

# PROTOCOL RELATING TO COMMUNITY ENTERPRISES

THE HIGH CONTRACTING PARTIES

Recalling the provisions of Articles 2 and 32 of the Treaty of the Economic Community of West African States relating to the integration and development of the economies of Member States of the Community;

Recalling the provision of the Protocol relating to the definition of the concept of products originating from Member States of ECOWAS;

Recalling Resolution ECW/CM/VI/RES.26 of November 1979 of the Council of Ministers relating to the formulation of ECOWAS Regional Industrial Policy and Programme;

Recalling Decision A/DEC.1/5/85 dated 30 th May, 1983 of the Authority relating to the adoption and the implementation of a single Trade Liberalisation Scheme for industrial Products originating from Member States and the classification of the Member States contained in Article 4 thereof;

Mindful of the fact that the responsibility for the economic development of the West African region rests with the Member States themselves;

Considering that in furtherance of the objectives of the Treaty, Community enterprises can be vital agents for the promotion of more rapid integration of the economies of the Member States through the provision of additional avenues for joint endeavours under a Community framework;

HAVE AGREED AS FOLLOWS;

## Article 1. Definitions

"Treaty" means the Treaty of the Economic Community of West African States signed in Lagos on the 28 th May, 1975;

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

"Member State" means a Member State of the Community;

"Third Country" means a country other than a Member State of the Community;

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

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

"Executive Secretariat" and "Executive Secretary" means the Executive Secretariat and Executive Secretary of the Community as provided for under Article 8 of the Treaty;

"The Fund" means the Fund for Co-operation, Compensation and Development established by Article 50 of the Treaty;

"Selection Panel" means the Panel established by Article 11 of this Protocol;

"Community Enterprise" means an enterprise admitted to the status of a Community Enterprise under this Protocol and enjoying the benefits and guarantees granted thereunder;

"National Enterprises" means an enterprise that is registered in a Member State and operating under the national laws of the Member States;

"Inter-governmental enterprise" means an enterprise whose equity capital is owned entirely by two or more Member States;

"Citizen of the Community" means a citizen of the Community as defined in the Protocol relating to the definition of Community Citizen;

"National of a Member State" means a national of a Member State who is otherwise not qualified as a citizen of the Community;

"Unit of Account" means the unit of account specified in paragraph 3 of Article 6 of the Protocol relating to the Fund;

"Value Added" means value added as defined by Article 1 of the Protocol relating to the definition of the concept of products originating from Member States;

"Legal Persons of Member States" means institutions or companies in which Member States or their nationals own not less than 51% of the equity capital;

"Processing" shall have the same meaning ascribed to it in the Protocol relating to the definition of the concept of products originating from Member States.

## **Article 2. Ownership and Form of Community Enterprises**

1. Subject to the provisions of this Protocol, an enterprise may be admitted to the status of Community Enterprise under this Protocol if its equity capital is owned by:

- a. two or more Member States, or
- b. two or more Member States and citizens or institutions of the Community or nationals or legal persons of a Member State or nationals or legal persons of third countries.

2. Any enterprise in respect of which an application is made of admission to the status of a Community Enterprise, shall first have been incorporated as a public limited liability company or established as an inter-governmental enterprise in a Member State.

## **Article 3. Conditions for the Approval of a Community Enterprise**

1. No enterprise shall be admitted to the status of a Community Enterprise unless it complies with the provisions of Article 2 of this Protocol and in addition it satisfies the following conditions:

- a. i. In respect of an enterprise referred to in sub-paragraph (a) of paragraph 1 of Article 2 of this Protocol, its entire equity capital is vested in two or more Member States, or
- ii. In respect of an enterprise referred to in sub-paragraph (b) of paragraph 1 of Article 2 of this Protocol, not less than 51% of its equity capital is vested in two or more Member States and

Citizens or institutions of the Community or nationals or legal persons of a Member State or nationals or legal persons of third countries; and

b. in accordance with Article 4 of Decision A/DEC.1/5/83 of the Authority.

- i. in respect of Cape Verde, the Gambia, Guinea Bissau, Burkina Faso, Mali, Mauritania or Niger its equity capital is not less than 1.5 million units of accounts with an intended investment of not less than 6 million units of accounts, or
- ii. in respect of Benin, Guinea, Liberia, Sierra Leone or Togo, its equity capital is not less than 2 million units of account with an intended investment of not less than 8 million units of account,
- iii. in respect of Ivory Coast, Ghana, Nigeria or Senegal, its equity capital is not less than 2.5 million units of account with an intended investment of not less than 8 million units of account,

c. its Chairman and the majority of the members of its Board of Directors are citizens of the Community; and

d. its activities extend to two or more Member States with the objective of promoting through complementarity the economic integration of the Community; and

e. its Headquarters is in a Member State; and

f. its objectives are in accordance with the development policies and programmes of the Community as may be determined from time to time by the Council; and

g. its operations will not harm the interest of National Enterprises of Member States; and

h. all its shares are registered and confer the same rights; and

i. with respect to a manufacturing enterprise, its products originate within the Member States in accordance with the provisions of the Protocol relating to the definition of the concept of products origination from Member States of the Economic Community of West African States other than those relating to indigenous ownership and participation.

2. Notwithstanding the provisions of this Protocol, an enterprise may be admitted to the status of a Community Enterprise if it is or will be engaged solely in the purchase or sale of goods without undergoing any processing.

## **Article 4.**

### ADDITIONAL CRITERIA FOR APPROVAL OF COMMUNITY ENTERPRISES

In addition to the conditions stipulated in Article 3 of this Protocol, the Selection Panel shall before recommending the admission of an enterprise to the status of a Community Enterprise and depending on the nature of the activities of the enterprise have regard to its ability to contribute to the following objectives:

a. the development of the Community in general and in particular, the industrially less-developed Member States;

b. the promotion of diversification in the economic activities of the Community;

c. the rational use of the resources of the Member States and their economic potential;

d. the creation and the expansion of employment within the Community for nationals of the Member States;

e. improved access of the Member States to international capital markets;

f. the provision of satisfactory arrangements for the training of nationals of the Member States in administrative, technical, managerial and other skills with a view to securing the benefit of their knowledge and experience in the conduct of the enterprises;

g. the promotion and development of indigenous technology and the transfer adaptation of imported one;

h. the improvement of the balance of payments of Member States through significant savings on import from third countries and increase of trade within the Community and exports to third countries;

i. the provision of sufficient and adequate environmental pollution controls and the restoration of the environment to its original state.

## **Article 5. Application for Approval**

1. All applications for the admission of an enterprise to the status of a Community Enterprise shall be in writing and shall first be submitted to the Member State in which the enterprise is located or will be located for its sponsorship with a copy to the Executive Secretariat for information.

1. On receipt of an application, the Member State shall acknowledge receipt and make its decision known to the applicant and the Executive Secretariat within three months of the receipt of such application.

2. An Enterprise sponsored by a Member State shall submit through such Member State thirty copies in French and twenty in English of its application to the Executive Secretariat which shall acknowledge receipt both to the member States and the Enterprises concerned.

## **Article 6. Information Required for Approval of Application**

1. All applications for the admission of an enterprise to the status of a Community Enterprise shall be accompanied by a detailed description of the nature of the enterprise and a copy of its Memorandum and Articles of Association or equivalent documents.

1. The particulars required under paragraph 1 of this Article shall where applicable include the following:

a. the name and address of the enterprise to be approved;

b. a copy of its instrument of incorporation and a certificate showing the number of shares held by each shareholder;

- c. list and nationalities of shareholders;
  - d. the names and nationalities of members of the Board of Directors;
  - e. the goods produced or to be produced or services offered or to be offered;
  - f. the actual or projected amount on investment and financing plan showing the amount to be invested in local and external currencies;
  - g. date of commencement of construction;
  - h. the day on which the enterprise is expected to commence operation or production in marketable quantities of the products specified;
  - i. the locality or localities in which it is proposed to establish the enterprise;
  - j. a detailed feasibility study on the enterprise which shall where applicable include
    - i. a detailed estimate and description and analysis of the projected markets, capital and production factors, required and size of the labour force, especially the size of personnel required from third countries;
    - ii. a production scheme indicating the annual volume and value of production and possibilities of expansions;
    - iii. a detailed inventory of the volume, value and origin of plant machinery, spare parts and all other equipment necessary for the establishment and operation of the enterprise after its admission and their expected sources of supply and the price structure for products to be manufactured and the estimated trading account figures for a ten-year period and cash flow;
  - iv. the projected scale of export to third countries;
  - v. the projected effect on trade within the Community;
  - vi. a detailed inventory in volume and value and origin of annual imports of raw materials and semi-processed goods essential to the operations of the enterprise after its admission.
  - vii. a programme of recruitment and training for workers who are citizens of the Community that would enable them to acquire the requisite skills. Such programme shall provide for a period at the end of which citizens of the Community shall replace personnel from third countries.
1. Upon the receipt of the application referred to in paragraph 3 of Article 5 of this Protocol, the Executive Secretariat shall:
    - a. acknowledge receipt and state the period required for an evaluation of the application which shall not exceed six months. The Executive Secretariat may during the evaluation of such application request the applicant for supplementary information and may determine a time limit in any case not exceeding six months, for the communication of such information;
    - b. forward a copy thereof to all Member States;
    - c. publish an extract of the application in the Official Journal of the Community and cause it to be published in the Official Gazettes of the Member States.
  2. The Member States shall acknowledge receipt and within four months from the date of the publication of an application in the Official Journal of the Community submit their observations thereon to the Executive Secretariat.
  3. Three months after the publication of an application in the Official Journal of the Community, the Executive Secretariat shall transmit the application together with all the relevant documents and observations received from the Member States to the Selection Panel for its consideration and recommendations.
  4. The Executive Secretariat shall forward the recommendations of the Selection Panel to the next meeting of the Council for its decision.
  5. The decision of the Council shall be published in the Official Journal of the Community and transmitted forthwith to the Member States which shall cause it to be published in their Official Gazettes.

## **Article 8. Objection Procedure**

1. Any Member State wishing to object to the admission of an enterprise to the status of a Community Enterprise shall

within a period of three months from the date the application is published in the Official Journal of the Community forward to the Executive Secretariat in writing the reasons and justification for its objection.

2. Any legal or natural person established or domiciled in a Member State wishing to object to the admission of an enterprise to the status of a Community Enterprise shall within the period specified in paragraph 1 of this Article submit in writing the reasons and justification for his objection to that Member State for transmission to the Executive Secretariat.

3. Upon the receipt of an objection the Executive Secretariat shall investigate the matter and submit its findings to the Selection Panel for its recommendations and transmit them to the Council for its decision.

## **Article 9. Approval Agreement**

1. As soon as enterprise has been approved for admission to the status of a Community Enterprise by the Council the Executive Secretary shall on behalf of the Community enter into an agreement (hereinafter referred to as "the Approval Agreement") with the enterprise in the form annexed to this Protocol.

2. The duration of the Approval Agreement shall be fixed by the Council on the recommendation of the Selection Panel bearing in mind the size and nature of the enterprise.

3. The Approval Agreement shall be governed by the provisions of this Protocol.

## **Article 10.**

### **ROLE OF THE EXECUTIVE SECRETARIAT**

The Executive Secretariat shall:

a. receive and evaluate all applications for the admission of enterprises to the status of Community Enterprises, submit them to the Selection Panel for its recommendations and to the Council for its decision;

b. keep a register of Community Enterprises and levy and collect from Community Enterprises such registration fees as may be determined by the Council;

c. Monitor in co-operation with the Member States the implementation of training schemes instituted in pursuance with item (vii) of sub-paragraph (j) of paragraph 2 of Article 6 of this Protocol;

d. monitor in co-operation with the Member States the results of benefits granted to Community Enterprise under this Protocol and advise the Council on the performance of such Community Enterprises;

e. inform the Council of any change in the composition of the Board of Directors or in the control of a Community Enterprise;

f. examine as early as possible any complaints or objections received affecting an Approval Agreement or the performance and conduct of a Community Enterprise after commencement of operations and submit them to the Selection Panel;

g. supervise the execution of the Approval Agreement and the implementation of this Protocol generally;

h. help Community Enterprise in their negotiations with Member States with a view to obtaining the most favourable fiscal regime, incentives and privileges in force in the Member States concerned.

## **Article 11. Selection Panel**

1. There is hereby established a Selection Panel which shall consist of one representative from each Member State who may be assisted by advisers.

2. It shall be the responsibility of the Selection Panel:

a. to examine all applications for the admission of enterprises to the status of Community Enterprises submitted to it by the Executive Secretariat and make recommendations thereon to the Council;

b. to deal with any complaints or objections affecting an Approval Agreement or the performance and conduct of a Community Enterprise.

## **Article 12.**

## ROLE OF THE COUNCIL

The Council shall:

- a. admit enterprises to the status of Community Enterprises in accordance with the provisions of this Protocol;
- b. determine the basis and the rate for calculating the Community Levy as provided for in paragraph 1 of Article 14 of this Protocol;
- c. approve the use of the proceeds of the Community Levy as provided for in paragraph 3 of Article 14 of this Protocol;
- d. cause the suspension or cancellation of an Approval Agreement where a Community Enterprise has been fraudulent or acts contrary to the provisions of this Protocol;
- e. determine registration fees to be paid by Community Enterprises as provided for in paragraph (b) of Article 10 of this Protocol;

## Article 13. Duties of a Community Enterprise

1. All enterprises which have been admitted to the status of Community Enterprises in accordance with the provisions of this Protocol shall:
  - a. submit progress reports, annual balance sheets and audited accounts to the relevant authorities of the Member States involved in the project with copies to the Executive Secretariat;
  - b. furnish the Member States and the Executive Secretariat with information relating to the fulfilment of the conditions of any permit and the extent to which benefits and permits have been utilised;
  - c. offer services or manufacture products within the Community of acceptable quality at competitive prices and in sufficient quantities;
  - d. inform the Executive Secretariat of any intended deviations from or difficulties in the implementation of the terms of an Approval Agreement, so as to enable any necessary reassessment to be made between the parties to the Approval Agreement;
  - e. comply with such audit as may be requested by the Executive Secretariat in collaboration with the relevant authorities of the Member State where they are located in order to ascertain compliance with the terms of the Approval Agreement;
  - f. comply with such other conditions as may be imposed by the Council;
  - g. for all other necessary purposes, co-operate fully with the representative of the Executive Secretariat and the Member States;
  - h. not fix or alter the prices of its product or services without prior consultation with the Executive Secretariat and the competent authorities of the Member States where they are located.
2. All shareholders of a Community Enterprise shall be entitled to a vote and to be informed about the activities of the enterprise.
3. No dealings in the shares of a Community Enterprise shall take place without the approval of its Board of Directors and in no case shall such dealings lead to a reduction of the equity capital of nationals, legal persons or governments of the Member States below the level prescribed in items (i) and (ii) of sub-paragraph (a) of paragraph 1 of Article 3 of this Protocol. All valid dealings in its shares shall be notified to the Executive Secretariat.
4. Any decision relating to the alteration of the instrument of incorporation, increase and reduction in the capital and dissolution of a Community Enterprise, appointment and removal of members of the Board of Directors and change of location of the headquarters of a Community Enterprise shall previously be notified to the Executive Secretariat.
5. All changes in the structure of a Community Enterprise that may reduce the effective control of citizens of the Community or nationals of the Member States in the day to day administration of that enterprise shall not be permitted.

## Article 14. Community Levy

1. In addition to such national taxes as a Community Enterprise may be subject to in a Member State where its headquarters

is or where it has autonomous branches, subsidiaries or affiliates a Community enterprise shall pay directly to the Community an annual Community Levy the basis and rate of which shall be determined by the Council, taking into consideration

The level of development of the different Member States in accordance with the provisions of Article 4 of Decision A/DEC.1/5/83 of the Authority.

2. Notwithstanding the provisions of paragraph 1 of this Article, the Council may exempt a Community Enterprise from the payment of Community Levy for such period and in respect of such activities as it may determine.
3. The Community Levy paid in pursuance of the provisions of paragraph 1 of this Article shall be kept in a Special Facility of the Fund and the use of such Special Facility shall be determined by Council.
4. Regulations relating to the application of the provisions of this Article including the computation of Community Levy, exemption from or deferment of payment of Community Levy and other allowances shall be made by the Council.

## **Article 15. Duties of the Member States**

1. Each Member State shall:

- a. receive, study and evaluate all applications for the admission of an enterprise to the status of a Community Enterprise and forward such applications sponsored by them within three months to the Executive Secretariat for processing;
- b. take such steps as are necessary to give effect to the provisions of this Protocol and ensure that effect is given to the provisions of an Approval Agreement and any matters required to be done thereunder;
- c. not take such discriminatory or unreasonable measures as would adversely affect the management, maintenance, use, enjoyment, expansion, sale, liquidation or other disposition of the investment of Community Enterprises;
- d. assist Community Enterprise by taking all necessary steps to promote their objectives and operations and facilitate the realisation of those objectives including the granting of the necessary export and import licences;
- e. determine and approve the quota of employees who are nationals of third countries required from time to time by Community Enterprises and take measures to facilitate the granting of the necessary visas and entry, resident and work permits;
- f. transmit as soon as possible to the Executive Secretariat any complaint or objection by any interested party in respect of an application for approval, or the performance or conduct of a Community Enterprise after commencement of its activities;
- g. pay fair compensation to any Community Enterprise which sustains a loss as a result of the expropriation or nationalisation by it of the assets or shares of the Community Enterprises;
- h. refuse to grant import licence or import duties exemption for the import of products from third countries where in the opinion of the Council, the same or similar products produced by Community Enterprises or by other enterprises manufacturing the same or similar products in the Member States are available in sufficient quantity or quantities within the Community to meet the demand for such products or similar products at competitive prices.

2. All shareholders shall be enabled by the Member States to exercise in a reasonable manner, all their rights, particularly with respect to their attendance at meetings of the organs of a Community Enterprise.

## **Article 16. General Benefits, Guarantees and Privileges of Community Enterprises**

1. No enterprise admitted to the status of a Community Enterprise shall be nationalised or expropriated by the government of any Member State except for valid reasons of public interest and whereupon fair and adequate compensation shall be promptly paid.
2. Subject to the provisions of this Article, no person who owns shares in a Community Enterprise shall be compelled by law while the Community Enterprise continues to enjoy the benefits, guarantees and privileges granted under this Protocol, to cede in whole or in part his interest in the Community Enterprise.
3. Benefits granted to a Community Enterprise under this Protocol and particularly under the terms of an Approval Agreement shall not, except as provided under Article 21, be altered subsequently to its disadvantage.
4. Community Enterprises shall have legal personality in all Member States and shall enjoy the rights and privileges and

favourable treatment with regard to industrial, financial and other incentives or advantages granted as a result of their negotiations with relevant authorities and in accordance with the laws of the Member States concerned.

5. Subject to legislation in force and economic conditions prevailing in the Member States the following privileges and benefits may be obtained for a Community Enterprise through negotiations with the Member State concerned.

- i. the remittance of funds for payment of normal commercial transactions;
- ii. the remittance of capital, including interests and dividends to the country of origin of shareholders and creditors in the event of sale or the liquidation of a Community Enterprise;
- iii. the transfer of profits at the rate fixed in accordance with the terms of the negotiations carried out with the Member State concerned out of the country in which the headquarters of a Community Enterprise is located after adequate provision has been made for re-investment, maintenance and replacement of assets and after payment of any tax due in respect of the Community Enterprise;
- iv. the transfer of payment in respect of principal, interest and other financial charges where a loan has been granted to a Community Enterprise by a non-resident in accordance with the terms of the contract of the said loan;
- v. the transfer of fees and other charges incurred by a Community Enterprise in the ordinary course of business outside the country of its principal place of business;
- vi. the entry into the Member State of the requisite foreign managerial and technical personnel for employment or engagement in a Community Enterprise, if the requisite skills are not available within the Community.

6. Reasonable facilities shall be provided by the monetary authorities of the Member States concerned to personnel employed or engaged in a Community Enterprise for making remittances abroad in respect of maintenance of their families and other contractual obligations such as insurance premiums and all contributions to provident and pension funds.

7. Dividends paid to natural or legal persons who are shareholders of Community Enterprises may be exempted from withholding tax whether such shareholders are residents or nonresidents of the Member States where such enterprises are established.

## **Article 17. Special Additional Privileges**

1. The provisions of this Article shall apply only to the Community Enterprises referred to in subparagraph (a) and (b) of paragraph 1 of Article 2 of this Protocol.

2. An Approval Agreement may, without prejudice to the right of products which otherwise enjoy Community tariff treatment, provide exceptionally that no other Approval Agreement under this Protocol may be entered into in respect of the same industrial or economic activity.

3. Where a Community Enterprise enjoys the benefits provided for in paragraph 2 of this Article:

a. the products of the enterprise shall not be subject to any form of tariff or non-tariff restrictions or barriers except as provided for under Article 26 of the Treaty;

b. products which are the same or similar to the products of that enterprise may be imported exceptionally into the Community or exempted from import duties where in the opinion of the Council the products of that enterprise are insufficient in quantity or quality to meet the demand for those products or similar products at a competitive price.

4. The provisions of paragraph 2 and sub-paragraph (b) of paragraph 3 of this Article are exceptional and can only be applied for a specified period and for a region defined by the Council and for a Community Enterprise operating in a priority sector or introducing a new industrial or economic activity within the Community without undue distortion to the economic equilibrium of the Community.

## **Article 18. Compensation**

1. For the purpose of paying compensation in pursuance of the provisions of sub-paragraph (g) of paragraph 1 of Article 15 of this Protocol, the assets and liabilities of Community Enterprise shall be valued in accordance with regulations that are in force in the Member States concerned.

2. Compensation shall forthwith be paid to the Community Enterprise in the currency of the original investment or convertible currency as soon as the amount of compensation has been determined in accordance with the provisions of this



Article.

3. Any disagreement as to the amount of compensation payable or the method of valuation used or as to any aspect of compensation shall be settled in accordance with the provisions of Article 22 of this Protocol.

4. No provision of this Article shall be construed as empowering a Community Enterprise to increase or minimize the loss or losses sustained.

## **Article 19. Application for Compensation**

1. A Community Enterprise whose assets are nationalised or expropriated or shareholders whose shares have been expropriated shall apply to the Member State concerned for compensation and transmit a copy of such application to the Executive Secretariat. Such application shall be in thirty copies in French and twenty in English, and shall contain:

- a. details of the circumstances of the expropriation or nationalisation;
- b. a valuation certificate of the investment expropriated or nationalised;
- c. relevant documents relating to the expropriation or nationalisation.

2. The Executive Secretariat shall transmit without delay to all the Member States copies of an application for compensation.

3. The Executive Secretariat shall within three months from the date on which the copies of an application for compensation are received by him, contact the relevant authorities of the Member State concerned with a view to reaching an amicable settlement on the matter.

4. If after the expiration of six months the issue has not been amicably settled, the Executive Secretary shall refer the matter to the Council.

5. An award for compensation shall be expressed and paid in the same currency in which the investment was made or in convertible currency.

## **Article 20. Non-assignment of Approval Agreement**

An Approval Agreement concluded under the provision of this Protocol shall not be assignable.,

## **Article 21. Default, Revocation, Suspension, Cancellation and Termination of the Approval Agreement**

1. The Council may without prior notice revoke its decisions to admit an enterprise to the status of a Community enterprise or cause the immediate suspension or cancellation of an Approval Agreement if any of the provisions of this Protocol or an Approval Agreement are not complied with. The revocation or cancellation shall take effect from the date of the decision which admitted an enterprise to the status of a Community Enterprise.

2. The Council shall take any of the actions specified in paragraph 1 of this Article for any of the following reasons:

- a. that the Community Enterprise has committed fraud, misrepresentation or other illegal act or has failed either deliberately or through negligence to disclose some material fact or facts prior to the enterprise being admitted to the status of a Community Enterprise;
- b. that the Community Enterprise has failed to carry out its activities on a scale to justify being admitted to the status of a Community Enterprise;
- c. that the Community Enterprise has abused the exemptions from import duties granted to it;
- d. that the Community Enterprise has committed such other act or omission as to constitute a breach of its Approval Agreement.

3. For the purpose of this Article the term "material fact" in sub-paragraph (a) of paragraph 2 of this Article shall mean any fact the knowledge of which would have caused the Community not to have entered into an Approval Agreement, or to enter into an Approval Agreement substantially different from that which is in fact entered into.

4. Either party to an Approval Agreement wishing to terminate it shall give to the other one year's notice in writing of its

intention to do so.

5. The termination of an Approval Agreement shall not affect on-going actions and projects and vested rights during its period of validity.

## **Article 22. Settlement of Disputes**

1. Where a dispute arises between Member States as to the interpretation or application of the provisions of this Protocol or an Approval Agreement the dispute shall be settled in accordance with the rules and procedures laid down in Article 56 of the Treaty.

2. Where a dispute arises as to the interpretation or application of the provisions of this Protocol or an Approval Agreement between the Community and a Community Enterprise or between a Member State and a Community Enterprise, the parties shall inform the Executive Secretariat and endeavour to settle the dispute amicably within six months from the date when the dispute arose.

3. Where a dispute referred to in paragraph 2 of this Article cannot be settled amicably, either party to the dispute shall notify the Executive Secretariat of the existence of such a dispute and each party shall within a period of 90 days nominate an arbitrator from the panel of Arbitrators of the International Centre for the Settlement of Investment Disputes or the Panel of Arbitrators of the Community as may from time to time be constituted by the Executive Secretariat. The two arbitrators so nominated shall within thirty days elect a third arbitrator from either of the said two panels who shall preside over the proceedings of the arbitration. In the event of the failure of the two arbitrators to agree on the election of the third arbitrator,

Either party may request the President of the International Court of Justice to elect the third arbitrator from either of the said two panels.

4. The arbitrators so nominated shall conduct the arbitration at the headquarters of the Community or at any other place within the Community as may be agreed by the parties.

5. The procedure of the arbitration shall be determined by the arbitrators, but the presiding arbitrator shall have full power to settle all questions of procedure in any case of disagreement in respect thereto.

6. All decisions of the arbitrators shall be by majority vote which decisions shall be final and binding on the parties to the arbitration.

7. The Council may make regulations concerning the application of the provisions of this Article.

## **Article 23. Amendment**

1. Any Member State may submit proposals for the amendment or revision of this Protocol to the Executive Secretariat.

2. The Executive Secretariat shall communicate such proposals to the Member States not later than thirty days after their receipt. Amendments or revisions shall be considered by the Authority after the Member States have been given thirty days notice thereof.

3. No amendment to this Protocol shall prejudice any rights acquired by a Community Enterprise in pursuance of the provisions of this Protocol prior to the coming into force of the amendment.

## **Article 24. Application**

The provisions of this Protocol:

a. shall apply to enterprises defined in paragraph 1 of Article 2 of this Protocol; and

b. may apply to wholly privately-owned enterprises in which nationals or legal persons of Member States own not less than 70% of equity capital and for this purposes the Council shall prescribe the rules and regulations for the application of the provisions of this Protocol to enterprises specified in this sub-paragraph.

## **Article 25. Entry Into Force**

1. This Protocol shall enter into force provisionally upon signature by the Authority of Heads of State and Government of

Member States and definitively upon ratification by at least seven (7) signatory States in accordance with the constitutional procedures applicable for each signatory State.

2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat of the Community which shall transmit certified true copies of this Protocol to all Member States and notify them of the dates of deposit of instruments of ratification and shall register this Protocol with the Organisation of African Unity, the United Nations and such other organisations as the Council shall determine.

3. This Protocol shall be annexed to and shall form an integral part of the Treaty.

In faith whereof, We, the Authority of Heads of State and Governments of the Economic Community of West African States, have signed this Protocol.

Done at Lomé, this 23rd day of November, 1984 in single original in the English, French languages, both texts being equally authentic.

## **Specimen of Approval Agreement**

SPECIMEN OF APPROVAL AGREEMENT THIS APPROVAL AGREEMENT IS MADE THIS ..... DAY OF ..... 19..... IN.....

BETWEEN

The Economic Community of West African States (hereinafter referred to as "The Community") whose headquarters is at 6, King George V Road, Lagos, in the Federal Republic of Nigeria, represented by the Executive Secretary of the Community

OF THE ONE PART

And the Company (Name of the Company) (hereinafter referred to as "The Promoter") whose

Headquarters is at..... incorpo-rated under

No..... and ad-mitted to the Status of

Community Enterprise by Decision No..... of

The..... day of..... 19..... of the Council of Ministers of the

Community and represented by..... (name and status)

OF THE OTHER PART

IN ACCORDANCE WITH THE PROVISIONS OF THE PROTOCOL OF THE COMMUNITY RELATING TO COMMUNITY ENTERPRISES (HEREINAFTER REFERED TO AS "THE PROTOCOL")

THE CONTRACTING PARTIES HAVE AGREED AS FOLLOWS:

### **1. Community Guarantees, Benefits and Privileges**

As a Community Enterprise, the Promoter may enjoy the guaranteed benefits and privileges set out in Article 16, and contingently those set out in Article 17 of the Protocol as may be conferred.

### **2. Obligations of Promoter**

The Promoter hereby accepts and undertakes to comply with all the obligations provided for in the Protocol and in this Agreement. He shall begin his operations not later than the 31 of December, 19.....

### **3. Notice**

All orders, approvals, declarations, notices, communications or undertakings of any kind between the Community and the

Promoter shall be in writing and the parties hereto shall not under any circumstances be permitted to allege or rely upon any oral order, approval, declaration, notice, communication or undertaking.

#### **4. Law of the Agreement**

The law which shall govern this Agreement and in accordance with which it is to be construed shall be the Protocol and any Regulations or Decisions made or taken thereunder. In the case of issues not expressly covered by the Protocol and this Agreement the governing law shall be the Memorandum and Articles of Association of the Promoter and the law of the Country where the principal office, incorporated branches and subsidiaries of the Promoter are located.

#### **5. Decisions Relating to the Article of the Promoter**

The Promoter shall previously inform the Executive Secretariat of any decision taken by its Board of Directors or shareholders affecting the provisions of its Articles.

#### **6. Location of Promoter**

The Promoter will be principally located in.....

With branches and subsidiaries in

#### **7. Products and Services**

The products and/or services which shall be produced and/or provided by the Promoter under the terms of this Agreement are.....

#### **8. Force Majeure**

1. Under this Agreement, force majeure means any unforeseeable, irresistible and insurmountable event independent of both parties occurring after the entry into force of this Agreement such as to impede the performance of either party obligations.
2. Either party to the Agreement shall inform the other party of the occurrence of a force majeure within forty-eight (48) hours following the occurrence of such force majeure.
3. Failure on the part of the parties to comply with any of the terms and conditions hereof shall not constitute grounds for termination or breach or give the parties any claims for damages insofar as the failure arises from force majeure as defined in paragraph (1) of this Article provided that the parties shall take all reasonable steps to minimise the effects of such failure and to fulfil the terms and conditions of this Agreement with the minimum of delay.

#### **9. Entry Into Force and Duration of Agreement**

This Agreement shall enter into force upon signature for a period of..... years and subject to revision after the first..... years

#### **10. Compliance with National Laws**

1. The Promoter shall comply with the general laws and regulations in force in the Member States.
2. With respect to fiscal laws and regulations in force in the Member States the grant of investment incentives under this Agreement shall not release the Promoter of liabilities for any act, omission or things required to be done under the fiscal bases of the Member States to the extent of which such compliance is not inconsistent with any provision of the Protocol and of this Agreement.

#### **11. Amendment and Revision**

This Agreement may be amended and revised by the parties after the expiration of the period provided in Article 9. Any party wishing to amend or to revise this Agreement shall notify the other through written proposals which shall be discussed by common consent within six (6) months after the date of notification.

## **12. Terminations, Suspension and Invalidation of Agreement**

1. This Agreement may be terminated at any time by either party provided that notice of one (1) year is given to other party.
2. The termination of this Agreement shall not affect on-going actions or projects, vested rights of parties during its period of validity.
3. This Agreement may be suspended or invalidated immediately without notice by the Council of Ministers of the Community, subject to conditions stipulated in Article 21 of the Protocol.

## **13. Residual Provisions**

The provisions of the Protocol shall govern obligations, breach of contract, settlement of disputes and all such all other matters not provided for in this Agreement.

## **14. Annexes**

The following documents are annexed to this Agreement:

- a. The Protocol
- b. The Articles of the Promoter and any other document relating to him.
- c. Support measures