ECOWAS Common Investment Code (ECOWIC)

PREAMBLE

THE HIGH CONTRACTING PARTIES

MINDFUL of Articles 7, 8 and 9 of the Revised ECOWAS Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of Article 3 of the Revised ECOWAS Treaty stipulating the areas in which the Community should focus its activities in order to achieve its aims and objectives;

MINDFUL of the Supplementary Act A/SA.3/12/08 Adopting Community Rules On Investment and the Modalities for their Implementation within ECOWAS;

RECOGNIZING that the development of a more vibrant and dynamic private sector can help to create job opportunities, promote technology transfer, support long-term economic growth and contributes effectively to the fight against poverty;

ANXIOUS to promote and consolidate within ECOWAS an environment conducive to the development of the activities of the private sector and to make the latter a genuine engine of economic growth;

DESIRING to promote further the trade and investment existing between and amongst the Member States;

RECOGNIZING the importance of fostering a conducive and predictable environment for international trade and investment;

RECOGNIZING the vision, aims and objectives of the ECOWAS Investment Policy

TAKING into account membership of some of the Member States in other international organisations such the World Trade Organization (WTO) and noting that this Code is without prejudice to the rights and obligations of the Member States where applicable, under suchâagreements, understandings, and other instruments relating thereto or concluded under the auspices of the WTO;

RECOGNIZING the potential benefits to each Party resulting from increased international trade and investment;

RECOGNIZING the essential role that both domestic and foreign private investment when accompanied by appropriate environmental and labour policies, can play in the sustainable development of the Parties, including in reducing poverty, increasing productive capacity, furthering growth, creating jobs, expanding trade, improving technology and transfer of technology, furthering human rights and human development and enhancing economic development;

SEEKING to promote, encourage and increase investment opportunities that enhance sustainable development goals within the territories of the Parties;

UNDERSTANDING sustainable development requires the fulfilment of the economic, social and environmental pillars that are embedded within the concept;

FURTHER RECOGNISING the right of each Member State to establish its own level of domestic environmental protection and its own sustainable development policies and priorities;

DESIRING to encourage and facilitate private sector and business contacts between and amongst the Parties;

NOTING that national investment codes in force in Member States offer investors different incentives and protection measures;

CONVINCED of the need to establish within the ECOWAS region, reliable, transparent, harmonised and predictable conditions for investments;

DESIROUS of adopting common regional rules on investments and defining the modalities for its implementation, in order to achieve the afore-mentioned objectives;

TAKING into account the need to eliminate non-tariff barriers in order to facilitate greater access of investors to the markets of the Parties and the mutual benefits thereof;

CONSIDERING that it would be in the respective interests of the Parties to establish a mechanism between the Parties for encouraging the liberalisation of trade and investment between and amongst them, including through the appropriate regional bodies and mechanisms;

DESIRING to ensure that trade and environmental policies are mutually supportive in furtherance of sustainable development;

AFTER THE OPINION of the ECOWAS Parliament;

ON THE RECOMMENDATION of the Session of the Council of Ministers, held in..... from.....to.....

TO THIS END, THE PARTIES AGREE AS FOLLOWS:

Chapter 1. GENERAL PROVISIONS

Article 1. Definitions

Under this Code:

(a) "Annex Scheduled List" means schedules of excluded sectors or any other list approved by Member States from time to time

(b) "Commission" means the executive body of the Economic Community of West African States;

(c) "Community" means the Economic Community of West African States;

(d) "Community citizen or citizens" means any national(s) of Member States who satisfy the conditions stipulated in the Protocol defining Community citizenship;

(e) "Enterprise or company" means any entity duly constituted or otherwise incorporated under the applicable laws and regulations of any ECOWAS Member State, provided it maintains substantial business activity in the Member State in which it is located, whether privately or governmentally owned or controlled;

(f) "Home State" means a Member State of ECOWAS from where the investment or the investor originates;

(g) "Host State" is the ECOWAS Member state where the investment is located and / or undertake.

(h) "Investment" means an enterprise or a company as defined in paragraph (e), which is established, acquired, or expanded by an investor, having business or commercial operations or other interests such as:

i. a company or an enterprise;

ii. shares, stocks or other forms of equity participation in a company or an enterprise, and bonds, debentures and other forms of debt interests in a company or an enterprise;

iii. contractual rights such as turnkey, construction, management contracts, production or revenue-sharing contracts, concessions or other similar contracts;

iv. tangible property, including real property; and intangible property, including rights such as leases, mortgages, liens and pledges or such other securities

v. similar assets or rights conferred pursuant to law of a Member State provided that

* such investments are not in the nature of portfolio investments which shall not be covered by this Code;

* there is a significant physical presence of the investment in the host State;

* the investment in the host State is made in accordance with the laws of that host State;

* the investment is part or all of a business or commercial operation; and the investment is made by an investor as defined in this Code.

For greater certainty, investment does not include:

(i) Debt securities issued by a government or loans to a government;

(ii) Portfolio investments;

(iii) Claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Member State to an enterprise in the territory of another Member State, or the extension of credit in connection with a commercial transaction, or any other claims to money that do not involve the kind of interests set out in Subparagraphs (i) through (v) above;

(iv) Investments of a speculative nature;

(v) Investments in any sector sensitive to its development or which would have an adverse impact on its economy;

(vi) Commercial activities.

In order to qualify as an investment under this Code, the investment must have the following characteristics: substantial business activity according to Paragraph e, commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and a significant contribution to the host State's economic development. Substantial business activity requires overall examination, on a case by case basis, of all the circumstances, including, inter alia: the amount of investment to be brought into the host state; the number of jobs to be created; its effect on the local community; the length of time the business has been in operation

(i) "Investor" is any individual, company or enterprise legally originating from any Member State of ECOWAS or an individual, company or enterprise from a third country that has made an investment in a Member State ;

(j) "Labour legislation" means legislation, or provisions thereof, that are directly related to the following internationally recognised labour rights:

(i) the right of association; (ii) the right to organise and bargain collectively; (iii) prohibition on the use of any form of forced or compulsory labour;

(iv) minimum age for the employment of children;

(v) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(k) "Measures" means any legal, administrative, legislative, judicial or policy decision that is taken by the host State, directly relating to and affecting an investment in the host State;

(l) "Member State (s)" means any Member State or Member States of ECOWAS as defined in Article 2, Paragraph 2, of the Revised ECOWAS Treaty;

(m) "National" means a person who is a citizen of any Member State of ECOWAS;

(n) "Portfolio investment" refers to any investment where the investor owns less than 10 per cent of shares in a company, either made through a stock exchange or otherwise, does not give the portfolio investor the possibility to exercise effective management or influence on the management of the investment;

(o) "Public official(s)" means any person who has been selected, appointed or elected and who performs public functions on a permanent or temporary basis. This includes persons who, at the national, regional or local level holds a legislative, administrative, judicial or military office, or who, performing a public function, is an employee of a Government or of a public or governmental authority or agency or who otherwise performs a public activity or function in the name of the State or in the service of the State, at any level of its hierarchy;

(p) State contracts are contracts entered into between a Member State or the State's agents and the investor or investors conferring contractual rights pursuant to the definition of an investment under this Code ;

(q) "Third Country" is any country which is not a member of ECOWAS

Article 2. Objectives

(1) The objective of this code is to establish in the ECOWAS territory, transparent, harmonized and predictable legal and institutional framework that applies to investment and to any investment-related measures designed to implement the ECOWAS Investment Policy.

(2) To this end, this code seeks to:

a) promote, facilitate, and protect investment that foster sustainable development of the region and in particular, the Member State in which the investment is located

b) promote the adoption of common regional rules on investments and define the modalities for their implementation, in order to achieve the aforementioned objective;

c) improve investment and trade relations with and within the region and between the region and foreign investors, conducive to regional stability and sustainable development;

d) enhance the role of both domestic and foreign direct investments in reducing poverty, increasing productive capacity, furthering growth, creating jobs, expanding trade, improving technology and transfer of technology, furthering human rights and human development, enhancing economic development; among others;

Article 3. Scope and Application

(1) This Code applies to the rights and obligations of Member States and investors.

(2) This Code applies to any measure adopted or maintained by a Member State, after the entry into force of this Code.

(3) This Code does not create retroactive obligations for Member States and investors.

Chapter 2. STANDARDS OF TREATMENT TO INVESTORS

Article 4. Admission and Establishment

(1) Each Member State shall in admitting an investment into its territory follow the parameters of the investment policy in force at the time the investment is made and in accordance with its national laws and regulations.

(2) Each Member State shall accord investors full rights of entry and establishment to all natural and legal persons engaged in cross-border business, based on the principle of national treatment with the aim of promoting free flows of investment within the region and in accordance with the West Africa Common Industrial Policy.

Article 5. Regulation of Investment

The admission and regulation of investment in any Member State shall be subject to the following conditions:

(a) Investments shall be subject to the laws and regulations of the Host State;

(b) The benefits of this Code shall apply to any investment by the investor in any Member State which is duly approved by the competent authority in accordance with the laws and regulations of the host State(s) ;

(c) Once a Member State admits an investment it shall provide in accordance with its laws and regulations all necessary permits related to such investment.

Article 6. National Treatment

(1) A Member State shall accord to investors of another Member State treatment no less favourable than that, which it accords, in like circumstances, to its own investors with respect to the management, conduct, operation, expansion and sale or other dispositions of investments.

(2) A Member State shall accord to investments from another Member State treatment no less favourable than that which it accords, in like circumstances, to investments ofits own investors with respect to the management, conduct, operation, expansion and sale or other dispositions of investments.

(3) For purposes of this Code, the concept of "in like circumstances" requires an overall examination, on a case by-case basis, of all the circumstances of an investment, including:

(a) its effects on the local community;

(b) its effects on the local, regional or national environment, the health of the populations, or on the global commons;

(c) the sector in which the investor is active;

(d) the aim of the measure in question;

(e) the regulatory process generally applied in relation to a measure in question; and

(f) other factors directly relating to the investment or investor in relation to the measure in question.

Article 7. Exceptions to National Treatment

1. Member States may adopt measures that derogate from the National Treatment principle provided such measures are not arbitrary and subject to the conditions set out in this Article.

2. Any regulatory measure taken by a Member State that is designed and applied to protect or enhance legitimate public welfare objectives, such as national interests, public health, safety and the environment, does not constitute a breach of the National Treatment principle.

3. Member States may, in accordance with their respective domestic legislation, grant preferential treatment to qualifying investments and investors in order to achieve national development objectives.

4. A Member State reserves the right to deny an investor the benefits of this Code where:

(a) The investor does not have substantial business activities in the Member State; or

(b) The investor is engaged in activities inimical to the economic interest of Member States.

5. A Member State may deny national treatment if advantages available within the Member State's economy are made for the exclusive benefit of its own nationals within the framework of its national development programs or its List of scheduled investment sectors where applicable.

6. The National Treatment principle shall not apply:

(a) to subsidies or grants provided to a government or a State enterprise, including government-supported loans, guarantees and insurance; or

(b) to taxation measures aimed at ensuring the effective collection of taxes, except where this results in arbitrary discrimination.

7. In accordance with national laws and regulations, Member States may accord more favourable treatment to address the internal needs of designated disadvantaged persons, groups or regions.

8. The implementation of these exceptions shall not entitle any investor to compensation for any competitive disadvantages they may suffer.

Article 8. Most-Favoured-Nation Treatment

(1) Each Member State shall accord to investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investors of any other Member State with respect to the management, conduct, operation, expansion, sale or other disposition of investment.

(2) Each Member State shall accord to investments made by investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investments made by investors of any other Member State with respect to the management, conduct, operation, expansion, sale or other disposition of investments.

(3) Paragraphs (1) to (2) above do not oblige a Member State to extend to the investors of a third country the benefit of any treatment, preference or privilege contained in:

(a) The existing or future customs union, free trade area, common market agreements, or any international agreement to which the investor's home State is not a Party, or

(b) Any international agreement or domestic legislation relating wholly or mainly to taxation.

(4) For greater certainty, the "treatment" referred to in Paragraphs 1 to 3, does not include dispute settlement procedures provided for in other treaties. Substantive obligations in other treaties do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article.

Article 9. Exceptions

(1) General Exceptions

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Member States or their investors in like circumstances, nothing in this Code shall be construed to prevent the adoption or enforcement by any Member State of measures taken in good faith and designed and applied:

(a) to protect public morals or to maintain public order;

(b) to protect human, animal, or plant life or health;

(c) to secure compliance with the national laws or regulations which are not inconsistent with this Code, including those relating to:

(i) for the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;

(ii) to the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) for safety reasons ;

(d) to ensure the equitable or effective imposition or collection of direct taxes in respect of investors of another Member State and their investments;

(e) to protect national treasures of artistic, historic, or archaeological value;

(f) for the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

(g) to promote the achievement of equality in its territory, land planning, or designed to protect or advance categories of disadvantaged persons.

(h) to preserve and promote cultural and linguistic diversity.

(i) to preserve and protect the biodiversity and the rights of local communities, in conformity with the relevant multilateral instruments.

(2) Security Exceptions Nothing in this Code shall be construed to:

(a) require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests, including, but not limited, to:

(i) action relating to fissionable and fusionable materials or the materials from which they derived ;

(ii) action relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) action taken in time of war or other emergency in domestic or international relations;

(iv) action taken so as to protect critical public infrastructure, including communication, power, and water infrastructure, from deliberate attempts intended to disable or degrade such infrastructure; or

(c) prevent any Member State from taking any action pursuant to its obligations under the United Nations Charter for the maintenance of international peace and security.

(3) Subject-Specific Exceptions

(a) A Member State may, in exceptional financial, economic or industrial circumstances, adopt any exceptional measure in the sectors or with respect to the matters specified in its Annex of schedules of excluded sectors or any other list as maybe approved by Member States from time to time, provided that such are consistent with the provisions of this Code.

(b) Nothing in this Code shall be construed to prevent a Member State from adopting or maintaining measures that restrict transfers when the Member state experiences serious balance of payments difficulties.

(c) Restrictions imposed on transfers related to trade in goods, shall not substantially impede those transfers from being made in a freely usable currency at a market rate of exchange and may not take the form of tariff surcharges or similar measures.

(d) An interested Member State shall prior to the entry into force of the exceptional measure:

(i) endeavour to notify the other Member State of the elements of the exceptional measure as set out;

(ii) provide, upon request by that other Member State, particulars of the exceptional measure to that other Member State ;

(iii) allow that other Member State reasonable time to make comments in writing;

(iv) hold, upon request by that other Member State, consultations in good faith with that other Member State with a view to achieving mutual satisfaction; and

(v) take an appropriate action based upon the written comments made pursuant to subparagraph (iii) of this paragraph or the results of the consultations held accordingly.

(4) Financial and Prudential Measures

(i) A Member State may take reasonable measures for prudential reasons to:

(a) protect investors, depositors, financial market participants, policy-holders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution;

(b) maintain the safety, soundness, integrity or financial responsibility of financial institutions;

(c) ensure the integrity and stability of a Member State's financial systems; and

(d) enhance Balance of Payments situations.

(ii) Nothing in this Code shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies.

(5) Mutual Recognition

(a) A Member State may by agreement or arrangement, recognize a certificate, qualification, diploma or experience from another Member State or third country, in any area of service delivery.

(b) An existing agreement or arrangement for the recognition of certificates, qualifications, diplomas or experiences, between two or more member States or a third country, shall not extend to another Member State.

(c) A non-contracting party to an existing agreement or arrangement, for the recognition of certificates, qualification or experience, may accede to such existing agreement or arrangement for the mutual recognition of certificates, qualifications, diplomas or experience within the Community.

(d) Nothing in 9 (a) to (c) above shall prevent member states from taking concrete steps towards the harmonisation of standards for the recognition of certificates, qualifications, diplomas and experience in the Community, in accordance with the objectives of this Code.

(e) Member States shall not apply discriminatory measures in the application of standards for the recognition of certificates, qualification, diplomas or experience from other Member States

Article 10. Treatment In Case of Armed Conflict or Civil Strife

Investors who suffer within the territory of a Member State damage in relation to their investments owing to the outbreak of hostilities or a state of national emergency such as revolt, insurrection or riot, shall be accorded treatment no less favourable than that accorded to investors of such Member State or to investors of any third country in like circumstances, as regards to any measure to be taken by the concerned Member State including restitution, compensation or other valuable consideration.

Article 11. Expropriation and Compensation

1. No Member State shall expropriate or nationalise an investment in its national territory, except:

(a) for a public purpose;

(b) on payment of prompt, adequate and effective compensation; andig, (c) in accordance with due process of law. il

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable.

3. Compensation awards that are significantly burdensome on a Member State may be paid under periodic instalments as agreed by the Parties, subject to simple interest at the rate agreed by the parties or through mediation and or judicial process

4. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus simple interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

5. lf the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

6. Where appropriate, the assessment of fair and adequate compensation shall be based on an equitable balance between the public interest and interest of those affected, having regard for all relevant circumstances and taking account of: the current and past use of the property, the history of its acquisition, the fair market value of the investment, the purpose of the expropriation, the extent of previous profit made by the foreign investor through the investment, and the duration of the investment.

7. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the relevant international agreements on intellectual property, or to the revocation, limitation, or creation of intellectual property rights to the extent that the issuance, revocation, limitation, or creation is consistent with the relevant international agreements on intellectual property.

8. For greater certainty, a Member State's decision not to issue, renew, or maintain a subsidy or grant, or its decision to modify or reduce a subsidy or grant:

(a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or grant;

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction, and maintenance of that subsidy or grant,

standing alone, does not constitute an expropriation.

Article 12. Transfer of Funds

(1) Types of Transfers Covered

Member States shall permit all transfers relating to an investment to be made freely and without delay. Such transfers may include:

(a) profits, capital gains, dividends, royalties, interest and other current income accruing from an investment;

(b) the proceeds of the total or partial liquidation of an investment;

(c) repayments made pursuant to aloan agreement in connection with an investment;

(d) license fees in relation to investment ;

(e) payments in respect of technical assistance, technical service and management fees;

(f) payments in connection with contracting projects ;

(g) earnings of nationals of a Member State who work in connection with an investment in the territory of the other Member State ;

(h) compensation, restitution, indemnification or other settlement pursuant to the investments.

(2) Capital Importation

(a) Investment funds may be imported into the Community through any licensed financial institution in a Member State who shall issue a certificate of capital importation to the investor within the time prescribed in national laws.

(b) The certificate of capital importation shall be registered with the appropriate regulatory authority for financial institutions in the Member State.

(3) Nature of the Obligations

(a) Each Member State shall permit transfers to be made in a convertible currency at the market rate of exchange prevailing on the date of transfer.

(b) Unless otherwise agreed by the investor, transfers shall be made in any convertible currency at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(4) Exceptions

(a) Capital can only be transferred two years after the investment entered the territory of a Member State unless its national legislation provides for a more favourable treatment.

(b) Proceeds of the investment can only be transferred one year after the investment entered the territory of a Member State.

(c) Notwithstanding paragraphs 1, 2 and 3, a Member State may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its national laws relating to:

(i) bankruptcy, insolvency, or the protection of the rights of creditors ;

(ii) issuing, trading, or dealing in securities, futures, options, or derivatives ;

(iii) criminal or penal offences ;

(iv) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(v) ensuring compliance with orders or judgments in judicial or administrative proceedings.

(d) A Member State may adopt or maintain measures not conforming with its obligations relating to cross-border capital transactions:

(i) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(ii) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

(e)Measures referred to in paragraph (d) above shall: (i) not exceed those necessary to deal with the circumstances set out above; (ii) be temporary and be eliminated as soon as conditions permit;

(iii) be as approved by the ECOWAS Common Investment Market Council (ECIM Council), and

(iv) be promptly notified to the affected Member State.

Article 13. Denial of Benefits

1. A Member State may deny the benefits of this Code to an investor of another Member State that is an enterprise of such

Member State and to the investments of such investor in the event that investors of a non-Member State own or control such enterprise, provided that the denying Member State adopts or maintains measures with respect to the non-Member State that prohibit transactions with such enterprise, or that otherwise would be violated or circumvented if the benefits of this Code were accorded to that enterprise or to its investments.

2. A Member State may deny the benefits of this Code to an investor of another Member State that is an enterprise of such Member State and to investments of such investors if investors of a non-Member State own or control the enterprise and the enterprise has no substantial business activities in the territory of the Member State under whose law it is constituted or otherwise organised.

Article 14. Subrogation

If a Member State, or any agency, institution, statutory body or corporation designated by the Member State, makes a payment to an investor of the Member State under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to an investment, the other Member State in whose territory the investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Code with respect to the investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

Article 15. Transparency

(1) Governmental Information

(a) A Member State shall endeavour to ensure that its laws, policies, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements after their entry into force, which may affect investments in its territory, including among others, exchange regimes and those of fiscal nature, are promptly published, or otherwise made publicly available. Such information shall be regularly updated and published at least annually.

(b) A Member State shall provide to the other Member State aggregated information on foreign investment and investment opportunities in its territory with respect to origin, economic activities benefited, investment modalities and other information which may be available.

(c) Upon request of an investor, a Member State shall provide information to enable investors to fully assess the legal status of investment assets.

(d) A Member State shall designate a contact point or points to facilitate communications between the Member States on any matter covered by this Code.

(2) Corporate Information

Member States have the right to seek information from a potential investor or its home state about its corporate governance history and its practices as an investor in its home state or in a third country. Member States oblige themselves to protect confidential business information they receive in this regard.

(3) Exchange of Information

(a) A Member State shall upon request by another Member State, promptly respond to specific questions and provide that other Member State with information on matters set out above.

(b) The provisions of paragraph (a) of this Article shall not be construed so as to oblige a Member State to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

(4) Duty to Disclose Investment Information

(a) As and when prescribed by the ECIM Council, investors shall make available to the public in the Member State where they are operating information relating to payments made to the Member State's public authorities, including taxes, royalties, surcharges, fees and all other payments relating to the investment contract or agreement.

(b) Information related to any investment contract or agreement involved in the investment authorization process shall also be made available to the public, subject to the protection of confidential business information.

(5) Answering Requests for Information

An investor shall provide such information to a Member State concerning the investment in question for purposes of decision-making in relation to that investment or solely for statistical purposes.

(6) Notification Requirements

a) An investor or a Host State may request a review of an investment agreement on terms that are mutually agreed by parties;

b) An investor shall comply with such audit as may be requested by a Host State in order to ascertain compliance with the terms of the investment agreement;

c) An investor shall not, without prior consultation with the Host State, fix or alter the prices of products or services in sectors identified by that Member State to be critical to economic and social development.

(7) Confidentiality

(a) Member States shall protect any confidential business information from any disclosure that would prejudice the investor or the investment.

(b) Nothing in paragraph (a) above shall be construed to prevent a Member State from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its relevant domestic laws and regulations.

(C) Nothing in this Code requires any Member State to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public and policy interest, or which would prejudice legitimate economic interests of particular enterprises, public or private.

(8) Enforcement

(a) Member States recognize that it is inappropriate to encourage investment by relaxing domestic measures and regulations of investments on the protection and enforcement of rights and duties pertaining to the investments as well as on the prevention of their abuse.

(b) No Member State should waive or derogate from, or offer to waive or otherwise derogate from investment measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment.

(c) If a Member State considers that another Member State has derogated from investment measures in violation of paragraph (a) and (b) above, it may report the matter to ECIM Council. The ECIM Council shall take appropriate measures as necessary to address the issue.

Chapter 3. STATE CONTRACTS

Article 16. Nature, Negotiation and Renegotiation

1. Member States and investors shall negotiate and implement State contracts in good faith. In such contracts, especially long-term ones, review or renegotiation clauses should normally be included.

2. In the absence of such clauses and where there has been a fundamental change of the circumstances on which the contract or agreement was based, trans-national corporations, acting in good faith, should co-operate with Member States for the review or renegotiation of such contract or agreement

3. Review or renegotiation of such contracts or agreements should be subject to the laws of the Member State(s) and international legal principles.

Chapter 4. HOST COUNTRY OPERATIONAL MEASURES

Article 17. Coverage and Duration

1) Member States may introduce measures to promote domestic investments and local content. Measures covered by this Paragraph include, inter alia:

(a) measures to grant preferential treatment to any enterprises qualifying under the domestic law of a Member State in order to achieve national, sub-national or regional development goals;

(b) measures to support the development of local entrepreneurs;

(c) measures to enhance productive capacity, increase employment, increase human resource capacity and training, research and development including of new technologies, technology and skills transfer, innovation and other benefits of investment through the use of specified requirements on investors;

(d) measures to address historically based economic disparities suffered by identifiable ethnic or cultural groups due to discriminatory or oppressive measures against such groups prior to the adoption of this Protocol. (2) With a view to ensuring that these instruments may be maintained by Member States till such time that their developmental needs demand, there will be a transition period to provide Member States the necessary flexibility to implement development policies intended to address, among others, social, regional, economic, and technological concerns that may help reduce the disparities they face.

(3) Member States shall within 5 years of the coming into force of this Investment Code define objective criteria on the basis of which a phase-out period can be considered and approved by the ECIM Council according to their development needs.

Article 18. Contact Point

(1) Each Member State shall establish a National Authority or designate one of its departments or agencies as a contact point for purposes of the implementation of this Code. The functions of the focal point shall include:

a) liaising with the ECIM Council;

b) facilitating regular communication and coordination between Member States concerning issues arising under the Code, including requesting or transmitting information from or to another Member State;

c) providing a contact for assistance in investment promotion and facilitation;

d) maintaining statistics about inward and outward investment of the Member State ;

a) handling enquiries in relation to the conduct of investments or investors of a Member State ;

b) investigating and seeking to resolve concerns or conflicts raised by individuals or civil society groups in relation to the conduct of investors or investments concerning their obligations under this Code or the additional responsibilities set out in this Code;

c) reporting on any matters dealt with under Paragraph f; and

d) any other functions the Member State incorporates into its work.

(2) The focal point shall operate in a visible, accessible, transparent and accountable manner. It shall receive and consider information, statements of concern or other information from government officials, nongovernmental groups or individuals from the Member State in which it is established, or from any other Member State or third country.

Chapter 5. INCENTIVES

Article 19. Nature and Character of Incentives

(1) Member States may introduce incentives in accordance with ECOWAS Investment Policy (ECOWIP) to attract investments. Such incentives may include:

a) financial incentives in the forms of investment insurance, grants or loans at concessionary rates;

b) fiscal incentives such as tax holidays, pioneer status and reduced tax rates;

c) subsidised infrastructure or services, market preferences;

d) development-oriented incentives, to encourage preferential markets schemes and specific investors within the region;

e) incentives for technical assistance, or technology transfer;

f) Investment guarantees.

(2) Member States shall harmonise incentives for investments which are of strategic interest to the region. Member States undertake to harmonise incentives in accordance with standards to be prescribed from time to time by ECIM Council. In prescribing harmonisation of incentive, ECIM Council shall give due consideration to the peculiarities of the investments concerned and, without prejudice to the generality of the foregoing, may provide for the following:

a) national incentives to investment designed to promote sustainable, export-led industrial and service-oriented development;

b) investment facilitation through the removal of bureaucratic impediments; and

c) non-discrimination in the granting of incentives among Community nationals

(3) For the purpose of such harmonisation, Member States shall exchange information concerning all incentives related to investments that they provide to their domestic investors.

(4) Member States shall notify the ECIM Council and other Member State of their incentives in order to enable ECIM Council and other Member States to evaluate their economic effects and to understand the operation of the notified measures and programmes.

Article 20. Non-Discrimination

(1) The rights and obligations under Articles 6 &7 (National Treatment and Most Favoured Nation Treatment principles) do not apply to subsidies or grants provided to a government or a State enterprise, including government-supported loans, guarantees and insurance.

(2) Exceptions and exemptions from the most-favoured nation and from the national treatment obligations within the context of incentives shall apply only if Member States make due commitments in this respect in their Annexes schedules of excluded sectors.

(3) The rights and obligations under Articles 6 & 7 (National Treatment and Most Favoured Nation Treatment principles) do not apply with regard to taxation measures aimed at ensuring the effective collection of taxes, except where this results in arbitrary discrimination duly noted and reported by the investor.

Chapter 6. ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Article 21. General Protection of the Environment

1. The Member States re-affirm their commitment to promote within the ECOWAS territory mutually supportive environmental-related investment policies, encourage high levels of environmental protection, facilitate the effective enforcement of national environmental laws, and enhance the capacities of the Member States to address environmental-related investment issues through regional co-operation.

2. For the purpose of this section, "environmental legislation" means any legislation of Member States, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of harm to human, animal, or plant life or health, including but not limited to legislation related to the:

(i) prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

(ii) control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto;

(iii) protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Member State's territory; implementation of any relevant and subsequent agreements on environment.

3. The Member States further recognise that it is unlawful under this Code to encourage investment by relaxing national health, safety, or environmental measures. Accordingly, no Member State shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its national territory.

4. If a Member State considers that another Member State has offered an encouragement referred to in paragraphs 3, the Member State may request consultations with the other Member State, and the two Member States shall consult with a view to avoiding any such encouragement. In the event that the Member States are unable to resolve their differences under this paragraph through bilateral consultations, either Member State shall submit the matter to the ECOWAS Common Investment Market Council for the resolution thereof.

Article 22. Member States Obligations

1. The Member States recognise the importance of mutually supportive investment, trade, and environmental policies and practices to improve national and regional environmental protection in the furtherance of sustainable, inclusive, and collective economic development.

2. The Member States further recognise the sovereign right of each Member State to establish its own levels of national environmental protection and its own national environmental priorities, and to establish, adopt, or modify its environmental laws and policies accordingly.

3. Each Member State shall strive to ensure that its national environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.

4. Without prejudice to paragraph 2, the Member States understand that it is unlawful to encourage investment or trade in their jurisdictions by reducing the protection afforded in their respective environmental laws. A Member State shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its national environmental laws in a manner that reduces the protection afforded in those laws in order to encourage cross-border investment or trade between and amongst the Member States in the ECOWAS territory.

5. In furtherance of paragraph 4, no Member State shall fail to enforce its national environmental laws through a sustained or recurring course of action or inaction in a manner affecting investment or trade in the ECOWAS territory after the date of entry into legal force and effect of this Code for that Member State.

6. The Member States recognise that each Member State retains the right to exercise discretion and to make decisions regarding: (a) national investigatory, prosecutorial, regulatory, and compliance matters; and (b) the allocation of national environmental enforcement resources with respect to other national environmental objectives determined to have higher priorities. The Member States further recognise that, with respect to the enforcement of national environmental laws, a Member State is in compliance with paragraph 5 if a course of action or inaction reflects a reasonable exercise of administrative discretion, or results from a bona fide decision regarding the allocation of its national resources in accordance with its national priorities for the enforcement of its national environmental laws.

7. For greater clarity, nothing in this Section shall be construed to empower the administrative authorities of any Member State to undertake any environmental law enforcement activities in the national territory of another Member State.

Article 23. Multilateral Environmental Agreements

1. The Member States recognise that multilateral environmental agreements to which they are a party play a strategic role, globally, regionally, and nationally, in protecting the natural environment, and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Each Member State affirms its commitment to implement in its national territory the multilateral environmental agreements to which it is a party.

2. The Member States emphasise the need to enhance the mutual supportiveness amongst investment, trade, and environmental policies and laws through dialogue between the Member States on such issues of mutual interest, particularly with respect to the negotiation and integrated implementation of the relevant multilateral investment, trade, and environmental agreements.

Article 24. Procedural Matters

1. Each Member State shall promote public awareness of its national environmental policies and laws, including enforcement and compliance procedures, by ensuring that relevant information is made available to the general public.

2. Each Member State shall ensure that an interested person residing or established in its national territory may request that the competent national environmental authorities of that Member State investigate alleged violations of its national environmental laws, and that the competent national authorities accord those requests due consideration in accordance with all applicable national laws of the Member State.

3. Each Member State shall ensure that judicial, quasi-judicial, or administrative proceedings for the enforcement of its national environmental laws are available under its law, and that those proceedings are not only fair, equitable, and transparent, but also comply with due process of law. Any hearings in such administrative proceedings shall, in accordance with its applicable national laws, be open to the public, except when the administration of justice otherwise requires.

4. Each Member State shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to the administrative proceedings referred to in paragraph 3.

5. Each Member State shall provide appropriate sanctions or remedies for any violations of its national environmental laws for the effective enforcement thereof. Such sanctions or remedies may include a right to bring an action directly against the violator to seek damages or injunctive relief, or a right to seek governmental action.

6. Each Member State shall ensure that it takes appropriate account of all relevant factors in the establishment of the sanctions or remedies referred to in paragraph 5. Those factors may include the nature and gravity of the violation, damage to the natural environment, and any economic benefit that the violator derived from the violation.

Article 25. Opportunities for Public Participation

1. Each Member State shall seek to accommodate requests for information regarding the implementation of this Section through its national environmental authorities.

2. Each Member State shall make use of existing, or establish new, consultative mechanisms, such as national advisory committees, to seek views on matters related to the implementation of this Section. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

Article 26. Regional Cooperation Frameworks

1. The Member States recognise the strategic importance of regional co-operation as a facilitative mechanism to implement this Section, to enhance its benefits, and to strengthen the joint and individual capacities of the Member States to protect the natural environment and to promote sustainable, inclusive, and collective economic development in the ECOWAS territory.

2. Taking into consideration their respective national priorities and circumstances and available resources, the Member States shall cooperate to address matters of joint or common interest among them that are related to the implementation of this Section, especially in cases in which mutual benefits from regional co-operation is anticipated. Such co-operation may be carried out on a bilateral or plurilateral basis between and amongst the Member States and, subject to consensus by the participating Member States, may include non-governmental bodies or organisations and non-Member States.

3. Each Member State shall designate the national administrative authority or authorities responsible for any regional co-operation in respect of the implementation of this Section to serve as its national contact point on matters that relate to regional co-operation and co-ordination activities. Each Member State shall notify the other Member States in writing, within ninety (90) days of the date of entry into legal force and effect of this Code for that Member State, of its national contact point.

4. Upon notifying the other Member States of its national contact point, or at any time thereafter through the contact points, a Member State may:

(a) share its priorities for co-operation with the other Member States, including the objectives of that co-operation;

(b) propose co-operation activities related to the implementation of this Section to another Member State or Member States;

(c) report to the ECOWAS Common Market Council all relevant issues raised during the regional co-operation undertaken under this Article;

(d) assist the ECOWAS Common Market Council to formulate regional environmental proposals that are consistent with the ECOWICPF, and that take into consideration the different levels of economic development, capacity, and financial resources of the Member States; and

(e) act as a channel for communication with the general public in its respective national territory.

5. When appropriate, the Member States shall seek to complement and use their existing co-operation mechanisms and take into account the relevant work of regional and international organisations.

6. In furtherance of the preceding paragraphs of this Article, regional co-operation may be carried out through various mechanisms, including dialogue, workshops, seminars, conferences, collaborative programmes and projects, technical assistance and support to facilitate co-operative training, the sharing of internationally-recognised environmental policies, practices, and procedures, and the exchange of experts.

7. In developing co-operative activities and programmes, a Member State shall, if relevant, identify performance measures

and indicators to assist in examining and evaluating the efficiency, effectiveness, and progress of specific co-operative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of any co-operative activity or programme, with the other Member States.

8. Each Member State shall promote public participation in the development and implementation of all regional co-operative activities, as appropriate, under this Article.

Article 27. Investor Environmental Obligations

1. Investors doing business in the ECOWAS territory shall comply with the following environmental obligations under this Code to:

(a) carry out their business activities in strict conformity with the applicable national environmental laws, regulations, and administrative practices of the Member States and other multilateral agreements applicable to their investments;

(b) undertake pre-investment environmental and social impact assessments of their proposed business activities and investments with respect to the natural environment and the local population in the relevant jurisdiction;

(c) apply the precautionary principle to their environmental and social impact assessments and to decisions taken in relation to a proposed investment, including any necessary mitigating or alternative approaches to such investment;

(d) make the investor environmental and social impact assessments available to the general public and accessible to the affected local communities and to any other affected interests in the Member State of the proposed investment;

(e) perform the restoration, using appropriate technologies, for any damage caused to the natural environment and to pay adequate compensation to all affected interested persons;

(f) provide to the competent national environmental authorities, in respect of the products, processes, and services of the investors enterprises, all relevant environmental information, together with measures and costs necessary to avoid and mitigate against any potentially harmful effects; and

(g) implement in the Member States standards of operation with regard to hazardous waste generation and disposal that are equivalent to, or no less stringent than, those in their home country of origin for investments carried out by investors of other Member States, or investors of non-Member States.

2. To ensure compliance with the obligations set out in paragraph 1, each Member State shall encourage investors operating within its national territory, without prejudice to Article 34 (Responsible Business Conduct) of this Code, to adopt as part of their responsible business conduct policies, internationally-recognised environmental standards and guidelines that have been endorsed or are supported by that Member State.

Article 28. Voluntary Mechanisms to Enhance Environmental Performance

1. The Member States recognise that flexible and voluntary mechanisms, such as voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement national regulatory measures. The Member States also recognise that those mechanisms should be designed in a manner that maximises their environmental benefits and avoids the creation of unnecessary barriers to investment or trade.

2. In accordance with its national policies, laws, and regulations, and to the extent that it considers appropriate, each Member State shall encourage:

(a) the use of flexible and voluntary mechanisms to protect natural resources and the environment in its national territory; and

(b) its relevant environmental authorities, business organisations, non-governmental organisations, and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve such criteria.

3. In cases in which private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Member State shall encourage those entities and organisations to develop voluntary mechanisms that, among other things:

(a) are truthful, are not misleading, and that take into account all relevant scientific and technical information;

(b) if applicable and available, are based on relevant international standards, recommendations, or guidelines;iss|

(c) promote competition and innovation; andigi

(d) do not treat a product less favourably on the basis of its country of origin.

Article 29. Transfer of Environmentally Sound Management Practices

1. Member States and Investors shall recognise environmental management as among the highest corporate priorities and as a key determinant to sustainable development. Accordingly, investors shall take the following amongst other necessary measures:

i) increase the efficiency of resource utilisation, including increasing recycling and reducing waste discharge and especially by providing adequate knowledge and assistance;

ii) report annually on their environmental records, and adopt and implement codes of conduct promoting best environmental practices, by providing adequate and timely information regarding the potential health aspects of all their activities and shall also provide the relevant expertise for the enterprise and support public information and community awareness programmes;

iii) adopt global policies on sustainable development and arrange for environmentally sound technologies to be available to affiliates of parent companies in Member States on fair terms and, where appropriate, the use of environmental auditing;

iv) establish partnership schemes with small and medium-sized enterprises to help facilitate the exchange of experience in managerial skills, market development and technological know-how;

v) increase both domestic and global research and development of environmentally sound technologies and environmental management systems;

vi) ensure responsible and ethical management of products and processes from the point of view of environmental aspects;

vii) adopt and implement, wherever they operate, policies and standards of operation with reference to hazardous waste generation and disposal that are equivalent to or no less stringent than those in their country of origin, including siting decisions, impact on local communities resources and foreseeable environmental and environmentally related health risks of products as well as from the generation, transport and disposal of waste; and

viii) prepare contingency plans for the prevention and mitigation of environmental damages.

Chapter 7. HUMAN CAPITAL

Article 30. Labour and Employment Standards

(1) Member States recognise that it is inappropriate to encourage investment by relaxing domestic labour legislation. Accordingly, each Member State shall ensure that it does not waive or derogate from such legislation as an encouragement for the establishment, maintenance or expansion of an investment in its territory.

(2) Member States shall ensure that national laws and regulations provide for high levels of labour and human rights protection appropriate to its economic and social situation provided that the key principles of the Common Investment Code are not sacrificed in the process.

(3) Member States shall in consultation with investors design employment schemes in accordance with existing ECOWAS Social Security and Labour/Employment Policy, in particular to:

i. conform to government policies designed to extend equality of opportunity and treatment, including on wages, benefits and conditions of work;

ii. observe freely negotiated obligations concerning employment stability and social security in conjunction with the trade unions or other representatives of employees;

iii. not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion;

iv. maintain the highest standards of health, risks and safety in the workplace;

v. apply the relevant and or to establish industrial dispute resolution mechanisms that provide due process and appropriate procedure to employers and workers, in conformity with domestic laws and policies;

vi. not use child labour and to support efforts for the elimination of all forms of child labour including forced or compulsory labour within the Community;

vii. make every effort to mitigate to the greatest possible extent every adverse effect of any purported investments changes on employees and the economy in the Member State.

In this regard, investors shall take the following steps:

i. consult with host country authorities and national employers' and workers' organizations in order to keep manpower plans in harmony with national social development policies, making optimal use of labour available locally and within the Community to provide substantial employment or reduce unemployment;

ii. give priority to the employment and promotion of host country nationals;

iii. use technologies which generate employment; and

iv. Promote, within relevant regulatory regimes and provisions in Member States, employment in the Community by entering into supply contracts with local enterprises and by prioritizing the use and the processing of local raw materials.

(4) Investors shall take into considerations issues submitted by Member States and related to the empowerment of local communities, and adopt measures aimed at facilitating the location of investments in low income or economically depressed areas.

Chapter 8. DEVELOPMENT OBJECTIVES AND SOCIAL RESPONSIBILITY

Article 31. Development Obligations

(1) Member States shall, in accordance with the general principles of international law, have the right to pursue their own development objectives and priorities.

(2) Member States recognize their obligations regarding trade-related investment measures established in other international agreements to which they are a Party.

(3) Investors doing business in the ECOWAS territory shall in pursuit of their economic objectives, proceed in ways that do not conflict with the social and economic development of host countries in particular, they shall be sensitive to changes in the social and economic goals of their hosts. Accordingly, there should be no conflict between the obligations of the parties in the investment agreement and the sovereign right of countries to pursue other key policy objectives.

(4) Member States may impose performance requirements to promote domestic development benefits from investments. Measures adopted prior to the completion of the host state measures prescribing the formalities for establishing an investment shall be deemed to be in compliance with this Code. If such measures are taken after the completion of the host state measures prescribing the formalities for establishing an investment, they shall be subject to the provisions of this Code.

(5) Measures to promote domestic development covered by this Article include requirements to:

a) transfer technology, a production process or other proprietary knowledge to a national or company in the Member State's territory, pursuant to relevant rules and processes duly agreed;

b) carry out a particular type, level or percentage of research and development in the Member State's territory;

c) appoint as executives, managers or members of boards of directors, individuals of any nationality ;

d) train or employ local workers in positions where shortages have been demonstrated, except through due authorisation; and

(6) Member States shall enforce any existing universal service policy or legislation in a transparent and non-discriminatory manner and shall ensure that the application of such universal service policy or legislation is not more burdensome than necessary for the kind of universal service that it prescribed or required.

(7) Member States shall take account of the following criteria, among others, in the assessment of a proposed investment:

(a) importance of the investment;

(b) participation in the implementation of the economic and social plans; (c) creation of employment and vocational training;

(d) use of appropriate technologies and equipment;

(e) priority of use of local raw materials and in general, local products;

(f) registered office established in a Member State and;

(g) environmental and social impact assessment report.

Article 32. Socio-Political Obligations

(1) Investors conducting business in the ECOWAS territory shall adhere to the following principles including but not limited to:

a) respect for national sovereignty and observance of domestic laws, regulations and administrative practices;

b)respect for socio-cultural objectives and values;

c) non-interference in internal political affairs; and

e)non-interference in intergovernmental relations;

(2) Investors shall not influence the appointment of persons to public office or finance political parties or organisations;

(3) The investor shall be bound by the laws and regulations in force in the host state and shall refrain from all acts that may disturb public order or morals or that may be prejudicial to the public interest. The investor is also to refrain from exercising restrictive practices and from trying to achieve gains through unlawful means.

Article 33. Consumer Protection

1. The Member States recognise the importance of consumer protection policy and its enforcement for the purposes of creating efficient and competitive markets and enhancing consumer welfare in the ECOWAS territory.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refer to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

(a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;

(b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone, or other accounts, without any authorisation.

3. Each Member State shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities. Such laws and regulations shall be compatible and consistent with the ECOWAS Supplementary Act on Competition.

4. The Member States recognise that fraudulent and deceptive commercial activities increasingly transcend national borders, and that cooperation and coordination between the Member States is desirable to address these activities effectively.

5. In accordance with paragraph 4, the Member States shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their national consumer protection laws in accordance with the ECOWAS Supplementary Act on Competition .

6. The Member States shall endeavour to cooperate on the matters set out in this Article under the auspices of the ECOWAS Regional Investment Competition Authority through coordination between the regional authority and the competent national public bodies or officials responsible for national consumer protection policies, laws, and enforcement as determined by each Member State.

7. Investors doing business in the ECOWAS region shall when dealing with consumers act in accordance with fair business,

marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. They shall in particular, give full and adequate attention to the following key areas:

a) Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.

b) As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.

c) Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.

d) Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.

e) Respect consumer privacy and provide protection for personal data.

f) Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products.

Article 34. Corporate Governance and Responsible Business Conduct

1. Investors shall comply with all international best practices, regional, and national laws and regulations applicable to corporate governance in the ECOWAS territory in order to promote improved corporate accountability and transparency in the region.

2. Investors conducting business in the ECOWAS territory shall endeavour to promote and engage in corporate social responsibility in accordance with international best practices, taking into account the peculiar development plans and priorities of Member State and in particular the needs of for the local communities.

3. The Member States shall adopt or maintain, as the case may be, national legal and regulatory frameworks applicable to corporate governance in accordance with the internationally-recognised standards referred to in this Code.

4. In this regard, investors are required to adopt and implement, inter alia, the following provisions:

a. ensure equitable treatment of all shareholders, including minority and third party shareholders;

b. encourage active cooperation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises;

c. ensure that timely and accurate disclosure is made of all materials facts relevant to, inter alia, the financial situation, performance, ownership, and governance of the company, risks related to environmental liabilities, and any other matters in accordance with the relevant regulations and requirements;

d. ensure similar disclosure of information relating to human resource policies, such as programmes for human resource development; and

e. respect any other requirement agreed to, and adopted, by the Member States pursuant to this Code and the ECOWICPF.

f. adhere to the financial reporting, disclosure, accounting, and audit practices satisfying the requirements of the International Financial Reporting Standards (IFRS)

Chapter 9. CORRUPTION AND UNETHICAL PRACTICES

Article 35. General

1. Member States affirm their resolve to eliminate bribery, fraud, and corruption in respect of international investment and trade in the ECOWAS territory.

2. The scope of this Section is limited to measures to eliminate bribery, fraud, and corruption with regard to any matter covered by this Code.

3. Member States recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is expressly reserved to the national

laws of each Member State, and that those offences shall be prosecuted and punished in accordance with such national laws.

4. Each Member State shall ratify or accede to the United Nations Convention against Corruption, done at New York on October 31, 2003 (UNCAC), within one hundred and eighty (180) days after the entry into legal force and effect of this Code for that Member State. For those Member States that have already ratified the UNCAC, such Member States shall continue to maintain their membership status thereto in conformity with this Code.

Article 36. Measures to Combat Corruption

1. Each Member State shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its national laws certain conduct, acts, or omissions that, when committed intentionally by any person subject to its jurisdiction, can affect cross-border international investment or trade, including:

(a) the promise, offering, or giving to a public official, directly or indirectly, of a gift, favour or an undue advantage for the official or another person or entity in order that the official act or refrain from acting in relation to the performance of, or the exercise of, his or her official duties;

(b) the solicitation or acceptance by a public official, directly or indirectly, of a gift, favour or an undue advantage for the official or another person or entity in order that the official acts or refrains from acting in relation to the performance of, or the exercise of, his or her official duties;

(c) the promise, offering, or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage for the official or another person or entity in order that such official acts or refrains from acting in relation to the performance of, or the exercise of, his or her official duties in order to obtain or retain business or other undue advantage in relation to the conduct of international business;

(d) any promise or declaration by any person that he can exercise some influence on decisions or actions of persons occupying positions in the public or private sector, whether the influence had been exercised or not and whether or not the supposed influence had the desired result;

(e) the diversion by a public official of any assets whether moveable or immovable, deeds or securities of a State in his possession either for his own benefit or for the benefit of another person; and

(f) the aiding or abetting or conspiracy in the commission of any of the offences described in subparagraphs (a) through (e).

2. Each Member State shall make the commission of an offence described in Article 37paragraphs a to e liable to sanctions, in accordance with its national laws, that take into account the gravity of that offence.

3. Each Member State shall adopt or maintain national measures as may be necessary, consistent with its legal principles, to establish the liability of juridical persons for offences described in Article 37, paragraphs a to e, whether or not the offence is committed in whole or part in its territory or the offender is one of its nationals, or an investor or its agent, or any other person acting in relation to an investment in a Member State. In furtherance of this provision, each Member State shall ensure that juridical persons held liable for offences described in paragraph 1 or 5 are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, which can include monetary sanctions, seizure and forfeiting of assets and other proceeds of such crime.

4. No Member State shall allow a person subject to its jurisdiction to deduct from any tax liability expenses incurred in connection with the commission of an offence described in Article 37 paragraphs a to e .

5. In order to prevent fraud and corruption, each Member State shall adopt or maintain national measures as may be necessary, in accordance with its national laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards to prohibit the following acts carried out for the purpose of committing any of the offences described in Article 37 paragraphs (a-e) :

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of false expenditures;

(d) the book entry of liabilities with incorrect classifications;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents before the time limit established by applicable national law.

6. Each Member State shall consider adopting or maintaining national measures to protect against any unjustified or retaliatory treatment any person who, in good faith and on reasonable grounds, reports to the competent national authorities any facts concerning any offences described in Article 37, paragraphs a to e.

Article 37. Promoting Integrity Amongst Public Officials

1. To regulate and effectively control fraud and corruption in matters that affect cross- border investment and trade, each Member State shall promote, among other attributes, integrity, honesty, and responsibility among its public officials. In furtherance of this goal, each Member State shall endeavour, in accordance with the fundamental principles of its national legal system, to adopt or maintain:

(a) national measures to provide adequate procedures for the selection and training of individuals for public positions considered particularly susceptible to fraud and corruption, and the rotation, if appropriate, of such individuals to other public positions;

(b) national measures to promote transparency in the behaviour of public officials in the exercise of their public functions;

(c) effective and transparent national policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

(d) national measures that require senior and other appropriate public officials to make declarations to the competent national authorities regarding, among other potential conflicts, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

(e) national measures to encourage the reporting by public officials of any acts of fraud or corruption to the competent national authorities in cases in which such officials, in the discharge of their public functions, become aware of any such acts as committed by any other public official or by any other person subject to its jurisdiction.

2. Each Member State shall endeavour to adopt or maintain national codes or standards of conduct to encourage the correct, honourable, and proper performance of public functions, as well as national measures providing for disciplinary or other measures, if warranted, against public officials who violate such codes or standards.

3. Each Member State, to the extent consistent with the fundamental principles of its national legal system, shall consider establishing procedures through which a public official accused of an offence described in Article 37may, where appropriate, be removed, suspended, or reassigned by the competent national authority, provided that the principle of the presumption of innocence is respected in all cases in accordance with the national laws of a Member State.

4. Each Member State shall, in accordance with the fundamental principles of its national legal system and without prejudice to the independence of its judicial courts, adopt or maintain national measures to strengthen public official integrity and to prevent opportunities for fraud and corruption among members of the judiciary in matters that affect international investment or trade in the ECOWAS territory. Such measures may include any rules governing the conduct of the members of the judiciary of any Member State.

Article 38. Obligations of Investors

1. Investors doing business in ECOWAS territory shall not, prior to the establishment of an investment or there after offer, promise or give any undue pecuniary or any undue advantage to a public official of a Member State or to a member of an official's family, business associate or other person in close proximity to an official or another person or any entity in order that the official acts or refrains from acting in relation to the performance of, or the exercise of, his or her official duties in order to achieve any favour or compromise in relation to the proposed investment.

2. The investors shall cooperate with Member States in eliminating corruption in public governance and shall accordingly, not encourage, incite, aid, abet or conspire with any official or another person or any entity to commit or authorise the commission of acts described in Article 37 above.

Article 39. Regional Co-operation

1. The Member States recognise the importance of co-operation and coordination among States to eliminate bribery, fraud, and corruption in respect of international investment and trade in the ECOWAS territory. In recognition of this principle,

each Member State shall:

(a) cooperate in the area of investment-related crime of bribery, fraud, and corruption by exchanging information on such crimes in accordance with the ECOWIPCPF ;

(b) cooperate, as appropriate, on issues of cross-border enforcement, including through notification, consultation and exchange of information.

(c) cooperate, as appropriate, on issue of mutual legal assistance and other law enforcement cooperative measures necessary to facilitate the investigation, prosecution and extradition of offenders for any act of corruption and other offences created pursuant to this Code in their national laws.

(d) ensure that investigation and prosecution for acts of corruption shall not be influenced by consideration of national economic interest, the potential effect upon relations with a Member State or a third country or the identity of the natural or legal person involved; and

(e) promote transparency in banking practices and transactions within its national jurisdictions and ensure that bank secrecy does not impede or hinder criminal investigations or other legal proceeding relating to fraud, bribery, corruption or related illicit practices in business practices and transactions

3. The offences created pursuant to the provisions of this Code shall be considered as crimes leading to extradition under existing ECOWAS Convention on Extradition or any other existing treaties on extradition between Member States or with other countries. Where such offences are not mentioned in existing treaties, Member States shall ensure that they are included.

Article 40. Trans-National Bribery

(1) Member States shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Chapter 9 of this Code where:

(a) the offence is committed in whole or in part in its territory;

(b) the offender is one of its nationals, or an investor or its agent ,or any other person acting in relation to an investment in a Member State ;

(2) Member States shall pursue effective enforcement of existing laws prohibiting corruption in international commercial transactions, to encourage the adoption of laws for those purposes where they do not exist, and to call upon private and public corporations, including investors and trans-national corporations and individuals within their jurisdiction engaged in international commercial transactions to promote the objectives set out in this Chapter.

(3) Member States shall deny, the tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country and, to that end, to examine their respective modalities for achieving these objectives.

(4) Member States shall ensure that bank secrecy provisions do not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in business practices and transactions.

(5) Member States legislation on corruption shall prohibit and punish corruption by measures which include:

i. deprivation of liberty for natural persons

ii. payment of fines or monetary sanction for non natural legal persons

iii. seizure and forfeiture of assets and other proceeds of crime.

(6) The offences created pursuant to the provisions of this Code shall be considered as crimes leading to extradition under existing ECOWAS Convention on Extradition or any other existing treaties on extradition between Member States or with other countries. If the offences are not mentioned in existing extradition treaties, Member States shall ensure that they are included.

(7) Member States undertake to assist each other with mutual legal assistance and other law enforcement cooperation measures necessary to facilitate the investigation and prosecution of acts of corruption and other offences created pursuant to this Code in national laws

(8) Member States may impose additional civil or administrative sanctions upon a person subject to prosecution for act of

corruption

(9) Investigation and prosecution for acts of corruption shall not be influenced by considerations of national economic interest, the potential effect upon relations with a Member State or a third country or the identity of the natural or legal persons involved.

Chapter 10. TRANSFER PRICING

Article 41. Obligation to Comply with International Transfer Pricing Standards

(1) Investors and their investments shall ensure that all transactions with related or affiliated parties ("controlled transactions") shall be conducted in accordance with the arm's length principle.

(2) The relevant international standard is the Organisation for Economic Cooperation and Development (OECD) "Transfer Pricing Guidelines for Multinational Persons and Tax Administrations".

(3) Where there is any inconsistency between Member States domestic transfer pricing regulations and OECD Guidelines, the regulations shall prevail.

Article 42. Investor Obligations to Provide Transfer Pricing Documentation

(1) Investors must have in place contemporaneous transfer pricing documentation that verifies that the conditions in its controlled transactions for the relevant tax year are consistent with the arm's length principle.

(2) Transfer pricing documentation shall include, but is not limited to:

a) an overview of the investor's business operations,

b) a description of the corporate organisational structure of the group,

c) general written description of the investor's business,

d) a description of controlled transactions (amounts, connected persons, copies of material intercompany agreements).

(3) The obligation of the investor to provide this documentation is established without prejudice to the power of the Member State to request additional information that in the course of audit procedures it deems necessary to carry out its functions.

Article 43. Member State Obligations to Cooperate on Transfer Pricing Issues

(1) To avoid any further harmful fiscal competition within the Community, Member States shall ensure that their national laws are compatible with international standards on transfer pricing.

(2) Furthermore, Member States shall cooperate in the detection and prevention of transfer pricing manipulation by investors, including in the provision of information necessary to identify and prevent such practices, and opportunities for joint tax audit.

Article 44. Investor Obligations Not to Engage In Base Erosion and Profit Shifting

Investors and their investments shall conduct their operations in a manner that fully complies with all applicable tax laws and international standards relating to ensuring tax benefits are not reduced through base erosion and profit shifting practices. Investors and their investments shall provide the financial information required by the Member State to ensure compliance with the applicable laws.

Chapter 11. TAXATION

Article 45. Jurisdiction to Tax

(1) This Code shall not affect the rights and obligations of a Member State under Double Taxation Agreements.

(2) Member States shall have the right to enter into double tax treaties, provided that whenever a harmonised ECOWAS tax regime is concluded it shall supersede existing double tax arrangements amongst Member States.

(3) Member States shall endeavour to conclude regional and international treaties to avoid double taxation and to allow for the exchange of information between the fiscal authorities from the various jurisdictions.

(4) Member States shall adequately examine the structure of their respective taxes over the income and profit of taxpayers, including identifying tax havens and examining their taxable basis, rates and fiscal administration through the establishment of a regional body in accordance with the ECOWAS Revised Treaty.

(5) In the design and negotiation of Double Tax Agreements, Member States should take special care to maintain the right to collect the tax revenue income earned/sourced within the jurisdiction.

(6) Member States shall develop rules and regulations to deter any attempt by a third-country resident or any person or entity to obtain benefits from an income tax treaty for which it was not intended or qualified or to act as a conduit for profits.

(6) Member States are encouraged to put in place measures for transparency, streamlining, due process and good governance in their fiscal legislations and regulations, in particular, to financial reporting, disclosure, accounting, and audit practices satisfying the requirements of the International Financial Reporting Standards (IFRS).

Chapter 12. HOME STATE MEASURES

Article 46. Home State Operational Measures

(1) Definition

Home country measures are measures that are used to promote the flow of investments within the community.

(2) Member States Obligations

Member States undertake to adopt a harmonized ECOWAS Investment incentives regime to promote the flows of investments by Community citizens across the region and from third countries.

(3) Home State incentives

(a) A Home State shall refrain from frustrating the effects of development relief granted by Host Country in respect of new investment. Third country governments are encouraged to support investment flows to the region by facilitating such flows through incentives and other measures.

(b) Home Country shall not obstruct flows of investment from its territory to Member States and is encouraged to adopt appropriate measures to facilitate such flows, including taxation agreements, investment guarantees, technical assistance, and the provision of information.

(4) Cooperation on Information Sharing

(a) Member States undertake to cooperate and to share information on the operations of investors from their territories and to implement the outcome of judicial or administrative decision made by host state with regards to the operations of investors in host state.

(b) Member states shall, on request, and in a timely manner, provide to a requesting member state such information as is requested and available for the purposes of the Member State to meet its obligations and perform its duties in relation to an investor. Home states shall protect confidential business information in this regard.

(c) Third country governments are encouraged to cooperate with Member States in the sharing of information on the operations of investors from their territories.

Chapter 13. TECHNOLOGY TRANSFER

Article 47. Promotion of Technology Transfer

(1) Member States can provide incentives in their territories for the purpose of promoting and encouraging the transfer of appropriate technology in their territory.

(2) Investors shall ensure that the technology being transferred complies with the science, technology and innovation policies and plans of the Member States in which they operate, and is appropriate and will contribute to the development of

local and national innovative capacity.

(3) Investors shall adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights, on reasonable terms and conditions and in a manner that contributes to the long term development prospects of the host country.

(4) In order to facilitate the implementation of these provisions, Member States and investors shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of requesting Party.

(5) Member States undertake to cooperate and facilitate the international transfer of technology by various measures such as:

a) getting access to available information regarding description, location and, as far as possible, approximate cost of technology,

a) establishing or strengthening of technology transfer centres;

b) providing training for research, engineering, design and other personnel engaged in the development of national technologies or in the adaptation and use of technologies transferred;

c) providing assistance in the development and administration of laws and regulations with a view to facilitating the transfer of technology;

d) granting credits on terms more favourable than the usual commercial terms for financing the acquisition of capital and intermediate goods in the context of approved development projects involving transfer of technology transaction;

e) assisting in the development of technological capabilities of the companies and their personnel.

Article 48. Technology Diffusion

(1) Investors shall diffuse technology and upgrades as well as improvements thereof through various mechanisms such as the demonstration and competition effects, the movement of labour from foreign affiliates to local firms and through the creation of linkages between foreign and local companies and their customers.

(2) Investors are encouraged to establish linkages with local firms, industries and institutions towards assisting the development of local technological capabilities.

Article 49. Treatment of Intellectual Property Rights

(1) Scope and Coverage

(a) For purposes of this Code, intellectual property covers copyright and related rights; industrial property rights; plant breeders rights; rights to traditional knowledge, folklore and genetic resources; and other rights and flexibilities recognised under the TRIPS Agreement, the Convention on Biological Diversity and the International Agreement on Plant Genetic Resources.

(b) Member States affirm their existing rights and obligations under the Trade Related Intellectual Property Services (TRIPS) Agreement and intellectual property agreements concluded or administered under the auspices of the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) to which they are a party.

(c) Each Member State shall make available to right holders civil judicial procedures concerning the enforcement of intellectual property rights.

(2) Traditional Knowledge and Folklore

(a) For purposes of this Code, the term "traditional knowledge" or "folklore" means the practices, representations, expressions, knowledge, skills - as well as the instruments, objects, artefacts and cultural spaces associated therewith - that communities and groups in Member States recognize as part of their heritage which is transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity. Traditional knowledge or folklore includes but is not limited to -

i. oral traditions and expressions;

ii. the performing arts;

iii. social practices, rituals and festive events;

iv. knowledge and practices concerning nature and the universe; and

v. traditional craftsmanship.

(b) Where traditional knowledge or folklore is sought, used or exploited by investors in a Member State, or is otherwise relevant to their contracts, practices and other operations in such Member State, the investors undertake to protect traditional knowledge under the generally accepted international legal standards and best practices and to adhere to the following minimum standards.

i. Local communities in Member States have rights of ownership over their innovations, practices, knowledge and technologies acquired through generations and have a right to collectively benefit from the utilization of such resources.

ii. These community rights are to be protected in accordance with norms, practices and customary law found in, and recognized by the local communities in Member States whether such law is written or not.

iii. Access by an investor to biological resources and knowledge or technologies of local communities in a Member State is conditioned on the prior informed consent of the local community with rights over the resources. Access carried out without such local consent is invalid.

iv. Local communities in Member States may withdraw their consent to access or place restrictions on activities relating to access where such activities are likely to be detrimental to their socio-economic life, or their natural or cultural heritage.

v. An investor seeking in the territory of a Member State a patent relating to biological materials or to traditional knowledge or to folklore must provide, as a condition of patent rights, (i) the disclosure of the source and country of the biological resource and traditional knowledge used in the invention; (ii) evidence of prior informed consent through approval of authorities in the source Member State; and (iii) evidence of fair and equitable sharing of benefits with relevant local communities in the source Member State.

(3) Registration of Intellectual Property Rights

The registration of intellectual property rights, including the protection of traditional knowledge by a regional Intellectual Property Rights Registration Agency shall be recognized by Member States without a further requirement of registration of those rights.

Chapter 14. COMPETITION

Article 50. Restrictive Business Practices

(1) The following shall be prohibited as incompatible with the ECOWAS Common Market: all agreements between enterprises, decisions by associations of enterprises and concerted practices which may affect trade between ECOWAS Member States and the object or effect of which are or may be the prevention, restriction, distortion or elimination of competition within the Common Market, and in Particular those which:

(a) directly or indirectly fix purchase or selling prices, terms of sale, or any other, trading conditions;

(b) limit or control production, markets, technical development, or investment; (c) share markets, customers, or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage; or

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Any agreement or decision prohibited under the sub-paragraph 1 of this Article shall be automatically void and of no legal effect in any Member State of the ECOWAS Community

(3) Member States also undertake to prevent the abuse of intellectual property rights such as resort to practices which unreasonably restrain, adversely affect or set barriers to trade in intellectual property rights or intangible goods including the transfer of technology.

(4) Harmonization Measures

In order to facilitate the implementation of this chapter of this Code, Member States undertake to implement the provisions of the ECOWAS Supplementary Acts on Competition rules and the establishment of Competition Authority.

Chapter 15. TRADE-RELATED INVESTMENT MEASURES

Article 51. Trade-Related Investment Measures

(1) | Member States shall adopt investment related trade measures to enhance regional economic integration in accordance with the provisions of Article 31.

(2) Sectorally-Managed Trade Arrangements Due attention shall be paid to the relevant regional and multilateral instruments, with a view to fulfilling development priority needs of Member States.

(3) Regional Trade Agreements

Nothing in this Article shall be construed so as to oblige a Member State to extend to investments or investors of a Third Country advantages resulting from any existing or future association or participation in a free trade area, customs union, common market, economic and monetary union or any other similar institution of economic integration or to extend to investments or investors of third countries deductions, fiscal exemptions or any other similar advantages resulting from double taxation agreements or any other agreement regarding tax matters negotiated by Member States among themselves or with any other third country.

(4) Export Promotion Devices

Member States are encouraged to design a framework to harmonize the functions and operations of export processing zones (EPZ) in order to attract investment and to prevent abuse of the scheme. In this regard, the operational guidelines for EPZs shall be included in the ECOWAS Investment Policy.

(5) Establishment of Special Economic Zones in the ECOWAS Territory

1. The Member States may establish any class or kind of special economic zones anywhere in their national territories in conformity with the ECOWICPF, this Code, and the national laws of the Member States.

2. In furtherance of paragraph 1, the Member States shall endeavour, to the extent practicable, to adhere to the internationally-recognised standards as set out in the ECOWICPF when adopting their national legal, regulatory, and institutional frameworks.

Article 52. Regional Investment Promotion

(1) | Member States are encouraged to establish by national legislation investment promotion agencies to facilitate the inflows of investment to their territories. The independence of such agency shall be guaranteed by law.

(2) National Investment Promotion Agencies shall cooperate towards the implementation of this Code by harmonizing practices and policies especially investment incentives. In this regard, ECOWAS Commission shall establish a Regional Investment Promotion Agency on a Public Private Partnership basis.

Chapter 16. DISPUTE SETTLEMENT MECHANISMS

Article 53. State-State

(1) Any dispute between Member States regarding the implementation of this Code shall be resolved through the use of consultations, good offices, mediation, conciliation or any other agreed dispute resolution mechanisms.

(2) Where the parties are unable to resolve dispute through the preceding methods, they may proceed to arbitration.

(3) Where recourse is made to arbitration, the arbitration may be conducted at any established public or private alternative dispute resolution centres or the arbitration division of the ECOWAS Community Court of Justice. Member States are encouraged to utilise regional and national alternatives dispute settlement institutions.

(4) Where the Member States are unable to resolve any dispute regarding the interpretation and application of this Code through any of the preceding methods, they may refer the matter to the ECOWAS Community Court of Justice whose

decision shall be final.

Article 54. State-Investor or Investor-Investor

(1) Any dispute between a Member State and an investor or between investors may be resolved through the use of consultations, good offices, mediation, conciliation, arbitration or any other agreed dispute resolution mechanism.

(2) Where recourse is made to arbitration, the arbitration may be conducted at any established public or private alternative dispute resolution centres or the arbitration division of the ECOWAS Court of Justice. Member States and investors are encouraged to utilise regional and national alternatives dispute settlement institutions.

(3): Where recourse is made to arbitration, the rules of procedure of the relevant forum shall be applicable, including rules for the submission of claims, selection of arbitrators and conduct of the arbitration.

(4) Except where the investment contract between a Member State and an Investor provides for the use of international mechanisms such as ICSID or UNCITRAL, parties to the investment contract shall exhaust all local remedies including the ECOWAS Court of Justice or national dispute settlement systems, before resorting to the international mechanisms.

Article 55. Enforceability of Final Awards

(1) The final awards or decisions on investment disputes made by arbitration panels and judicial bodies shall be enforceable. To this end, decisions or awards rendered in another Member State shall be enforced as if there were decisions or awards rendered by a judicial body or arbitration panel located in a Member State requested to enforce the award or decision.

(2) Decisions of ECOWAS Court of Justice shall be enforced in accordance with its own rules and existing protocols.

Article 56. Interpretation and Application

Any dispute regarding the interpretation and application of this Code shall be referred to the ECOWAS Court of Justice whose decision shall be final.

Article 57. Access to the ECOWAS Court of Justice

For the purposes of instituting or maintaining any action under chapter 16 of this code, access to the ECOWAS Court of Justice is open to Member States, ECOWAS Institutions, corporate bodies, investors and individuals.

Chapter 17. REGIONAL MONITORING STRUCTURE

Article 58. Implementation

(1) Member States shall adopt such appropriate measures that are necessary to ensure that any obligation arising from this Code is fulfilled.

(2) Member States shall co-operate in addressing any impediment that may arise as a result of any action, or lack thereof, by any Member State on issues having a material bearing on the implementation of this Code.

(3) Member States shall publish all relevant measures which pertain to or affect the implementation of this Code.

(4) Member States should respond promptly to all requests by any other Member State and or by the Commission for specific information on any of its measures covered under this Code.

Article 59. Monitoring Structure

(1) For the purpose of administration, implementation and monitoring of the provisions of this Code, the Community shall in accordance with Article 25 of the ECOWAS Supplementary Act on Investment Rules, establish the necessary regional structure.

(2) The ECOWAS Common Investment Market Council shall identify and establish the relevant mechanisms to assist Member States to implement the provisions of this Code.

(3) The ECOWAS Commission shall act as the Depository for the Lists of scheduled investment sectors of Member States in

accordance with the relevant obligations under this Code.

(4) The ECOWAS Commission shall regularly update and publish the Lists of scheduled investment sectors to Member States and investors

Chapter 18. MISCELLANEOUS MATTERS

Article 60. Observer Status

Representatives of investors within the Community may be allowed observer status at meetings of ECOWAS institutions in accordance with the existing rules and regulations.

Article 61. Amendments and Revisions

(1) Any Community Institution may submit proposals for the amendment or revision of this Community Investment Code.

(2) Proposals for amendment or revision shall be submitted to the Commission. The Commission shall forward such proposals to Member States not later than thirty (30) days after receipt. Upon expiration of the thirty (30) days the Authority of Heads of State and Government shall examine the proposal and if approved shall be adopted by the Authority of Heads of State and Government in accordance with the provisions of Article 9 of the ECOWAS Treaty.

Article 62. Entry Into Force and Publication

This Code shall be published by the ECOWAS Commission in the Official Journal of the Economic Community of West African States within thirty (30) days of its signature by the Chairman of the Council of Ministers. It shall also be published by each Member State in its National Gazette within thirty (30) days after notification by the Commission.

Article 63. Transitional Provision

In order to ensure the participation of all Member States in the implementation of this Code, there will be a transition period of 5 years, to provide Member States the necessary flexibility to address developmental needs and other economic concerns that they face in the normal and smooth implementation of this Code.

Article 64. Relationship with other Investment Agreements

(1) Where there are differences or inconsistencies in the provisions of this code and other legal instruments under the ECOWAS Treaty, the provisions of this code shall prevail to the extent of the differences and inconsistencies.

(2) Member States shall ensure that all future investment agreements to which they may become Party are fully consistent with the code.

(3) In the case of a conflict between this Code and any intra-African BIT, investment chapter under any intra-African trade agreement, or regional investment arrangements, this Code shall prevail.

Article 65. Language of Publication

(1) This Code shall be published in the official languages of the Community, namely:

English, French and Portuguese.

(2) The authentic texts of this Code are in English, French and Portuguese.