

CHAPTER 22:01

AFRICAN DEVELOPMENT BANK (MEMBERSHIP OF ZIMBABWE) ACT

Act 16/1980.

AN ACT to provide for the membership of the African Development Bank by Zimbabwe and to ratify the accession of Zimbabwe to the agreement providing for the establishment and operation of such Bank; and to provide for matters incidental to or connected therewith.

[Date of commencement: 10th October, 1980.]

1 Short title

This Act may be cited as the African Development Bank (Membership of Zimbabwe) Act [*Chapter 22:01*].

2 Interpretation of terms

In this Act—

“Bank” means the African Development Bank;

“Bank Agreement” means the agreement providing for the establishment and operation of a body to be known as the African Development Bank which was adopted by the Conference of Finance Ministers held at Khartoum from the 31st July to the 4th August, 1963, as amended;

“Bank Resolution” means the resolution of the Board of Governors of the Bank relating to membership by Zimbabwe of the Bank, the text of which is set out in the First Schedule;

“Consolidated Revenue Fund” means the Consolidated Revenue Fund established by section 101 of the Constitution of Zimbabwe;

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act.

3 Membership of Bank by Zimbabwe and ratification of accession to Bank Agreement and payment of first instalment in terms of Bank Resolution

Zimbabwe is hereby authorized to become a member of the Bank on the terms and conditions specified in the Bank Agreement and the Bank Resolution and the execution by the Minister of the Instrument of Accession on the 23rd June, 1980, signifying the accession of Zimbabwe to the Bank Agreement and the payment of the first instalment of the initial subscription in terms of the Bank Resolution is hereby ratified.

4 Financial and other provisions

(1) There are hereby charged on and shall be paid out of the Consolidated Revenue Fund all payments required to be made from time to time to the Bank in terms of the Bank Agreement and the Bank Resolution.

(2) The Minister may, on behalf of Zimbabwe, issue, pursuant to the Bank Agreement and the Bank Resolution, such non-negotiable and non-interest bearing notes which may be necessary or appropriate in respect of the membership by Zimbabwe of the Bank and any sums payable under any such notes are hereby charged on and shall be paid out of the Consolidated Revenue Fund.

(3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government of Zimbabwe, raise loans by the creation and issue of securities bearing such rates of interest and subject to such terms and conditions as to repayment, redemption or otherwise as he may think fit, and the principal and interest of such securities and the charges and expenses incurred in connexion with their issue are hereby charged on and shall be paid out of the Consolidated Revenue Fund.

5 Certain provisions of Bank Agreement to have force of law

The Bank Agreement set out in the Second Schedule shall have the force of law in Zimbabwe:

Provided that nothing in Article 57 of the Bank Agreement shall be construed as—

(a) entitling the Bank to import goods free of customs duty without any restriction on their subsequent sale;
or

(b) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold;
or

(c) conferring on the Bank any exemption from taxes or duties which are in fact no more than charges for services rendered.

6 Transactions with Bank

(1) In terms of paragraph 1 of Article 40 of the Bank Agreement, Zimbabwe shall deal with the Bank only through the Treasury.

(2) The Treasury shall have authority to carry on such dealings as may be required for the purposes of subsection (1).

7 Reserve Bank of Zimbabwe to be depository

In terms of paragraph 2 of Article 40 of the Bank Agreement, the Reserve Bank of Zimbabwe is hereby designated as and authorized to be the depository in Zimbabwe for all the holdings of Zimbabwean currency of the Bank.

8 Minister's powers

The Minister may make such regulations and give such directions as he may deem necessary or convenient for the carrying out of the objects and purposes of this Act.

FIRST SCHEDULE (Section 2)

THE BANK RESOLUTION

RESOLUTION No. 04-80

Resolution of the Board of Governors of the African Development Bank concerning the Accession of the State of Zimbabwe to the African Development Bank Agreement (adopted at the first plenary sitting of the Sixteenth Annual Meeting on 23 June, 1980).

THE BOARD OF GOVERNORS

HAVING REGARD to Articles 3 (1), 5, 6 (1), 7 and 64 (2) of the Agreement establishing the African Development Bank ("the Bank Agreement") and to Article 13 of the Bank's General Regulations;

HAVING REGARD to Resolution 4 on Accession to the Bank Agreement adopted by the Conference of Finance Ministers held in Khartoum from 31 July to 4 August, 1964;

CONSIDERING the Declaration of Intent presented by the Government of the State of Zimbabwe on 11 June, 1980, in which the said Government declared its intention to join the Bank;

CONSIDERING, further, the Report of the Board of Directors (Doc. ADB/BG/XVI/14) on the exchange of views and negotiations with the Government of Zimbabwe;

WELCOMING the said Declaration of Intent;

DESIROUS, for its part, of aiding the State of Zimbabwe to become a member of the Bank at the earliest possible opportunity;

RESOLVES that the State of Zimbabwe shall become a member of the Bank on the following terms:

1. The State of Zimbabwe shall initially subscribe 5 000 (five thousand) shares of the capital stock of the Bank; such shares to consist of 1 250 (one thousand two hundred and fifty) paid-up shares and 3 750 (three thousand seven hundred and fifty) callable shares to be issued at par;
2. The payment of the amount initially subscribed to the paid-up capital stock of the Bank—to be effected in convertible currency—shall be made in instalments; the first of which, equivalent to five *per centum* (5%) of the paid-up subscription shall be paid by the Government of Zimbabwe on or before the date it deposits its Instrument of Accession;
3. The payment of the second instalment equivalent to fifteen *per centum* (15%) of the paid-up subscription, shall become due on the last day of a period of six months from the date on which the preceding instalment was paid;
4. The balance of the paid-up subscription, equivalent to eighty *per centum* (80%) of the paid-up subscription, shall be payable in four consecutive annual instalments of twenty *per centum* (20%); each instalment to become due (successively) on the last day of a period of one (1) year immediately following the day on which the preceding instalment became due;

NOTING that the formalities provided in Article 64 of the Bank Agreement have been duly completed;

DECIDES to appoint 23 June, 1980, as the date on which the State of Zimbabwe, on deposit of its Instrument of Accession, and making its initial payment, shall become a member of the Bank.

SECOND SCHEDULE (Section 5)

PROVISIONS OF BANK AGREEMENT HAVING EFFECT OF LAW

ARTICLE 51—STATUS IN MEMBER COUNTRIES

In the territory of each member the Bank shall possess 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 52—JUDICIAL PROCEEDINGS

1. The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be used only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.
2. The property and assets of the Bank shall, wherever 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 53—IMMUNITY OF ASSETS AND

- ARCHIVES
1. Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
 2. The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

ARTICLE 54—FREEDOM OF ASSETS FROM RESTRICTION

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, control and moratoria of any nature.

ARTICLE 55—PRIVILEGE FOR COMMUNICATIONS

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

ARTICLE 56—PERSONAL IMMUNITIES AND PRIVILEGES

1. All governors, directors, alternates, officers and employees of the Bank:

- i. shall be immune from legal process with respect to acts performed by them in their official capacity;
 - ii. where they are not 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 members to the representatives, officials and employees of comparable rank of other members; and
 - iii. shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.
2. Experts and consultants performing missions for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys in connexion therewith.

ARTICLE 57—EXEMPTION FROM TAXATION

1. The Bank, its property, other assets, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to 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, alternates, officers and other professional staff of the Bank.
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:
 - i. which discriminates against such obligation or security solely because it is issued by the Bank; or
 - ii. 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:
 - i. which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - ii. if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 59—APPLICATION OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Article 52, 54, 56 and 57 of this Agreement in cases where its action would, in its opinion, further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.