# ACORD
# DE ÎNFIINȚARE
# A BĂNCII MĂRII NEGRE
# PENTRU COMERȚ ȘI DEZVOLTARE*

## ADOPTAT LA TBILISI, LA 30 IUNIE 1994

# AGREEMENT ESTABLISHING
# THE BLACK SEA TRADE
# AND DEVELOPMENT BANK

## DONE AT TBILISI ON JUNE 30, 1994

* *În vigoare pentru Republica Moldova din 24 ianuarie 1997.*

*The Black Sea Economic Cooperation participating states,* being the Republic of Albania, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Bulgaria, the Republic of Georgia, the Hellenic Republic, the Republic of Moldova, Romania, the Russian Federation, the Republic of Turkey, and Ukraine, referred to in this Agreement as the "BSEC Participating States,"

*in order* to promote private and entrepreneurial initiative and to further the implementation of reforms in the financial sector,

*have agreed* to establish hereby the Black Sea Trade and Development Bank (hereinafter called "the Bank") which shall operate in accordance with the following Articles of Agreement. Those BSEC Participating States who, directly or through designated representatives, become members of the Bank in accordance with the provisions of the Articles of Agreement are hereinafter called "Member States."

## CHAPTER I

## PURPOSE, FUNCTIONS, POWERS AND MEMBERSHIP

*Article 1*

### PURPOSE

The purpose of the Bank shall be to effectively contribute to the transition process of the Member States towards the economic prosperity of the people of the region and to finance and promote regional projects and provide other banking services to projects of the public and private sectors in the Member States and trade activities among the Member States.

*Article 2*

### FUNCTIONS AND POWERS

To fulfill its purpose, the Bank shall have the following functions and powers:

(a) to assist in the promotion of intra-regional trade, especially of capital goods, among the Member States;

(b) to finance productive projects and enterprises in the Member States;

(c) to cooperate with international development institutions and national finance and development agencies of the Member States;

(d) to establish and operate Special Funds for specific purposes, which are to be decided by the Board of Governors;

(e) to undertake research and surveys for promoting economic development of the region of the Member States or any of the Member States in order to stimulate development and transition;

(f) to further the aim of regional cooperation for development and to cooperate with the Member States to orient their development policies towards better utilization of their resources in a manner consistent with the objective of making their economies more complementary and of fostering the orderly growth of the economies of the Member States and acting as an advisor in designing sound economic policies;

(g) to promote investment in economic and social infrastructure projects in the Member States, by way of guarantees, participations and other financial arrangements in both the public and the private sectors;

(h) to undertake such other activities and provide such other services as may advance its purpose.

*Article 3*

**MEMBERSHIP**

1. Membership in the Bank shall be open to:

(a) the BSEC Participating States, directly or through their designated representatives;

(b) other multilateral banks and financial institutions.

2. "Members" means those BSEC Participating States that have become members of the Bank and those multilateral banks and financial institutions that have become members of the Bank.

3. "Founding Members" means those BSEC Participating States which have become Members of the Bank on or before the Final Date as provided tor in Paragraph 2 of Article 59 of this Agreement.

## CHAPTER II

## FINANCIAL RESOURCES

*Article 4*

### AUTHORIZED CAPITAL

1. The unit of account of the Bank shall be Special Drawing Rights (referred to as "SDR"), as defined by the Articles of Agreement of the International Monetary Fund (referred to as "IMF").

2. The initial authorized capital stock of the Bank shall be one billion SDR (SDR 1,000,000,000), divided into one million (1,000,000) shares having a par value of one thousand SDR (SDR 1,000) each.

3. The authorized capital stock of the Bank may be increased at such time and under such terms as may seem advisable.

*Article 5*

### SUBSCRIPTION AND ALLOCATION OF SHARES

1. Each BSEC Participating State, either directly or through its designated representative, shall be entitled to subscribe to a portion of the initial authorized capital stock of the Bank as follows:

Republic of Albania – *20,000* shares (SDK 20,000,000 aggregate par value) – two (2) percent of the initial authorized capital stock of the Bank;

Republic of Armenia – 20,000 shares (SDR 20,000,000 aggregate par value) – two (2) percent of (lie initial authorized capital stock of the Bank;

Republic of Azerbaijan – 20,000 shares (SDR 20,000,000 aggregate par value) – two (2) percent of the initial authorized capital stock of the Bank;

Republic of Bulgaria – 135,000 shares (SDK 135,000,000 aggregate par value) – thirteen and one half (13.5) percent of the initial authorized capital stock of the Bank;

Republic of Georgia – 20,000 shares (SDR 20,000,000 aggregate par value) – two (2) percent of the initial authorized capital stock of (lie Bank;

Hellenic Republic – 165,000 shares (SDR 165,000,000 aggregate par value) – sixteen and one half (16.5) percent of the initial authorized capital stock of the Bank;

Republic of Moldova – 20,000 shares (SDR 20,000,000 aggregate par value) – two (2) percent of the initial authorized capital stock of the Bank;

Romania – 135,000 shares (SDR 135,000,000 aggregate par value) – thirteen and one half (13.5) percent of the initial authorized capital stock of the Bank;

Russian Federation – 165,000 shares (SDR 165,000,000 aggregate par value) – sixteen and one half (16.5) percent of the initial authorized capital stock of the Bank;

Republic of Turkey – 165,000 shares (SDR 165,000,000 aggregate par value) – sixteen and one half (16.5) percent of the initial authorized capital stock of the Bank; and

Ukraine – 135.000 shares (SDR 135,000,000 aggregate par value) – thirteen and one half (13.5) percent of the initial authorized capital stock of the Bank.

2. The initially authorized capital stock shall be subscribed by and issued to each Member as follows:

(a) ten per cent (10%) shall be fully paid shares,

(b) twenty per cent (20%) shall be subscribed shares, payable as described in Paragraph 3 of Article 6, and

(c) seventy per cent (70%) shall be unpaid but callable shares as provided in Paragraph 4 of Article 6.

3. The Board of Governors shall, at intervals of not more than five (5) years, review the capital stock of the Bank. In case of an increase in the authorized capital stock, each Member shall, subject to the following sentence, have a reasonable opportunity to subscribe, under such uniform terms and conditions as the Board of Governors shall determine, to a proportion of the increase in stock equivalent to the proportion which its stock subscribed bears to the total subscribed capital stock immediately prior to such increase. Until each Founding Member shall have subscribed to the same amount of capital stock of the Bank as all other Founding Members, each Founding Member who shall r have subscribed to less than other Founding Members shall be given a fair preference to subscribe to a part of any increase until such time as all Founding Members shall have subscribed to an equal percentage of shares. No Member shall be obliged to subscribe to any part of an increase of capital stock.

4. (a) If, by the Final Date established as provided in Paragraph 2 of Article 59, any BSEC Participating State shall not have subscribed to all shares of the initial capital stock of the Bank to which it is entitled as provided in Paragraph 1 of this Article 5, the Board of Governors may offer such unsubscribed shares of the initial capital stock of the Bank to the other Member States for subscription as provided in Paragraph 3 of this Article 5 as if such shares were to have become available as a result of an increase in the authorized capital stock of the Bank.

(b) If any shares shall be offered for subscription pursuant to Paragraph 3 of this Article 5 and a Member shall not have subscribed to all shares to which it is entitled within one year following the opening date of the subscription,

the shares not subscribed shall be offered for subscription to the other Members in accordance with the procedure described in Paragraph 3 hereof.

5. Shares of the initial capital stock of the Bank shall be issued at par. Other shares shall be issued at par unless the Board of Governors decides to issue them in special circumstances on other terms.

6. The admission of new Members and the allocation of their participation quotas shall be subject to condition that total holding of the Founding Members shall always form a majority share holding.

*Article 6*

## PAYMENT OF SUBSCRIPTION

1. Each BSEC Participating State shall subscribe to a percentage of shares, representing a part less than or equal to the quota of such BSEC Participating State set forth in Paragraph 1 of Article 5 of the initial authorized capital stock of the Bank as set forth in Paragraph 2 of Article 4, which shares shall be allocated among the categories described in subparagraphs (a), (b), and (c) of Paragraph 2 of Article 5 in the same percentages as set forth in those subparagraphs.

2. Payment for the portion of the shares referred to in subparagraph (a) of Paragraph 2 of Article 5 shall be made by each Member within sixty (60) days after the date on which it becomes a member of the Bank as provided in Paragraph 3 of Article 59.

3. Payment for the portion of the shares referred to in subparagraph (b) of Paragraph 2 of Article 5 shall be made by each Member by promissory notes or other obligations issued by such Member. Such notes or obligations shall be non-negotiable and non-interest bearing, shall be denominated in SDR, and shall be payable to the Bank in eight (8) equal successive annual installments at par value commencing on that date which is one year after the date of entry into force of this Agreement as provided in Article 61.

4. Payment for the portion of the authorized capital stock of the Bank pursuant to subparagraph (c) of Paragraph 2 of Article 5 shall be subject to call only when required to meet obligations of the Bank created under subparagraph (a) of Paragraph 1 of Article 18 or otherwise required for the operations of the Bank.

5. To each particular payment installment the following rules shall apply:

(a) Each payment shall be made in the currencies of the SDR composition and in the currency of the respective Member State.

(b) Each Member shall be free to select the currency or currencies and the proportion thereof in which the payment will be made. The portion of the

national currency of the respective Member State in each payment shall not exceed fifty (50) percent of the amount due for such payment.

(c) The value of each national currency will be determined by the Bank by taking into account the exchange rate prevailing in the market at the time of such payment. For this purpose, the Bank may consult the respective authorities of the country concerned and the IMF.

6. Except as provided in Article 19, the Bank shall determine the place for any payment under this Article not later than one (1) month after the inaugural meeting of its Board of Governors, provided that before such determination, such payments shall be made to the EBRD as trustee for the Bank.

*Article 7*

## CONDITIONS RELATING TO CAPITAL STOCK

1. Shares of stock shall not be pledged or encumbered in any manner whatsoever and they shall not be transferable except to the Bank in accordance with Chapter VII of this Agreement.

2. The liability of a Member on shares shall be limited to the unpaid portion of its capital subscription.

3. No Member, by reason only of its membership, shall be liable for the obligations of the Bank.

*Article 8*

## ORDINARY CAPITAL RESOURCES

As used in this Agreement, the term "Ordinary Capital Resources" of the Bank shall include the following:

(a) Authorized capital stock of the Bank, including paid-in, payable, and callable shares, subscribed pursuant to Article 5 of this Agreement;

(b) Funds raised by the borrowing of the Bank by virtue of powers conferred by sub-paragraph (a) of Paragraph 1 of Article 18 of this Agreement to which the commitment to calls provided for in Paragraph 4 of Article 6 of this Agreement is applicable;

(c) Funds received in repayment of loans or guarantees and proceeds from the disposal of equity investments made with the resources indicated in sub-paragraphs (a) and (b) of this Article;

(d) Income derived from loans and equity investment made from the resources indicated in sub-paragraphs (a) and (b) of this Article, and income derived from guarantees and underwriting not forming part of the Special Operations of the Bank; and

(e) any other funds or income received by the Bank which do not form part of its Special Funds Resources referred to in Article 17 of this Agreement.

## CHAPTER III

## OPERATIONS

*Article 9*

### USE OF RESOURCES

The resources and facilities of the Bank shall be used exclusively to implement the purpose and carry oui the functions set forth, respectively, in Articles 1 and 2 of this Agreement.

*Article 10*

### ORDINARY AND SPFXTAL OPERATIONS

The operations of the Bank shall consist of ordinary operations financed from the Ordinary Capital Resources of the Bank referred to in Article 8 of this Agreement and special operations financed by the Special Funds Resources referred to in Article 17 of this Agreement. The two types of operations may be combined.

*Article 11*

### SEPARATION OF OPERATIONS

1. The Ordinary Capital Resources and the Special Funds Resources of the Bank shall, at all times and in all respects, be held, used, committed, invested or otherwise disposed of entirely separately from each other. Financial statements of the Bank shall show the reserves of the Bank together with its ordinary operations and the special operations, separately.

2. The Ordinary Capital Resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of special operations or activities for which Special Fund Resources were originally used or committed.

3. Expenses appertaining directly to ordinary operations shall be charged to Ordinary Capital Resources of the Bank. Expenses appertaining directly to special operations shall be charged to Special Fund Resources. Any other expenses shall, subject to Paragraph 1 of Article 16 of this Agreement, be charged as the Bank shall determine.

*Article 12*

## METHODS OF OPERATION

The Bank shall carry out its operations in furtherance of its purpose and functions as set out in Articles 1 and 2 of this Agreement in any or all of the following ways:

(a) by supporting trade activities;

(b) by making or co-financing with multilateral institutions, commercial banks or other interested sources, or participating in, loans;

(c) by investing in equity capital;

(d) by raising funds in the international financial markets;

(e) by underwriting, where other means of financing are not appropriate;

(f) by deploying Special Funds Resources in accordance with the agreements determining their use;

(g) by making or participating in loans and providing technical assistance for the reconstruction or development of infrastructure, including environmental programs;

(h) by entering into other appropriate banking operations not explicitly excluded by this Agreement or a decision of the Board of Governors.

*Article 13*

## CONSIDERATIONS RELEVANT TO FINANCING

1. In conducting its operations, the Bank shall pay due regard to:

(a) safeguarding its interests in respect of its financing;

(b) the prospect that the recipient and its guarantor, if any, will be in a position to meet their obligations under the contract;

(c) the objective of promoting complementarities in the economies of the Member States;

(d) the promotion of the well-being of the people in the Member States through economic and social development and the enlargement of opportunities for gainful employment; and

(e) the promotion of the economic development of the region of the Member States by giving priority and preference to procurement from the Member States, taking into account the relevant Member State's legislation;

(f) the law of the respective country of operation and its due process through cooperation with the country's respective authorities.

2. The Bank will give special emphasis to regional projects as well as to

projects which promote and strengthen economic cooperation among the Member States.

3. The Bank may provide financing for projects and commercial activities within and among the Member States, based on rules and regulations to be approved by the Board of Governors.

*Article 14*

## APPLICATION OF LOCAL RULES AND REGULAR IONS

In view of the regional character of the Bank, and the existence of different laws and regulations and legal procedures in the Member States, the Bank shall ensure that all financial facilities granted in any of these countries in any form shall be covered and protected by the provisions of domestic laws so that repayments and collections of the Bank's claims shall be unhindered. However, all financial facilities shall be based on the rules and regulations approved by the Bank.

*Article 15*

## LIMITATION ON ORDINARY OPERATIONS

1. The total amount of outstanding loans, equity investments and guarantees made by the Bank in its ordinary operations shall not be increased at any time if by such increase the total amount of such items shall exceed one hundred fifty percent (150%) of the total amount of the Bank's unimpaired subscribed capital, reserves and surpluses included in its Ordinary Capital Resources.

2. The total amount of any equity investment shall not normally exceed such percentage of the equity capital of the enterprise concerned as shall be determined, by a general rule, to be appropriate by the Board of Directors. The Bank shall not seek to obtain by such an investment a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment, except in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Bank, threaten to jeopardize such investment, in which case the Bank may take such action and exercise such rights as it may deem necessary for the protection of its interests.

3. The amount of the Bank's disbursed equity investments shall not at any time exceed an amount corresponding to its total unimpaired paid-in subscribed capital, surpluses and general reserve.

*Article 16*

**SPECIAL FUNDS**

1. The Bank may accept the administration of Special Funds provided by a Member State, a group of Member States, or a third party donor which are designed to serve the purpose and come within the functions of the Bank. The full cost of administering any such Special Fund shall be charged to that Special Fund.

2. Special Funds accepted by the Bank may be used in any manner and on any terms and conditions consistent with the purpose and the functions of the Bank, with the other applicable provisions of this Agreement, and with the agreement or agreements relating to such Funds.

3. Each Special Fund shall be governed by specific rules and regulations adopted for such Fund by the Board of Directors. Such rules and regulations shall be consistent with the provisions of this Agreement and the law of the countries of operations of the Special Fund.

*Article 17*

**SPECIAL FUNDS RESOURCES**

The term "Special Funds Resources" shall refer to the resources of any Special Fund and shall include:

(a) Funds accepted by the Bank for inclusion in any Special Fund;

(b) Funds repaid in respect of loans or guarantees, and the proceeds of equity investments, financed from the resources of any Special Fund which, under the rules and regulations governing that Special Fund, are received by such Special Fund; and

(c) Income derived from the investment of Special Funds Resources.

## CHAPTER IV

## BORROWING AND OTHER MISCELLANEOUS POWERS

*Article 18*

**GENERAL POWERS**

1. The Bank shall have, in addition to the powers specified elsewhere in this Agreement, the power to:

(a) Borrow funds in Member States or elsewhere, provided always that:

*(i)* before making a sale of its obligations in the territory of a Member State, the Bank shall have obtained the approval of such Member State; and

*(ii)* where the obligations of the Bank are to be denominated in the currency of a Member State, the Bank shall have obtained the approval of such Member State.

(b) Invest or deposit funds not needed in its operations;

(c) Buy and sell securities, in the secondary market, which the Bank has issued or guaranteed or in which it has invested;

(d) Guarantee securities in which it has invested in order to facilitate their sale;

(e) Underwrite, or participate in the underwriting of securities issued by any enterprise for purposes consistent with the purpose and functions of the Bank;

(f) Provide technical advice and assistance which serve its purpose and come within its functions;

(g) Exercise such other powers and adopt such Rules and Regulations as may be necessary or appropriate for its purpose and functions, consistent with the provisions of this Agreement.

2. Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government or Member.

## CHAPTER V

## CURRENCIES

*Article 19*

### USE AND CONVERSION OF CURRENCIES

1. Pursuant to Paragraph 5 sub-paragraph (b) of Article 6, national currencies of Member States shall be eligible for payment of a portion of the capital subscription of each Member State under following rules:

(a) The par value of the national currency of a Member State shall be calculated by the Bank using representative exchange rates prevailing on the market. For this purpose, the Bank may consult the respective authorities of the country concerned and the IMF.

(b) A Capital Deposit Account of the Bank shall be opened with the central bank of the respective Member State which shall bear interest equal to

the annual SDR interest rate. All payments pursuant to capital subscription to be made in the national currency of such Member State shall be made to such Capital Deposit Account.

(c) The balance of the Capital Deposit Account, after accumulation of due interest, shall be subject to annual revaluation to reflect the change of the exchange rate of the national currency of the respective Member State towards the SDR for the annual period. If such revaluation reveals a deficit in the balance in such Account in SDR terms, the Member State shall deposit into such Account an additional amount of its national currency to bring such Account into balance in SDR terms. If such revaluation reveals a surplus in the balance of such Account, the Bank shall make a disbursement from such Account to such Member State to bring such Account into balance in SDR terms. The Board of Directors shall adopt appropriate rules and regulations establishing time schedules and other procedures for implementing the provisions of this sub-paragraph on a uniform basis as to all Member States.

(d) Each Member State shall accept its national currency as a means of payment for the purpose of each payment due by the Bank to such Member State.

2. Except where a Member State deposits with its instruments of ratification or acceptance, a declaration that such Member State retains for itself the right to restrict the operations of the Bank carried on in the national currency and within the territory of such Member State, the Bank shall be entitled to enter into any operation within the territory of each Member State of a commercial and, in particular, of a financial nature denominated in either the national currency of such Member State or in foreign exchange and no further restrictions shall be levied except as applicable to the national financial institutions or any third party institution, whichever is more favorable. For the purpose of its operation, the Bank shall enjoy an unrestricted access to the domestic foreign exchange markets and other facilities to convert the national currency of a Member State into a freely convertible currency on terms not less favorable than those available to any domestic or foreign financial institution operating in such Member State.

3. The Bank shall have consultations with the respective authorities of each Member State with respect to the Bank's operations in the national currency such Member State to resolve in good faith all issues arising in order to facilitate the Bank's operations.

4. If, pursuant to Paragraph 2 hereof, a Member State has imposed excessive restrictions on the operations of the Bank in its national currency, the Board of Directors shall have the right to refuse to accept payments in such national currency pursuant to Article 6 and all such payments shall be made in a currency of the SDR composition during the time such restrictions are in effect.

*Article 20*

### DENOMINATION OF TRANSACTIONS

The Bank's foreign currency facilities shall be denominated and payable in the currencies of which the SDR is composed. All foreign currency obligations to the Bank shall be discharged in freely convertible currency acceptable to the Bank. The Bank's national currency facilities shall be denominated in the local currency of the Member State concerned. The rate of return of these transactions shall not be less than those of similar transactions in international .A-'fmancial markets.

## CHAPTER VI

## ORGANIZATION AND MANAGEMENT

*Article 21*

### STRUCTURE

The Bank shall be managed by a Board of Governors, a Board of Directors, a President, one or more Vice Presidents, and such other officers and staff as may be considered necessary.

*Article 22*

### BOARD OF GOVERNORS: COMPOSITION

1. Each Member State shall be represented on the Board of Governors and shall appoint one Governor and one Alternate Governor. Representation of all other Members shall be decided by the Board of Governors upon admission to membership. Each Governor and each Alternate Governor shall serve at the pleasure of the appointing Member. No Alternate Governor may vote except in the absence of the Governor appointed by the same Member. At its annual meeting, the Board shall elect one of the Governors as Chairman, who shall hold office until the election of the next Chairman at the next annual meeting of the Board.

2. Governors and Alternate Governors shall serve as such without remuneration from the Bank.

*Article 23*

### BOARD OF GOVERNORS: POWERS

1. All the powers of the Bank shall be vested in the Board of Governors.

2. The Board of Governors may delegate to the Board of Directors any or all of its powers, except the power to:

(a) Amend this Agreement;

(b) Increase or decrease the authorized capital stock of the Bank;

(c) Decide appeals from interpretations or applications of this Agreement as may be requested by the Board of Directors;

(d) Authorize the conclusion of general agreements for cooperation with other international organizations;

(e) Appoint the President of the Bank;

(f) Determine the remuneration of the Directors and Alternate Directors and the salary and other terms of the contract of services of the President;

(g) Approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Bank;

(h) Admit new Members and determine conditions of their admission;

(i) Suspend a Member;

(j) Determine the reserve and distribution of the net income and surplus of the Bank;

(k) Decide to terminate the operations of the Bank and to distribute its assets;

(l) Exercise such other special powers as are expressly assigned to the Board of Governors in this Agreement or any other matter referred to it by the Board of Directors.

3. The Board of Governors .hall retain full power to exercise authority over any matter delegated to the Board of Directors under Paragraph 2 of this Article, or elsewhere in this Agreement.

*Article 24*

**BOARD OF GOVERNORS: PROCEDURE**

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board of Governors or called by the Board of Directors. Meetings of the Board of Governors shall be called by the Board of Directors whenever requested by not less than four (4) Members or by Members holding at least one fourth (1/4) of the voting power of the Members.

2. Two-thirds (2/3) of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds (2/3) of the total voting power of the Members.

3. The decision on issues indicated under Paragraph 2 sub-paragraphs (a), (h), (i) and (k) of Article 23 shall be made by the Board of Governors by a mechanism (referred to as "Consensus") which shall be understood as the

absence of any objection expressed by a Governor and considered by such Governor as constituting an obstacle to the decision in question, except that a decision to suspend a Member shall be effective notwithstanding such an objection by a Governor appointed by such Member.

4. The Board of Governors shall, by regulations, establish a procedure whereby the Board of Directors may, when the latter deems such an action advisable, obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

5. The Board of Governors, and the Board of Directors, to the extent authorized, may establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

*Article 25*

## BOARD OF DIRECTORS: COMPOSITION

1. The Board of Governors shall determine the number of Directors, provided that each Member State shall be entitled to appoint one (1) Director.

2. Directors shall not be members of the Board of Governors and shall be of high competence in economic and financial matters.

3. The Board of Governors shall increase or decrease the number of the Directors or revise the composition of the Board of Directors as may be necessary in order to take into account changes in the number of Members of the Bank.

4. Each Member State shall appoint an Alternate Director with full powers to act for the Director when the Director is not present. Alternate Directors may participate in the meetings of the Board of Directors but may vote only when they are acting in place of their principals.

5. Directors shall hold office for a term of three (3) years and may be reappointed. They shall continue in office until their successors are appointed. If the office of a Director becomes vacant more than ninety (90) days before the end of his term, a successor shall be appointed or elected for the remainder of the term by the Member who appointed the former Director. While the office remains vacant, the Alternate of the former Director shall exercise the powers of the latter.

6. Directors and Alternate Directors shall not necessarily reside permanently at the location of the headquarters of the Bank and shall not be considered full time employees of the Bank, but they shall be remunerated by the Bank for each meeting of the Board of Directors which they attend.

*Article 26*

## BOARD OF DIRECTORS: POWERS

Subject to the provisions of Article 23, the Board of Directors shall be responsible

for the direction of the general operations of the Bank and for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

(a) Prepare the work of the Board of Governors;

(b) Take decisions concerning the business of the Bank and its operations in conformity with the general directions of the Board of Governors;

(c) Submit the accounts for each financial year for the approval of the Board of Governors at each annual meeting;

(d) Approve the budget of the Bank.

*Article 27*

## BOARD OF DIRECTORS: PROCEDURE

1. The Board of Directors shall meet as often as the business of the Bank may require. All usual travel and accommodation expense as well as the remuneration of the Directors shall be provided by the Bank.

2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two-thirds (2/3) of the total voting power of the Members.

3. The rules and procedures for the Board of Directors shall be approved by the Board of Governors.

*Article 28*

## VOTING

1. Subject to the provisions of the next sentence, the voting power of each Member, including the voting power of each Governor (or Alternate Governor acting in his place) and each Director (or Alternate Director acting in his place) shall be equal to the total number of its subscribed shares of the capital stock of the Bank. In the event of any Member failing to pay any part of the amount theretofore due in respect of its obligation in relation to the subscribed shares as required under Article 6 of this Agreement, such Member shall be unable, so long as such failure continues, to exercise that percentage of its voting power which corresponds to the percentage which the amount due but unpaid bears to the total amount theretofore due to be paid by such Member in respect of its obligation in relation to the subscribed shares as required under Article 6 of this Agreement.

2. In voting in the Board of Governors or Board of Directors, each Governor or Director shall be entitled to cast the votes of the Member he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of

the voting power of the Members voting.

3. Except as otherwise expressly provided in this Agreement, and except for general policy decisions in which cases such policy decisions shall be taken by a majority of not less than two-thirds (2/3) of the total voting power of the Members voting, all matters before the Board of Directors shall be decided by a majority of the voting power of the Members voting.

*Article 29*

**MANAGEMENT: THE PRESIDENT**

1. The Board of Governors, by a vote of simple majority of the total number of Governors, representing not less than a majority of the total voting power of the Members, shall appoint a President of the Bank. He/she shall be a citizen of a Member State. The President, while holding office, shall not be a Governor or a Director or an Alternate for either.

2. The term of office of the President shall be four (4) years. He/she shall, however, cease to hold office when the Board of Governors so decides, in which case the Board of Governors in accordance with Paragraph 1 of this Article 29 shall appoint a successor for up to four (4) years. Unless the Board of Governors shall otherwise direct, the President shall continue to hold the office until his/her successor is appointed.

3. The President shall be the Chairman of the Board of Directors. He/she shall not exercise any voting power, except casting vote in case of a split decision in the Board of Directors. The President may participate in the meetings of the Board of Governors but shall not vote.

4. The President as chief executive of the Bank, shall be its legal representative and shall conduct, under the direction of the Board of Directors, the current business of the Bank. The President shall, subject to the provisions of Article 30 of this Agreement, be responsible for the organization, appointment, and dismissal of the officers and staff in accordance with rules and regulations adopted by the Board of Directors.

5. In appointing the officers and the staff, the President shall ensure the highest standards of efficiency and technical competence and shall pay due regard to the recruitment of personnel on a broad geographical basis, preference being given to the citizens of the Member States.

*Article 30*

**MANAGEMENT: VICEPRESIDENT(S)**

1. One or more Vice President(s) shall he appointed by the Board of Directors on the recommendations of the President. They shall hold office for

such term, exercise such authority and perform such functions in the administration of the Bank, as may from time to time be determined by the Board of Directors. In the absence or incapacity of the President, one of the Vice Presidents nominated by the President shall exercise the authority and perform the functions of the President. A Vice President, while holding office, shall not be a Governor or Director (or an alternate of either).

2. A Vice President may participate in meetings of the lk)ard of Directors but shall have no vote at such meetings.

*Article 31*

**INTERNATIONAL CHARACTER 01 THE BANK AND PROHIBITION OF POLITICAL ACTIVITY**

1. The Bank shall not accept loans or assistance that may in any way prejudice, limit, deflect or otherwise alter its purpose or functions.

2. The Bank, its President, Vice President(s), Directors, officers, and staff shall, in their decisions, take into account only considerations relevant to the Bank's purpose, functions, and operation as set out in this Agreement. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

3. The President, Vice Presidents), officers, and staff of the Bank, in the discharge of their offices, shall owe their duty entirely to the Bank and to no other authority. Each Member of the Bank shall respect the international and non-political character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

*Article 32*

**OFFICE OF THE BANK**

1. The Headquarters of the Bank shall be located in the city of Thessaloniki, Hellenic Republic.

2. The Bank, upon the approval of the Board of Governors, may establish representative offices elsewhere with the objective of collecting information, assisting communication with the Bank and the Member States and in order to facilitate project and trade related transactions.

3. The Bank may enter into arrangements with other organizations with respect to the exchange of information or for other purposes consistent with this Agreement and with the approval of the Board of Governors.

*Article 33*

**FINANCIAL YEAR**

The Bank's financial year shall be the calendar year.

*Article 34*

## CHANNEL OF COMMUNICATION, DEPOSITORIES

1. Each Member shall designate an appropriate official authority with which the Bank may communicate in connection with any matter arising under this Agreement.

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

*Article 35*

## AUDITORS AND REPORTS

1. Upon the recommendations of the Board of Directors and approval of the Board of Governors, qualified outside auditors of international reputation shall be appointed for a term of one year, renewable further on such terms and conditions as approved by the Board of Directors, to audit the affairs of the Bank and to report to the Board of Directors on a periodic basis, as may be decided by the Board of Directors.

2. The Bank shall transmit to its Members, to the Governments of the Member States and to the BSEC International Secretariat, an annual report containing an audited statement of its accounts including a separate statement for the. operation of Special Funds and shall publish such reports. It shall also transmit quarterly to its Members and the BSEC International Secretariat a summary statement of its financial position and a profit and loss statement showing the results of its operations.

3. The Bank may also publish such other reports as it may deem necessary in carrying out its purposes and functions. Such reports shall be transmitted to the Members, to the Governments of the Member States and to the BSEC International Secretariat.

*Article 36*

## ALLOCATION OF NET INCOME

The Board of Governors shall determine annually what part of the net income or surplus of the Bank from ordinary capital operations shall be allocated to reserves, provided (kit no part of the net income or surplus of the Bank shall be distributed pro rata based on paid-in shares to Members by way of profit until the general reserves of (lie Bank shall have attained the level of ten (10) percent of the subscribed capital including all paid, unpaid but payable, and unpaid but callable capital.

## CHAPTER VII

## WITHDRAWAL AND TERMINATION OF OPERATIONS OF THE BANK

*Article 37*

### WITHDRAWAL

1. Any Member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its Headquarters.

2. Withdrawal by a Member shall become effective and its Membership shall cease on the date specified in its notice, but in no event less than six (6) months after such notice is received by the Bank. However, at any time before the withdrawal becomes finally effective, the Member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.

*Article 38*

### SUSPENSION OF MEMBERSHIP

1. If a Member fails to fulfill any of its obligations to the Bank, the Bank may suspend its membership. Hie suspension of membership will be made by a decision of the Board of Governors. Within one year after the membership was suspended, the Board of Governors shall reconsider its decision and either restore the membership to good standing or cancel the membership of such a member in the Bank.

2. A Member, while under suspension, shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, hut shall continue to be liable on all of its obligations.

*Article 39*

### SETTLEMEN OF ACCOUNTS ON CESSATION OF MEMBERSHIP

1. After the date on which a Member ceases membership, it shall remain liable, for its direct obligations to the Bank incurred as of that date. It shall also remain responsible for its contingent liabilities to the Bank so long as any part of the loans, equity investments and guarantees contracted before it ceases to be a Member is outstanding, but it shall not incur liabilities with respect to loans and guarantees entered into thereafter by the Bank nor share in the income or the expenses of (lie Bank.

2. At the time a Member ceases membership, the Bank shall arrange for the repurchase of such Member's shares by the Bank as a part of the settlement

of accounts with such Member in accordance with the provisions of Paragraphs 3 and 4 of this Article. For this purpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the date the Member ceases membership.

3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:

(a) Any amount due to the Member for its shares shall be withheld so long as the Member, including its Central Bank or any of its agencies, instrumentalities or political subdivisions, has outstanding obligations to the Bank. Any amount due to such Member may, at the option of the Bank, be applied to any such liability as it matures.

(b) The net amount, equal to the excess of the repurchase price for shares (in accordance with Paragraph 2 of this Article) over the aggregate amount of liabilities of the Member concerned to the Bank, shall be payable within a period not exceeding five (5) years, as may be determined by the Bank, upon surrender of the corresponding stock certificates.

(c) Payments shall be made by the Bank in the currencies of the SDR composition and in the respective currencies of the Member States as the Bank may determine in accordance with its financial position.

(d) If losses are sustained by the Bank on any guarantees or loans which were outstanding on the date when a Member ceased membership and the amount of such losses exceeds the amount of the reserve provided against losses on the date, the Member concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined.

4. If the Bank terminates its nitrations pursuant to Article 41 of this Agreement within six (6) months of the date upon which any Member ceases membership, all rights of the Member concerned shall be determined in accordance with the provisions of Articles 41 to 43. Such Member shall be considered as still a Member for puqxises of such Articles, but shall have no voting rights.

*Article 40.*

## TEMPORARY SUSPENSIONS OF OPERATIONS

In an emergency, the Board of Directors, by decision of a majority of not less than two-thirds (2/3) of the total voting power of the Members, may temporarily suspend operations in respect of new commitments pending an opportunity of further consideration and action by the Board of Governors.

*Article 41*

## TERMINATION OF OPERATIONS

1. In the event that the Board of Governors decides to terminate the

operations of the Bank, the Bank shall forthwith cease all activities except those incidental to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

2. Until final settlement of such obligations and distribution of assets, the Bank shall remain in existence and all mutual rights and obligations of the Bank and its Members shall continue unimpaired.

*Article 42*

## LIABILITY OF MEMBERS AND PAYMENTS OF CLAIMS

1. In the event of termination of the operations of the Bank, the liability of Members for the unpaid portion of the subscribed capital of the Bank shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

2. All creditors holding direct claims shall first be paid out of the assets of the Bank and then out of payments to the Bank on unpaid subscriptions. Before making any payments to the creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary in its judgement to ensure a pro rata distribution among holders of direct and contingent claims.

*Article 43*

## DISTRIBUTION OF ASSETS

1. No distribution of assets slull be made to Members on account of their subscriptions to the capital slock of the Bank until all liabilities to creditors shall have been discharged or provided for. Such distribution must be approved by the Board of Governors.

2. Any distribution of the assets of the Bank to Members shall be in proportion to the capital stock had by each Member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable, giving priority to depositors. The share of assets distributed need not be uniform as to type. of asset. No Member shall be entitled to receive its share in such a distribution ofa.ssets until it has scltled all of its obligations to the Bank.

3. Any Member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to the distribution.

## CHAPTER VIII

## STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

*Article 44*

### LEGAL STATUS

The Bank shall be an independent international institution possessing full juridical personality and, in particular, full capacity:

(a) to contract,

(b) to acquire and dispose of immovable and movable property, and

(c) to institute legal proceedings.

*Article 45*

### IMMUNITY FROM JUDICIAL PROCEEDINGS

1. The Bank shall enjoy immunity from every legal process except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the ternlory of the BSEC Participating State in which the Bank has its Headquarters or in any country where the Bank has appointed an agent for the puqxvse of accepting service or notice of process or has issued or guaranteed securities.

2. Notwithstanding the provisions of Paragraph 1 of this Article, no action shall be brought against the Bank by any Member, or by any agency or instrumentality of a Member, or any entity or person directly or indirectly acting for or deriving claims from a Member, or from any agency or instrumentality of the Member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its Members as may be prescribed in this Agreement, in ihe by-laws and regulations of the Bank, or in contracts entered into with the Bank.

3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

*Article 46*

### IMMUNITY OF ASSETS

1. Property and assets of the Bank, wheresoever located and by whomsoever

held, shall be immune from search, requisition, confiscation, expropriation or any oilier form of taking or from closure by administrative or legislative action.

2. The Bank shall prevent its premises from becoming refuge for fugitives from justice, or for persons subject to extradition, or persons avoiding service of legal process or judicial proceedings.

*Article 47*

**IMMUNITY OF ARCHIVED**

The archives of the Bank and, in general, any kind of information, documents, or equipment belonging to it, or held by it, shall be inviolable wherever located.

*Article 48*

**FREEDOM OF ASSETS FROM RESTRICTION**

To the extent necessary to carry out the purpose and functions of the Bank effectively and subject to the provisions of this Agreement, all property and assets of the Bank shall I'e free from any restrictions, regulations, controls and moratoria of any nature.

*Article 49*

**PRIVILEGED FOR COMMUNICATION**

The official communications of the Bank shall be accorded by each Member State treatment which is not less favorable than that accorded by it to any other international organization.

*Artide 50*

**IMMUNITIES AND PRIVILEGES OF BANK PERSONNEL**

All Governors, Directors, Alternates, officers and employees of the Bank and experts performing missions for the Bank shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, employee or expert.

*Article 51*

**PRIVILEGES OF OFFICERS AND EMPLOYEES**

1. All Governors, Directors, Alternates, officers and employees of the Bank and experts performing missions for the Bank,

(a) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by Member States to the representatives, officials and employees of comparable rank of other Member States; and

(b) shall be granted the same treatment in respect of traveling facilities as is accorded by Member States to representatives, officials and employees of comparable rank of other Member States.

2. The spouses and immediate dependents of those officers, employees and experts of the Bank who are resident in the country in which the principal office of the Bank is located shall be accorded opportunity to take employment in that country. The spouses and immediate dependents of those officials. employees and experts of the Bank who are resident in a country in which any agency or branch office of the Bank is located shall, wherever possible, in accor dance with the national law of the country, be accorded similar opportunity in that country. The Bank shall negotiate specific agreements implementing the provisions of this Paragraph with the country in which the principal office of the Bank is located and as appropriate with the other countries concerned.

*Article 52*

**EXEMPHON FROM TAXATION**

1. The Bank, its assets, property, income and its operations and transactions shall be exempt from all taxation and from all customs duties. Thr Bank shall also be exempt from any obligation for the payment, withholding or ' collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, Alternate Directors, officers or employees of the Bank, including experts performing missions for the Bank, except where a Member State deposits with its instruments of ratification or acceptance a declaration that such Member State retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or residents of such Member State.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon by whomsoever held:

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

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

place of business maintained by the Bank.

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

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

(b) if the sole jurisdictional basis for such taxation is the place of business maintained by the Bank.

*Article 53*

### WAIVER OF IMMUNITIF.S, EXEMPTIONS AND PRIVILEGES

The immunities, privileges and exemptions conferred under this Chapter are granted in the interest of the Bank. The Board of Directors may waive to such extent and upon such conditions as it may determine, any of the immunities, privileges and exemptions conferred under this Chapter in cases where such action would, in its opinion, be appropriate in the best interest of the Bank. The President shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Bank, other than the President or a Vice President, where, in his or her opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interest of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive any immunity, privilege or exemption in respect of the President and each Vice President.

## CHAPTER IX

## AMENDMENTS, INTERPRETATION AND ARBITRATION

*Article 54*

### AMENDMENTS

Any proposal to amend this Agreement, whether emanating from a Member, a Governor or the Board of Directors shall be communicated to the chairman of the Board of Governors, who shall bring the proposal before the Board of Governors. When an amendment has been adopted, in accordance with the provisions of Paragraph 3 of Article 24, the Bank shall so certify in an official communication addressed to all Members. Amendments shall enter into force for all Members three (3) months after the date of the official communication unless the Board of Governors specifies therein a different period.

*Article 55*

## LANGUAGE, INTERPRETATION, AND APPLICATION

1. The official language for coiu muni cation in the Bank shall be English. The English text of this Agreement shall be regarded as the authentic text for both interpretation and application.

2. Any question of interpretation or application of the provisions of this Agreement arising between Members of the Hank and the Bank or between two or more Members of the Bank concerning the Bank shall be submitted to the Board of Directors and decided upon following rules established by the Board 01 Governors.

*Article 56*

## ARBITRATION

If a disagreement arises between the Bank and a Member which has ceased to be a Member, or between the Bank and any of the Members after adoption of a decision to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the Member or former Member concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as prescribed under the regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

*Article 57*

## APPROVAL DEEMED GIVEN

Whenever the approval of any Member is required before any act may be done by the Bank, except an act under Articles 14, 19, 54 and 59, approval shall be deemed to have been given unless the Member presents an objection within such reasonable period as the Bank may fix in notifying the Member of the proposed act.

# CHAPTER X

# FINAL PROVISIONS

*Article 58*

## SIGNATURE AND DEPOSIT

1. The original of this Agreement in a single copy in the English language deposited with the Government of the Hellenic Republic (herein called "the Depository") shall remain open for signature until 1 January, 1995 by the Governments of the BSEG Participating States.

2. The Depository shall send certified copies of this Agreement to all the Signatories and to the BSEC International Secretariat.

*Article 59*

## RATIFICATION AND ACCEPTANCE

1. Any BSEC Participating State may become a party to this Agreement by signing it. Any other party shall sign this Agreement upon approval of its membership by the Board of Governors.

2. This Agreement shall be subject to ratification, acceptance or approval by the Signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depository until a date, herein called the "Final Date," which shall be that date which is one year after the earlier of

(a) the date of signature of this Agreement by all of the BSEC Participating States, or

(b) the date on which this Agreement shall no longer remain open for signature as set forth in Paragraph 1 of Article 58, except that at any time after the entry into force of this Agreement, the Board of Governors may decide, by a vote representing a majority of the voting power of all of the then Members of the Bank, to extend the Final Date. Instruments of ratification, acceptance, or approval, when deposited as provided herein, shall specify the number of shares of the initial capital stock of the Bank to which such Signatory subscribes as provided in Paragraph 1 of Article b of this Agreement. The Depository shall duly notify all Signatories of each deposit, the date thereof, and the number of shares subscribed.

3. A Signatory whose instrument of ratification, acceptance or approval is deposited before the date on which this Agreement enters into force shall become a Member of the Bank on the date on which this Agreement enters into force. Any other Signatory which complies with the provisions of the preceding Paragraph shall become a Member of the Bank on the date on which its insmimcnt of ratification, acceptance, or approval is deposited.

*Article 60*

**IMPLEMENTATION**

Each Member State, in accordance with its juridical system, shall promptly take such action as it is necessary to make effective in its own territory, the provisions set forth in this Agreement and shall inform the Bank of the action winch it lias taken on the matter.

*Article 61*

**ENTRY INTO FORCE**

This Agreement shall come into force when instruments of ratification, acceptance, or approval shall have been deposited by at least six (6) BSEC Participating States whose initial subscriptions in the aggregate comprise not less than fifty-one (51) percent of the initial authorized capital stock of the Bank. The Depository shall inform the Members of the date of entry into force of this Agreement.

*Article 62*

**COMMENCEMENT OF OPERATIONS**

1. As *soon* as this Agreement comes into force, each BSEC Participating State which deposited an instrument of ratification, acceptance, or approval shall appoint a Governor and an Alternate Governor.

2. At its inaugural meeting, the Board of Governors shall:

(a) appoint the President **of** the Bank;

(b) make arrangements for the appointment of the Directors oi the Bank; and

(c) make arrangements for the determination of the date on which the Bank shall commence its operations.

3. The Bank shall notify its Members and the BSEC International Secretariat of the date of the commencement of its operations.

*Done* at Tbilisi, on June 30, 1994.