect to such securities; and

(c) By assignees and successors in interest thereof with respect to the aforementioned transactions.

Such actions may be brought only before courts of competent jurisdiction in places in which the Fund has agreed in writing with the other party to be subject. However, if no provision is made as to the forum, or if an agreement as to the jurisdiction of such courts is not effective for reasons other than the fault of the party bringing legal action against the Fund, then such action may be brought before a competent court in the place in which the Fund has its headquarters or has appointed an agent for the purpose of accepting service or notice of process.

2. No action shall be brought against the Fund by Members, Associated ICOs, ICBs, or their participants, or persons acting for or deriving claims from them, except in cases as in paragraph 1 of this article. Nevertheless, Associated ICOs, ICBs, or their participants shall have recourse to such special procedures to settle controversies between themselves and the Fund as may be prescribed in agreements with the Fund, and, in the case of Members, in this Agreement and in any rules and regulations adopted by the Fund.

3. Notwithstanding the provisions of paragraph 1 of this article, property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, any form of taking, foreclosure, seizure, all forms of attachment, injunction, or other judicial process impeding disbursement of funds or covering or impeding disposition of any commodity stocks or Stock Warrants, and any other interlocutory measures before the delivery of a final judgement against the Fund by a court having jurisdic-

tion in accordance with paragraph 1 of this article. The Fund may agree with its creditors to limit the property or assets of the Fund which may be subject to execution in satisfaction of a final judgement.

#### ARTICLE 43

##### *Immunity of assets from other actions*

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

#### ARTICLE 44

##### *Immunity of archives*

The archives of the Fund, wherever located, shall be inviolable.

#### ARTICLE 45

##### *Freedom of assets from restrictions*

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls, and moratoria of any nature.

#### ARTICLE 46

##### *Privilege for communications*

As far as may be compatible with any international convention on telecommunications in force and concluded under the auspices of the International Telecommunication Union to which a Member is a party, the official communications of the Fund shall be accorded by each Member the same treatment that is accorded to the official communications of other Members.

#### ARTICLE 47

##### *Immunities and privileges of specified individuals*

All Governors, Executive Directors, their alternates, the Managing Director, members of the Consultative Committee, experts performing missions for the Fund, and the staff, other than persons in domestic service of



the Fund:

(a) Shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives such immunity;

(b) When they are not nationals of the Member concerned, shall be accorded, as well as their families forming part of their household, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by such Member to the representatives, officials and employees of comparable rank of other international financial institutions of which it is a member;

(c) Shall be granted the same treatment in respect to travelling facilities as is accorded by each Member to representatives, officials and employees of comparable rank of other international financial institutions of which it is a member.

#### ARTICLE 48

##### *Immunities from taxation*

1. Within the scope of its official activities, the Fund, its assets, property, income and its operations and transactions authorized by this Agreement shall be exempt from all direct taxation and from all customs duties on goods imported or exported for its official use, provided that this shall not prevent any Member from imposing its normal taxes and customs duties on commodities which originate from the territory of such Member and which are forfeited to the Fund through any circumstance. The Fund shall not claim exemption from taxes which are no more than charges for services rendered.

2. When purchases of goods or services of substantial value necessary for the official activities of the Fund are made by or on behalf of the Fund, and when the price of such purchases includes taxes or duties, appropriate measures shall, to the extent possible and subject to the law of the Member concerned, be taken by such Member to grant exemption from such taxes or duties or provide for their reimbursement. Goods imported or purchased under an exemption provided for in this article shall not be sold or otherwise disposed of in the territory of the Member which granted the exemption, except under conditions agreed with that Member.

3. No tax shall be levied by Members on or in respect of salaries and emoluments paid or any other form of payment made by the Fund to Governors, Executive Directors, their alternates, members of the Consultative Committee, the Managing Director and staff, as well as experts performing missions for the Fund, who are not their citizens, nationals or subjects.

4. No taxation of any kind shall be levied on any obligation or security issued or guaranteed by the Fund, including any dividend or interest thereon, by whomsoever held:

(a) which discriminates against such obligation or security solely because it is issued or guaranteed by the Fund; or

(b) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

#### ARTICLE 49

##### *Waiver of immunities, exemptions and privileges*

1. The immunities, exemptions and privileges provided in this chapter are granted in the interests of the Fund. The Fund may waive, to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges provided in this chapter in cases where its action would not prejudice the interests of the Fund.

2. The Managing Director shall have the power, as may be delegated to him by the Governing Council, and the duty to waive the immunity of any of the staff, and experts performing missions for the Fund, in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.

#### ARTICLE 50

##### *Application of this chapter*

Each Member shall take such action as is necessary for the purpose of making effective in its territory the principles and obligations set forth in this chapter.

#### ARTICLE 51

##### *Amendments*

1. (a) Any proposal to amend this Agreement emanating from a Member shall be notified to all Members by the Managing Director and referred to the Executive Board, which shall submit its recommendations thereon to the Governing Council.

(b) Any proposal to amend this Agreement emanating from the Executive Board shall be notified to all Members by the Managing Director and referred to the Governing Council.

2. Amendments shall be adopted by the Governing Council by a Highly Qualified Majority. Amendments shall enter into force six months after

their adoption unless otherwise specified by the Governing Council.

3. Notwithstanding paragraph 2 of this article, any amendment modifying:

- (a) The right of any Member to withdraw from the Fund;
- (b) Any voting majority requirement provided for in this Agreement;
- (c) The limitation on liability provided in article 6;
- (d) The right to subscribe or not to subscribe Shares of Directly Contributed Capital pursuant to article 9, paragraph 5;
- (e) The procedure for amending this Agreement;

shall not come into force until accepted by all Members. Acceptance shall be deemed to have been given unless any Member notifies its objection to the Managing Director in writing within six months after the adoption of the amendment. Such period of time may be extended by the Governing Council at the time of the adoption of the amendment, at the request of any Member.

4. The Managing Director shall immediately notify all Members and the Depositary of any amendments that are adopted and of the date of the entry into force of any such amendments.

## ARTICLE 52

### *Interpretation*

1. Any question of interpretation or application of the provisions of this Agreement arising between any Member and the Fund or between Members shall be submitted to the Executive Board for decision. Such Member or Members shall be entitled to participate in the deliberations of the Executive Board during the consideration of such question in accordance with rules and regulations to be adopted by the Governing Council.

2. In any case where the Executive Board has given a decision under paragraph 1 of this article, any Member may require, within three months from the date of notification of the decision, that the question be referred to the Governing Council, which shall take a decision at its next meeting by a Highly Qualified Majority. The decision of the Governing Council shall be final.

3. Where the Governing Council has been unable to reach a decision under paragraph 2 of this article, the question shall be submitted to arbitration in accordance with the procedures laid down in article 53, paragraph 2, if any Member so requests within three months after the final day of consideration of the question by the Governing Council.

## ARTICLE 53

*Arbitration*

1. Any dispute between the Fund and any Member which has withdrawn, or between the Fund and any Member during the termination of the Fund's operations, shall be submitted to arbitration.

2. The arbitral tribunal shall consist of three arbitrators. Each party to the dispute shall appoint one arbitrator. The two arbitrators so appointed shall appoint the third arbitrator, who shall be the Chairman. If within 45 days of receipt of the request for arbitration either party has not appointed an arbitrator, or if within 30 days of the appointment of the two arbitrators the third arbitrator has not been appointed, either party may request the President of the International Court of Justice, or such other authority as may have been prescribed by rules and regulations adopted by the Governing Council, to appoint an arbitrator. If the President of the International Court of Justice has been requested under this paragraph to appoint an arbitrator and if the President is a national of a State party to the dispute or is unable to discharge his duties, the authority to appoint the arbitrator shall devolve on the Vice-President of the Court, or, if he is similarly precluded, on the oldest among the members of the Court not so precluded who have been longest on the bench. The procedure of arbitration shall be fixed by the arbitrators but the Chairman shall have full power to settle all questions of procedure in any case of disagreement with respect thereto. A majority vote of the arbitrators shall be sufficient to reach a decision, which shall be final and binding upon the parties.

3. Unless a different procedure for arbitration is provided for in an Association Agreement, any dispute between the Fund and the Associated ICO shall be subject to arbitration in accordance with the procedures provided for in paragraph 2 of this article.

## ARTICLE 54

*Signature and ratification, acceptance or approval*

1. This Agreement shall be open for signature by all States listed in schedule A, and by intergovernmental organizations specified in article 4 (b), at United Nations Headquarters in New York from 1 October 1980 until one year after the date of its entry into force.

2. Any signatory State or signatory intergovernmental organization may become a party to this Agreement by depositing an instrument of ratification, acceptance or approval until 18 months after the date of its entry into force.

## ARTICLE 55

*Depositary*

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

## ARTICLE 56

*Accession*

After the entry into force of this Agreement, any State or intergovernmental organization specified in article 4 may accede to this Agreement upon such terms and conditions as are agreed between the Governing Council and that State or intergovernmental organization. Accession shall be effected by the deposit of an instrument of accession with the Depositary.

## ARTICLE 57

*Entry into force*

1. This Agreement shall enter into force upon receipt of the Depositary of instruments of ratification, acceptance or approval from at least 90 States, provided that their total subscriptions of Shares of Directly Contributed Capital comprise not less than two thirds of the total subscriptions of Shares of Directly Contributed Capital allocated to all the States specified in schedule A and that not less than 50 per cent of the target for pledges of voluntary contributions to the Second Account specified in article 13, paragraph 2, has been met, and further provided that the foregoing requirements have been fulfilled by 31 March 1982 or by such later date as the States that have deposited such instruments by the end of that period may decide by a two-thirds majority vote of those States. If the foregoing requirements have not been fulfilled by that later date, the States that have deposited such instruments by that later date may decide by a two-thirds majority vote of those States on a subsequent date. The States concerned shall notify the Depositary of any decisions taken under this paragraph.

2. For any State or intergovernmental organization that deposits an instrument of ratification, acceptance or approval after the entry into force of this Agreement, and for any State or intergovernmental organization that deposits an instrument of accession, this Agreement shall enter into force on the date of such deposit.

## ARTICLE 58

*Reservations*

Reservations may not be made with respect to any of the provisions of this Agreement, except with respect to article 53.