

**THE TREATY FOR EAST AFRICAN
CO-OPERATION ACT 1967**

No. 31 of 1967

Date of Assent: 29th November 1967

Date of Commencement: 1st December 1967

ARRANGEMENT OF SECTIONS

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SCHEDULE

An Act of Parliament to provide for giving effect to certain provisions of the Treaty for East African Co-operation and for purposes connected therewith

WHEREAS the Treaty for East African Co-operation (which is set out in the Schedule to this Act) was signed on the 6th June 1967 on behalf of the Governments of the United Republic of Tanzania, the Sovereign State of Uganda and the Republic of Kenya at Kampala:

AND WHEREAS it is expedient to make provisions for giving effect to certain provisions contained in the said Treaty which shall come into operation when the said Treaty comes into force on the 1st December 1967:

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya, as follows:—

Short title and commencement.

1. This Act may be cited as the Treaty for East African Co-operation Act 1967, and shall come into operation on the 1st December 1967.

Interpretation.

2. In this Act, except where the context otherwise requires—

“Act of the Community” means an Act of the Community enacted in accordance with Article 59 of the Treaty;

“the Assembly” means the East African Legislative Assembly established by Article 56 of the Treaty;

“the Common Services Authority” means the East African Common Services Authority established by the Constitution of the East African Common Services Organization annexed to the East African Common Services Organization Agreements 1961 to 1966;

“the Common Services Organization” means the East African Common Services Organization established by the East African Common Services Organization Agreements 1961 to 1966;

“the Community” means the East African Community established by Article 1 of the Treaty;

“the East African Authority” means the East African Authority established by Article 46 of the Treaty;

“existing law” means an enactment of the High Commission or the Common Services Organization in force or having effect immediately before the commencement of this Act and any rules, regulations, orders or other legislative instruments in force or having effect as aforesaid and made in pursuance of such an enactment;

“the High Commission” means the East Africa High Commission which was established by the East Africa (High Commission) Order in Council 1947;

“the Treaty” means the Treaty for East African Co-operation entered into by the Governments of the United Republic of Tanzania, the Sovereign State of Uganda and the Republic of Kenya, which is set out in the Schedule to this Act, as from time to time amended under any provision thereof or otherwise modified.

3. (1) The Community shall have the capacity within Kenya of a body corporate with perpetual succession, and shall have power to acquire, hold, manage and dispose of land and other property, and to sue and be sued in its own name.

Community to have capacity of body corporate.

(2) The Community shall have power to perform any of the functions conferred upon it by the Treaty and to do all things (including borrowing) that in the opinion of the East African Authority are necessary or desirable for the performance of those functions.

(3) Subsection (2) of this section relates only to the capacity of the Community as a body corporate, and nothing in that subsection shall be construed as authorizing the disregard by the Community of any law, or as affecting any power of the Community conferred by any law.

4. (1) All property of the Common Services Authority immediately before the commencement of this Act shall, as from such commencement, vest in the Community, and as from such commencement the Community shall have all the rights which the Common Services Authority has, and be subject to all the liabilities to which the Common Services Authority is subject, immediately before such commencement.

Transfer of assets and liabilities.

(2) On and after the commencement of this Act, every contract made by or on behalf of the Common Services Authority (whether in writing or not and whether or not of such a nature that rights and liabilities thereunder could be assigned by the Common Services Authority) shall have effect as if made by or on behalf of the Community, and as if references therein to the Common Services Authority and to any officer or authority thereof were replaced, in relation to anything falling to be done on or after such commencement, by references to the Community and to the corresponding officer or authority of the Community.

(3) Without prejudice to the generality of subsections (1) and (2) of this section, the Community and any other person or authority shall have like rights, powers and remedies (including in particular rights and powers as to instituting or defending legal proceedings) for ascertaining, perfecting or enforcing any rights or liabilities vested in or attaching to them by virtue of this section as if the rights or liabilities had at all times been rights or liabilities of the Community or of that person or authority.

(4) Any proceedings by or against the Common Services Authority pending immediately before the commencement of this Act shall be continued by or against the Community.

Transfer of offices and officers of Community.

5. (1) Every office which is an office in the service of the Common Services Organization immediately before the commencement of this Act shall, upon such commencement, become an office in the service of the Community.

(2) Any officer or servant of the Common Services Organization who is holding an office in the service of that Organization at the time when that office becomes an office in the service of the Community shall thereupon become an officer or servant of the Community.

Existing laws of Common Services Organization to continue in force. 4 of 1966.

6. The existing laws, with the exception of the East African Merchant Shipping Act 1966, shall continue in force in Kenya and shall be read and construed with such modifications, adaptations and qualifications as may be necessary to bring them into conformity with the Treaty.

Adaptation of existing laws.

7. The East African Authority may, by order published in the Gazette of the Community at any time before the Assembly first meets after the commencement of this Act, make such amendments to any existing law as may appear to the East African Authority to be necessary or expedient for bringing that law into conformity with the provisions of the Treaty or otherwise for giving effect or enabling effect to be given to the Treaty.

Acts of Community to have force of law.

8. (1) The provisions of an Act of the Community enacted with respect to any matter that is included in Annex X to the Treaty shall, from the date of the publication of that Act in the Gazette of the Community, have the force of law in Kenya.

(2) An Act of the Community shall come into operation on the date of its publication in the Gazette of the Community, or if it is provided in that Act that some or all of its provisions shall come into operation on some other date (whether before or after the date of publication), those provisions shall come into operation on that other date.

Cap. 1.

Construction of Acts of Community.

9. It is hereby declared that, notwithstanding section 8 of this Act, so long as the Interpretation Act of the High Commission as from time to time amended, or any Act of

the Community repealing or replacing the same, has the force of law in Kenya, the Interpretation and General Provisions Act shall not apply for the interpretation of the existing laws or the Acts of the Community.

Cap. 2.

10. (1) Where an Act of Parliament enacted on or after the 1st January 1948 and before the 11th December 1961 is inconsistent with an Act of the High Commission made in pursuance of section 28 (1) (a) of the East Africa (High Commission) Order in Council 1947, it shall be construed as being repealed by the Act of the High Commission to the extent of the inconsistency.

Inconsistency
between laws.

(2) Where an Act of Parliament is inconsistent with an Act of the Organization or an Act of the Community enacted after it, it shall be construed as being repealed by the Act of the Organization or Act of the Community to the extent of the inconsistency, unless it makes express provision indicating the intention that it shall not be so construed.

(3) Where an Act of Parliament is inconsistent with an Act of the High Commission, an Act of the Organization or an Act of the Community enacted before it, it shall not be construed so as to repeal any part of the Act of the Organization or Act of the Community, unless it makes express provision indicating the intention that it shall have effect notwithstanding the Act of the High Commission, Act of the Organization or Act of the Community.

(4) For the purposes of this section—

- (a) an Act shall be regarded as being enacted on the day upon which it has the force of law;
- (b) where an Act of the Community and an Act of Parliament are enacted on the same day, the Act of Parliament shall be deemed to have been enacted after the Act of the Community; and
- (c) a reference in this section to an Act of Parliament includes a reference to any Act of the Legislature of Kenya.

11. (1) Notwithstanding any other written law, the proportions of the amounts payable to—

- (a) the Distributable Pool Fund of the Community for the purposes of Article 67 of the Treaty; and
- (b) the General Fund of the Community for the purposes of Article 68 of the Treaty,

Provisions to
give effect to
Articles 67 and
68 of Treaty.

that fall to be contributed by the Government of Kenya shall, to the extent that they are payable out of revenues collected by the Community under any law of Kenya or any Act of the High Commission, the Common Services Organization or the Community that has the force of law in Kenya, be so paid into the said Distributable Pool Fund or the General Fund, as the case may be, without further appropriation.

(2) Payments from the Distributable Pool Fund of the Community for the purposes of Article 67 of the Treaty shall be made without further appropriation.

Adaptation of laws.

12. The Attorney-General may, by order published in the Gazette at any time before the expiration of six months from the commencement of this Act, make such amendments to any Act of Parliament as may appear to him to be necessary or expedient for the bringing of that Act into conformity with the Treaty or otherwise for giving effect or enabling effect to be given to the Treaty.

Personal immunities and privileges.

13. Paragraphs 4 and 5 of Article 3 of the Treaty (which relate to the immunities and privileges to be accorded to certain persons) shall have the force of law in Kenya.

Status, immunities and privileges of Bank.

14. Chapter X of Annex VI to the Treaty (which relates to the status, immunities and privileges to be accorded to the East African Development Bank) shall have the force of law in Kenya.

Common Market Tribunal.

15. Rules of Procedure made under paragraph 2 of Article 42 of the Treaty by the Common Market Tribunal, established by Article 32 of the Treaty, shall, in relation to the summoning of witnesses, and the conduct of the proceedings of the Tribunal, have the force of law in Kenya.

Power of Authority to enact legislation concerning Corporations.

16. (1) Notwithstanding Chapter XVI of the Treaty, the East African Authority shall have power, by decree published in the Gazette of the Community not later than the 31st December 1967, to enact legislation with respect to—

(a) services and facilities relating to rail, road and inland waterways transport and inland waterways ports, and the establishment of the East African Railways Corporation as an institution of the Community;

(b) harbour services and facilities, and the establishment of the East African Harbours Corporation as an institution of the Community;

(c) posts and telegraphs, telephones, radio communications and other associated matters, and the establishment of the East African Posts and Telecommunications Corporation as an institution of the Community;

(d) the establishment of the East African Airways Corporation as an institution of the Community,

and matters incidental or relating thereto, and a decree so made shall have the force of law in Kenya and shall in all respects be deemed to be an Act of the Community.

(2) Every decree made under subsection (1) of this section shall be in conformity with and give effect to the Treaty, and nothing in any such decree shall be inconsistent with the Treaty.

17. The Court of Appeal for Eastern Africa established by the East African Common Services Organization Agreements 1961 to 1966 and the Court of Appeal for Eastern Africa Act 1962 of the Common Services Organization shall continue in being under the name of the Court of Appeal for East Africa and shall be deemed to have been established by the Treaty, notwithstanding the abrogation of those Agreements by the Treaty.

Court of Appeal
for East Africa.

13 of 1962.

18. Notwithstanding any other written law, the sum of money which is equivalent to the sum of the balances of the General Fund of the Common Services Organization as at the closure of accounts on the 30th November 1967, except for moneys that are appropriated by Act of the Common Services Organization and after deducting the sum of twelve million shillings, shall be divided into three parts consisting of forty per cent, thirty per cent and thirty per cent and the Community shall pay the part consisting of forty per cent to the Government of the Republic of Kenya and the other parts one each to the Governments of the United Republic of Tanzania and the Sovereign State of Uganda.

Distribution of
General Fund
balances.

19. If the Treaty is amended or modified, the Attorney-General shall cause a notice of the amendment or modification, and of the date when the amendment or modification comes or is deemed to have come into operation, to be published in the Gazette and a copy of the notice to be laid

Amendment of
Treaty.

without delay before the National Assembly; and such amendment or modification shall, for the purposes of this Act, come or be deemed to have come into operation on such date.

Amendment of
Cap. 2 and
Cap. 9.

20. (1) The Interpretation and General Provisions Act is amended as follows—

(a) in section 3 (1)—

(i) by deleting the definitions of “Act of the Organization”, “the Authority”, and “the Court of Appeal”;

(ii) by adding, in their appropriate alphabetical positions, the following new definitions—

“Act of the Community” means an Act of the Community enacted in accordance with Chapter XVI of the Treaty for East African Co-operation and having the force of law in Kenya, and also means an Act of the East African Common Services Organization and an Act of the East Africa High Commission;

“the Community” means the East African Community established by the Treaty for East African Co-operation;

“the Court of Appeal” has the same meaning as in the Appellate Jurisdiction Act;

“the East African Authority” means the East African Authority established by the Treaty for East African Co-operation;

(iii) by deleting the words “the Authority or the Organization or any department” in the definition of “public body” and substituting therefor the words “Community or any department, institution”;

(iv) by deleting the word “Organization” in the definition of “applied law” and substituting therefor the word “Community”;

(b) in section 40, by deleting the words “the Organization or the Authority or to both of them, or to the purposes of the Organization or the Authority or of both of them, as the case may be” and substituting therefor the words “the Community or the purposes of the Community”;

(c) by repealing section 8.

(2) Section 2 of the Appellate Jurisdiction Act is amended by substituting for the definition of "the Court of Appeal" a new definition as follows—

"the Court of Appeal" means the Court of Appeal for East Africa referred to in section 17 of the Treaty for East African Co-operation Act 1967;.

21. The East African Common Services Organization Act is repealed.

Repeal of
Cap. 4.

SCHEDULE

(s. 2)

TREATY FOR EAST AFRICAN CO-OPERATION

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TREATY FOR EAST AFRICAN CO-OPERATION

WHEREAS the United Republic of Tanzania, the Sovereign State of Uganda and the Republic of Kenya have enjoyed close commercial, industrial and other ties for many years:

AND WHEREAS provision was made by the East Africa (High Commission) Orders in Council 1947 to 1961 for the control and administration of certain matters and services of common interest to the said countries and for that purpose the East Africa High Commission and the East Africa Central Legislative Assembly were thereby established:

AND WHEREAS provision was made by the East African Common Services Organization Agreements 1961 to 1966 (upon the revocation of the East Africa (High Commission) Orders in Council 1947 to 1961) for the establishment of the East African Common Services Organization with the East African Common Services Authority as its principal executive authority and the Central Legislative Assembly as its legislative body:

AND WHEREAS the East African Common Services Organization has, since its establishment, performed on behalf of the said countries common services in accordance with the wishes of the said countries and its Constitution:

AND WHEREAS the said countries, while being aware that they have reached different stages of industrial development and resolved to reduce existing industrial imbalances, are resolved and determined to foster and encourage the accelerated and sustained industrial development of all of the said countries:

AND WHEREAS the said countries, with a view to strengthening the unity of East Africa, are resolved to abolish certain quantitative restrictions which at present affect trade between them and are desirous of pursuing a policy towards the most favourable development of the freest possible international trade:

AND WHEREAS the said countries having regard to the interests of and their desire for the wider unity of Africa are resolved to co-operate with one another and with other African countries in the economic, political and cultural fields:

AND WHEREAS the said countries are resolved to act in concert for the establishment of a common market with no restrictions in the long term on trade between such countries:

NOW THEREFORE the Government of the United Republic of Tanzania, the Government of the Sovereign State of Uganda and the Government of the Republic of Kenya

Determined to strengthen their industrial, commercial and other ties and their common services by the establishment of an East African Community and of a Common Market as an integral part thereof

AGREE AS FOLLOWS—

PART I—PRINCIPLES

CHAPTER I—THE EAST AFRICAN COMMUNITY

Article 1—Establishment and membership of the Community

1. By this Treaty the Contracting Parties establish among themselves an East African Community and, as an integral part of such Community, an East African Common Market.

2. The East African Community is in this Treaty referred to as “the Community” and the East African Common Market is referred to as “the Common Market”.

3. The members of the Community, in this Treaty referred to as “the Partner States”, shall be the United Republic of Tanzania, the Sovereign State of Uganda and the Republic of Kenya.

Article 2—Aims of the Community

1. It shall be the aim of the Community to strengthen and regulate the industrial, commercial and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities the benefits whereof shall be equitably shared.

2. For the purposes set out in paragraph 1 of this Article and as hereinafter provided in the particular provisions of this Treaty, the Community shall use its best endeavours to ensure—

(a) the establishment and maintenance, subject to certain exceptions, of a common customs tariff and a common excise tariff;

(b) the abolition generally of restrictions on trade between Partner States;

- (c) the inauguration, in the long term, of a common agricultural policy;
- (d) the establishment of an East African Development Bank in accordance with the Charter contained in Annex VI to this Treaty;
- (e) the retention of freedom of current account payments between the Partner States, and freedom of capital account payments necessary to further the aims of the Community;
- (f) the harmonization, required for the proper functioning of the Common Market, of the monetary policies of the Partner States and in particular consultation in case of any disequilibrium in the balances of payments of the Partner States;
- (g) the operation of services common to the Partner States;
- (h) the co-ordination of economic planning;
- (i) the co-ordination of transport policy;
- (j) the approximation of the commercial laws of the Partner States; and
- (k) such other activities, calculated to further the aims of the Community, as the Partner States may from time to time decide to the undertake in common.

Article 3—Institutions of the Community

1. The institutions of the Community (established and regulated by Parts III and IV of this Treaty) shall be—

- the East African Authority
- the East African Legislative Assembly
- the East African Ministers
- the Common Market Council
- the Common Market Tribunal
- the Communications Council
- the Finance Council
- the Economic Consultative and Planning Council
- the Research and Social Council,

and such other corporations, bodies, departments and services as are established or provided for by this Treaty.

2. The institutions of the Community shall perform the functions and act within the limits of the powers conferred upon them by this Treaty or by any law.

3. The institutions of the Community shall be assisted in the exercise of their functions by a central secretariat of officers in the service of the Community.

4. Persons employed in the service of the Community, the Corporations or the Bank, and directors and alternate directors of the Bank—

- (a) shall be immune from civil process with respect to acts performed by them in their official capacity; and
- (b) shall be accorded such immunities from immigration restrictions or alien registration, and where they are not citizens of a Partner State, such facilities in relation to exchange regulations, as the Authority may determine.

5. Experts or consultants rendering services to the Community, the Corporations or the Bank shall be accorded such immunities and privileges in the Partner States as the Authority may determine.

Article 4—General undertaking as to implementation

The Partner States shall make every effort to plan and direct their policies with a view to creating conditions favourable for the development of the Common Market and the achievement of the aims of the Community and shall co-ordinate, through the institutions of the Community, their economic policies to the extent necessary to achieve such aims and shall abstain from any measure likely to jeopardize the achievement thereof.

PART II—THE EAST AFRICAN COMMON MARKET

CHAPTER II—EXTERNAL TRADE

Article 5—Common customs tariff

1. The Partner States, recognizing that a common external customs tariff is a basic requirement of the Common Market and subject to paragraphs 2 and 3 of this Article, agree to establish and maintain a common customs tariff in respect of all goods imported into the Partner States from foreign countries.

2. A Partner State may, with the agreement of the Ministers of the Partner States responsible for public finance, depart from the common external customs tariff in respect of the importation of a particular item into that State.

3. The Partner States agree to undertake early consultations in the Common Market Council with a view to the abolition generally of existing differences in the external customs tariff.

Article 6—Remission of customs duty

1. The Partner States agree not to exempt, remit or otherwise relieve from payment of customs duty any goods originating in a foreign country and imported by the Government of a Partner State if—

- (a) such goods are imported for the purpose of resale or for any purpose other than consumption or use by that Government; and
- (b) in the case of goods provided by way of aid, by any government or organization, either *gratis* or on terms less stringent

than those appropriate to ordinary commercial transactions, such goods are intended for the purpose of resale or consumption in, or are transferred to, any country other than the Partner State which is the recipient of such goods.

2. The Partner States agree that the Community and the Corporations shall be enabled to import free of customs duty any goods required for the purpose of their operations except such goods as are intended for sale, or are sold, to the public.

Article 7—External Trade Arrangements

No Partner State shall enter into arrangements with any foreign country whereunder tariff concessions are available to that Partner State which are not available to the other Partner States.

Article 8—Deviation of Trade Resulting from Barter Agreements

1. If as a result of any barter agreement involving a particular kind of manufactured goods, entered into between a Partner State or any body or person therein, and a foreign country, or any body or person therein, there is, in respect of that kind of manufactured goods, a significant deviation of trade away from goods coming from and manufactured in another Partner State to goods imported in pursuance of that agreement, then the Partner State into which such goods are so imported shall take effective measures to counteract such deviation.

2. In paragraph 1 of this Article "barter agreement" means any agreement or arrangement by which manufactured goods are imported into a Partner State, being goods for which settlement may be effected, in whole or in part, by the direct exchange of goods.

3. In order to determine whether a deviation of trade in a particular kind of manufactured goods has occurred for the purposes of this Article, regard shall be had to all relevant trade statistics and other records concerning that kind of manufactured goods of the East African Customs and Excise Department for the six months immediately preceding a complaint that a deviation has occurred and to the average of the two comparable periods of six months in the twenty-four months which preceded the first importation of goods under the barter agreement.

CHAPTER III—INTRA-EAST AFRICAN TRADE

Article 9—External Goods—General Principles

1. The Partner States agree that where customs duty has been charged and collected on any goods imported into a Partner State (hereinafter in this paragraph referred to as "the importing State") from a foreign country then such goods shall not be liable to further customs duty on transfer to any other Partner State (hereinafter referred to as "the receiving State"):

Provided that where the rate of customs duty applicable to such goods in the receiving State exceeds that charged and collected in the importing State any excess of duty so arising may be charged and collected.

2. Each of the Partner States shall grant full and unrestricted freedom of transit through its territory for goods proceeding to or from a foreign country indirectly through that territory to or from another Partner State; and such transit shall be subject to any discrimination, quantitative restrictions, duties or other charges levied on transit.

3. Notwithstanding paragraph 2 of this Article—

- (a) goods in transit shall be subject to the customs laws; and
- (b) goods in transit shall be liable to the charges usually made for carriage and for any services which may be rendered, provided such charges are not discriminatory.

4. The Partner States agree that each Partner State shall be entitled to prohibit or restrict the import from a foreign country into it of goods of any particular description or derived from any particular source.

5. Where goods are imported from a foreign country into one Partner State, it shall be open to each of the other Partner States to restrict the transfer to it of such goods whether by a system of licensing and controlling importers or by other means:

Provided that, in the application of any restriction referred to in this paragraph, regard shall be had to the practicability of such restriction where goods have been repacked, blended, or otherwise processed.

6. The provisions of paragraphs 4 and 5 of this Article shall not apply to any goods which, under the provisions of Article 11 of this Treaty, fall to be accepted as goods originating in a Partner State.

Article 10—Customs Duty Collected to be Paid to Consuming State

1. Where any goods, which are imported into a Partner State from a foreign country and in respect of which customs duty has been charged and collected in that State (in this paragraph referred to as “the collecting State”) are transferred to one of the other Partner States (in this paragraph referred to as “the consuming State”), the following provisions shall apply—

- (a) if the duty collected in the collecting State was a specific duty or if the goods are transferred to the consuming State in their original packages, the collecting State shall pay the full amount of the duty collected to the consuming State;
- (b) if the duty collected in the collecting State was an *ad valorem* duty and the goods are transferred to the consuming State other than in their original packages, the collecting State shall pay to the consuming State an amount equal to 70 per cent of the duty which would have been payable if the value of the goods for duty had been taken to be the ordinary retail price; and for this purpose “ordinary retail price” means the price at which the goods could be expected to sell at the time and place of their transfer to the consuming State:

Provided that the Authority may by order from time to time alter the amount to be paid by the collecting State to the consuming State under this subparagraph and the method of calculation thereof;

- (c) if the duty collected was an *ad valorem* duty and the goods are transferred other than in their original packages and an alteration of the relevant tariff has been made in the collecting State within a material time, then, for the purpose of calculating the sum to be paid under subparagraph (b) of this paragraph, duty shall be deemed to have been collected in accordance with the tariff actually in force six weeks before the transfer of the goods.

2. Where any goods, which are imported from a foreign country into a Partner State (in this paragraph referred to as "the importing State") are chargeable to customs duty in that State, but the duty has been remitted either in whole or in part, and are subsequently transferred to one of the other Partner States (in this paragraph referred to as "the consuming State") the importing State shall, notwithstanding the said remission, pay to the consuming State the amount which would have been paid to the consuming State in accordance with paragraph 1 of this Article had the duty been collected but to the extent only that such duty would have been chargeable and collected if the goods had been imported directly into the consuming State.

Article 11—No Internal Tariff on East African Goods

1. Except as is provided in paragraph 2 of this Article no Partner State shall impose a duty in the nature of a customs duty or import duty in respect of goods which are transferred to that Partner State from one of the other Partner States and originate in the Partner States.

2. Paragraph 1 of this Article is subject to the rights and powers of Partner States to impose transfer taxes in accordance with and subject to the conditions contained in this Treaty.

3. For the purpose of this Treaty, goods shall be accepted as originating in the Partner States where—

- (a) they have been wholly produced in the Partner States; or
 (b) they have been produced in the Partner States and the value of materials imported from a foreign country or of undetermined origin which have been used at any stage of the production of the goods does not exceed 70 per cent of the ex-factory value of the goods.

4. Rules for the administration and application of this Article are contained in Annex I to this Treaty.

5. The Common Market Council shall from time to time examine whether the rules contained in Annex I to this Treaty can be amended to make them simpler and more liberal and to ensure their smooth and equitable operation, and the Authority may by order from time to time amend or add to Annex I.

Article 12—No Quantitative Restrictions on East African Goods

1. Except as is provided in this Article, each of the Partner States undertakes that, at a time not later than the coming into force of this Treaty, it will remove all the then existing quota, quantitative or the like restrictions or prohibitions which apply to the transfer to that State of goods originating in the other Partner States (including agricultural products) and, except as may be provided for or permitted by this Treaty, will thereafter refrain from imposing any further restrictions or prohibitions:

Provided that this paragraph shall not preclude a Partner State introducing or continuing or executing restrictions or prohibitions affecting—

- (a) the application of security laws and regulations;
- (b) the control of arms, ammunition and other war equipment and military items;
- (c) the protection of human, animal or plant health or life, or the protection of public morality;
- (d) transfers of gold, silver and precious and semi-precious stones;
- (e) the control of nuclear materials, radio-active products or any other material used in the development or exploitation of nuclear energy; or
- (f) the protection of its revenue where another Partner State has, in accordance with paragraph 2 of Article 17 of this Treaty, departed from a common excise tariff.

2. It is agreed that each of the Partner States shall have the right to impose restrictions and prohibitions against the transfer of goods from the other Partner States which originate in the other Partner States, in so far as may be necessary from time to time to give effect to the contractual and other obligations entered into by each of the States and listed in Annex II to this Treaty.

3. It is agreed that each of the Partner States shall have the right to impose quantitative restrictions or prohibitions in respect of certain agricultural products in the circumstances provided for by Article 13 of this Treaty.

4. If a Partner State encounters balance of payment difficulties, taking into account its overall position, that Partner State may, for the purpose only of overcoming such difficulties, impose quantitative restrictions on the goods of the other Partner States, subject to the following conditions being satisfied, namely that—

- (a) the proposed quantitative restrictions do not contravene its obligations under the General Agreement on Tariffs and Trade or its obligations under the rules of the International Monetary Fund; and
- (b) restrictions have been imposed on the import of goods from foreign countries and are inadequate to solve the difficulties; and

- (c) the restrictions imposed under this paragraph shall in no case operate against the goods of Partner States more unfavourably than the restrictions imposed on the goods of foreign countries; and
- (d) consultation concerning the proposed quantitative restrictions has first taken place within the Common Market Council and thereafter, while such restrictions remain in force, the Common Market Council shall keep the operation thereof under review.

Article 13—Exception for certain agricultural products

1. Notwithstanding the obligation of the Partner States in respect of agricultural products referred to in paragraph 1 of Article 12 of this Treaty, it is declared that each of the Partner States shall, to the extent set out in Annex III to this Treaty, have the right to impose quantitative restrictions against the transfer of the agricultural products of the other Partner States which are basic staple foods or major export crops, subject to special marketing arrangements and listed in that Annex.

2. The Authority may from time to time amend or add to Annex III to this Treaty.

Article 14—Long-term aim as to agriculture

Notwithstanding Articles 12 and 13 of this Treaty, it is declared that, in the long term, it is the aim and intention of the Partner States that the provisions of this Treaty relating to the establishment and maintenance of the Common Market should extend to agriculture and trade in agricultural products and that the development of the Common Market in respect of agricultural products should be accompanied by co-operation and consultation in the field of agricultural policy among the Partner States so that in particular, within the framework of the Community, trade arrangements between the national agencies or marketing boards of the Partner States may be entered into directly within a single system of prices and a network within the Partner States as a whole of marketing services and facilities.

Article 15—Customs duty on goods used in manufacture

1. Where goods which are imported into a Partner State from a foreign country and in respect of which customs duty is charged and collected in that State (in this Article referred to as "the collecting State") are wholly or in part used in the collecting State in the manufacture of other goods (in this Article referred to as "the manufactured goods"), and the manufactured goods are subsequently transferred to another Partner State (in this Article referred to as "the consuming State"), the collecting State shall pay to the consuming State the full amount of the duty collected in the collecting State in respect of the goods imported into the collecting State and used in the manufacture of the manufactured goods subsequently transferred to the consuming State.

2. Where goods which are imported into a Partner State (in this paragraph referred to as "the importing State") from a foreign country are chargeable to customs duty in that State but the duty has been remitted either in whole or in part and the goods are wholly or in part used in the importing State in the manufacture of other goods (in this paragraph referred to as "the manufactured goods"), and the manufactured goods are subsequently transferred to another Partner State (in this paragraph referred to as "the consuming State"), the importing State shall, notwithstanding the said remission, pay to the consuming State the amount of the duty chargeable in respect of goods imported into the importing State and used in the manufacture of the manufactured goods subsequently transferred to the consuming State to the extent that such duty would have been chargeable and collected if the goods had been imported into the consuming State.

3. Notwithstanding paragraphs 1 and 2 of this Article, if the value of the imported goods which are used in the manufacture of any manufactured goods transferred as a separate consignment is less than one hundred shillings in the currency of the State of manufacture, then in that case only no payment of duty shall be made to the consuming State under this Article.

Article 16—Discriminatory practices

1. The Partner States recognize that the following practices are incompatible with this Treaty to the extent that they frustrate the benefits expected from the removal or absence of duties and quantitative restrictions on trade between the Partner States—

- (a) one channel marketing;
- (b) discriminatory rates of taxes, duties or other charges levied in a Partner State on any goods originating in another Partner State;
- (c) dumping; and
- (d) discriminatory purchasing.

2. In paragraph 1 of this Article—

- (a) "one channel marketing" means any arrangement for the marketing of goods, whether regulated by law or otherwise, which, by limiting the channels by which such goods may be marketed, has effect to exclude competition in the marketing of such goods;
- (b) "discriminatory rates of taxes, duties or other charges" means rates of taxes, duties or other charges imposed upon goods by a Partner State which place such goods in an unfavourable position with regard to sale by comparison with similar goods originating in that Partner State or imported from any other country;
- (c) "dumping" means the transfer of goods originating in a Partner State to another Partner State for sale—
 - (i) at a price less than the comparable price charged for similar goods in the Partner State where such goods originate (due allowance being made for the differences

in the conditions of sale or in taxation or for any other factors affecting the comparability of prices); and

(ii) under circumstances likely to prejudice the production of similar goods in that Partner State; and

(d) "discriminatory purchasing" means any arrangement or practice whereby a Partner State or any body or person therein gives preference to the purchase of goods originating from a foreign country when suitable goods originating within the Partner States are available on comparable terms including price.

CHAPTER IV—EXCISABLE GOODS

Article 17—Common excise tariff

1. Subject to paragraphs 2 and 3 of this Article, the Partner States agree to establish and maintain a common excise tariff in respect of excisable goods manufactured, processed or produced in the Partner States.

2. For revenue purposes, a Partner State may, in special circumstances and after consultation between the Ministers of the Partner States responsible for public finance, depart from the common excise tariff in respect of the manufacture, processing or production of particular excisable goods in that State:

Provided that a Partner State before acting under this paragraph shall have due regard to the administrative practicability of enforcing the departure contemplated and to whether the proposed departure would be likely to affect detrimentally the proper functioning of the Common Market.

3. The Partner States acknowledge their intention to remove presently existing differences in the excise tariff which the Common Market Council may determine to be undesirable in the interests of the proper functioning of the Common Market.

Article 18—Excise duty to be paid to consuming State

1. Where goods which are liable to excise duty in one of the Partner States (in this Article referred to as "the collecting State") are transferred to another Partner State (in this Article referred to as "the consuming State") the East African Customs and Excise Department shall collect excise duty either at the rate in force in respect of the collecting State or, where the rate in force in respect of the consuming State is higher than that in force in respect of the collecting State, at that rate.

2. Where the rate of excise duty in force in respect of the consuming State is lower than that in force in respect of the collecting State, the owner or other transferor of goods referred to in paragraph 1 of this Article shall receive from the East African Customs and Excise Department, on proof of transfer to the consuming State, a refund of the difference between those rates of duty.

3. The East African Customs and Excise Department shall, in respect of goods liable to excise duty transferred from the collecting State to the consuming State, pay to the consuming State the amount of the excise duty collected at the rate in force in that State.

CHAPTER V—MEASURES TO PROMOTE BALANCED INDUSTRIAL DEVELOPMENT

Article 19—Fiscal incentives

The Partner States declare that they shall use their best endeavours to agree upon a common scheme of fiscal incentives towards industrial development which shall apply within the Partner States.

Article 20—Transfer tax

1. As a measure to promote new industrial development in those Partner States which are less developed industrially transfer taxes may, with the aim of promoting industrial balance between the Partner States, be imposed, notwithstanding paragraph 1 of Article 11 of this Treaty, in accordance with and subject to the conditions and limitations imposed by this Treaty.

2. In this Article, "manufactured goods" means the goods defined, or otherwise listed, in Annex IV to this Treaty. The Authority may by order from time to time amend or add to Annex IV.

3. Subject to this Article, a Partner State which is in deficit in its total trade in manufactured goods with the other two Partner States may impose transfer taxes upon manufactured goods which are transferred to that State and originate from either of the other Partner States.

4. Subject to this Article, a Partner State may impose transfer taxes upon the manufactured goods of a Partner State being goods of a value not exceeding the amount of the deficit in trade in manufactured goods between the State which is imposing the transfer tax and the State of origin of the goods upon which the tax is to be imposed.

5. For the purposes of paragraphs 3 and 4 of this Article the deficit in trade in manufactured goods between Partner States shall at any time be taken to be that indicated in the most recently published annual trade statistics produced by the East African Customs and Excise Department and where, in any particular case, the manufactured goods of a Partner State upon which a transfer tax may under this Article be imposed are not readily identifiable within the trade statistics referred to in this paragraph, the Common Market Council may determine the extent to which any goods comprised in such statistics contribute to the amount of any deficit in any trade.

6. A Partner State may impose a transfer tax upon manufactured goods only if at the time the tax is imposed goods of a similar description are being manufactured in that State or are reasonably expected to be manufactured in that State within three months of the imposition of the tax, and for the purposes of this paragraph

goods shall be deemed to be of a similar description to other goods if, in addition to similar function, constituent parts or content, they are of such a nature as will enable them actively to compete in the same market as those other goods:

Provided that this paragraph shall not preclude the imposition, but not the bringing into operation, of a suspended transfer tax at any time:

Provided further that, if a transfer tax is imposed in the reasonable expectation that the manufacture of particular goods will commence within three months of the imposition of the tax and such manufacture does not commence within that period—

- (a) the Partner State imposing the transfer tax shall, within twenty-one days, revoke it unless, before the expiration of that period, that Partner State has obtained the directive of the Common Market Council that, conditional upon the commencement of manufacture within a further period of three months, the revocation of such tax may be deferred for such further period;
- (b) notwithstanding that a transfer tax has been revoked, for the reason that the Common Market Council has not within three months of the imposition of such tax given the directive referred to in subparagraph (a) of this proviso, it shall be competent to that Council, where application in that behalf has been made by a Partner State within three months of the imposition of such tax, to direct that, conditional upon the commencement of manufacture within a further period of three months, such tax may be reimposed.

7. A Partner State may impose a transfer tax upon a particular kind of manufactured goods only if at the time the tax is imposed, or within three months thereafter if the tax is imposed in the reasonable expectation that the manufacture of such goods will commence within three months, the industry within the tax imposing State has the capacity to produce in the ensuing year—

- (a) a quantity of goods equivalent to not less than 15 per cent of the domestic consumption within that Partner State of goods of that particular kind in the period of twelve months immediately preceding the imposition of the tax; or
- (b) goods of that particular kind having an ex-factory value of not less than 2,000,000 shillings.

8. The rate of transfer tax shall be determined by the Partner State which imposes it, but the rate for a particular item shall not exceed—

- (a) where the duty is chargeable *ad valorem* or *ad valorem* as an alternative to the specific duty, 50 per cent of the rate of duty prescribed by the customs tariff of the tax imposing State in respect of the import of the same kind of item; or
- (b) where the duty is a specific duty with no alternative *ad valorem*, 50 per cent of the *ad valorem* equivalent of the specific duty;

but if the same kind of item is not chargeable with any duty on import no transfer tax may be imposed.

9. For the purposes of paragraph 8 of this Article, the *ad valorem* equivalent of the specific duty on a particular item shall be the percentage which is equivalent to that proportion which the aggregate of the duties collected on all items of that kind imported into the tax imposing State in a period of one year bears to the total value of those items, calculated from the date used in compiling the most recently published annual trade statistics produced by the East African Customs and Excise Department:

Provided that, if in the course of the period covered by such annual trade statistics the relevant rate of specific duty was altered, the *ad valorem* equivalent of the specific duty shall be calculated with reference only to imports entered after the alteration of the rate of duty:

Provided further that, in the calculation of the *ad valorem* equivalent of the specific duty, no account shall be taken of manufactured goods which have been either exempted from the payment of customs duty or in respect of which the customs duty has been remitted:

Provided further that, in relation to goods subject to specific duty with no alternative *ad valorem*, where there has been no importation of such goods into the tax imposing State and consequently no *ad valorem* equivalent can be determined, the rate of transfer tax shall not exceed 50 per cent of the specific duty thereon.

10. Where, in accordance with this Article, a Partner State has imposed a transfer tax upon manufactured goods and subsequently the rate of customs duty chargeable in that State on goods of the same kind is reduced, so that by virtue of paragraph 8 of this Article the tax falls to be reduced, that State shall, within twenty-one days of such reduction, reduce the tax accordingly:

Provided that, where the relevant item in the customs tariff is expressed only as a specific duty, the obligation to reduce the tax shall be performed as soon as the *ad valorem* equivalent of the specific duty as defined in paragraph 9 of this Article can be recalculated, on the basis of statistics produced by the East African Customs and Excise Department, in respect of imports into the tax imposing State for a period of three months following the reduction in the customs tariff.

11. Transfer tax shall be assessed on the value of the manufactured goods upon which it is imposed, which shall be taken to be the value set out in Annex V to this Treaty:

Provided that, in the case of manufactured goods transferred under a contract of sale and entered for the payment of transfer tax, tax shall be deemed to have been paid on that value if, before the

goods are released after transfer, tax is tendered and accepted on a declared value based on the contract price and for the purposes of this proviso—

- (a) the declared value of any goods shall be their value as declared by or on behalf of the buyer in the country to which the goods are being transferred in making entry of the goods for transfer tax;
- (b) that value shall be deemed to be based on the contract price if, but only if, it represents that price properly adjusted to take account of circumstances differentiating the contract from such contract of sale as is contemplated by Annex V to this Treaty; and
- (c) the rate of exchange to be used for determining the equivalent in the currency of the country to which the goods are transferred of any foreign currency shall be the current selling rate for sight drafts in the country to which the goods are transferred as last notified before the time when the goods are entered for transfer:

Provided further that, where under Article 15 of this Treaty the Partner State in which the goods are manufactured is liable to pay to the Partner State which has imposed the transfer tax the full amount of customs duty collected in respect of goods imported and used in the manufacture of the manufactured goods, the amount of such duty paid over shall be deducted from the value provided for by this Article:

Provided further that, where under Article 18 of this Treaty the Partner State in which the goods are manufactured is liable to pay to the Partner State which has imposed the transfer tax the full amount of excise duty collected in respect of goods manufactured or processed or used in the manufacture of the manufactured goods, the amount of such duty paid shall be deducted from the value provided for by this Article.

12. The Authority may from time to time make rules for the administration and operation of paragraph 11 of this Article and of Annex V to this Treaty and may from time to time amend or add to such rules.

13. Subject to this Treaty, the assessment, collection, administration and management generally of all transfer taxes imposed under this Treaty shall be performed by the East African Customs and Excise Department, but the costs and expenses thereof, including any costs and expenses incurred in establishing the system of such assessment and collection, shall be borne by the Partner States which impose such transfer taxes in such manner as the Finance Council may from time to time determine.

14. Every transfer tax shall expire, unless sooner revoked, eight years after the date of its first imposition; and for the purposes of this paragraph no regard shall be had, in the case of a suspended transfer tax, to the date when, if at all, such tax is brought into operation.

15. Every transfer tax imposed under this Treaty shall be revoked fifteen years after the coming into force of this Treaty unless such tax has sooner expired.

16. Notwithstanding paragraphs 14 and 15 of this Article, the Partner States agree that, for the purpose of evaluating the effectiveness of the transfer tax system as an instrument for attaining the aims of the Community, and in particular its effectiveness as a measure to promote a more balanced industrial development, they will undertake joint consultations to review and reappraise the system five years after the first imposition of a transfer tax under this Treaty.

17. If, as a result of a Partner State imposing a transfer tax upon a particular kind of manufactured goods, there is, in respect of manufactured goods of that kind coming into the Partner State which has imposed the transfer tax, a significant deviation of trade away from goods coming from and manufactured in the Partner State whose goods are subject to the transfer tax, to goods imported from a foreign country, then the Partner State which has imposed the transfer tax shall take measures to counteract such deviation and the other Partner States shall, where appropriate, take steps, in co-operation with that Partner State, to make such measures effective.

18. In order to determine whether a deviation of trade in a particular kind of manufactured goods has occurred for the purpose of paragraph 17 of this Article, regard shall be had to the information concerning that kind of manufactured goods in the trade statistics of the East African Customs and Excise Department (or otherwise recorded by that Department) for the six months immediately preceding a complaint that a deviation has occurred and to the average of the two comparable periods of six months in the twenty-four months which preceded the imposition of the transfer tax.

19. If a transfer tax is imposed by a Partner State upon a particular kind of manufactured goods originating in one of the other Partner States, and subsequently not less than 30 per cent of the total ex-factory value of sales, in any period of twelve months, of manufactured goods of that kind originating in the tax imposing State is sold for transfer to the other Partner States, the transfer tax shall be revoked.

20. If a transfer tax is imposed by a Partner State upon a particular kind of manufactured goods originating in the other Partner States, or one of them, and subsequently not less than 30 per cent of the total ex-factory value of sales, in any period of twelve months, of manufactured goods of that kind originating in the tax imposing State is sold for transfer to the other Partner States or to a foreign country, a Partner State may, if it considers that in the circumstances the tax ought not to continue in force, having regard to all relevant matters and to this Treaty, raise the matter within the Common Market Council and the Council may direct that the Partner State which imposed the tax shall revoke it.

21. If a Partner State which is entitled to impose transfer taxes transfers to the other Partner States in any year beginning on the 1st January manufactured goods originating in that Partner State and amounting in total value to not less than 80 per cent of the total value (measured on a fair and comparable basis in accordance with the annual trade statistics produced by the East African Customs and Excise Department) of manufactured goods transferred into that Partner State from the other Partner States during that year (and originating in those Partner States), that Partner State shall not thereafter be entitled to impose any new transfer tax or bring any suspended transfer tax into operation; but this paragraph shall not affect any subsisting transfer tax.

22. If a transfer tax is imposed by a Partner State upon a particular kind of manufactured goods, the manufacture of which is regulated under East African Industrial Licensing laws in operation in the Partner States (or any laws which may be enacted in replacement of those laws in pursuance of Article 23 of this Treaty), the Partner State whose goods are subject to the transfer tax may, if it considers that there are such exceptional circumstances that the tax ought not to continue in force, having regard to all relevant matters and to this Treaty, raise the matter within the Common Market Council and if the Council after due consideration finds that such circumstances exist the Partner State which imposed the tax shall revoke it.

23. Each Partner State shall take effective action to prevent manufactured goods originating in a Partner State being transferred to another Partner State at a price lower than their true value if such transfer is likely to prejudice the production of similar goods by that other Partner State or retard or prevent the establishment of an industry to produce such goods in that State.

24. For the purpose of paragraph 23 of this Article—

(a) manufactured goods shall be considered to be transferred at a price lower than their true value if, due allowance having been made in each case for differences in conditions of sale, taxation or for any other factors affecting the comparability of prices, their price on transfer is less than—

(i) the comparable price, in ordinary trading conditions, of similar goods destined for domestic consumption in the State in which they were produced; or

(ii) the comparable price of similar goods on their export to a foreign country in ordinary trading conditions; or

(iii) the cost of production of the goods in the Partner State where they are produced, together with a reasonable addition in respect of distribution and sales costs and profit; and

(b) "effective action" shall include the making available of facilities for inquiry relating to any allegation, by a Partner State, of transfer of goods to that Partner State at a price lower than the true value of such goods and where, on reference to the

Common Market Council, the fact of such transfer at such lower value has been established, the taking of such measures as, in relation to any industry, shall be calculated to prevent its recurrence.

25. No Partner State shall directly or indirectly subsidize the transfer of any manufactured goods from that Partner State, or establish, maintain or support any system whereby such goods are sold for transfer to another Partner State at a price lower than the comparable price charged for similar goods on the domestic market, due allowance being made for differences in the conditions of sale or in taxation and for any other factors affecting the comparability of prices.

26. For the purpose of paragraph 25 of this Article, tax incentives or refunds of a general and non-discriminatory nature granted by a Partner State with a view to encouraging production within that State of goods shall not constitute a transfer subsidy, provided they do not frustrate the purpose of the transfer tax system and are not inconsistent with this Treaty.

27. The Partner States agree that no transfer tax may be imposed upon manufactured goods which are required by the Community or by any of the Corporations for the purpose of their operations, otherwise than upon such goods as are intended for sale, or are sold, to the public.

Article 21—Establishment of the East African Development Bank

1. There is hereby established a Development Bank, to be known as the East African Development Bank.

2. The East African Development Bank is in this Treaty referred to as "the Bank".

Article 22—Charter of the Bank

The Charter of the Bank shall be that set out in Annex VI to this Treaty.

CHAPTER VI—INDUSTRIAL LICENSING

Article 23—Present system to continue

1. Subject to this Article, the Partner States agree to continue the industrial licensing system formulated in the three East African Industrial Licensing laws now in operation in the Partner States, whereby the manufacture of certain articles scheduled under the said laws is regulated and the East African Industrial Council is empowered to grant industrial licences in respect of the manufacture of such articles.

2. It is agreed that the industrial licensing system shall continue until the expiration of twenty years from the commencement of the said East African Industrial Licensing laws.

3. It is agreed that no additions shall be made to the schedules of articles, the manufacture of which is subject to industrial licensing under the said East African Industrial Licensing laws.

4. Subject to paragraph 5 of this Article, the Partner States agree to support the early replacement of the said East African Industrial Licensing laws by one law to be introduced into the East African Legislative Assembly for enactment as an Act of the Community.

5. It is agreed that the law proposed in paragraph 4 of this Article shall generally be in similar terms to the said East African Industrial Licensing laws, except that an appeal shall lie to the Industrial Licensing Appeal Tribunal on a matter of law only.

CHAPTER VII—CURRENCY AND BANKING

Article 24—No exchange commission

The Partner States undertake to make arrangements through their central banks, subject only to exchange control laws and regulations which do not conflict with this Treaty, whereby—

- (a) their respective currency notes shall be exchanged without undue delay within the territories of the Partner States at official par value without exchange commission:

Provided that the Finance Council may at its discretion authorize the central banks to make such charge, upon the exchange of currency, as will be sufficient only to meet the cost of transfer of such currency to the Partner State of its origin; and

- (b) remittances may be effected without undue delay between the Partner States at official par value of the respective currencies, that is to say without exchange commission.

Article 25—Payments and capital transfers

1. Each Partner State undertakes to permit, in the currency of the Partner State in which the creditor or beneficiary resides, all *bona fide* payments on current account falling within the definition of current account payments set out in Annex VII to this Treaty, and undertakes to ensure that all necessary permissions and authorities are given without undue delay.

2. Each Partner State undertakes to permit payments and transfers on capital account except to the extent that a Partner State may consider that control of certain categories of such payments and transfers is necessary for furthering its economic development and an increase in trade consistent with the aims of the Community:

Provided that no such control shall be imposed by a Partner State in such a manner as to prejudice the ability of the Community, the Bank or the Corporations to perform the functions conferred upon any of them by this Treaty or under any law.

3. The Authority may from time to time by order amend or add to Annex VII to this Treaty.

Article 26—Inter-State settlements

The central banks of the Partner States shall open accounts with each other over which settlements shall be effected between them in a currency acceptable to the creditor.

Article 27—Economic and monetary policy

1. Each of the Partner States agrees to pursue an economic policy aimed at ensuring the equilibrium of its overall balance of payments and confidence in its currency.

2. The Partner States will endeavour to harmonize their monetary policies to the extent required for the proper functioning of the Common Market and the fulfilment of the aims of the Community, and for this purpose agree that the Governors of the three central banks shall meet at least four times in every year to consult, and to co-ordinate and review their monetary and balance of payments policies.

Article 28—Reciprocal credits

1. If a Partner State is in difficulties as regards its balance of payments and has already exercised its drawing rights under the first credit tranche beyond the gold tranche with the International Monetary Fund, such State may, from time to time, request assistance in the way of credits for balance of payments support from any other Partner State with which it had a payments deficit in the last period of twelve months for which information is available and, subject to this Article, such a request shall be granted. Credits granted under this Article shall be in the currency of the Partner State granting the credits.

2. A Partner State shall not be obliged by this Article to allow credits at any one time to be outstanding in excess of an amount equivalent to the value of one-sixth of the goods transferred from the Partner State granting the credits to the recipient Partner State in the last period of twelve months for which information is available.

3. Except by agreement, a Partner State shall not be obliged by this Article to grant credits which in any year beginning on the 1st January exceed in total one-twelfth of the value of the goods transferred from the Partner State granting the credits to the recipient Partner State in the preceding year.

4. Credits granted in pursuance of this Article shall be for a period not exceeding three years and interest shall be paid half-yearly on the amounts outstanding at the rate of 4 per cent per annum for the first year, 5 per cent per annum for the second year and 6 per cent per annum for the third year.

CHAPTER VIII—CO-OPERATION IN OTHER RESPECTS

Article 29—Co-operation in particular fields

The Partner States declare their intention to consult with one another through the appropriate institutions of the Community for the purpose of co-ordinating their respective policies in such fields of governmental activity as they may, from time to time, consider necessary or desirable for the efficient and harmonious functioning and

development of the Common Market, and in particular, but without prejudice to the generality of the foregoing declaration, the Partner States agree—

- (a) that the Tax Board established by Article 88 of this Treaty shall, if requested by any Partner State, render assistance in the study of and correlation between taxes managed and collected by the Community and taxes managed and collected directly by authorities in that Partner State, and shall render such further assistance in matters appertaining to fiscal planning as may be desired by any Partner State;
- (b) that the Counsel to the Community shall advise the Partner States on, and endeavour to promote, the harmonization of the commercial laws in operation in the Partner States;
- (c) that it is their intention to co-operate in the co-ordination of their surface transport policies and to consult thereon within the Communications Council as may from time to time be desirable; and
- (d) in order to assist their respective national planning, to engage in consultations within the Economic Consultative and Planning Council and between the planning authorities of each of the Partner States and those of the Community.

PART III—PRINCIPAL COMMON MARKET MACHINERY

CHAPTER IX—THE COMMON MARKET COUNCIL

Article 30—Responsibilities of the Common Market Council

It shall be the responsibility of the Common Market Council established by Article 53 of this Treaty—

- (a) to exercise such powers and perform such duties as are conferred or imposed upon it by this Treaty;
- (b) to ensure the functioning and development of the Common Market in accordance with this Treaty and to keep its operation under review;
- (c) to settle problems arising from the implementation of this Treaty concerning the Common Market;
- (d) to receive and consider references making, refuting or concerning allegations as to the breach of any obligation under this Treaty in relation to the Common Market or as to any action or omission affecting the Common Market alleged to be in contravention of this Treaty and determine every such reference as follows—
 - (i) by issuing a binding directive to a Partner State or States;
or
 - (ii) by making recommendations to a Partner State or States;
or
 - (iii) by recording that the reference shall be deemed to be abandoned, settled or otherwise disposed of; or
 - (iv) by recording an inability to agree in relation to the reference;

- (e) to consider what further action should be taken by Partner States and the Community in order to promote the attainment of the aims of the Community and to facilitate the establishment of closer economic and commercial links with other States, associations of States or international organizations;
- (f) to request advisory opinions from the Common Market Tribunal in accordance with this Treaty.

Article 31—Common Market functions of the central secretariat

1. The central secretariat shall keep the functioning of the Common Market under continuous examination and may act in relation to any particular matter which appears to merit examination either on its own initiative or upon the request of a Partner State made through the Common Market Council and the central secretariat shall, where appropriate, report the results of its examination to the Common Market Council.

2. The central secretariat shall undertake such work and studies and perform such service relating to the Common Market as may be assigned to it by the Common Market Council, and shall also make such proposals thereto as it considers may assist in the efficient and harmonious functioning and development of the Common Market.

3. For the performance of the functions imposed upon it by this Article, the central secretariat may collect information and verify matters of fact relating to the functioning of the Common Market and for that purpose may request a Partner State to provide information relating thereto.

4. The Partner States agree to co-operate with and assist the central secretariat in the performance of the functions imposed upon it by this Article and agree in particular to provide any information which may be requested under paragraph 3 of this Article.

CHAPTER X—THE COMMON MARKET TRIBUNAL

Article 32—Establishment of the Common Market Tribunal

1. There is hereby established a judicial body, to be known as the Common Market Tribunal, which shall ensure the observance of law and of the terms of this Treaty in the interpretation and application of so much of this Treaty as appertains to the Common Market.

2. The Common Market Tribunal is in this Treaty referred to as "the Tribunal".

Article 33—Composition of the Tribunal

1. Subject to this Article, the Tribunal shall be composed of a Chairman and four other members, all of whom shall be appointed by the Authority.

2. The Chairman of the Tribunal shall be chosen from among persons of impartiality and independence who fulfil the conditions required for the holding of the highest judicial office in their respective countries of domicile or who are jurists of a recognized competence.

Of the members of the Tribunal other than the Chairman, each of the Partner States shall choose one, and the fourth shall be chosen by the Chairman and the other three members acting in common agreement.

4. The members chosen under paragraph 3 of this Article shall be chosen from among persons of impartiality and independence who are qualified for appointment by reason of their knowledge or experience in industry, commerce or public affairs.

Article 34—Term of office and temporary membership of the Tribunal

1. The Chairman and the other members of the Tribunal shall hold office for such period, being not less than three years, as may be determined in their respective instruments of appointment, and in fixing such periods of office regard shall be had to the desirability of securing a measure of continuity in the membership of the Tribunal.

2. All members of the Tribunal shall be eligible for re-appointment.

3. If a member of the Tribunal is temporarily absent or otherwise unable to carry out his functions, the Authority shall, if such absence or inability to act appears to the Authority to be likely to be of such duration as to cause a significant delay in the work of the Tribunal, appoint a temporary member chosen in the same manner as was the absent or disabled member in accordance with Article 33 of this Treaty, to act in place of the said member.

4. If a member of the Tribunal, other than the Chairman, is directly or indirectly interested in a case before the Tribunal, he shall immediately report the nature of his interest to the Chairman, who, if he considers that the member's interest is such that it would be undesirable for him to take part in that case, shall make a report to the Authority; and the Authority shall appoint a temporary member, chosen in the same manner as was the interested member, to act for that case only in place of the interested member.

5. If the Chairman is directly or indirectly interested in a case before the Tribunal he shall, if he considers that the nature of his interest is such that it would be undesirable for him to take part in that case, make a report to the Authority; and the Authority shall appoint a temporary Chairman, chosen in the manner as was the substantive Chairman, to act as Chairman for that case only in place of the substantive Chairman.

6. A temporary Chairman or temporary member appointed under this Article shall have, during the period he is acting, all the functions of the Chairman or member, as the case may be.

Article 35—Competence of the Tribunal

The Tribunal shall be competent to accept and adjudicate upon all matters which pursuant to this Treaty may be referred to it, and shall also possess the jurisdiction specifically conferred on it by this Chapter.

Article 36—References to the Tribunal by a Partner State

1. Where a Partner State has made a reference to the Common Market Council in pursuance of paragraph (d) of Article 30 of this Treaty, and the reference has not been determined by the Common Market Council in accordance with that paragraph within one month of the reference being made, that Partner State may refer the matter in dispute to the Tribunal.

2. Where a reference has been made to the Common Market Council in pursuance of paragraph (d) of Article 30 of this Treaty and the reference has been determined by the Council by recording an inability to agree in relation to the reference, a Partner State which is aggrieved by such determination may within two months thereof refer the matter in dispute to the Tribunal.

3. Where a reference has been made to the Common Market Council in pursuance of paragraph (d) of Article 30 of this Treaty, and a binding directive has been issued by the Common Market Council to a Partner State, and in the opinion of one of the other Partner States that directive is not complied with by the Partner State to which it is directed within the period fixed therein, that other Partner State may refer the question of such non-compliance to the Tribunal.

Article 37—Decisions of the Tribunal

1. The Tribunal shall consider and determine every reference made to it by a Partner State pursuant to this Treaty in accordance with the Statute of the Common Market Tribunal and its rules of procedure, and shall deliver in public session a reasoned decision which, subject to the provisions of the said Statute as to rectification and review, shall be final and conclusive and not open to appeal:

Provided that, if the Tribunal considers that in the special circumstances of the case it is undesirable that its decision be delivered in public, the Tribunal may make an order to that effect and deliver its decision before the parties privately.

2. The Tribunal shall deliver one decision only in respect of every reference to it, which shall be the decision of the Tribunal reached in private by majority verdict. In the event of the members of the Tribunal being equally divided, the Chairman shall have a casting vote.

3. If a member of the Tribunal does not agree with the majority verdict reached in respect of any reference, he shall not be permitted to deliver a dissenting opinion nor record his dissent in public.

Article 38—Advisory opinions of the Tribunal

The Common Market Council may request the Tribunal to give an advisory opinion regarding questions of law arising from the provisions of this Treaty affecting the Common Market, and the Partner States shall in the case of every such request have the right to be represented and take part in the proceedings.

Article 39—Interim orders and directions of the Tribunal

The Tribunal may, in any case referred to it, make any interim order or issue any directions which it considers necessary or desirable.

Article 40—Intervention

A Partner State which is not a party to a case before the Tribunal may intervene in that case, but its submissions shall be limited to supporting or opposing the arguments of a party to the case.

Article 41—Acceptance of the Tribunal's decisions

1. The Partner States undertake not to submit a dispute concerning the interpretation or application of this Treaty, so far as it relates to or affects the Common Market, to any method of settlement other than those provided for in this Treaty.

2. Where a dispute has been referred to the Common Market Council or to the Tribunal, the Partner States shall refrain from any action which might endanger the solution of the dispute or might aggravate the dispute.

3. A Partner State shall take, without delay, the measures required to implement a decision of the Tribunal.

Article 42—Statute and Rules of the Tribunal

1. The Statute of the Tribunal shall be that set out in Annex VIII to this Treaty.

2. The Tribunal shall, after consultation with the Common Market Council, make its rules of procedure and may in like manner from time to time amend or add to any such rules.

PART IV—THE FUNCTIONS OF THE EAST AFRICAN COMMUNITY AND ITS INSTITUTIONS**CHAPTER XI—FUNCTIONS AND PROCEDURE***Article 43—Functions of the Community*

1. The Community shall, on behalf of the Partner States, through its appropriate institutions, perform the functions given to it, and discharge the responsibilities imposed upon it, by this Treaty in relation to the establishment, functioning and development of the Common Market.

2. (a) The Community shall, on behalf of the Partner States, administer the services specified in Part A of Annex IX to this Treaty, and for that purpose shall, subject to this Treaty, take over from the Common Services Organization such of those services as are in existence at the date of the coming into force of this Treaty.

(b) The Authority may by order from time to time amend or add to Part A of Annex IX to this Treaty.

3. The Corporations shall, on behalf of the Partner States and in accordance with this Treaty and the laws of the Community, administer the services specified in Part B of Annex IX to this Treaty, and for that purpose shall take over from the Common Services Organization the corresponding services administered by the Common Services Organization at the date of the coming into force of this Treaty.

4. The Community shall provide machinery to facilitate the co-ordination of the activities of the Partner States on any matter of common interest.

5. Subject to this Treaty, the Community shall so regulate the distribution of its non-physical investments as to ensure an equitable contribution to the foreign exchange resources of each of the Partner States.

6. The Community shall so arrange its purchases within the Partner States as to ensure an equitable distribution of the benefits thereof to each of the Partner States.

7. Subject to this Treaty, the Community may enact measures with respect to the matters set out in Annex X to this Treaty.

8. The Community shall, in accordance with this Treaty, provide a Court of Appeal, a Common Market Tribunal and an East African Industrial Court.

Article 44—Provision of Services on an Agency Basis

1. The Community and the Corporations may, with the approval of the Authority, enter into arrangements with any Government or international organization for providing services, and may provide and administer such services accordingly.

2. The Community may enter into arrangements with any of the Corporations for providing services, and may provide and administer such services accordingly.

3. Arrangements made under this Article shall normally provide for the Community or the Corporation concerned to be reimbursed for any expenditure incurred.

Article 45—Procedure within the Community

1. The procedural provisions set out in Annex XI to this Treaty shall be followed within the Community.

2. If there is a doubt as to the procedure to be followed in any particular case, or if no procedure is prescribed by or under this Treaty, the procedure to be followed may be determined by the Authority.

CHAPTER XII—THE EAST AFRICAN AUTHORITY

Article 46—Establishment of the East African Authority

There is hereby established an Authority to be known as the East African Authority, which shall, subject to this Treaty, be the principal executive authority of the Community.

Article 47—Composition of the Authority

1. The Authority shall consist of the President of the United Republic of Tanzania, the President of the Sovereign State of Uganda and the President of the Republic of Kenya.

2. If a member of the Authority is unable to attend a meeting of the Authority and it is not convenient to postpone the meeting, he shall, after consultation with the other members of the Authority, appoint a person holding office as a Minister of his Government to represent him at such meeting only, and a person so appointed shall for the purpose of that meeting have all the powers, duties and responsibilities of the member of the Authority for whom he is acting.

Article 48—Functions of the Authority

1. The Authority shall be responsible for, and have the general direction and control of, the performance of the executive functions of the Community.

2. The Authority shall be assisted in the performance of its functions under this Article by the Councils and the East African Ministers.

3. The Authority may give directions to the Councils and to the East African Ministers as to the performance of any functions conferred upon them, and such directions shall be complied with.

CHAPTER XIII—EAST AFRICAN MINISTERS

Article 49—Appointment of East African Ministers

1. There shall be three East African Ministers.

2. The Partner States shall each nominate one person, qualified under paragraph 3 of this Article, for appointment as an East African Minister, and the Authority shall appoint the persons so nominated to be East African Ministers.

3. A person shall be qualified to be appointed an East African Minister if he is qualified to vote under the national electoral laws of the Partner State nominating him:

Provided that if at the time of his appointment as an East African Minister a person holds office as a Minister, a Deputy, Junior or Assistant Minister or a Parliamentary Secretary in the Government of a Partner state, he shall immediately resign from that office and may not thereafter hold such an office while he remains an East African Minister.

4. If an East African Minister is temporarily absent from the territories of the Partner States, or for some other reason is temporarily unable to perform his duties, the Partner State which nominated him for appointment may, and at the request of the other East African Ministers shall, nominate some other person, qualified to vote under its national electoral laws, for temporary appointment as an East African Minister; and the Authority shall appoint the person so nominated to be an Acting East African Minister in the place of the Minister who is absent or unable to act.

5. An Acting East African Minister shall hold office until the person in whose place he is acting returns to the territories of the Partner States or is able to resume his duties, as the case may be, and delivers notification thereof in writing to the Secretary-General for transmission to the Authority.

6. An Acting East African Minister shall while he is holding office have all the functions, responsibilities, powers, duties and privileges of the substantive East African Minister.

Article 50—Tenure of Office of East African Ministers

An East African Minister shall not be appointed for a fixed term but shall vacate his office upon the happening of any of the following events—

- (a) if he transmits his resignation in writing to the Authority and the Authority accepts his resignation;
- (b) if he ceases to be qualified for appointment as an East African Minister;
- (c) if the Authority terminates his appointment, which it shall do upon the request in writing of the Partner State which nominated him.

Article 51—Functions of East African Ministers

1. It shall be the responsibility of the East African Ministers to assist the Authority in the exercise of its executive functions to the extent required by and subject to the directions of the Authority, and to advise the Authority generally in respect of the affairs of the Community.

2. In addition to the responsibilities conferred on them by paragraph 1 of this Article, the East African Ministers shall perform the functions conferred on them by this Treaty in respect of the Councils, the Assembly and other matters.

3. The Authority may allocate particular responsibilities to each of the East African Ministers.

4. The Authority may, in respect of any responsibilities which it confers upon the East African Ministers, specify which matters shall be performed by them acting in common agreement and which may be performed by a single East African Minister.

5. It shall be the responsibility of the East African Ministers, with the assistance of representatives of the East African Airways Corporation and such other persons as may be appropriate, to negotiate bi-lateral air services agreements on behalf of the Partner States and to conduct such negotiations in accordance with the criteria laid down by the Communications Ministerial Committee of the Common Services Organization and any amendment of such criteria which may be made by the Communications Council.

6. Each of the Partner States undertakes that it will grant to the East African Minister nominated by it a status within its territory commensurate with that of a Minister of its Government, and shall permit that East African Minister to attend and speak at meetings of its Cabinet.

CHAPTER XIV—DEPUTY EAST AFRICAN MINISTERS

Article 52—Deputy East African Ministers

1. The Authority may, if at any time it considers it desirable, appoint three Deputy East African Ministers.

2. If the Authority decides to appoint three Deputy East African Ministers, the Partner States shall each nominate one person, qualified under paragraph 3 of this Article, for appointment as a Deputy East African Minister; and the Authority shall appoint the persons so nominated to be Deputy East African Ministers.

3. A person shall be qualified to be appointed a Deputy East African Minister if he is qualified to vote under the national electoral laws of the Partner State nominating him:

Provided that if, at the time of his appointment as a Deputy East African Minister, a person holds office as a Minister, a Deputy, Junior or Assistant Minister or a Parliamentary Secretary in the Government of a Partner State, he shall immediately resign from that office and may not thereafter hold such an office while he remains a Deputy East African Minister.

4. A Deputy East African Minister shall not be appointed for a fixed term but shall vacate his office upon the happening of any of the following events—

- (a) if he transmits his resignation in writing to the Authority and the Authority accepts his resignation;
- (b) if he ceases to be qualified for appointment as a Deputy East African Minister;
- (c) if the Authority terminates his appointment, which it shall do upon the request in writing of the Partner State which nominated him.

5. Where Deputy East African Ministers have been appointed and thereafter the number of Deputy East African Ministers falls below three, a person or persons shall be nominated and appointed in the manner provided by this Article to fill the vacancy or vacancies.

6. Subject to any directions given or instructions issued by the Authority, it shall be the responsibility of the Deputy East African Ministers to assist the East African Ministers in the performance of their functions and to perform such duties as may be imposed on them by the Authority or by this Treaty.

CHAPTER XV—THE COUNCILS

Article 53—Establishment of the Councils

There shall be established as institutions of the Community the following Councils—

- (a) the Common Market Council;
- (b) the Communications Council;
- (c) the Economic Consultative and Planning Council;
- (d) the Finance Council; and
- (e) the Research and Social Council.

Article 54—Composition of the Councils

1. The composition of the Councils shall be as follows—

- (a) the Common Market Council shall consist of the three East African Ministers, together with nine other members, of whom three shall be designated by each Partner State from among the persons holding office as Minister of its Government;
- (b) the Communications Council shall consist of the three East African Ministers, together with three other members, being the persons holding office as Ministers responsible for matters relating to communications in the respective Governments of the Partner States;
- (c) the Economic Consultative and Planning Council shall consist of the three East African Ministers, together with nine other members, of whom three shall be designated by each Partner State from among the persons holding office as Minister of its Government;
- (d) the Finance Council shall consist of the three East African Ministers together with three other members, being the persons holding office as the Ministers responsible for matters relating to public finance in the respective Governments of the Partner States; and
- (e) the Research and Social Council shall consist of the three East African Ministers, together with nine other members, of whom three shall be designated by each Partner State from among the persons holding office as Minister of its Government.

2. If an East African Minister is unable to attend a meeting of a Council, he may, if at the time there are persons holding office as Deputy East African Ministers, appoint one of them, by notice in writing delivered to the Secretary-General, to act as a member of that Council for that meeting and a person so appointed shall, in respect of the meeting for which he is appointed to act, have all the rights and duties of a member of the Council.

3. If a Minister of the Government of a Partner State is unable to attend a meeting of a Council of which he is a member, that Partner State may, by notice in writing delivered to the Secretary-General, appoint some other person who is a Minister, a Deputy, Junior or Assistant Minister or a Parliamentary Secretary of its Government to act as a member of that Council for that meeting, and a person so appointed shall, in respect of the meeting for which he is appointed to act, have all the rights and duties of a member of the Council.

4. If under paragraph 1 of this Article a Partner State designates one of its Ministers to be a member of a Council or terminates such a designation, it shall give notice thereof in writing to the Secretary-General.

Article 55—Functions of the Councils

The Common Market Council. 1. The function of the Common Market Council shall be the discharge of the responsibilities imposed upon it by Article 30 of this Treaty.

The Communications Council. 2. Subject to any directions given by the Authority, and subject to this Treaty and to any law of the Community, the Communications Council shall perform the duties and have the powers which are set out in Annex XIII to this Treaty, and shall provide a forum for consultation generally on communications matters.

The Economic Consultative and Planning Council. 3. The functions of the Economic Consultative and Planning Council shall be—

- (a) to assist the national planning of the Partner States by consultative means; and
- (b) to advise the Authority upon the long-term planning of the common services.

The Finance Council. 4. Subject to this Treaty, the functions of the Finance Council shall be to consult in common on the major financial affairs of the Community, and to consider and approve major financial decisions relating to the services administered by the Community, including their estimates of expenditure and related loan and investment programmes. In this paragraph "the Community" shall not include the Bank.

The Research and Social Council. 5. The functions of the Research and Social Council shall be to assist, by consultative means, in the co-ordination of the policies of each of the Partner States and the Community regarding research and social matters.

CHAPTER XVI—THE EAST AFRICAN LEGISLATIVE ASSEMBLY

Article 56—Establishment and composition of the East African Legislative Assembly

1. There is hereby established for the Community a legislative body, to be known as the East African Legislative Assembly, which shall exercise the powers conferred upon it by this Treaty.

2. The members of the Assembly shall be—

- (a) the three East African Ministers;
- (b) the three Deputy East African Ministers (if any);
- (c) twenty-seven appointed members; and
- (d) the Chairman of the Assembly, the Secretary-General and the Counsel to the Community.

3. The Chairman of the Assembly shall preside over and take part in its proceedings in accordance with the rules of procedure of the Assembly made by the Authority in accordance with paragraph 17 of Annex XI to this Treaty.

4. The Assembly shall have a Public Accounts Committee, which shall be constituted in the manner provided in the rules of procedure of the Assembly and shall perform the functions provided in respect thereof in the said rules of procedure; and the Assembly may have such other committees as may be provided for or permitted under the said rules of procedure.

Article 57—Appointment of members of the Assembly

1. Of the twenty-seven appointed members of the Assembly each Partner State shall appoint nine in accordance with such procedure as each Partner State decides.

2. A person shall be qualified to be appointed a member by a Partner State if he is a citizen of that Partner State and is qualified to be elected a member of its legislature under its electoral laws, and is not an officer in the service of the Community or a servant of a Corporation or the Bank.

3. If an appointed member of the Assembly is temporarily absent from the territories of the Partner States, or for some other reason is temporarily unable to perform his duties, the Partner State which appointed him may appoint some other person, qualified under paragraph 2 of this Article, to be a temporary appointed member in his place; and a temporary appointed member shall, unless his period of office is terminated by the Partner State which appointed him, hold office until the person in whose place he is acting returns to the territories of the Partner States or is able to resume his duties, as the case may be, and so notifies the Chairman of the Assembly in writing.

4. A temporary appointed member of the Assembly shall, while holding office, have all the responsibilities, powers and privileges of the substantive appointed member.

Article 58—Tenure of office of appointed members

1. Subject to this Article, an appointed member of the Assembly shall hold office until the legislature of the Partner State which appointed him first meets after it is next dissolved.

2. An appointed member of the Assembly shall vacate his seat in the Assembly upon the happening of any of the following events—

- (a) upon the delivery of his resignation in writing to the Chairman of the Assembly;
- (b) upon his ceasing to be qualified for appointment as an appointed member;
- (c) upon his appointment as a Minister, a Deputy, Junior or Assistant Minister or a Parliamentary Secretary in the Government of a Partner State;
- (d) upon his appointment as an East African Minister or as a Deputy East African Minister;
- (e) upon his having been absent from the Assembly for such period and in such circumstances as are prescribed by the rules of procedure of the Assembly.

Article 59—Acts of the Community

1. The enactment of measures of the Community shall be effected by means of Bills passed by the Assembly and assented to on behalf of the Community by the Heads of State of the Partner States and every measure that has been duly passed and assented to shall be styled an Act.

2. When a Bill has been duly passed by the Assembly the Chairman of the Assembly shall submit the Bill to the Heads of State of the Partner States.

3. Every Bill that is submitted to the Heads of State under paragraph 2 of this Article shall contain the following words of enactment—

“Enacted by the President of the United Republic of Tanzania, the President of the Sovereign State of Uganda and the President of the Republic of Kenya on behalf of the East African Community, with the advice and consent of the East African Legislative Assembly.”

Article 60—Assent to Bills

1. The President of the United Republic of Tanzania, the President of the Sovereign State of Uganda and the President of the Republic of Kenya may assent or withhold assent to a Bill.

2. A Bill that has not received the assent provided for in paragraph 1 of this Article within nine months of the date upon which it was passed by the Assembly shall lapse.

CHAPTER XVII—STAFF OF THE COMMUNITY

Article 61—Offices in the Community

1. There shall be the following offices in the service of the Community—

- (a) a Secretary General, who shall be the principal executive officer of the Community;
- (b) a Counsel to the Community; and
- (c) an Auditor-General.

2. There shall be such other offices in the service of the Community as, subject to any Act of the Community, the Authority may determine.

3. In this Treaty, “offices in the service of the Community” does not include an office in the service of a Corporation or of the Bank.

Article 62—Establishment of the East African Community Service Commission

1. There is hereby established a service commission to be known as the East African Community Service Commission for all offices in the service of the Community.

2. The Service Commission shall consist of such number of members as the Authority shall from time to time determine.

3. The Authority shall appoint the members of the Service Commission by instrument in writing, which shall specify the period of office of the member concerned.

4. A person shall not be qualified to be appointed a member of the Service Commission if he holds office as a Minister, a Deputy, Junior or Assistant Minister or a Parliamentary Secretary in the Government of a Partner State, or is a member of the Legislative Assembly or a member of the legislature of a Partner State.

5. A member of the Service Commission shall vacate his office—

(a) upon the expiry of the period of office specified in his instrument of appointment;

(b) if he delivers his resignation in writing to the Secretary General for transmission to the Authority; or

(c) if he ceases to be qualified for appointment as a member.

6. A member of the Service Commission may be removed from office by the Authority for inability to perform the functions of his office, whether arising from infirmity of mind or body or for any other sufficient cause, or for misbehaviour, but shall not otherwise be removed from office.

Article 63—Appointment and disciplinary control of the Secretary General and certain other officers

1. The Secretary General of the Community shall be appointed by the Authority.

2. The Counsel to the Community and the holders of such other offices in the service of the Community as the Authority may, by notice in the Gazette, determine shall be appointed by the Authority after consultation with the Service Commission and with the Secretary General.

3. If the Secretary General or any person appointed under paragraph 2 of this Article is absent from the territories of the Partner States, or is unable through illness or for any other reason to perform the functions of his office, the Authority may appoint a person to act in the place of the Secretary General or of such person, as the case may be, during the period of the absence or inability to act and the person so appointed shall have, while he is so acting, the same powers and responsibilities as the substantive holder of the office.

4. For the purposes of the exercise of the power of disciplinary control and dismissal, the persons appointed under paragraph 2 of this Article shall be subject to the jurisdiction of the Service Commission.

Article 64—Functions of the Service Commission

1. Subject to this Treaty and to any Act of the Community, the Service Commission shall, on behalf of the Community, make appointments to offices in the service of the Community, and shall exercise

the powers of disciplinary control and dismissal over persons holding or acting in such offices.

2. For the purposes of paragraph 1 of this Article, references to appointments shall be construed as including references to appointments on promotion and on transfer, and appointments of persons in an acting capacity.

3. The Service Commission may, by order published in the Gazette, and with the approval of the Authority, delegate, subject to such conditions as it may think fit, any of its functions under this Article to any of its members or to any officer of the Community either generally or in respect of any particular class of cases.

4. This Article shall not apply to the Judges of the Court of Appeal for East Africa or to the members of the Common Market Tribunal.

CHAPTER XVIII—FINANCES OF THE COMMUNITY

Article 65—The General Fund and special funds

1. There shall be a General Fund of the Community, and such special funds as may from time to time be established by an Act of the Community.

2. Subject to this Treaty, all moneys received by the Community from whatever source shall be paid into the General Fund, except—

- (a) the divisible income tax, the remaining divisible income tax and the divisible customs and excise duties;
- (b) sums which fall to be paid into the Distributable Pool Fund under Article 67 of this Treaty; and
- (c) sums which are required by an Act of the Community to be paid into one of the special funds referred to in paragraph 1 of this Article.

Article 66—Expenditure from the General Fund

1. All expenditure of the Community, other than expenditure which is required by an Act of the Community to be met from one of the special funds referred to in Article 65 of this Treaty, shall be met from the General Fund.

2. There may be met from the General Fund—

- (a) the estimated net annual recurrent expenditure of the University of East Africa;
- (b) one-half of the estimated net annual recurrent expenditure of Makerere University College, the University College, Dar-es-Salaam, and University College, Nairobi; and
- (c) expenditure towards the cost of any service provided by the Community under Article 44 of this Treaty, or of any activity which the Authority declares to be in furtherance of the aims of the Community:

Provided that the expenditure under sub-paragraphs (a) and (b) of this paragraph shall cease on the 30th June 1970 or upon the cessation of the arrangements under which the University Colleges mentioned in

sub-paragraph (b) of this paragraph are constituent colleges of the University of East Africa, whichever is the sooner.

3. No money shall be paid out of the General Fund unless—

- (a) the payment has been authorized by an Appropriation Act of the Community; or
- (b) the money is required to meet expenditure charged on the General Fund under this Treaty or by an Act of the Community:

Provided that, if an Appropriation Act for a particular financial year has not come into operation by the first day of that financial year, the Authority may from time to time authorize the payment of money out of the General Fund to meet any expenditure which may properly be met thereout, but so that—

- (i) the amount paid out in any particular month for any particular head of expenditure shall not exceed one-twelfth of the total appropriation for the previous financial year for that head;
- (ii) the authorization shall not extend beyond the 30th day of September in the same financial year or such earlier date as that on which the Appropriation Act may come into operation; and
- (iii) any money paid out under this proviso shall be brought into account when payments are being made under the Appropriation Act.

4. No money shall be paid out of the General Fund except in the manner prescribed by an Act of the Community.

5. The Authority shall cause detailed estimates of the receipts into and the payments out of the General Fund to be prepared for each financial year and shall cause them to be laid before a meeting of the Assembly in the financial year preceding that to which they relate.

6. A Bill for an Appropriation Act providing for the sums necessary to meet the estimated expenditure (other than expenditure charged on the General Fund under this Treaty or by an Act of the Community) to be paid out of the General Fund shall be introduced into the Assembly as soon as practicable after the estimates have been laid before a meeting of the Assembly under paragraph 5 of this Article.

7. If in any financial year it is found—

- (a) that the amount appropriated by the Appropriation Act is insufficient to meet any particular head of expenditure or that a need has arisen for expenditure from the General Fund for which no amount has been appropriated by that Act; or
- (b) that any expenditure has been incurred for any purpose in excess of the amount appropriated to that purpose by the Appropriation Act, or for a purpose to which no amount has been appropriated by that Act,

the Authority shall cause a supplementary estimate of expenditure in respect thereof to be prepared and laid before the Assembly, and a Bill for a Supplementary Appropriation Act, providing for the sums necessary to meet the estimated expenditure (other than expenditure charged on the General Fund under this Treaty or by an Act of the Community) to be paid out of the General Fund, shall be introduced into the Assembly as soon as practicable after the supplementary estimate has been so laid before the Assembly.

8. Notwithstanding paragraph 3 of this Article, if at any time it appears to the East African Ministers to be necessary for money to be paid out of the General Fund to meet unforeseen expenditure which either—

- (a) is of a special character, and may properly be provided for in an Appropriation Act but has not been so provided for; or
- (b) will result in an excess on a vote contained in an Appropriation Act,

and which in either case cannot without serious injury to the public interest be postponed until a Supplementary Appropriation Act can be enacted, the East African Ministers may, in anticipation of such enactment, authorize payment from the General Fund of the sums required to meet such expenditure:

Provided that—

- (i) the total sum so authorized shall not at any time exceed 500,000 Tanzania shillings; and
- (ii) a Bill for a Supplementary Appropriation Act in respect of the payments shall be introduced into the Assembly as soon as practicable thereafter.

Article 67—The Distributable Pool Fund

1. There shall be a Distributable Pool Fund of the Community.

2. There shall be paid into the Distributable Pool Fund—

- (a) a sum equal to 20 per cent of the income tax collected by the East African Income Tax Department on gains or profits of companies engaged in manufacturing or finance business (less 20 per cent of the proportion of the cost of collection referred to in paragraph 1 (b) of Article 68 of this Treaty):

Provided that, where the tax is collected on or after the effective date and before the final date, the percentages shall be 10 per cent; and

- (b) a sum equal to 3 per cent of the amount of customs duty and excise duty collected by the East African Customs and Excise Department (less a rateable proportion of the cost of collection referred to in paragraph 3 of Article 68 of this Treaty):

Provided that, where the customs duty or excise duty is collected on or after the effective date and before the final date, the percentage shall be one and one-half per cent.

3. Notwithstanding paragraph 2 of this Article, no payment shall be made into the Distributable Pool Fund in respect of income tax

collected on or after the final date or in respect of customs duty or excise duty collected on or after the final date.

4. The Distributable Pool Fund shall be distributed among the Partner States in equal shares.

Article 68—Distribution of the principal revenue

1. From the amount of income tax collected by the East African Income Tax Department, there shall be deducted—

(a) the cost of collection, which shall be paid into the General Fund; and

(b) so much of the amount as represents income tax on gains or profits of companies engaged in manufacturing or finance business (less a rateable proportion of the cost of collection), which shall be dealt with in accordance with paragraph 4 of this Article,

and the balance (in this Treaty referred to as “the divisible income tax”) shall be divided among the Partner States in accordance with paragraph 7 of this Article.

2. In this Article and in Article 67 of this Treaty, the “gains or profits of companies engaged in manufacturing or finance business” means the income defined in the provisions of Annex XII to this Treaty.

3. From the amount of customs duty and excise duty collected by the East African Customs and Excise Department, there shall be deducted the cost of collection, which shall be paid into the General Fund, and the balance shall be dealt with in accordance with paragraph 4 of this Article.

4. From the amounts which, under paragraph 1 (b) and paragraph 3 of this Article, are to be dealt with in accordance with this paragraph, there shall be deducted—

(a) the sums which, under Article 67 of this Treaty, fall to be paid into the Distributable Pool Fund; and

(b) such sums as are required to make up (with the moneys in the General Funds) the amount of expenditure to be met from the General Fund; and

(i) for the period from the coming into force of this Treaty until the final date as defined in Article 70 of this Treaty, such sums shall be charged against the moneys referred to in paragraph 1 (b) and paragraph 3 of this Article in the ratio which 20 per cent of the moneys referred to in paragraph 1 (b) bears to 3 per cent of the moneys referred to in paragraph 3 respectively; and

(ii) after the said final date, the proportions in which those sums shall be charged against the moneys referred to in paragraph 1 (b) and paragraph 3 of this Article respectively shall correspond to the relative sizes of those two amounts of money,

and the residue of the money referred to in paragraph 1 (b) of this Article (in this Treaty referred to as "the remaining divisible income tax") and the residue of the money referred to in paragraph 3 of this Article (in this Treaty referred to as "the divisible customs and excise duties") shall each be divided among the Partner States in accordance respectively with paragraphs 7 and 8 of this Article.

5. The money divided between the Partner States under paragraph 4 of this Article shall be paid direct by the East African Income Tax Department or the East African Customs and Excise Department, as the case may be, to the Partner States.

6. Revenue from transfer taxes payable to a Partner State under Article 20 of this Treaty, less the costs and expenses to be borne by that Partner State under paragraph 13 of that Article, shall be paid direct by the East African Customs and Excise Department to that Partner State, and the said costs and expenses shall be paid into the General Fund.

7. There shall be paid by the East African Income Tax Department to each of the Partner States that portion of the remaining divisible income tax as, according to law, may be ascertained as relating to income accruing in, or derived from, that Partner State.

8. There shall be paid by the East African Customs and Excise Department to each of the Partner States that portion of the divisible customs and excise duties which arises from customs and excise duties collected in respect of goods imported into, or manufactured in, that Partner State and consumed in that Partner State, together with such portion of the divisible customs and excise duties as falls to be paid to that State in accordance with Articles 10, 15 and 18 of this Treaty.

Article 69—Remuneration of the holders of certain offices

1. There shall be paid to the holders of the offices of—

- (a) Judge of the Court of Appeal for East Africa;
- (b) Chairman or other member of the Tribunal;
- (c) Chairman of the Assembly;
- (d) Chairman or other member of the Service Commission; and
- (e) Auditor-General,

such salaries as may be prescribed by an Act of the Community.

2. The salaries payable to the holders of the offices specified in paragraph 1 of this Article shall be paid from and are hereby charged on the General Fund.

3. A holder of any of the offices specified in paragraph 1 of this Article shall not have his salary or any of his other terms and conditions of service altered to his disadvantage after his appointment.

Article 70—Interpretation of this Chapter

In this Chapter of this Treaty—

"cost of collection" means the expenditure of the East African Income Tax Department or the East African Customs and Excise

Department, as the case may be, less appropriations in aid and less the costs and expenses referred to in paragraph 6 of Article 68 of this Treaty;

“divisible customs and excise duties” has the meaning given to it in paragraph 4 of Article 68 of this Treaty;

“divisible income tax” has the meaning given to it in paragraph 1 of Article 68 of this Treaty;

“effective date” means the first day of the month following the date on which a transfer tax is first imposed under this Treaty;

“final date” means the first day of the month following the first anniversary of the date on which the Republic of Kenya has paid in full the second instalment to the paid-in capital stock of the Bank pursuant to Article 5 of the Chapter of the Bank;

“financial year” means the period from the 1st day of July to the succeeding 30th day of June;

“remaining divisible income tax” has the meaning given to it in paragraph 4 of Article 68 of this Treaty.

CHAPTER XIX—THE CORPORATIONS WITHIN THE COMMUNITY

Article 71—Establishment of the Corporations

1. There shall be within the Community, as institutions of the Community, the Corporations specified in paragraph 2 of this Article and the Corporations shall, subject to this Treaty, be constituted in such manner as shall be provided by law.

2. The Corporations shall be—

The East African Railways Corporation;

The East African Harbours Corporation;

The East African Posts and Telecommunications Corporation; and

The East African Airways Corporation.

Article 72—Principles of operation

1. It shall be the duty of each of the Corporations to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that, taking one year with another, its revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account, including proper allocations to the general reserve and provision in respect of depreciation of capital assets, pension liabilities and interest and other provision for the repayment of loans and further to ensure that, taking one year with another, its net operating income is not less than sufficient to secure an annual return on the value of the net fixed assets in operation by the Corporation of such a percentage as the Authority may from time to time direct:

Provided that the Authority may at any time, if it thinks fit, relieve the East African Airways Corporation from any obligation to secure an annual return on the value of net fixed assets in operation by the Corporation.

2. For the purpose of paragraph 1 of this Article—

- (a) “net operating income” shall be determined by subtracting from gross operating revenues all operating and administrative expenses, including taxes (if any) and adequate provision for maintenance and depreciation; and
- (b) “value of the net fixed assets in operation” shall be the value of such assets less accumulated depreciation as shown in the statement of accounts of the Corporation:

Provided that, if the amounts shown in such statements of accounts do not reflect a true measure of value of the assets concerned because of currency revaluations, changes in prices or similar factors, the value of the fixed assets shall be adjusted adequately to reflect such currency revaluations, changes in prices or similar factors.

3. It shall be the duty of each Corporation, in performing its obligations under paragraph 1 of this Article, to have regard to its revenues in the territories of the Partner States as a whole and not to its revenues in any particular Partner State or area within the territories of the Partner States.

4. Subject to this Treaty, the Corporations shall so regulate the distribution of their non-physical investments as to ensure an equitable contribution to the foreign exchange resources of each of the Partner States, taking into account *inter alia* the scale of their operations in each Partner State.

5. The Corporations shall so arrange their purchases within the Partner States as to ensure an equitable distribution of the benefits thereof to each of the Partner States, taking into account *inter alia* the scale of their operations in each Partner State.

6. The Corporations shall be exempted from income tax and from stamp duty.

Article 73—Control of the Corporations

1. There shall be a Board of Directors for each of the Corporations which shall be, subject to this Treaty, responsible for its policy, control and management through the Director-General.

2. The Authority, the Communications Council and the Board of Directors and the Director-General of each Corporation shall, in respect of that Corporation, and in addition to any other powers and duties conferred or imposed on them by this Treaty or by any Act of the Community, have the powers and perform the duties specified in Annex XIII to this Treaty.

Article 74—Composition of Boards of Directors of the Corporations

1. Subject to this Article, the Boards of Directors of the Corporations, other than the East African Airways Corporation, shall each be composed of a Chairman, who shall be appointed by the Authority, the Director-General, who shall be a director *ex officio*, and six other members who shall be appointed in the manner provided by paragraph 2 of this Article.

2. Of the six members of the Boards of Directors to be appointed under paragraph 1 of this Article, three shall be appointed one each by the Partner States, and three shall be appointed by the Authority which shall have regard to the desirability of appointing persons with experience in commerce, industry, finance or administration or with technical experience or qualifications.

3. The Board of Directors of the East African Airways Corporation shall be composed of a Chairman, who shall be appointed by the Authority, the Director-General, who shall be a director *ex officio*, and eight other members of whom two each shall be appointed by the Authority and the Partner States, and the appointing authorities shall have regard to the desirability of appointing persons with experience in commerce, industry, finance or administration or with technical experience or qualifications.

4. A member of the legislature of a Partner State or a member of the Assembly shall not, while he remains such a member, be appointed to a Board of Directors.

Article 75—Resident Directors

1. The three directors appointed by the Partner States to the Board of Directors of the East African Railways Corporation shall be styled Resident Directors.

2. The Board of Directors of the East African Posts and Telecommunications Corporation may resolve (and may if it so desires rescind such a resolution) that the three directors appointed to the Board of Directors of that Corporation by the Partner States shall be styled Resident Directors and in that event paragraph 3 of this Article shall apply.

3. Each Resident Director shall have the duty of being the main link between the Partner State which appointed him and the Corporation of which he is a director, and for that purpose he shall reside and have his office in the capital of that Partner State and shall also be a member of the General Purposes Committee of the Board of Directors; but a Resident Director shall have no executive functions in relation to the Corporation other than his functions as one of the directors of the Corporation.

Article 76—Directors-General of the Corporations

1. There shall be a principal executive officer, who shall be styled the Director-General, for each of the Corporations and, subject to this Treaty, a Director-General shall be responsible for the execution of the policy of the Board of Directors.

2. The Authority shall be responsible for the appointment, disciplinary control and termination of appointment of the Director-General of each of the Corporations:

Provided that, except in the case of the appointment of the first Director-General of a Corporation, the Authority shall exercise its powers under this paragraph after consultation with the Board of Directors.

Article 77—Appointment and Disciplinary Control of Staff of the Corporations

1. The Corporations shall employ such staff as may be necessary for the efficient conduct of their operations.
2. The Board of Directors of each Corporation shall be responsible for the appointment, disciplinary control and dismissal of all staff of that Corporation other than the Director-General.
3. A Board of Directors may, subject to such conditions as it shall think fit, delegate any of its functions under paragraph 2 of this Article to the Director-General or to any other member of the staff of the Corporation or to any committee or board established by the Board of Directors.
4. The Board of Directors of each of the Corporations shall introduce and maintain procedures whereby staff aggrieved by the exercise of powers delegated under paragraph 3 of this Article may appeal to a higher authority.
5. For the purpose of Article 76 of this Treaty, and this Article, references to appointments shall be construed so as to include references to appointments on promotion and on transfer or secondment and appointments of persons in an acting capacity.

Article 78—Annual Accounts of the Corporations

1. A Board of Directors shall ensure that proper accounts and proper records are kept in relation to the revenue and expenditure of the Corporation, and shall ensure that within six months of the end of each financial year of the Corporation, or such longer period as the Communications Council may allow in any particular case, a statement of accounts of the Corporation is prepared, in accordance with the best commercial standards and any directions which may be issued by the Authority, and transmitted to the Auditor-General.
2. Upon the return of the statement of accounts, certified by the Auditor-General, and the receipt of his report thereon, the Board of Directors shall immediately transmit that statement of accounts and report of the Auditor-General to the Communications Council which shall cause the same to be presented to the Assembly without delay and, in any event, before the expiry of nine months from the end of the financial year to which they relate or such longer period as the Communications Council may allow in any particular case.

Article 79—Annual Reports of the Corporations

A Board of Directors shall, within nine months after the end of each financial year, prepare a report upon the operations of the Corporation during that year and shall transmit such report to the Communications Council which shall cause the same to be presented to the Assembly with the statement of accounts and report of the Auditor-General referred to in Article 78 of this Treaty.

CHAPTER XX—THE COURT OF APPEAL FOR EAST AFRICA

Article 80—The Court of Appeal for East Africa

There shall be a Court of Appeal for East Africa which shall be constituted in such manner as may be provided by Act of the Community, and the Court of Appeal for Eastern Africa established by the East African Common Services Organization Agreements 1961 to 1966 shall continue in being under the name of the Court of Appeal for East Africa and shall be deemed to have been established by this Treaty, notwithstanding the abrogation of those Agreements by this Treaty.

Article 81—Jurisdiction of the Court of Appeal

The Court of Appeal for East Africa shall have jurisdiction to hear and determine such appeals from the courts of each Partner State as may be provided for by any law in force in that Partner State and shall have such powers in connexion with appeals as may be so provided.

CHAPTER XXI—PENSIONS AND TRADE DISPUTES

Article 82—Pension Rights

1. This Article applies to any benefit payable under any law providing for the grant of pensions, compensation, gratuities or like allowances to persons who are, or have been, officers or servants of the Community, the Corporations, the Common Services Organization or of the East Africa High Commission in respect of their services as such officers or servants, or to the widows, children or personal representatives of such persons in respect of such services.

2. The law applicable to any benefits to which this Article applies shall, in relation to any person who has been granted or is eligible for such benefits, be that in force on the relevant date or any later law that is no less favourable to the person.

3. In this Article, "the relevant date" means—

- (a) in relation to any benefits granted before the coming into force of this Treaty, the date upon which those benefits were granted;
- (b) in relation to any benefits granted after the date upon which this Treaty comes into force, to or in respect of any person who was an officer or servant of the Common Services Organization before that date or any benefits for which any such person may be eligible, the date immediately preceding the date on which this Treaty comes into force; and
- (c) in relation to any benefits granted to or in respect of any person who first becomes an officer or servant of the Community or of a Corporation after the date upon which this Treaty comes into force, the date upon which he first becomes such an officer or servant.

4. Where a person is entitled to exercise an option as to which of two or more laws might apply in his case, the law specified by him in exercising the option shall, for the purpose of this Article, be deemed to be more favourable to him than any other law.

5. Any benefits to which this Article applies shall—

- (a) in the case of benefits that are payable in respect of the service of any person who at the time he ceased to be an officer or servant of the East Africa High Commission or the Common Services Organization was in the service of the East African Posts and Telecommunications Administration, be a charge upon the funds of the East African Posts and Telecommunications Corporation;
- (b) in the case of benefits that are payable in respect of the service of any person who at the time he ceased to be an officer or servant of the East Africa High Commission or the Common Services Organization was in the service of the East African Railways and Harbours Administration, be a charge upon the funds of either the East African Railways Corporation or the East African Harbours Corporation as the Authority may, in respect of such person, by notice in the Gazette determine;
- (c) in the case of benefits that are payable in respect of the service of any person who, immediately preceding his retirement, was an officer or servant of the East African Posts and Telecommunications Corporation, the East African Railways Corporation or the East African Harbours Corporation, be a charge upon the funds of that Corporation;
- (d) in the case of any other benefits, be a charge upon the General Fund of the Community or such special fund as may be established for that purpose by an Act of the Community.

6. Where under any law any person or authority has a discretion—

- (a) to decide whether or not any benefits to which this Article applies shall be granted; or
- (b) to withhold, reduce in amount or suspend any amounts which have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate body concurs in the refusal to grant the benefits or, as the case may be, the decision to withhold them, reduce them in amount or suspend them.

7. Where the amount of any benefit to which this Article applies that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate body concurs in his being granted benefits of a smaller amount.

8. For the purpose of this Article "the appropriate body" means—

- (a) in the case of benefits that have been granted or may be granted in respect of the services of any person who, at the time that he ceased to be an officer or servant of the Community, was subject to the jurisdiction of the Service Commission established by this Treaty, that Commission; and

- (b) in the case of an officer or servant of any of the Corporations, the body appointed by that Corporation for the purpose of paragraphs 6 and 7 of this Article.

9. Reference in this Article to officers or servants of the Community shall include reference to the Judges, officers and servants of the Court of Appeal for East Africa.

Article 83—Investment of money accruing for the payment of pensions

Upon the coming into force of this Treaty, and until such time as the Authority may determine, the net accruals to money held by the Community or the Corporation for the payment of pensions shall be invested in such stock of the former East Africa High Commission as the Authority may specify; and thereafter such net accruals shall be invested in such stock of the Partner States as the Authority may specify, having regard to the relative proportions of the financial provisions made each year by the Community or the Corporations in respect of pensions for the citizens of each Partner State employed in their service.

Article 84—Settlement of trade disputes

The law relating to the settlement of trade disputes in force in any Partner State shall apply to employment or service under the Community and the Corporations, and to persons in such employment or service, within that State; so however that any such law shall provide that—

- (a) any power therein conferred upon any tribunal, court or other authority to make binding awards or orders in respect of the salaries or other conditions of service of persons in employment or service under the Community or the Corporations, and any power incidental thereto, shall be conferred upon, and be exercised by, the East African Industrial Court provided for in Article 85 of this Treaty; and
- (b) any award or order made by the East African Industrial Court which accords with paragraph 2 of Article 85 of this Treaty shall be binding.

Article 85—The East African Industrial Court

1. There shall be established a tribunal to be styled the East African Industrial Court, in this Article referred to as “the Industrial Court”, which shall be constituted by—

- (a) the Chairman, or other member nominated by the Chairman, of the Permanent Labour Tribunal established under the Permanent Labour Tribunal Act 1967 of Tanzania;
- (b) the president, or the deputy president if so nominated by the president, of the Industrial Court established under the Trade Disputes (Arbitration and Settlement) Act 1964 of Uganda; and

(c) the President, or other member nominated by the President, of the Industrial Court established under the Trades Disputes Act 1965 of Kenya.

2. The Industrial Court shall exercise the powers referred to in Article 84 of this Treaty in accordance with the principles laid down from time to time by the Authority.

3. The persons referred to in paragraph 1 of this Article shall, in the order set out therein, preside over the sittings of the Industrial Court.

4. The Industrial Court shall regulate its own procedure.

5. The Authority may determine the fees, emoluments or allowances to be paid to members of the Industrial Court.

CHAPTER XXII—DECENTRALIZATION, THE LOCATION OF HEADQUARTERS AND THE EAST AFRICAN TAX BOARD

Article 86—Decentralization and related measures

The Partner States agree that the measures in Annex XIV to this Treaty, which relate to decentralization of the operations of the Corporations and of certain of the services administered by the Community, shall be put into effect by the authorities concerned in accordance with the said Annex.

Article 87—Location of headquarters

1. It is agreed that—

- (a) the headquarters of the Community, including the Tribunal and the central secretariat, shall be at Arusha in Tanzania;
- (b) the headquarters of the Bank shall be at Kampala in Uganda;
- (c) the headquarters of the East African Railways Corporation shall be at Nairobi in Kenya;
- (d) the headquarters of the East African Harbours Corporation shall be at Dar es Salaam in Tanzania;
- (e) the headquarters of the East African Posts and Telecommunications Corporation shall be at Kampala in Uganda; and
- (f) the headquarters of the East African Airways Corporation shall be at Nairobi in Kenya.

2. The authorities concerned shall implement paragraph 1 of this Article as soon as possible.

Article 88—The East African Tax Board

1. There is hereby established an advisory body, to be known as the East African Tax Board.

2. The Tax Board shall consist of—

- (a) three members appointed one each by the Minister responsible for public finance in each of the Partner States;
- (b) the Commissioner-General of the East African Income Tax Department;

- (c) the Commissioner-General of the East African Customs and Excise Department;
- (d) the three Commissioners of Income Tax in the Partner States;
- (e) the three Commissioners of Customs and Excise in the Partner States; and
- (f) a senior officer of the central secretariat of the Community designated by the Secretary General.

3. The members appointed under sub-paragraph (a) of paragraph 2 of this Article shall hold the office of Chairman of the Tax Board in rotation.

4. The functions of the Tax Board shall be—

- (a) to render assistance as provided for in paragraph (a) of Article 29 of this Treaty;
- (b) to keep under review the administration of the East African Income Tax Department and the East African Customs and Excise Department including the allocation and distribution of revenue collected by those Departments;
- (c) to ensure the best possible co-operation between the East African Income Tax Department and the East African Customs and Excise Department;
- (d) to study the correlation between the taxes managed and collected by the Community and taxes managed and collected directly by authorities in the Partner States, to make proposals to improve this correlation and to report annually thereon to the Finance Council;
- (e) if requested by any Partner State, to render assistance in relation to taxation planning; and
- (f) to make an annual report to the Finance Council concerning the operation of the East African Income Tax Department and of the East African Customs and Excise Department, and the organization and the personnel situation in those Departments.

CHAPTER XXIII—AUDIT

Article 89—Audit of accounts

1. The public accounts of the Community and of all officers and authorities of the Community shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General and any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.

2. It shall be the duty of the Auditor-General to verify that the revenue collected by the East African Income Tax Department and the East African Customs and Excise Department has been allocated and distributed in accordance with this Treaty and to include a certificate to that effect in his report.

3. The Auditor-General shall submit his reports under paragraph 1 of this Article to the East African Ministers who shall cause the same to be laid before the Assembly.

4. The accounts of the Corporations and of all officers and authorities of the Corporations shall be audited by the Auditor-General, and for that purpose the Auditor-General and any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts and upon receipt of a statement of accounts transmitted to him under paragraph 1 of Article 78 of this Treaty the Auditor-General shall examine it, certify it and report on it and shall return the statement with his certificate and report to the Board of Directors of the Corporation concerned in sufficient time to enable compliance with paragraph 2 of Article 78 of this Treaty.

5. In the performance of his functions under this Article, the Auditor-General shall not be subject to the direction or control of any person or authority.

PART V—TRANSITIONAL AND GENERAL

CHAPTER XXIV—TRANSITIONAL

Article 90—Transitional provisions

The transitional provisions contained in Annex XV to this Treaty shall apply.

CHAPTER XXV—GENERAL

Article 91—Commencement of the Treaty

This Treaty shall come into force on the first day of December 1967.

Article 92—Duration of the Treaty

1. Parts II and III of this Treaty, together with so much of the other Parts of the Treaty as appertains to the Common Market or the Common Market Council, shall remain in force for 15 years after coming into force and shall be reviewed by the Partner States before the expiry of that period.

2. Subject to paragraph 1 of this Article, this Treaty shall have indefinite duration.

Article 93—Association of other countries with the Community

The Partner States may together negotiate with any foreign country with a view to the association of that country with the Community or its participation in any of the activities of the Community or the Corporations.

Article 94—Modification of the Treaty

1. This Treaty may be modified at any time by agreement of all the Partner States.

2. Notwithstanding paragraph 1 of this Article, Annex VI to this Treaty shall only be amended in accordance with Article 52 of that Annex.

Article 95—Implementation measures of the Partner States

1. Each of the Partner States undertakes to take all steps within its power to secure the enactment and the continuation of such legislation as is necessary to give effect to this Treaty, and in particular—

- (a) to confer upon the Community the legal capacity and personality required for the performance of its functions; and
- (b) to confer upon Acts of the Community the force of law within its territory.

2. A Partner State shall not, by or under any law of that Partner State, confer any power nor impose any duty upon an officer or authority of the Community, or of a Corporation as such, except with the prior consent of the Authority.

Article 96—Effect of Annexes, rules and orders

1. The Annexes to this Treaty shall form an integral part of this Treaty.

2. Rules and orders made by the Authority pursuant to this Treaty shall be binding on the institutions of the Community and the Partner States.

Article 97—Abrogation of existing agreements

1. Subject to this Treaty, the East African Common Services Organization Agreements 1961 to 1966 are hereby abrogated.

2. Subject to this Treaty, all the existing agreements between the Partner States or any of them concerning the imposition of customs and excise duties and the allocation and distribution of customs and excise revenue collected by the East African Customs and Excise Department are hereby abrogated.

3. Subject to this Treaty, all the existing agreements between the Partner States or any of them concerning the allocation and distribution of revenue collected by the East African Income Tax Department are hereby abrogated.

4. Subject to this Treaty, the Agreement dated the 22nd November 1961 made between the Governments of the Trust Territory of Tanganyika, the Protectorate of Uganda and the Colony and Protectorate of Kenya in pursuance of section 42A of the East Africa (High Commission) Order in Council 1947 with respect to payments into and out of the Distributable Pool Fund of the East Africa High Commission is hereby abrogated.

Article 98—Interpretation

1. In this Treaty, except where the context otherwise requires—
 “Act of the Community” means an Act of the Community enacted in accordance with this Treaty or an Act of the Common Services Organization or an Act of the East Africa High Commission;

“appointed member” means an appointed member of the Assembly appointed under Article 57 of this Treaty;

“Assembly” means the East African Legislative Assembly established by Article 56 of this Treaty;

“Auditor-General” means the Auditor-General of the Community provided for by Article 61 of this Treaty;

“Authority” means the East African Authority established by Article 46 of this Treaty;

“Bank” means the East African Development Bank established by Article 21 of this Treaty;

“Board of Directors”, except in Annex VI to this Treaty, means the Board of Directors of a Corporation;

“central banks” means the Bank of Tanzania, the Bank of Uganda and the Central Bank of Kenya;

“Chairman of the Assembly” means the Chairman of the East African Legislative Assembly provided for by paragraph 2 of Article 56 of this Treaty;

“Chairman of the Tribunal” means the Chairman of the Common Market Tribunal provided for by Article 33 of this Treaty;

“common customs tariff” and “common excise tariff” imply an identical rate of tariff imposed in the same manner;

“Common Market” means the East African Common Market established by Article 1 of this Treaty;

“common services” means the services specified in Annex IX to this Treaty;

“Common Services Organization” means the East African Common Services Organization established by the East African Common Services Organization Agreements 1961 to 1966;

“Community” means the East African Community established by Article 1 of this Treaty;

“Corporation” means a corporation specified in paragraph 2 of Article 71 of this Treaty;

“Council” means a council established by Article 53 of this Treaty;

“Counsel to the Community” means the Counsel to the Community provided for by Article 61 of this Treaty;

“current account payments” means the payments so defined in Annex VII to this Treaty;

“customs duty” includes suspended duty;

“customs laws” means the East African Customs Management Act 1952;

“Deputy East African Ministers” means the Deputy East African Ministers appointed under Article 52 of this Treaty;

“Director-General”, except in Annex VI to this Treaty, means the Director-General of a Corporation provided for by Article 76 of this Treaty;

“East African Ministers” means the East African Ministers appointed under Article 49 of this Treaty;

“foreign country” means any country other than a Partner State;

“Gazette” means the Official Gazette of the Community;

“General Fund” means the General Fund provided for by Article 65 of this Treaty;

“goods in transit” means goods being conveyed between a Partner State and a foreign country and passing through another Partner State or States, and “transit” shall be construed accordingly;

“Heads of State” means the President of the United Republic of Tanzania, the President of the Sovereign State of Uganda and the President of the Republic of Kenya;

“import” with its grammatical variations and cognate expressions means to bring or cause to be brought into the territories of the Partner States from a foreign country;

“Industrial Licensing laws” means the East African Industrial Licensing Ordinance (Tanzania Cap. 324), the East African Industrial Licensing Act (Uganda Cap. 102) and the East African Industrial Licensing Act (Kenya Cap. 496);

“Industrial Licensing Tribunal” means the Tribunal established by the law referred to in paragraph 4 of Article 23 of this Treaty;

“manufactured goods” means the goods defined or otherwise listed in Annex IV to this Treaty;

“Minister” in relation to a Partner State includes the Vice-President of that Partner State;

“Partner State” means the United Republic of Tanzania, the Sovereign State of Uganda and the Republic of Kenya;

“Resident Director” means a director of a Corporation who is styled a Resident Director under Article 75 of this Treaty;

“salaries and other conditions of service” includes wages, overtime pay, salary and wage structures, leave, passages, transport for leave purposes, pensions and other retirement benefits, redundancy and severance payments, hours of duty, grading of posts, medical arrangements, housing, arrangements for transport and travelling on duty, and allowances;

“Secretary General” means the Secretary General of the Community provided for by Article 61 of this Treaty;

“Service Commission” means the East African Community Service Commission established by Article 62 of this Treaty;

“suspended transfer tax” means a transfer tax the operation of which is suspended at the time of its introduction;

“Tax Board” means the East African Tax Board established by Article 88 of this Treaty;

“transfer tax” includes suspended transfer tax;

“Tribunal” means the Common Market Tribunal established by Article 32 of this Treaty;

“University of East Africa” means the University of East Africa constituted by the University of East Africa Act 1962.

2. In this Treaty, a reference to a law shall be construed as a reference to that law as from time to time amended, added to or replaced.

(Article 11)

ANNEX—RULES FOR THE ADMINISTRATION AND APPLICATION OF ARTICLE 11

Interpretation

1. (1) In these Rules—

“materials” includes products, parts and components used in the production of goods;

“produced” and “a process of production” include the application of any operation or process with the exception of any operation or process which consist only of one more of the following—

- (a) packing, wherever the packing materials may have been produced;
- (b) splitting up into lots;
- (c) sorting or grading;
- (d) marking;
- (e) putting up into sets.

(2) Energy, fuel, plant, machinery and tools used in the production of goods within the Partner States and materials used in the maintenance of such plant, machinery and tools shall be regarded as wholly produced within the Partner States when determining the origin of such goods.

(3) In determining the place of production of marine products and goods in relation to a Partner State, a vessel of a Partner State shall be regarded as part of the territory of that State and in determining the place from which such goods originated, marine products taken from the sea or goods produced therefrom at sea, shall be regarded as having their origin in the territory of a Partner State if they were taken by, or produced in, a vessel of that State and have been brought directly to the territories of the Partner States.

(4) For the purposes of paragraph (3) of this rule, a vessel which is registered or licensed under any law in force within the Partner States shall be regarded as a vessel of the State in which it is so registered or licensed.

Goods wholly produced in the Partner States

2. For the purposes of paragraph 3 of Article 11 of this Treaty, the following are among the products which shall be regarded as wholly produced in the Partner States—

- (a) mineral products extracted from the ground within the Partner States;
- (b) vegetable products harvested within the Partner States;
- (c) live animals born and raised within the Partner States;
- (d) products obtained within the Partner States from live animals;
- (e) products obtained by hunting or fishing conducted within the Partner States;

- (f) marine products taken from the sea by a vessel of a Partner State;
- (g) used articles fit only for the recovery of materials provided that they have been collected from users within the Partner States;
- (h) scrap and waste resulting from manufacturing operations within the Partner States;
- (i) goods produced within the Partner States exclusively from one or both of the following—
 - (i) products within sub-paragraphs (a) to (h);
 - (ii) materials containing no element imported from outside the Partner States or of undetermined origin.

Application of percentage criterion

3. For the purposes of sub-paragraph (b) of paragraph 3 of Article 11 of this Treaty, the following rules shall apply—

- (a) any materials which meet the condition specified in sub-paragraph (a) of paragraph 3 of that Article shall be regarded as containing no element imported from outside the Partner States;
- (b) the value of any materials which can be identified as having been imported from a foreign country shall be their c.i.f. value accepted by the East African Customs and Excise Department on clearance for home consumption less the amount of any transport costs incurred in transit through the territory of other Partner States;
- (c) if the value of any materials imported from a foreign country cannot be determined in accordance with paragraph (b) of this rule, their value shall be the earliest ascertainable price paid for them in the territory of the Partner State where they were used in a process of production;
- (d) if the origin of any materials cannot be determined, such materials shall be deemed to have been imported from a foreign country and their value shall be the earliest ascertainable price paid for them in the territory of the Partner State where they were used in a process of production;
- (e) the ex-factory value of the goods shall be the price paid or payable for them to the exporter in the territory of the Partner State where the goods were produced, that price being adjusted where necessary to a f.o.b. or free at frontier basis in that territory;
- (f) the value under paragraphs (b), (c) or (d) of this rule or the ex-factory value under paragraph (e) of this rule may be adjusted to correspond with the amount which would have been obtained on a sale in the open market between buyer and seller independent of each other; this amount shall also be taken to be the ex-factory value when the goods are not the subject of a sale.

Unit of Qualification

4. (a) Each article in a consignment shall be considered separately.

(b) For the purposes of paragraph (a) of this rule—

(i) tools, parts and accessories which are transferred with an article, the price of which is included in that of the article or for which no separate charge is made, shall be considered as forming a whole with the article so long as they constitute the standard equipment customarily included on the sale of articles of that kind;

(ii) in cases not within sub-paragraph (i) of this paragraph, goods shall be treated as a single article if they are so treated for the purpose of assessing customs duty on like articles.

(c) An unassembled or disassembled article which is imported in more than one consignment because it is not feasible for transport or production reasons to transfer it in a single consignment may, at the option of the transferee, be treated as one article.

Segregation of Materials

5. (a) For those products or industries where it would be impracticable to segregate physically materials of similar character but of different origin used in the production of goods, such segregation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Partner States than would have been the case if it had been possible physically to segregate the materials.

(b) Any such accounting system shall conform to such conditions as may be agreed upon by the Common Market Council in order to ensure that adequate control measures will be applied.

Treatment of Mixtures

6. (a) In the case of mixtures, not being groups, sets or assemblies of separable articles dealt with under rule 4, a Partner State may refuse to accept as originating in the Partner States any product resulting from the mixing together of goods which would qualify as originating in the Partner States with goods which would not so qualify, if the characteristics of the product as a whole are not essentially different from the characteristics of the goods which have been mixed.

(b) In the case of particular products where it is recognized by the Common Market Council to be desirable to permit mixing of the kind described in paragraph (a) of this rule, such products shall be accepted as originating in the Partner States in respect of such part thereof as may be shown to correspond to the quantity of goods originating in the Partner States used in the mixing subject to such conditions as may be agreed by the Common Market Council.

Certificates of Origin

7. The transferor of any goods from one Partner State to another Partner State shall, if required by law or by the appropriate authority, provide a certificate of the origin of such goods, determined in

accordance with the provisions of paragraph 3 of Article 11 of this Treaty and of these rules, signed or otherwise authenticated by the manufacturer of such goods.

(Article 12)

ANNEX II—CONTRACTUAL AND OTHER OBLIGATIONS

TANZANIA

Contracting Parties:	..	The Government of Tanganyika Anic S.P.A. of 12 Viale Dell'Arto, Rome, Italy Hydrocarbons Holding Co. A.G. of Zurich, Switzerland Tanganyikan & Italian Petroleum Refin- ing Co. (Tiper) Ltd., of Dar es Salaam
Subject	(a) Petroleum products of the types made, or to be made, pursuant to the contract, by the Tanganyikan & Italian Petroleum Refining Company and those obtain- able by blending two or more of these petroleum products; (b) products which correspond com- mercially to the products aforesaid
Duration	Thirty years from the 19th June 1963

UGANDA

Obligations	Those comprised in the Enguli (Manu- facture and Licensing) Act (Cap. 9— Laws of Uganda) and the Jaggery and Enguli Base Tax Act, 1966
Subject	Jaggery and Enguli
Duration	Commencing respectively on 20th Janu- ary 1965 and 1st July 1966—of indefinite duration

KENYA

1. Contracting Parties	..	The Government of Kenya and the Con- solidated Petroleum Co. Ltd.
Subject	Crude oil and petroleum products
Duration	Indefinite duration from September 1959
2. Contracting Parties	..	The Government of Kenya, Ross Group (International) Ltd., F.A.A. Ellenberger, Lamu Fisheries Ltd., Sidewell and Co. (Mombasa) Ltd., and Kenya Inshore Fisheries
Subject	Crustacea
Duration	Five years from 1st January 1967
3. Contracting Parties	..	The Government of Kenya and Albatross Superfostaafabrieken, N.V., Covenant Industries Ltd., Imperial Chemical Industries Ltd.
Subject	Nitrogenous fertilizers
Duration	Indefinite duration

KENYA—(Contd.)

4. Contracting Parties .. The Government of Kenya and, *inter alia*, Chemelil Sugar Company Ltd.
 Subject Sugar and sugar products.
 Duration Indefinite duration from 6th August 1966

(Article 13)

ANNEX III—AGRICULTURAL PRODUCTS

1. Period of operation—no limitation.

Maize, including maize flour
 Wheat
 Rice, both paddy and husked
 Coffee, raw
 Pyrethrum flowers
 Cotton lint, cotton seed and unginned cotton
 Sisal fibre, sisal tow, and sisal flume tow
 Beans, peas, lentils and other leguminous vegetables, split or dried
 Meat (including poultry) fresh, chilled or frozen
 Milk and cream, fresh
 Eggs
 Pineapples, fresh
 Passion fruit, fresh
 Groundnuts
 Millets
 Simsim (sesame seed)

2. Period of operation—three years from the coming into force of this Treaty.

Onions

3. Period of operation—until 1st December 1968.

Bixa
 Castor seed
 Copra
 Capsicum, dried
 Sunflower seed
 Cassava
 Cashew nuts
 Sorghum
 Wattle bark

(Article 20)

ANNEX IV—MANUFACTURED GOODS

Manufactured goods shall be all those goods referred to in those Sections, Divisions or Items of the Official Import and Export List, as specified in the Schedule to Legal Notice No. 68 of 1963 of the Common Services Organization, which are set out below, subject to

the modifications expressly stated in the description of goods given below:—

<i>Section, Division or Item</i>	<i>Description of Goods</i>
012 (part) ..	Bacon, ham and other smoked meat, whether or not in airtight containers (excluding dried meat and salted meat)
013 (part) ..	Sausages and other prepared or preserved meat (excluding meat extracts and meat juices)
022 1 (part) ..	Milk or cream (in liquid or semi-solid form) evaporated or condensed, including butter milk and whey but excluding skimmed milk
022 2 ..	Milk and cream dry (in solid form such as blocks or powder), including buttermilk, skimmed milk and whey
023 ..	Butter, including clarified butter
024 ..	Cheese and curd
032 (part) ..	Fish and fish preparations (including crustacea and molluscs) in airtight containers
046 (part) ..	Meal and flour of wheat (excluding meal and flour of meslin)
047 (part) ..	Meal and flour of other cereals (excluding meal and flour of maize)
048 ..	Cereal preparations and preparations of flour and starch of fruits and vegetables
053 ..	Fruit preserved and fruit preparations (excluding dried and artificially dehydrated fruit)
055 ..	Vegetables, roots and tubers, preserved or prepared, not elsewhere specified whether or not in airtight containers
06 (part) ..	Sugar, sugar preparations and honey (excluding item 061 6 0, natural honey)
071 1 8 ..	Coffee, roasted, including ground, and coffee substitutes containing coffee
073 ..	Chocolate and other food preparations containing cocoa or chocolate, not elsewhere specified
074 1 0 ..	Tea (other than unprocessed leaf)
075 (part) ..	Spices, ground only
081 ..	Feeding stuff for animals (excluding unmilled cereals)
091 ..	Margarine and shortening
099 ..	Food preparations, not elsewhere specified
11 ..	Beverages
122 ..	Tobacco manufactures
243 (part) ..	Wood, shaped or simply worked (excluding item 243 1 0, railway sleepers (ties))

<i>Section, Division or Item</i>	<i>Description of Goods</i>
251	Pulp and waste paper
266	Synthetic and regenerated (artificial) fibres (including waste of such fibres)
33	Petroleum and petroleum products
34	Gas, natural and manufactured
42	Fixed vegetable oils and fats
5 (part) ..	Chemicals (excluding item 532 4 1, wattle bark extract)
6 (part) ..	Manufactured goods classified chiefly by material, excluding the following items:—
	681 1 0 Silver, unworked or partly worked
	682 1 0 Copper and alloys, whether or not refined, unwrought
	683 1 0 Nickel and nickel alloys, unwrought
	684 1 0 Aluminium and aluminium alloys, unwrought
	685 1 0 Lead and lead alloys, unwrought
	686 1 0 Zinc and zinc alloys, unwrought
	687 1 0 Tin and tin alloys, unwrought
	688 0 0 Uranium and thorium and their alloys
	689 0 0 Miscellaneous non-ferrous base metals employed in metallurgy
7	Machinery and transport equipment
8	Miscellaneous manufactured articles

(Article 20)

ANNEX V—VALUE OF GOODS LIABLE TO TRANSFER TAX

1. (1) The value of any goods liable to transfer tax shall be taken to be the normal price, that is to say the price which they would fetch when they are entered for the payment of transfer tax (or, if they are not so entered, at the time of transfer) on a sale in the open market between a buyer in the country to which the goods are transferred and a seller in the country from which the goods are transferred independent of each other.

(2) The normal price of any goods liable to transfer tax shall be determined on the following assumptions—

(a) that the goods are treated as having been delivered to the buyer at the point of entry into the country to which the goods are being transferred; and

(b) that the seller will bear freight, insurance, commission and all other costs, charges and expenses incidental to the sale and the delivery of the goods at that point of entry; but

(c) that the buyer will bear any tax chargeable in the country to which the goods are being transferred.

2. A sale in the open market between buyer and seller independent of each other presupposes—

(a) that the price is the sole consideration; and

- (b) that the price paid is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him (other than the relationship created by the sale of the goods in question); and
- (c) that no part of the proceeds of the subsequent resale, use or disposal of the goods will accrue directly or indirectly to the seller or any person associated with him.

3. Where the goods to be valued—

- (a) are manufactured in accordance with any patented invention or are goods to which any registered design has been applied; or
- (b) are transferred under a foreign trade mark or are transferred for sale (whether or not after further manufacture) under a foreign trade mark,

the normal price shall be determined on the assumption that the price covers the right to use the patent, design or trade mark in respect of the goods.

4. For the purposes of paragraph 3 of this Annex, the expression "trade mark" includes a trade name and a get up, and a foreign trade mark is a trade mark used for the purpose of indicating that goods in relation to which it is used are those of—

- (a) a person by whom the goods to be valued have been grown, produced, manufactured, selected, offered for sale or otherwise dealt with outside the country to which the goods are transferred; or
- (b) a person associated in business with any such person as is referred to in sub-paragraph (a) of this paragraph; or
- (c) a person to whom any such person as is mentioned in sub-paragraph (a) or (b) of this paragraph has assigned the goodwill of the business in connexion with which the trade mark is used.

5. Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either one of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

(Article 22)

**ANNEX VI—THE CHARTER OF THE EAST AFRICAN
DEVELOPMENT BANK**

WHEREAS the Governments of the United Republic of Tanzania, the Sovereign State of Uganda and the Republic of Kenya, who are referred to in the Treaty and this Charter as "the Partner States", have in Article 21 of the Treaty agreed to establish a Development Bank to be known as the East African Development Bank :

AND WHEREAS the said Governments have agreed in Article 22 of the Treaty that the Charter of the East African Development Bank shall be set out in an Annex to the Treaty:

NOW THEREFORE it is agreed that the East African Development Bank (hereinafter referred to as "the Bank") be established and operate in accordance with the following provisions:

CHAPTER I—OBJECTIVES AND MEMBERSHIP

Article 1—Objectives of the Bank

1. The objectives of the Bank shall be—

- (a) to provide financial and technical assistance to promote the industrial development of the Partner States;
- (b) to give priority, in accordance with the operating principles contained in this Charter, to industrial development in the relatively less industrially developed Partner States, thereby endeavouring to reduce the substantial industrial imbalances between them;
- (c) to further the aims of the East African Community by financing, wherever possible, projects designed to make the economies of the Partner States increasingly complementary in the industrial field;
- (d) to supplement the activities of the national development agencies of the Partner States by joint financing operations and by the use of such agencies as channels for financing specific projects;
- (e) to co-operate, within the terms of this Charter, with other institutions and organizations, public or private, national or international, which are interested in the industrial development of the Partner States; and
- (f) to undertake such other activities and provide such other services as may advance the objectives of the Bank.

2. In paragraph 1 of this Article, "industry" with its grammatical variations and cognate expressions means manufacturing, assembling and processing industries including processing associated with the agricultural, forestry and fishing industries but does not include the building, transport and tourist industries.

Article 2—Membership in the Bank

1. The original members of the Bank shall be the Partner States and such bodies corporate, enterprises or institutions who with the approval of the Governments of the Partner States become members on or before the date specified in Article 55 of this Charter.

2. Upon an affirmative decision of the Board of Directors by a majority of the voting power, any body corporate, enterprise or institution, which has not become a member under paragraph 1 of this Article, may, with the approval of the Authority, be admitted to membership of the Bank under such terms and conditions as the Bank may determine.

CHAPTER II—CAPITAL

Article 3—Authorized capital

1. The authorized capital stock of the Bank shall be 400,000,000 units of account and the value of the unit of account shall be 0.124414 grams of fine gold.
2. The authorized capital stock of the Bank shall be divided into 4,000 shares having a par value of 100,000 units of account each which shall be available for subscription only by members in accordance with Article 4 of this Charter.
3. The original authorized capital stock of the Bank shall be divided equally into paid-in shares and callable shares.
4. The authorized capital stock of the Bank may, after consultation with the Board of Directors, be increased by the Authority.

Article 4—Subscription of shares

1. Each member of the Bank shall subscribe to shares of the capital stock of the Bank.
2. Each subscription to the original authorized capital stock of the Bank shall be for paid-in shares and callable shares in equal parts.
3. The initial subscription of each of the Partner States to the original authorized capital stock of the Bank shall be 800 shares and the initial subscriptions of other original members to the original authorized capital stock of the Bank shall be as determined by the Governments of the Partner States.
4. The initial subscriptions of members, other than original members, to the original authorized capital stock of the Bank shall be determined by the Bank but no subscription shall be authorized which would have the effect of reducing the percentage of capital stock held by the Partner States below 51 per cent of the total subscribed capital stock.
5. If the authorized capital stock of the Bank is increased, the following provisions shall apply—
 - (a) subject to this Article, subscriptions to any increase of the authorized capital stock shall be subject to such terms and conditions as the Bank shall determine;
 - (b) the Partner States shall subscribe to equal parts only of the increased capital stock; and
 - (c) each member, other than a Partner State, shall be given a reasonable opportunity to subscribe to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total subscribed capital stock immediately prior to such increase:

Provided that no such member shall be obligated to subscribe to any part of an increase of capital stock; and

Provided further that subscriptions shall be restricted proportionately to the extent necessary to ensure that the

percentage of capital stock held by the Partner States remains not less than 51 per cent of the total subscribed capital stock.

6. Shares of stock initially subscribed for by the original members shall be issued at par. Other shares shall be issued at par unless the Bank, by a vote representing a majority of the total voting power of members, decides in special circumstances to issue them on other terms.

7. Shares of stock shall not be pledged or encumbered in any manner whatsoever and they shall not be transferable except to the Bank:

Provided that if any shares of stock which are transferred to the Bank are subsequently subscribed for by or otherwise transferred to the Partner States, they shall take up such shares in equal parts only.

8. The liability of the members on shares shall be limited to the unpaid portion of the issue price of the shares.

9. No member shall be liable, by reason of its membership in the Bank, for obligations of the Bank.

Article 5—Payment of subscriptions

1. Payment of the amount initially subscribed by the original members to the paid-in capital stock of the Bank shall be made in four instalments the first of which shall be 10 per cent of such amount and the remaining instalments shall each be 30 per cent of such amount. The first instalment payable by each Partner State shall be paid within 30 days after the coming into force of the Treaty to which this Charter is annexed and in the case of original members other than the Partner States, the first instalment shall be paid within 30 days of their becoming a member. The second instalment shall be paid six calendar months after the date on which the Treaty comes into force. The remaining two instalments shall each be paid successively six calendar months from the date on which the preceding instalment becomes due under this paragraph.

2. Notwithstanding the provisions of paragraph 1 of this Article, in respect of any instalment, other than the first instalment, of the initial subscriptions to the original paid-in capital stock, the Bank shall, if the funds are not immediately required, either defer the due date for payment of such instalment or require that part only of such instalment be payable on the due date and at the same time prescribe a due date for the remainder of such instalment.

3. Of each instalment for the payment of subscriptions by each of the Partner States to the original paid-in capital stock—

- (a) 50 per cent shall be paid in convertible currency;
- (b) 50 per cent shall be paid in the currency of the Partner State concerned.

4. Each payment of a Partner State in its own currency under sub-paragraph (b) of paragraph 3 of this Article shall be in such amount as the Bank, after such consultation with the International Monetary Fund as the Bank may consider necessary, determines to be

equivalent to the full value in terms of the unit of account as expressed in paragraph 1 of Article 3 of this Charter of the portion of the subscription being paid.

5. The initial payment of a Partner State under sub-paragraph (b) of paragraph 3 of this Article shall be in such amount as the member considers appropriate but shall be subject to such adjustment, to be effected within 90 days of the date on which such payment was made, as the Bank shall determine to be necessary to constitute the full value of such payment in terms of the unit of account as expressed in paragraph 1 of Article 3 of this Charter.

6. Each instalment for the payment of subscriptions by members other than Partner States to the original paid-in capital stock shall be paid in convertible currency.

7. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its obligations incurred under paragraphs (b) and (d) of Article 10 of this Charter on borrowings of funds for inclusion in its ordinary capital resources or on guarantees chargeable to such resources.

8. In the event of a call being made in terms of paragraph 7 of this Article, payment may be made at the option of the member in convertible currency or in the currency required to discharge the obligations of the Bank for the purposes for which the call is made. Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.

9. The Bank shall determine the place for any payment of subscriptions, provided that, until the first meeting of its Board of Directors, the payment of the first instalment referred to in paragraph 1 of this Article shall be made to the Bank of Uganda as Trustee for the Bank.

CHAPTER III—ORDINARY CAPITAL RESOURCES AND SPECIAL FUNDS

Article 6—Ordinary capital resources

In the context of this Charter, the term "ordinary capital resources" of the Bank shall include—

- (a) the authorized capital stock of the Bank including both paid-in and callable shares subscribed pursuant to Article 4 of this Charter;
- (b) funds raised by borrowings of the Bank by virtue of powers conferred by Article 19 of this Charter to which the commitment to calls provided for in paragraph 7 of Article 5 of this Charter is applicable;
- (c) funds received in repayment of loans or guarantees made with the resources specified in paragraphs (a) and (b) of this Article;
- (d) income derived from loans made from the above-mentioned funds or from guarantees to which the commitment to calls provided for in paragraph 7 of Article 5 of this Chapter is applicable; and

- (e) any other funds or income received by the Bank which do not form part of its Special Funds referred to in Article 7 of this Charter.

Article 7—Special Funds

1. The Bank may accept for administration, from such sources as it considers appropriate, Special Funds which are designed to promote the objectives of the Bank.

2. Special Funds accepted by the Bank under paragraph 1 of this Article shall be used in such manner and on such terms and conditions as are not inconsistent with the objectives of the Bank and the agreement under which such funds are accepted by the Bank for administration.

3. The Board of Directors shall make such regulations as may be necessary for the administration and use of each Special Fund. Such regulations shall be consistent with the provisions of this Charter, other than those provisions which expressly relate only to the ordinary operations of the Bank.

4. The term "Special Funds" as used in this Charter shall refer to the resources of any Special Fund and shall include—

- (a) funds accepted by the Bank in any Special Fund;
- (b) funds repaid in respect of loans or guarantees financed from any Special Fund which, under the regulations of the Bank covering that Special Fund, are received by such Special Fund; and
- (c) income derived from operations of the Bank in which any of the above-mentioned resources or funds are used or committed if, under the regulations of the Bank covering the Special Fund concerned, that income accrues to such Special Fund.

CHAPTER IV—OPERATIONS OF THE BANK

Article 8—Use of resources

The resources and facilities of the Bank shall be used exclusively to implement the objectives of the Bank as set forth in Article 1 of this Charter.

Article 9—Ordinary and special operations

1. The operations of the Bank shall consist of ordinary operations and special operations. Ordinary operations shall be those financed from the ordinary capital resources of the Bank and special operations shall be those financed from the Special Funds referred to in Article 7 of this Charter.

2. The ordinary capital resources and the Special Funds 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.

3. The ordinary capital resources of the Bank shall not be charged with, or used to discharge, losses or liabilities arising out of special operations for which Special Funds were originally used or committed.

4. Expenses relating directly to ordinary operations shall be charged to ordinary capital resources of the Bank and those relating to special operations shall be charged to the Special Funds. Any other expenses shall be charged as the Bank shall determine.

Article 10—Methods of operation

Subject to the conditions set forth in this Charter, the Bank may provide finances or facilitate financing in any of the following ways to any agency, entity or enterprise operating in the territories of the Partner States—

- (a) by making or participating in direct loans with its unimpaired paid-in capital and, except in the case of its Special Reserve as defined in Article 17 of this Charter, with its reserves and undistributed surplus or with the unimpaired Special Funds;
- (b) by making or participating in direct loans with funds raised by the Bank in capital markets or borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources;
- (c) by investment of funds referred to in paragraphs (a) and (b) of this Article in the equity capital of an institution or enterprise; or
- (d) by guaranteeing, in whole or in part, loans made by others for industrial development.

Article 11—Limitations on operations

1. The total amount outstanding of loans, equity investments and guarantees made by the Bank in its ordinary operations shall not at any time exceed one and a half times the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources, excluding the Special Reserve and any other reserves not available for ordinary operations.

2. The total amount outstanding in respect of the special operations of the Bank relating to any Special Fund shall not at any time exceed the total amount of the unimpaired special resources appertaining to that Special Fund.

3. In the case of loans made with funds borrowed by the Bank to which the commitment to calls provided for in paragraph 7 of Article 5 of this Charter is applicable, the total amount of principal outstanding and payable to the Bank in a specific currency shall not at any time exceed the total amount of the principal of outstanding borrowings by the Bank that are payable in the same currency.

4. In the case of funds invested in equity capital out of the ordinary capital resources of the Bank, the total amount invested shall not exceed 10 per cent of the aggregate amount of the unimpaired paid-in capital stock of the Bank actually paid up at any given time together with the reserves and surplus included in its ordinary capital resources, excluding the Special Reserve.

5. The amount of any equity investment in any entity or enterprise shall not exceed such percentage of the equity capital of that

entity or enterprise as the Board of Directors shall in each specific case determine to be appropriate. The Bank shall not seek to obtain by such investment a controlling interest in the entity or enterprise concerned, except where necessary to safeguard the investment of the Bank.

6. In the case of guarantees given by the Bank in the course of its ordinary operations, the total amount guaranteed shall not exceed 10 per cent of the aggregate amount of the unimpaired paid-in capital stock of the Bank actually paid up at any given time together with the reserves and surplus included in its ordinary capital resources excluding the Special Reserve.

Article 12—Provision of currencies for direct loans

In making direct loans or participating in them, the Bank may provide finance in the following ways—

- (a) by furnishing the borrower with currencies other than the currency of the Partner State in whose territory the project is located, which are needed by the borrower to meet the foreign exchange costs of the project; or
- (b) by providing when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, local currency but not exceeding a reasonable portion of the total local expenditure to be incurred by the borrower.

Article 13—Operating principles

The operations of the Bank shall be conducted in accordance with the following principles—

- (a) the Bank shall be guided by sound banking principles in its operations and shall finance only economically sound and technically feasible projects, and shall not make loans or undertake any responsibility for the discharge or re-financing of earlier commitments by borrowers;
- (b) in selecting projects, the Bank shall always be guided by the need to pursue the objectives set forth in Article 1 of this Charter;
- (c) subject to this Article, the Bank shall ensure that, taken over consecutive periods of five years, the first of which shall begin upon the commencement of the operations of the Bank, it shall so conduct its operations that it shall have loaned, guaranteed or otherwise invested, as nearly as is possible, in the United Republic of Tanzania $38\frac{1}{2}$ per cent of the total sum which it has loaned, guaranteed or otherwise invested of its ordinary capital resources and the Special Funds, in the Sovereign State of Uganda $38\frac{1}{2}$ per cent thereof and in the Republic of Kenya $22\frac{1}{2}$ per cent thereof:

Provided that, after a period of ten years from the commencement of operations of the Bank, the Partner States shall review the percentages specified in this paragraph and thereafter the Authority, after consultation with the Board of Directors, may by order published in the Gazette of the Community alter the percentages specified in this paragraph;

- (d) the operations of the Bank shall provide principally for the financing directly of specific projects within the Partner States but may include loans to or guarantees of loans made to the national development agencies of the Partner States so long as such loans or guarantees are in respect of and used for specific projects which are agreed to by the Bank;
- (e) the Bank shall seek to maintain a reasonable diversification in its investments;
- (f) the Bank shall seek to resolve its funds by selling its investments in equity capital to other investors wherever it can appropriately do so on satisfactory terms;
- (g) the Bank shall not finance any undertaking in the territory of a Partner State if that Partner State objects to such financing;
- (h) before a loan is granted or guaranteed or an investment made, the applicant shall have submitted an adequate proposal to the Bank, and the Director-General of the Bank shall have presented to the Board of Directors a written report regarding the proposal, together with his recommendations;
- (i) in considering an application for a loan or guarantee, the Bank shall pay due regard to the ability of the borrower to obtain finance or facilities elsewhere on terms and conditions that the Bank considers reasonable for the recipient, taking into account all pertinent factors;
- (j) in making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and its guarantor, if any, will be able to meet their obligations under the loan contract;
- (k) in making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall be such as are, in the opinion of the Bank, appropriate for the loan concerned;
- (l) in guaranteeing a loan made by other investors, the Bank shall charge a suitable fee or commission for its risk;
- (m) in the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw the loan funds only to meet payments in connexion with the project as they fall due;
- (n) the Bank shall take all necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank are used only for the purposes for which the loan was granted and with due attention to considerations of economy and efficiency; and
- (o) the Bank shall ensure that every loan contract entered into by it shall enable the Bank to exercise all necessary powers of entry, inspection and supervision of operations in connexion with the project and shall further enable the Bank to require the borrower to provide information and to allow inspection of its books and records during such time as any part of the loan remains outstanding.

Article 14—Prohibition of political activity

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

2. The Bank, its Director-General and officers and staff shall not interfere in the political affairs of any Partner State, nor shall they be influenced in their decisions by the political character of a Partner State. Only economic considerations shall be relevant to their decisions and such considerations shall be weighed impartially to achieve and carry out the objectives and functions of the Bank.

Article 15—Terms and conditions for direct loans and guarantees

1. In the case of direct loans made or participated in or loans guaranteed by the Bank, the contract shall establish, in conformity with the operating principles set out above and subject to the other provisions of this Charter, the terms and conditions for the loan or the guarantee concerned, including payment of principal, interest, commitment fee and other charges, maturities and dates of payment in respect of the loan, or the fees and other charges in respect of the guarantee, respectively.

2. The contract shall provide that all payments to the Bank under the contract shall be made in the currency loaned, unless, in the case of a loan made or guaranteed as part of special operations, the regulations of the Bank provide otherwise.

3. Guarantees by the Bank shall also provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower or any other guarantor, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

4. Whenever it considers it appropriate, the Bank may require as a condition of granting or participating in a loan that the Partner State in whose territory a project is to be carried out, or a public agency or instrumentality of that Partner State acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.

5. The loan or guarantee contract shall specifically state the currency in which all payments to the Bank thereunder shall be made.

Article 16—Commission and fees

1. In addition to interest, the Bank shall charge a commission on direct loans made or participated in as part of its ordinary operations at a rate to be determined by the Board of Directors and computed on the amount outstanding on each loan or participation.

2. In guaranteeing a loan as part of its ordinary operations, the Bank shall charge a guarantee fee at a rate determined by the Board of Directors payable periodically on the amount of the loan outstanding.

3. Other charges, including commitment fee, of the Bank in its ordinary operations and any commission, fees or other charges in relation to its special operations shall be determined by the Board of Directors.

Article 17—Special Reserve

The amount of commissions and guarantee fees received by the Bank under the provisions of Article 16 of this Charter shall be set aside as a Special Reserve which shall be kept for meeting liabilities of the Bank in accordance with Article 18 of this Charter. The Special Reserve shall be held in such liquid form as the Board of Directors may decide but the Board of Directors shall ensure that any part of the Special Reserve which it may decide to invest in the territories of the Partner States shall be invested, as nearly as possible, in equal proportions in each Partner State.

Article 18—Defaults on loans and methods of meeting liabilities of the Bank

1. In cases of default on loans made, participated in or guaranteed by the Bank in its ordinary operations, the Bank shall take such action as it considers appropriate to conserve its investment including modification of the terms of the loan, other than any term as to the currency of repayment.

2. Payments in discharge of the Bank's liabilities on borrowings or guarantees chargeable to the ordinary capital resources shall be charged firstly against the Special Reserve and then, to the extent necessary and at the discretion of the Bank, against other reserves, surplus and capital available to the Bank.

3. Whenever necessary to meet contractual payments of interest, other charges or amortization on borrowings of the Bank in its ordinary operations, or to meet its liabilities with respect to similar payments in relation to loans guaranteed by it, chargeable to its ordinary capital resources, the Bank may call an appropriate amount of the uncalled subscribed callable capital in accordance with paragraphs 7 and 8 of Article 5 of this Charter.

CHAPTER V—MISCELLANEOUS POWERS AND DUTIES OF THE BANK

Article 19—Miscellaneous powers

In addition to the powers specified elsewhere in this Charter, the Bank shall be empowered—

(a) to borrow funds in the territories of the Partner States, or elsewhere, and in this connexion to furnish such collateral or other security therefor as the Bank shall determine:

Provided that—

- (i) before selling its obligations or otherwise borrowing in the territory of a country, the Bank shall obtain the approval of the Government of that country to the sale; and
- (ii) before deciding to sell its obligations or otherwise borrowing in a particular country, the Bank shall consider the

amount of previous borrowing, if any, in that country with a view to diversifying its borrowing to the maximum extent possible;

- (b) to buy and sell securities which the Bank has issued or guaranteed or in which it has invested;
- (c) to guarantee securities in which it has invested in order to facilitate their sale;
- (d) to invest funds not immediately needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities, but the Bank shall ensure that any funds which it may decide to invest in the territories of the Partner States shall be invested, as nearly as possible, in equal proportions in each Partner State;
- (e) to provide technical advice and assistance which may serve its purposes and come within its functions and where appropriate, for example in the case of special feasibility studies, the Bank shall charge for such services; and
- (f) to study and promote the investment opportunities within the Partner States.

Article 20—Allocation of net income

1. The Board of Directors shall determine annually what part of the net income of the Bank, including the net income accruing to the Special Funds, shall be allocated, after making provision for reserves, to surplus and what part, if any, shall be distributed to the members.

2. Any distributions to members made pursuant to paragraph 1 of this Article shall be in proportion to the number of shares held by each member and payments shall be made in such manner and in such currency as the Board of Directors shall determine.

Article 21—Power to make regulations

The Board of Directors may make such regulations, including financial regulations, being consistent with the provisions of this Charter as it considers necessary or appropriate to further the objectives and functions of the Bank.

Article 22—Notice to be placed on securities

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, unless it is in fact the obligation of a particular Government, in which case it shall so state.

CHAPTER VI—CURRENCIES

Article 23—Determination of convertibility

Whenever it shall become necessary under this Charter to determine whether any currency is convertible, such determination shall be made by the Bank after consultation with the International Monetary Fund.

Article 24—Use of currencies

1. The Partner States may not maintain or impose any restriction on the holding or use by the Bank or by any recipient from the Bank for payments in any country of the following—

- (a) currencies received by the Bank in payment of subscriptions to its capital stock;
- (b) currencies purchased with the currencies referred to in sub-paragraph (a) of this paragraph;
- (c) currencies obtained by the Bank by borrowing for inclusion in its ordinary capital resources;
- (d) currencies received by the Bank in payment of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraphs (a), (b) and (c) of this paragraph or in payment of fees in respect of guarantees made by the Bank; and
- (e) currencies received from the Bank in distribution of the net income of the Bank in accordance with Article 20 of this Charter.

2. The Partner States may not maintain or impose any restriction on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of currency received by the Bank which does not come within the provisions of paragraph 1 of this Article unless such currency forms part of the Special Funds of the Bank and its use is subject to special regulations.

3. The Partner States may not maintain or impose any restriction on the holding or use by the Bank, for making amortisation payments or for repurchasing in whole or in part the Bank's own obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.

4. Each Partner State shall ensure, in respect of projects within its territories, that the currencies necessary to enable payments to be made to the Bank in accordance with the provisions of the contracts referred to in Article 15 of this Charter shall be made available in exchange for currency of the Partner State concerned.

Article 25—Maintenance of value of currency holdings

1. Whenever the par value in the International Monetary Fund of the currency of a Partner State is reduced or the foreign exchange value of the currency of a Partner State has, in the opinion of the Bank, depreciated to a significant extent within the territory of that Partner State, such Partner State shall pay to the Bank within a reasonable time an additional amount of its own currency sufficient to maintain the value, as of the time of subscription, of the amount of the currency of such Partner State paid in to the Bank by that Partner State under sub-paragraph (b) of paragraph 3 of Article 5 of this Charter, and currency furnished under the provisions of this paragraph, provided, however, that the foregoing shall apply only so long as and to the extent that such currency shall not have been initially disbursed or exchanged for another currency.

2. Whenever the par value in the International Monetary Fund of the currency of a Partner State is increased, or the foreign exchange value of the currency of a Partner State has, in the opinion of the Bank, appreciated to a significant extent within the territory of that Partner State, the Bank shall return to such Partner State within a reasonable time an amount of the currency of that Partner State equal to the increase in the value of the amount of such currency to which the provisions of paragraph 1 of this Article are applicable.

CHAPTER VII—ORGANIZATION AND MANAGEMENT OF THE BANK

Article 26—Structure

The Bank shall have a Board of Directors, a Director-General and such other officers and staff as it may consider necessary.

Article 27—Board of Directors

1. All the powers of the Bank shall, subject to this Charter, be vested in the Board of Directors.

2. The Board of Directors shall consist of not more than five nor fewer than three members of whom—

- (a) three shall be appointed by the Partner States, each of which shall appoint one; and
- (b) up to two shall be elected by the members other than the Partner States in accordance with such procedure as the said members shall from time to time decide:

Provided that no single member shall be represented by more than one director.

3. All directors shall be persons possessing high competence and wide experience in economic, financial and banking affairs.

4. Directors shall hold office for a term of three years and shall be eligible for re-appointment or re-election:

Provided that—

- (a) of the first directors of the Bank two, who shall be chosen by the directors by lot, shall hold office for two years;
- (b) a director shall remain in office until his successor has been appointed or elected;
- (c) a director appointed or elected in place of one whose office has become vacant before the end of his term shall hold office only for the remainder of that term;
- (d) a director appointed by a Partner State may be required at any time by that Partner State to vacate his office.

5. There shall be appointed or elected, as the case may be, an alternate director in respect of each substantive director and an alternate director shall be appointed or elected in the same manner and for the same term of office as the director to whom he is an alternate; and an alternate director shall remain in office until his successor has been appointed or elected.

6. An alternate director may participate in meetings but may vote only when he is acting in place of and in the absence of the director to whom he is an alternate.

7. While the office of a director is vacant the alternate of the former director shall exercise the powers of that director.

Article 28—Procedure of the Board of Directors

1. The Board of Directors shall normally meet at the principal office of the Bank and shall meet at least once every three months or more frequently if the business of the Bank so requires.

2. Meetings of the Board of Directors shall be convened by the Director-General of the Bank.

3. Four directors, including the three directors appointed by the Partner States, or, if there is no member other than the Partner States, three directors, shall constitute a quorum for any meeting of the Board of Directors:

Provided that if within two hours of the time appointed for the holding of a meeting of the Board of Directors a quorum is not present, the meeting shall automatically stand adjourned to the next day, at the same time and place, or if that day is a public holiday, to the next succeeding day which is not a public holiday at the same time and place, and if at such adjourned meeting a quorum is not present within two hours from the time appointed for the meeting, the directors present shall constitute a quorum and may transact the business for which the meeting was called.

4. The Board of Directors may, by regulation, establish a procedure whereby a decision in writing signed by all the Directors of the Bank shall be as valid and effectual as if it had been made at a meeting of the Board of Directors.

Article 29—Voting

1. The voting power of each member of the Bank shall be equal to the number of shares of the capital stock of the Bank held by that member.

2. In voting in the Board of Directors—

(a) an appointed director shall be entitled to cast the number of votes of the Partner State which appointed him;

(b) each elected director shall be entitled to cast the number of votes of the members of the Bank whom he represents, which votes need not be cast as a unit; and

(c) except as otherwise expressly provided in this Charter, all matters before the Board of Directors shall be decided by a majority of the total voting power of the members of the Bank.

Article 30—Director-General of the Bank

1. There shall be a Director-General of the Bank who shall be appointed by the Authority after consultation with the Board of Directors, and who, while he remains Director-General, may not hold office as a Director or an alternate to a Director.

2. Subject to paragraph 3 of this Article, the Director-General shall hold office for a term of five years and may be re-appointed.

3. The Director-General shall vacate his office if the Authority after consultation with the Board of Directors so decides.

4. If the office of Director-General becomes vacant for any reason, a successor shall be appointed for a new term of five years.

5. The Director-General shall preside at meetings of the Board of Directors but shall have no vote.

6. The Director-General shall be the legal representative of the Bank.

7. The Director-General shall be chief of the staff of the Bank and shall conduct under the direction of the Board of Directors the current business of the Bank. He shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations adopted by the Board of Directors.

8. In appointing officers and staff the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, pay due regard to the recruitment of citizens of the Partner States.

Article 31—Loyalties of Director-General and Officers and Staff

The Director-General and officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence the Director-General or any of the officers and staff in the discharge of their duties.

Article 32—Offices of the Bank

The principal office of the Bank shall be located at Kampala in Uganda and the Bank may establish offices or agencies elsewhere.

Article 33—Channel of Communications, Depositories

1. Each member of the Bank shall designate an appropriate official, entity or person with whom the Bank may communicate in connexion with any matter arising under this Charter.

2. Each Partner 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 holdings of currency and other assets.

Article 34—Working Language

The working language of the Bank shall be English.

Article 35—Accounts and Reports

1. The Board of Directors shall ensure that proper accounts and proper records are kept in relation to the operations of the Bank and such accounts shall be audited in respect of each financial year by auditors of high repute selected by the Board of Directors.

2. The Bank shall prepare and transmit to the Authority and to the members of the Bank, and shall also publish, an annual report containing an audited statement of its accounts.

3. The Bank shall prepare and transmit to its members quarterly a summary statement of its financial position and a profit and loss statement showing the results of its operations.

4. All financial statements of the Bank shall show ordinary operations and the operations of each Special Fund separately.

5. The Bank may also publish such other reports as it considers desirable in carrying out its objectives and functions and such reports shall be transmitted to members of the Bank.

CHAPTER VIII—WITHDRAWAL AND SUSPENSION OF MEMBERS

Article 36—Withdrawal of Members

1. A Partner State may not withdraw from the Bank.

2. Any member, other than a Partner State, may withdraw from the Bank at any time by delivering a notice in writing to the Bank at its principal office.

3. Withdrawal by a member under paragraph 2 of this Article shall become effective, and its membership shall cease, on the date specified in its notice but in no event less than six months after the date that notice has been 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.

4. A withdrawing member shall remain liable for all direct and contingent obligations to the Bank to which it was subject at the date of delivery of the withdrawal notice. If the withdrawal becomes finally effective, the member shall not incur any liability for obligations resulting from operations of the Bank effected after the date on which the withdrawal notice was received by the Bank.

Article 37—Suspension of Membership

1. If a member of the Bank, other than a Partner State, fails to fulfil any of its obligations to the Bank, the Board of Directors may suspend such member by a majority vote of the total number of Directors representing not less than 75 per cent of the total voting power of the members including the affirmative votes of each of the Partner States.

2. The member so suspended shall automatically cease to be a member of the Bank six months from the date of its suspension unless the Board of Directors decides, within that period and by the same majority necessary for suspension, to restore the member to good standing.

3. While under suspension, a member shall not be entitled to exercise any rights under this Charter but shall remain subject to all its obligations.

Article 38—Settlement of Accounts

1. After the date on which a member ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased 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 either in the income or the expenses of the Bank.

2. At the time a member ceases to be a member, the Bank shall arrange for the repurchase of its 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 to be a member.

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 concerned for its shares shall be withheld so long as that member remains liable, as a borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the contingent liability of the member for future calls on its subscription for shares in accordance with paragraph 7 of Article 5 of this Charter. In any event, no amount due to a member for its shares shall be paid until six months after the date on which the member ceases to be a member;
- (b) payments for shares may be made from time to time, upon their surrender by the member concerned, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities on loans and guarantees referred to in subparagraph (a) of this paragraph, until the former member has received the full repurchase price;
- (c) payments shall be made in such available currencies as the Bank determines, taking into account its financial position; and
- (d) if losses are sustained by the Bank on any guarantees or loans which were outstanding on the date when a member ceased to be a member and the amount of such losses exceeds the amount of the reserve provided against losses on that 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. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 7 of Article 5 of this Charter, to the same extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

4. If the Bank terminates its operations pursuant to Article 39 of this Charter within six months of the date upon which any member ceases to be a member, all rights of the member concerned shall be determined in accordance with the provisions of Articles 39 to 41 of this Charter. Such member shall be considered as still a member for the purposes of such Articles but shall have no voting rights.

CHAPTER IX—TERMINATION OF OPERATIONS

Article 39—Termination of operations

1. The Bank may terminate its operations by resolution of the Board of Directors approved by a vote representing not less than 85 per cent of the total voting power of the members and with the approval also of the Authority.

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

Article 40—Liability of members and payment of claims

1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock 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 or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a *pro rata* distribution among holders of direct and contingent claims.

Article 41—Distribution of assets

1. No distribution of assets shall be made to members on account of their subscriptions to the capital stock of the Bank until all liabilities to creditors shall have been discharged or provided for and any such distribution shall be approved by the Board of Directors by a vote representing not less than 85 per cent of the total voting power of the members.

2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall consider fair and equitable. The shares 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 of assets until it has settled 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 their distribution.

CHAPTER X—STATUS, IMMUNITIES AND PRIVILEGES

Article 42—Purpose of Chapter

To enable the Bank effectively to fulfil its objectives and carry out the functions with which it is entrusted, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territories of each of the Partner States.

Article 43—Legal status

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 44—Judicial proceedings

1. Actions may be brought against the Bank in the territories of the Partner States only in a court of competent jurisdiction in a Partner State in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. No action shall be brought against the Bank by members or persons acting for or deriving claims from members. However, 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 Charter, in the regulations of the Bank or in contracts entered into with the Bank.

Article 45—Immunity of assets

1. Property and other assets of the Bank, wheresoever located and by whomsoever held, shall be immune from requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action and premises used for the business of the Bank shall be immune from search.

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

Article 46—Immunity of archives

The archives of the Bank and all documents belonging to it, or held by it, shall be inviolable wherever located.

Article 47—Freedom of assets from restriction

To the extent necessary to carry out the objectives and functions of the Bank and subject to the provisions of this Charter, all property and other assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 48—Personal immunities and privileges

Directors, alternates, officers and employees of the Bank and experts and consultants rendering services to the Bank shall have the immunities and privileges provided for under Article 3 of the Treaty to which this Charter is annexed.

Article 49—Exemption from taxation

1. The Bank shall be enabled to import free of customs duty any goods required for the purpose of its operations except such goods as are intended for sale, or are sold, to the public.

2. No transfer tax may be imposed upon manufactured goods which are required by the Bank for the purpose of its operations, otherwise than upon such goods as are intended for sale, or are sold, to the public.

3. The Bank shall be exempted from income tax and stamp duty.

Article 50—Implementation

Each Partner State shall promptly take such action as is necessary to make effective within that Partner State the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken on the matter.

Article 51—Waiver of immunities

1. The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

2. The Bank shall take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Charter are not abused and for this purpose shall establish such regulations as it may consider necessary and expedient.

CHAPTER XI—AMENDMENT, INTERPRETATION AND ARBITRATION

Article 52—Amendment of the Charter

1. This Charter may be amended only by a resolution of the Board of Directors approved by a vote representing not less than 85 per cent of the total voting power of the members and thereafter approved by the Authority.

2. An amendment to this Charter shall be published as a Legal Notice in the Gazette of the Community and shall enter into force three calendar months after the date of such publication unless the resolution referred to in paragraph 1 of this Article otherwise provides

3. Notwithstanding the provisions of paragraph 1 of this Article, the unanimous agreement of the Board of Directors shall be required for the approval of any amendment of the Charter modifying—

(a) the right of a member, other than a Partner State, to withdraw from the Bank as provided in Article 36 of this Charter;

- (b) the right to subscribe to capital stock of the Bank as provided in paragraph 5 of Article 4 of this Charter; and
- (c) the limitation on liability as provided in paragraphs 8 and 9 of Article 4 of this Charter.

Article 53—Interpretation or application

Any question of interpretation or application of the provisions of this Charter arising between any member and the Bank or between two or more members of the Bank shall be submitted to the Board of Directors for decision.

Article 54—Arbitration

1. If a disagreement shall arise between the Bank and a member or between the Bank and a former member of the Bank including a disagreement in respect of a decision of the Board of Directors under Article 53 of this Charter, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the member or former member concerned and the third, unless the parties otherwise agree, by the Executive Secretary of the Economic Commission for Africa or such other authority as may have been prescribed by regulations made by the Board of Directors.

2. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding on the parties and a decision of the arbitrators may include an order as to payment of costs and expenses.

3. The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

CHAPTER XII—FINAL PROVISIONS

Article 55—Signature and deposit

1. Upon the signature of the Treaty to which this Charter is annexed on behalf of all three Partner States, a copy of this Charter shall be deposited with the Secretary General of the Common Services Organization where it shall remain open until the first day of December 1967 for signature by the bodies corporate, enterprises or institutions approved under paragraph 1 of Article 2 of this Charter.

2. Immediately after the first day of December 1967 the Secretary General of the Community shall send certified copies of this Charter to all the Partner States and others who by signing this Charter become members of the Bank.

Article 56—Entry into force

This Charter shall enter into force at the same time as does the Treaty to which it is annexed.

Article 57—Commencement of operations

1. As soon as this Charter enters into force, the Directors shall be appointed or elected in accordance with the provisions of Article 27 of this Charter and the Secretary General of the Community shall call the first meeting of the Board of Directors.

2. At its first meeting the Board of Directors shall determine the date on which the Bank shall commence its operations.

3. The Bank shall notify its members of the date of the commencement of its operations.

Article 58—Definitions

In this Charter, unless the context otherwise requires—

“Authority” means the East African Authority established by Article 46 of the Treaty to which this Charter is annexed;

“Board of Directors” means the Board of Directors of the Bank;

“Community” means the East African Community established by Article 1 of the Treaty to which this Charter is annexed;

“Director-General” means the Director-General of the Bank;

“Treaty” means the Treaty For East African Co-operation to which this Charter is annexed.

(Article 25)

ANNEX VII—CURRENT ACCOUNT PAYMENTS

1. Payments for goods of all kinds, including any payment of insurance in respect of such goods or any element in the price thereof in respect of such insurance, and payments for water and electricity, imported or to be imported into the Partner State from which payment is to be made.

2. Payments in respect of goods traded under transit or merchanting arrangements.

3. Payments in respect of the carriage of goods or passengers by any means of transport, including payments for the chartering of such transport.

4. Payments in respect of services incidental to the carriage of goods or passengers by any means of transport, including warehousing and storage and transit facilities.

5. Payments in respect of the operation of transport services, including bunkering and provisioning, maintenance, assembly and repair of equipment and installations, fuel and oil, garaging, and expenses of staff.

6. Payments in respect of postal and telecommunications services.

7. Payments in respect of business services, including payments for agency and representation services, advertising, banking commission and charges, insurance and reinsurance, commission and brokerage services, and assistance relating to the production and distribution of goods and services at all stages.

8. Payments for professional services, including legal, medical, dental, architectural, accounting and auditing and engineering services.

9. Payments in respect of travel, subsistence and accommodation.

10. Payments in respect of fees and remuneration for other services, including education and personal services.

11. Payments in respect of construction carried out in the Partner State from which payment is to be made.

12. Payments in respect of processing, finishing, servicing and maintenance work.

13. Payments of interest and other investment income on shares, loans, mortgages, overdrafts and debentures, of profits from business, and contractual amortization.

14. Payments by or to subsidiary concerns, branches or sub-branches in respect of overhead costs shared with a parent concern or branch.

15. Payments in respect of rentals.

16. Payments in respect of any tax, rate, fine, fee or charge levied or imposed under any law by any public authority, including charges for customs clearance, demurrage, licences and permits, court fees and fines, and fees for registration of companies, partnerships, business names, trade marks and patents.

17. Payments in respect of business expenses, including wages, salaries, allowances, directors' fees, gratuities and severance payments.

18. Payments of pensions, including any commuted portion thereof, and of superannuation and Provident Fund benefits.

19. Remittances from current income to, by or on behalf of persons (other than bodies corporate) in a Partner State who are not citizens of that Partner State.

20. Payments to, by or on behalf of persons visiting or residing in another Partner State whose personal income is not sufficient to cover their current expenses or the current expenses of their family.

21. Payments in respect of claims for damage, legal obligations for damages or for maintenance.

22. Payments in respect of subscriptions to and entrance and membership fees of any association.

23. Payments by persons having emigrated from the Partner State from which the payment is to be made to another Partner State, of amounts not less than those permitted for emigrants to any foreign country.

24. Payments in respect of royalties and of use of patent rights, designs, trade marks and inventions.

25. Donations out of current income towards charities.

26. Payments in respect of inheritances, subject to regulation of the timing of transfers of such payments.

27. Payments in respect of prizes, including premium bond, lottery and sports prizes.

(Article 42)

ANNEX VIII—STATUTE OF THE COMMON MARKET
TRIBUNAL*Article 1—Preliminary*

The Tribunal shall be constituted and shall perform its duties in accordance with this Treaty and this Statute.

Article 2—Oath and declaration

1. Before entering upon their duties, the members of the Tribunal shall in public session individually undertake, by oath or affirmation, to perform their duties impartially and conscientiously and to preserve the secrecy of the Tribunal's deliberations.

2. When entering upon their duties, the members of the Tribunal shall make a declaration to the effect that they will, both during and after the termination of their office, respect the obligations resulting therefrom and in particular the duty of exercising honesty and discretion as regards the acceptance, after their term of office, of certain positions or benefits, and will abide by the direction of the Tribunal in cases of doubt.

Article 3—Holding of other offices

Except with the consent of the Authority, a member of the Tribunal shall neither hold any political office or any office in the service of a Partner State, the Community or a Corporation, nor engage in any trade, vocation or profession.

Article 4—Resignation

1. The Chairman of the Tribunal may at any time resign his office by letter delivered to the Secretary General for transmission to the Authority, but his resignation shall not take effect until his successor enters upon his duties.

2. A member of the Tribunal other than the Chairman may at any time resign his office by letter delivered to the Chairman of the Tribunal for transmission to the Authority, but his resignation shall not take effect until his successor enters upon his duties.

Article 5—Replacement of member

A member of the Tribunal appointed to replace a member whose term of office has not expired shall be appointed in the same manner as was that member and for the remainder of that member's term of office.

Article 6—Registrar and staff

1. There shall be a Registrar of the Tribunal who shall hold office in the service of the Community and whose functions shall, subject to this Statute and to the rules of procedure of the Tribunal, be determined by the Tribunal.

2. Before entering upon his duties, the Registrar of the Tribunal shall undertake, by oath or affirmation sworn or made before the Tribunal in public session, to perform his duties impartially and conscientiously and to preserve the secrecy of the Tribunal's deliberations.

3. The Tribunal shall have such officials and staff, who shall hold office in the service of the Community, as may be necessary to enable it to perform its functions.

Article 7—Seat of the Tribunal

The seat of the Tribunal shall be at Arusha in Tanzania, but the Tribunal may in any particular case sit and exercise its functions elsewhere within the Partner States if it considers it desirable.

Article 8—Sessions of the Tribunal

1. The Tribunal shall remain permanently in session, except for judicial vacations, and the dates and length of such vacations shall be determined by the Chairman with due regard for its obligations.

2. Subject to this Statute and to the rules of procedure, the Tribunal shall sit in plenary session only with all its members present:

Provided that, in any case where the Tribunal has commenced the hearing of a case before it and not more than one member of the Tribunal is unable to continue such hearing and is temporarily absent therefrom, it shall be competent to the Tribunal, notwithstanding the temporary absence of such member and with the agreement of the parties to the case before it, to continue and determine the hearing of such case.

Article 9—Functions of the Chairman

Notwithstanding paragraph 2 of Article 8 of this Statute, the rules of procedure may impose functions upon the Chairman of the Tribunal sitting alone in relation to administrative, procedural and other preliminary matters not being matters falling to be dealt with by the Tribunal by interim order under Article 39 of this Treaty.

Article 10—Duty to attend

Members of the Tribunal shall be bound, unless they are prevented from attending by illness or other serious reasons duly explained to the Chairman, to hold themselves permanently at the disposal of the Tribunal.

Article 11—References

1. Matters in dispute shall be referred to the Tribunal by a reference addressed to the Registrar specifying the subject matter of the dispute and the parties to it.

2. The Registrar shall immediately send a copy of the reference to all concerned.

Article 12—Representation before the Tribunal

Every party to a case before the Tribunal shall be represented by a person appointed by that party for the case; a representative need not be an advocate but he may be assisted by an advocate entitled to appear before a superior court of any of the Partner States.

Article 13—Proceedings

1. The proceedings of the Tribunal shall consist of a written part and an oral part.

2. The written part of the proceedings shall include the reference, the application, the response to the application, the reply, the rejoinder and the submissions, together with all papers and documents in support.

3. The written part of the proceedings shall be presented to the Registrar, in the order and within the time fixed by the rules of procedure or by the Tribunal in any particular case, and a copy of every paper or document presented by one party shall be communicated to the other party.

4. The oral part of the proceedings shall consist of the hearing by the Tribunal of witnesses, experts, representatives and advocates.

Article 14—Hearings

The hearing before the Tribunal shall be under the control of the Chairman and shall be in public, unless the Tribunal decides otherwise or a party requests that the public be not admitted.

Article 15—Production of documents

1. The Tribunal may at any time request the parties to produce all documents and supply all information or explanations which the Tribunal considers desirable. Formal note shall be taken of any refusal.

2. The Tribunal may also request a Partner State, which is not a party to the case, or an institution of the Community to supply all information which the Tribunal considers necessary for the proceedings.

Article 16—Inquiries and expert opinions

The Tribunal may, in relation to any proceedings and at any time, charge any person, body or institution with the task of carrying out an inquiry or giving an expert opinion.

Article 17—Witnesses

1. During the hearing relevant questions may be put to the witnesses and experts under the conditions laid down by the rules of procedure.

2. During the hearing the Tribunal may examine the experts and witnesses and ask questions of the representatives and advocates.

3. The Tribunal shall have, with respect to defaulting witnesses, the powers granted to the superior court in the Partner State where it is at the relevant time sitting, and may impose sanctions accordingly.

4. Minutes shall be kept of each hearing and shall be signed by the Chairman and the Registrar.

Article 18—List of cases

The list of cases shall be fixed by the Chairman.

Article 19—Costs

Unless otherwise decided by the Tribunal, each party shall bear its own costs.

Article 20—Advisory opinions

1. A request for an advisory opinion under Article 38 of the Treaty shall be made by means of a written request containing an exact statement of the question upon which an opinion is required and shall be accompanied by all documents likely to be of assistance.

2. Upon receipt of a request under paragraph 1 of this Article, the Registrar shall forthwith give notice thereof to the Partner States and notify them that the Tribunal will be prepared to accept, within a time to be fixed by the Chairman, written submissions, or to hear, at a hearing held for the purpose, oral submissions relating to the question.

3. The Tribunal shall, unless for special reasons it makes an order to the contrary, deliver an advisory opinion in public session.

4. In the exercise of its advisory function the Tribunal shall be guided by the provisions of this Statute relating to references to the extent which it considers them applicable.

Article 21—Interpretation of decisions

In the case of difficulty as to the meaning or scope of a decision or an advisory opinion, the Tribunal shall interpret it upon the request of any party or any institution of the Community establishing an interest therein.

Article 22—Revision

1. An application for revision of a decision may be made to the Tribunal only if it is based upon the discovery of some fact of such nature as to be a decisive factor, which fact was, when the decision was delivered, unknown to the Tribunal and to the party claiming revision.

2. On an application for revision, the procedure shall commence, where the application is admissible, with a decision of the Tribunal explicitly finding that the new fact alleged does exist and is of such a character as to lay the case open to revision, and declaring the application admissible on that ground.

3. Before declaring an application for revision of a decision to be admissible, the Tribunal may require prior compliance with the terms of the decision.

4. No application for revision of a decision may be made after the expiry of five years from the date of the decision.

Article 23—Amendment of the Statute

The Authority may, after consultation with the Tribunal, by order from time to time amend or add to this Statute, and the Tribunal may propose amendments or additions to this Statute.

(Article 43)

ANNEX IX—SERVICES TO BE ADMINISTERED BY THE
COMMUNITY OR BY THE CORPORATIONS

PART A—SERVICES TO BE ADMINISTERED BY THE COMMUNITY

1. The secretariat of the Community, including services relating to the Common Market and the Chambers of the Counsel to the Community.
2. The East African Directorate of Civil Aviation.
3. The East African Meteorological Department.
4. The East African Customs and Excise Department.
5. The East African Income Tax Department.
6. The East African Industrial Council.
7. The East African Literature Bureau.
8. The Auditor-General's Department.
9. The East African Community Service Commission.
10. The East African Legislative Assembly.
11. The East African Agriculture and Forestry Research Organization.
12. The East African Freshwater Fisheries Research Organization.
13. The East African Marine Fisheries Research Organization.
14. The East African Trypanosomiasis Research Organization.
15. The East African Veterinary Research Organization.
16. The East African Leprosy Research Centre.
17. The East African Institute of Malaria and Vector-Borne Diseases.
18. The East African Institute for Medical Research.
19. The East African Virus Research Organization.
20. The East African Industrial Research Organization.
21. The East African Tropical Pesticides Research Institute.
22. The East African Tuberculosis Investigation Centre.
23. Services arising from the operations of the East African Currency Board.
24. Services for the administration of grants or loans made by the government of any country, any organization or any authority, for the purposes of projects or services agreed between the Authority and the Partner States.
25. Services, including statistical services, for the purposes of co-ordinating the economic activities of the Partner States.
26. Services for the purposes of any body or authority established in pursuance of paragraph 4 of Article 43 of this Treaty.
27. Services for the purposes of the East African Industrial Court established by Article 85 of this Treaty.

PART B—SERVICES TO BE ADMINISTERED BY THE CORPORATIONS

1. The East African Railways Corporation—services and facilities relating to rail, road and inland waterways transport and inland waterways ports.
2. The East African Harbours Corporation—harbours services and facilities (other than inland waterways ports).
3. The East African Posts and Telecommunications Corporation—posts, telecommunications and other associated services.
4. The East African Airways Corporation—services and facilities relating to East African and international air transport.

(Article 43)

ANNEX X—MATTERS WITH RESPECT TO WHICH ACTS
OF THE COMMUNITY MAY BE ENACTED

1. Finances of the Community.
2. Appropriations from the General Fund.
3. Audit of the accounts of the Community and the accounts of the Corporations.
4. Civil aviation.
5. Customs, excise and transfer tax—administrative and general provisions (but not including tariff, rates of tax and allowances).
6. Income tax—administrative and general provisions (but not including rates of tax and allowances).
7. Powers, privileges and immunities of the East African Legislative Assembly and the Chairman and members thereof.
8. Research within the Partner States.
9. Control of pesticides.
10. The University of East Africa; Makerere University College; the University College, Dar es Salaam; and University College, Nairobi.
11. The East African Staff College.
12. The East African Examinations Council.
13. Meteorology.
14. The East African Land Survey Certificate.
15. Pensions, gratuities and other retirement benefits payable out of the funds of the Community or the Corporations.
16. Staff of the Community, the East African Community Service Commission, and staff of the Corporations.
17. Posts and telegraphs, telephones, radio communications and other associated matters.
18. Services and facilities relating to rail, road and inland waterways transport and inland waterways ports.
19. Harbour services and facilities (other than inland waterways ports).
20. Borrowing for the purposes of the Community and the Corporations.
21. The Common Market Tribunal.
22. The Court of Appeal for East Africa (but not including the jurisdiction or powers of the Court).
23. Legal proceedings by or against the Community and the Corporations, or any officers or authorities thereof.
24. Statistics.
25. Industrial licensing in East Africa.
26. The establishment of advisory or consultative bodies in respect of any service or Corporation or in respect of any matter of common interest to the Partner States.
27. Any matter, not mentioned elsewhere in this Annex, which is incidental to the execution, performance or enforcement of any function conferred by this Treaty or by an Act of the Community upon any institution or authority, or officer in the service, of the Community, or upon any authority or servant of a Corporation.

(Article 45)

ANNEX XI—PROCEDURAL PROVISIONS

Procedure of Authority

1. (a) Subject to this Treaty, the Authority shall determine its own procedure, including that for convening its meetings, for the conduct of business thereat and at other times, and for the rotation of the office of Chairman among the members of the Authority.

(b) The East African Ministers shall attend meetings of the Authority (and speak at such meetings to the extent required or permitted by the Authority) unless, on any particular occasion, the Authority otherwise directs but the absence of an East African Minister or Ministers from a meeting of the Authority shall in no way invalidate its proceedings.

Delegation of the Authority's functions

2. (a) Subject to this Treaty, the Authority may delegate the exercise of any executive function, subject to any conditions which it may think fit to impose, to a member of the Authority, to the East African Ministers jointly or any one of them, to a Council, or to an officer in the service of the Community.

(b) An Act of the Community may make provision for the delegation of any powers, including legislative powers, conferred on the Authority by this Treaty or by any Act of the Community, to the East African Ministers jointly, or to any one of them, to an officer in the service of the Community or to a Director-General.

Decisions of the Authority

3. (a) Any member of the Authority may record his objection to a proposal submitted for the decision of the Authority and, if any such objection is recorded, the Authority shall not proceed with the proposal unless the objection is withdrawn.

(b) Subject to the provisions of any Act of the Community, the acts and decisions of the Authority may be signified under the hand of the Secretary General or of any officer in the service of the Community authorized in that behalf by the Authority.

Procedure of the East African Ministers

4. (a) Subject to any directions which may be given by the Authority, the East African Ministers shall determine their procedure, including that for convening their meetings, for the conduct of business thereat and at other times, and for the rotation of the office of Chairman among the East African Ministers, and such procedure may provide that a decision in writing signed by all the East African Ministers shall be as valid and effectual as if it had been made at a meeting of the East African Ministers.

(b) Subject to any Act of the Community, the acts and decisions of the East African Ministers may be signified by any East African Minister or by any officer in the service of the Community authorized by the East African Ministers in that behalf.

Meetings of the Councils

5. Subject to any directions which may be given by the Authority, the Councils shall determine the frequency of their meetings but the Chairman of any Council shall, at the request of any of the Partner States, summon that Council to meet within ten days.

Chairmanship of the Councils

6. (a) Subject to any directions which may be given by the Authority, within each Council the East African Ministers shall hold the office of Chairman in rotation for periods of four months in such order as may be determined by the Authority.

(b) If the person holding the office of Chairman of a Council is absent from a meeting of that Council, there shall preside at that meeting such member of the Council as the members present may elect for that purpose, unless the Authority otherwise directs.

Procedure of Councils

7. (a) Subject to any directions which may be given by the Authority, a Council shall determine its own procedure, including that for convening its meetings and the conduct of business thereat and at other times.

(b) The procedure determined by a Council under sub-paragraph (a) of this paragraph may include arrangements under which the exercise of any function of the Council is delegated, subject to such conditions as the Council may think fit to impose, to the East African Ministers jointly, or to any one of them, or to any officer in the service of the Community or to any authority or a servant of a Corporation.

(c) When the Communications Council is conducting business relating to any of the Corporations, the Chairman of the Board of Directors and the Director-General of that Corporation shall be entitled to attend and speak.

Decisions of Councils

8. (a) Any member of a Council may record his objection to a proposal submitted for the decision of that Council and, except where Article 36 of this Treaty applies, unless such objection is withdrawn the proposal shall be referred to the Authority for its decision.

(b) If the Communications Council makes a decision which is contrary to a proposal submitted by the Board of Directors of a Corporation for the approval of that Council, that Board of Directors may refer the question at issue through the East African Ministers to the Authority for its decision.

(c) No further action shall be taken in relation to a proposal before a Council or a decision of a Council, as the case may be, in respect of which a reference has been made to the Authority whilst that reference is under consideration by the Authority, unless the reference is withdrawn and the Authority is notified accordingly.

(d) Subject to any Act of the Community, the acts and decisions of a Council may be signified by any member of the Council or by any officer in the service of the Community authorized by the Council in that behalf.

Questions as to Membership of the Assembly

9. (a) Any questions that may arise whether any person is an appointed member of the Assembly or whether any seat in the Assembly is vacant shall be determined by the Partner State responsible for the appointment in question.

(b) The Partner States shall notify the Chairman of the Assembly of every determination made under sub-paragraph (a) of this paragraph, and for the information of the Chairman shall forward to him a copy of the instrument of appointment of every appointed member of the Assembly.

Chairman of the Assembly

10. (a) The Chairman of the Assembly shall be appointed by the Authority, by instrument in writing.

(b) A person shall not be qualified to hold the office of Chairman of the Assembly if he is an appointed member of the Assembly, a member of the legislature of a Partner State, a member of a Board of Directors, an officer in the service of the Community, a servant of a Corporation, an officer in the service of the Government of a Partner State, or a director, alternate director or a servant of the Bank.

(c) The Chairman of the Assembly shall vacate his office—

- (i) upon the expiry of the period of office specified in his instrument of appointment;
- (ii) if he delivers his resignation in writing to the Secretary General for transmission to the Authority; or
- (iii) if he ceases to be qualified for appointment as Chairman.

(d) The Chairman of the Assembly may be removed from office by the Authority for inability to perform the functions of his office, whether arising from infirmity of mind or body or from any other cause, or for misbehaviour, but shall not otherwise be removed from office.

Invitation of persons to assist the Assembly

11. (a) The Chairman of the Assembly, at the request of the East African Ministers, shall invite any person to attend the Assembly, notwithstanding that he is not a member of the Assembly, if in the opinion of the East African Ministers the business before the Assembly renders his presence desirable.

(b) A person so invited shall be entitled to take part in the proceedings of the Assembly relating to the matters in respect of which he was invited as if he were a member of the Assembly, but he shall not have a right to vote in the Assembly.

Meetings of the Assembly

12. (a) The meetings of the Assembly shall be held at such times and places as the Authority may appoint.

(b) The Assembly shall meet at least once in every year and a period of twelve months shall not elapse between the commencement of the last meeting in any year and the first meeting in the following year.

Presiding in the Assembly

13. There shall preside at any sitting of the Assembly—

(a) the Chairman;

(b) in the absence of the Chairman, such member of the Assembly as the Authority may appoint; or

(c) in the absence of the Chairman or a person so appointed, such member as the Assembly may elect for the sitting.

Quorum and vacancies in the Assembly

14. (a) If, during any sitting of the Assembly, the attention of the person presiding is drawn to the fact that there are fewer than ten members present and if, after such interval as may be prescribed by the rules of procedure of the Assembly, the person presiding ascertains that there are present at the sitting fewer than ten members, he shall adjourn the Assembly.

(b) In reckoning the number of members who are present for the purposes of sub-paragraph (a) of this paragraph, the person presiding shall not be taken into account.

(c) The Assembly may transact business notwithstanding that there is a vacancy among its members, and the attendance or participation of any person not entitled to attend or participate in the proceedings of the Assembly shall not invalidate those proceedings.

Voting in the Assembly

15. (a) Subject to sub-paragraph (e) of this paragraph, all questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting.

(b) The Chairman of the Assembly, the Secretary General and the Counsel to the Community shall not be entitled to vote in the Assembly.

(c) When in the absence of a Chairman a member is presiding in the Assembly, the member presiding shall retain his right to vote.

(d) If the votes of the members are equally divided upon any motion before the Assembly, the motion shall be lost.

(e) A Bill for the amendment or repeal of the Court of Appeal for Eastern Africa Act 1962 shall not be passed in the Assembly unless it has received, on the second reading thereof, the votes of not less than two-thirds of all the members of the Assembly.

Bills and Motions in the Assembly

16. (a) Subject to the rules of procedure of the Assembly, any member may propose any motion or introduce any Bill in the Assembly:

Provided that a motion which does not relate to the functions of the Community shall not be proposed in the Assembly, and a Bill which does not relate to a matter with respect to which Acts of the Community may be enacted shall not be introduced into the Assembly.

(b) Except with the consent of the Authority, signified by an East African Minister, the Assembly shall not—

(i) proceed on any Bill, including an amendment to any Bill, that, in the opinion of the person presiding, makes provision for any of the following purposes—

(1) for the imposition of any charge upon any fund of the Community or any fund of a Corporation;

(2) for the payment, issue or withdrawal from any fund of the Community of any moneys not charged thereon or the increase in the amount of any such payment, issue or withdrawal; or

(3) for the remission of any debt due to the Community or a Corporation;

(ii) proceed upon any motion, including any amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the said purposes.

Rules of Procedure of the Assembly

17. The Authority may make, amend, add to or revoke rules governing the procedure of the Assembly (including the Standing Orders thereof).

Publication of Acts of the Community

18. The Authority shall cause every Act of the Community to be published in the Gazette.

Publication and commencement of rules and orders of the Authority

19. The Authority shall cause all rules and every order made by it under this Treaty to be published in the Gazette; and such rules or order shall come into force on the date of publication unless otherwise provided therein.

(Article 68)

ANNEX XII—INCOME OF COMPANIES ENGAGED IN
MANUFACTURING OR FINANCE BUSINESS

1. The expression “income of companies engaged in manufacturing or finance business” means income of companies engaged within the Partner States in the business of manufacturing and income of companies engaged within the Partner States in the business of finance, being in either case income which is chargeable at the corporation rate under the laws in force in the Partner States.

2. For the purpose of the definition in paragraph 1 of this Annex, a company is engaged in the business of manufacturing if it is a company whose major activity, in terms of gross revenue, falls within one of the classifications in List A hereunder.

3. For the purposes of paragraph 2 of this Annex, where the end-product of an earlier activity is used as the raw material of a later activity and the major part of the company's revenue is from the sale of the final production, the company shall be classified according to the activity at the final stage.

4. For the purpose of the definition in paragraph 1 of this Annex, a company is engaged in the business of finance if it is a company whose major activity in terms of gross revenue falls within any one of the classifications in List B hereunder.

LIST A

<i>Classifications</i>	<i>Examples of Activity</i>
(i) Food manufacturing industries (except beverages).	Includes slaughtering, dressing, packing and canning, manufacture of prepared feeds for animals and fowls, the manufacture of ice other than dry ice.
(ii) Beverage industries ..	Production of distilled spirits, wines, malt liquors, soft drinks and carbonated beverages.
(iii) Tobacco manufacture ..	
(iv) Manufacture of textiles ..	Preparation of fibre, manufacture and finishing of fabrics (including carpets, linoleum, artificial leather, ropes and twine, and water-proofing of fabrics). Also includes the manufacture of garments in knitting mills (e.g. hosiery).
(v) Manufacture of footwear, other wearing apparel and made up textile goods.	All types of footwear except vulcanized (which is included in (xi) manufacture of rubber products); all wearing apparel by cutting and sewing fabrics, leather, fur and other material, all made up textile goods.
(vi) Manufacture of wood and cork (except furniture).	Sawmills, manufacture of boxes, baskets, ladders and coffins.
(vii) Manufacture of furniture ..	Includes furniture for households, offices and restaurants.
(viii) Manufacture of pulp, paper and paperboard.	
(ix) Printing, publishing and allied industries.	Includes bookbinding, engraving and etching.
(x) Manufacture of leather and leather and fur products, except footwear and other wearing apparel.	Tanning of hides, preparation of furs, manufacture of fur and skin, rugs, handbags, saddlery.
(xi) Manufacture of rubber products.	Natural and synthetic rubber; tubes, tyres, vulcanized footwear.
(xii) Manufacture of chemical and chemical products.	Basic chemicals, dyes, vegetable and animal oils and fats, paints, soap, ink, matches, insecticides (except lard and other edible fats from livestock).
(xiii) Manufacture of products of petroleum and coal.	Petroleum refineries and other manufacturers of products from petroleum and coal.
(xiv) Manufacture of non-metallic mineral products (except petroleum and coal).	Pottery, cement, bricks, glass, china, etc.
(xv) Basic metal industries ..	All processes from smelting to the semi-finished stage in rolling mills and foundries.
(xvi) Manufacture of metal products except machinery and transport equipment.	Cutlery, hand tools, hardware, bolts and nuts; enamelling, galvanizing, blacksmithing and welding.

LIST A—(Contd.)

<i>Classifications</i>	<i>Examples of Activity</i>
(xvii) Manufacture of machinery except electrical machinery.	Tractors, refrigerators, air-conditioning units, sewing machines, typewriters.
(xviii) Manufacture of electrical machinery, apparatus, appliances and supplies.	All machinery and apparatus for the generation, storage and transmission of electricity; vacuum cleaners, etc., insulated wire and cable, radios, electric lamps, etc.
(xix) Manufacture of transport equipment.	Does not include tyres and tubes (xi), agricultural and road building tractors (xvii), aeronautical instruments (xx).
(xx) Miscellaneous manufacturing industries.	Scientific instruments, photographic and optical goods, watches and clocks, jewellery, musical instruments, lamp shades, tobacco pipes and cigarette holders, advertising displays, moulded or extruded plastic products.

LIST B

(i) Banks and other financial institutions.	Banks, credit companies, investment companies.
(ii) Insurance	Insurance carriers of all kinds, life, fire, accident, etc., insurance agents and brokers.

(Article 55 and 73)

ANNEX XIII—CONTROL OF THE CORPORATIONS

PART A—THE EAST AFRICAN POSTS AND TELECOMMUNICATIONS CORPORATION

The Director-General

1. It shall be the duty of the Director-General—

- (a) to conduct and manage, subject to the direction of the Board of Directors, the business and operations of the Corporation;
- (b) to keep the Board fully informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (c) to submit to the Board annual estimates of revenue and expenditure; and
- (d) to submit annually a draft statement of accounts and a draft report for the consideration of the Board.

2. Subject to this Treaty and to the direction of the Board of Directors, the Director-General may—

- (a) establish and operate postal and telecommunications services and services, including agency services for the Partner States, which may conveniently be performed in association therewith;
- (b) regulate and control radio communications;
- (c) approve recurrent expenditure within limits which shall be determined by the Board;
- (d) approve any individual capital work of which the estimated cost does not exceed 100,000 Uganda shillings or such other sum as the Authority may, by order, determine;

- (e) approve any alteration in salaries or other conditions of service not involving expenditure in excess of the limits determined by the Board;
- (f) approve any alteration in the establishment other than an alteration involving a major reorganization or a substantial reduction in the number of employees;
- (g) if required by a Partner State, manage its Post Office Savings Bank;
- (h) allocate functions and delegate powers to officers of the Corporation; and
- (i) perform the duties and exercise the powers imposed on or vested in him by any Act of the Community.

The Board of Directors

3. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, it shall be the duty of the Board of Directors—

- (a) to provide postal and telecommunications services and services, including agency services for the Partner States, which may conveniently be performed in association therewith;
- (b) to regulate and control radio communications;
- (c) to determine policy regarding all the operations of the Corporation and to ensure the application of that policy;
- (d) to keep the Communications Council informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (e) to approve annual estimates of revenue and expenditure;
- (f) if required by a Partner State, to manage its Post Office Savings Bank;
- (g) to establish a General Purposes Committee from among its members; and
- (h) to publish the tariffs charged by the Corporation and the rules made by the Board of Directors.

4. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, the Board of Directors may—

- (a) approve any alteration in the tariff of a service which would not affect the gross revenue of the service concerned to an extent greater than two per cent;
- (b) approve any alteration in salaries or other conditions of service of employees other than an alteration which would require a tariff increase of more than two per cent in the service concerned;
- (c) approve any individual capital work of which the estimated cost does not exceed 2,000,000 Uganda shillings or such other sum as the Authority may, by order, determine;
- (d) delegate functions to its General Purposes Committee;
- (e) consider legislative proposals and recommend their enactment;

- (f) refuse to provide a new service in a Partner State at a rate or charge which is insufficient to meet the costs involved in the provision of such service, unless the Partner State undertakes to make good the amount of the loss incurred by the provision of such service;
- (g) approve any alteration in the organization or establishment which is beyond the competence of the Director-General; and
- (h) give directions to the Director-General.

The Communications Council

5. It shall be the responsibility of the Communications Council—
- (a) to receive and consider the information concerning the Corporation provided by the Board of Directors, and upon being consulted by the Board to assist it with advice or directions;
 - (b) to give to the Board of Directors directions of a general nature on matters of policy;
 - (c) to give effect to the directions of the Authority;
 - (d) to consider and approve the development plan and associated loan programme of the Corporation; and
 - (e) to consider and approve in principle legislative proposals submitted by the Board of Directors.
6. Subject to this Treaty and to any directions which may be given to the Communications Council by the Authority, the Communications Council may—
- (a) give directions of a general nature to the Board of Directors;
 - (b) approve any alteration in the tariff of a service which is beyond the competence of the Board of Directors;
 - (c) approve any alteration in salaries or other conditions of service of employees of the Corporation which is beyond the competence of the Board of Directors; and
 - (d) approve any individual capital work of which the estimated cost exceeds 2,000,000 Uganda shillings or such other sum as the Authority may, by order, determine.

The Authority

7. Subject to this Treaty and to any Act of the Community, the Authority shall be responsible for the general direction and control of the Corporation.

8. The Authority may—

- (a) give directions of a general nature to the Communications Council; and
- (b) determine matters referred to it by the Communications Council.

Interpretation

9. In this Part, except where the context otherwise requires, "service" means postal service, telephone service or telegraph service.

PART B—THE EAST AFRICAN RAILWAYS CORPORATION

The Director-General

1. It shall be the duty of the Director-General—

- (a) to conduct and manage, subject to the direction of the Board of Directors, the business and operations of the Corporation;
- (b) to keep the Board fully informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (c) to submit to the Board annual estimates of revenue and expenditure; and
- (d) to submit annually a draft statement of accounts and a draft report for the consideration of the Board.

2. Subject to this Treaty and to the direction of the Board of Directors, the Director-General may—

- (a) establish and operate services and facilities relating to rail, road and inland waterways transport and inland waterways ports;
- (b) approve recurrent expenditure within limits which shall be determined by the Board;
- (c) approve any individual capital work of which the estimated cost does not exceed 400,000 Kenya shillings or such other sum as the Authority may, by order, determine;
- (d) approve any alteration in salaries or other conditions of service not involving expenditure in excess of the limits imposed by the Board;
- (e) approve any alteration in the establishment other than an alteration involving a major re-organization or a substantial reduction in the number of employees;
- (f) allocate functions and delegate powers to officers of the Corporation; and
- (g) perform the duties and exercise the powers imposed on or vested in him by any Act of the Community.

The Board of Directors

3. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, it shall be the duty of the Board of Directors—

- (a) to determine policy regarding all the operations of the Corporation and to ensure the application of that policy;
- (b) to keep the Communications Council informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (c) to approve annual estimates of revenue and expenditure;
- (d) to establish a General Purposes Committee from among its members; and
- (e) to publish the tariff of rates, fares and other charges made by the Corporation and the rules made by the Board of Directors.

4. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, the Board of Directors may—

- (a) approve any minor alteration in the tariff of rates, fares and other charges;
- (b) approve any minor alteration in salaries or other conditions of service of employees;
- (c) approve any individual capital work, not included within a programme of works approved by the Communications Council, of which the estimated cost does not exceed 5,000,000 Kenya shillings or such other sum as the Authority may, by order, determine;
- (d) delegate functions to its General Purposes Committee;
- (e) consider legislative proposals and recommend their enactment;
- (f) refuse to provide new transport services or inland waterways facilities in a Partner State at a rate or charge which is insufficient to meet the costs involved in the provision of such services or facilities, unless the Partner State undertakes to make good the amount of the loss incurred by the provision of such services or facilities;
- (g) approve any alteration in the organization or establishment which is beyond the competence of the Director-General; and
- (h) give directions to the Director-General.

The Communications Council

5. It shall be the responsibility of the Communications Council—

- (a) to receive and consider the information concerning the Corporation provided by the Board of Directors, and upon being consulted by the Board to assist it with advice or directions;
- (b) to give to the Board of Directors directions of a general nature on matters of policy;
- (c) to give effect to the directions of the Authority;
- (d) to consider and approve the development plan and associated loan programme of the Corporation; and
- (e) to consider and approve in principle legislative proposals submitted by the Board of Directors.

6. Subject to this Treaty and to any directions which may be given to the Communications Council by the Authority, the Communications Council may—

- (a) give directions of a general nature to the Board of Directors;
- (b) approve any major alteration in the tariff of rates, fares and other charges;
- (c) approve any major alteration in salaries or other conditions of service of employees of the Corporation;
- (d) approve any individual capital work of which the estimated cost exceeds 5,000,000 Kenya shillings or such other sum as the Authority may, by order, determine; and

- (e) give directions to the Board of Directors concerning any matter of policy involving agreement with, or the interests of, a foreign country.

The Authority

7. Subject to this Treaty and to any Act of the Community, the Authority shall be responsible for the general direction and control of the Corporation.

8. The Authority may—

- (a) give directions of a general nature to the Communications Council; and
 (b) determine matters referred to it by the Communications Council.

General

9. If there is a difference of opinion between the Communications Council and the Board of Directors concerning what constitutes a minor or a major alteration in the tariff of rates, fares and other charges, or a minor or major alteration in salaries or other conditions of service of the employees of the Corporation, the difference shall be referred to the Authority to be resolved.

PART C—THE EAST AFRICAN HARBOURS CORPORATION

The Director-General

1. It shall be the duty of the Director-General—

- (a) to conduct and manage, subject to the direction of the Board of Directors, the business and operations of the Corporation;
 (b) to keep the Board fully informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
 (c) to submit to the Board annual estimates of revenue and expenditure; and
 (d) to submit annually a draft statement of accounts and a draft report for the consideration of the Board.

2. Subject to this Treaty and to the direction of the Board of Directors, the Director-General may—

- (a) establish and operate harbour services and facilities (other than inland waterways ports);
 (b) approve recurrent expenditure within limits which shall be determined by the Board;
 (c) approve any individual capital work of which the estimated cost does not exceed 400,000 Tanzania shillings or such other sum as the Authority may, by order, determine;
 (d) approve any alteration in salaries or other conditions of service not involving expenditure in excess of the limits imposed by the Board;

- (e) approve any alteration in the establishment other than an alteration involving a major reorganization or a substantial reduction in the number of employees;
- (f) allocate functions and delegate powers to officers of the Corporation; and
- (g) perform the duties and exercise the powers imposed on or vested in him by any Act of the Community.

The Board of Directors

3. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, it shall be the duty of the Board of Directors—

- (a) to determine policy regarding all the operations of the Corporation and to ensure the application of that policy;
- (b) to keep the Communications Council informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (c) to approve annual estimates of revenue and expenditure;
- (d) to establish a General Purposes Committee from among its members; and
- (e) to publish the tariff of rates and other charges made by the Corporation and the rules made by the Board of Directors.

4. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, the Board of Directors may—

- (a) approve any minor alteration in the tariff of rates and other charges;
- (b) approve any minor alteration in salaries or other conditions of service of employees;
- (c) approve any individual capital work, not included within a programme of works approved by the Communications Council, of which the estimated cost does not exceed 5,000,000 Tanzania shillings or such other sum as the Authority may, by order, determine;
- (d) delegate functions to its General Purposes Committee;
- (e) consider legislative proposals and recommend their enactment;
- (f) refuse to provide new harbour services or facilities in a Partner State at a rate or charge which is insufficient to meet the costs involved in the provision of such services or facilities, unless the Partner State undertakes to make good the amount of the loss incurred by the provision of such services or facilities;
- (g) approve any alteration in the organization or establishment which is beyond the competence of the Director-General; and
- (h) give directions to the Director-General.

The Communications Council

5. It shall be the responsibility of the Communications Council—

- (a) to receive and consider the information concerning the Corporation provided by the Board of Directors, and upon being consulted by the Board to assist it with advice or directions;
- (b) to give to the Board of Directors directions of a general nature on matters of policy;
- (c) to give effect to the directions of the Authority;
- (d) to consider and approve the development plan and associated loan programme of the Corporation; and
- (e) to consider and approve in principle legislative proposals submitted by the Board of Directors.

6. Subject to this Treaty and to any directions which may be given to the Communications Council by the Authority, the Communications Council may—

- (a) give directions of a general nature to the Board of Directors;
- (b) approve any major alteration in the tariff of rates and other charges;
- (c) approve any major alteration in salaries or other conditions of service of employees of the Corporation;
- (d) approve any individual capital work of which the estimated cost exceeds 5,000,000 Tanzania shillings or such other sum as the Authority may, by order, determine; and
- (e) give directions to the Board of Directors concerning any matter of policy involving agreement with or the interests of a foreign country.

The Authority

7. Subject to this Treaty and to any Act of the Community, the Authority shall be responsible for the general direction and control of the Corporation.

8. The Authority may—

- (a) give directions of a general nature to the Communications Council; and
- (b) determine matters referred to it by the Communications Council.

General

9. If there is a difference of opinion between the Communications Council and the Board of Directors concerning what constitutes a minor or a major alteration in the tariff of rates and other charges, or a minor or major alteration in salaries or other conditions of service of the employees of the Corporation, the difference shall be referred to the Authority to be resolved.

PART D—THE EAST AFRICAN AIRWAYS CORPORATION

The Director-General

1. It shall be the duty of the Director-General—

- (a) to conduct and manage, subject to the direction of the Board of Directors, the business and operations of the Corporation;
- (b) to keep the Board fully informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (c) to submit to the Board annually a programme of services and financial estimates for the ensuing year; and
- (d) to submit to the Board, in respect of every five-year period in the operations of the Corporation, a draft development plan including estimates of expected traffic growth, proposals for the development of air routes and for the use and operation of aircraft, and estimates of probable revenue and expenditure.

2. Subject to this Treaty and to the direction of the Board of Directors, the Director-General may—

- (a) establish and operate air transport services, and facilities relating thereto, within the Partner States and elsewhere;
- (b) approve recurrent expenditure within limits which shall be determined by the Board;
- (c) approve any individual capital work of which the estimated cost does not exceed 200,000 Kenya shillings or such other sum as the Authority may, by order, determine;
- (d) approve any alteration in salaries or other conditions of service not involving expenditure in excess of the limits imposed by the Board.
- (e) approve any alteration in the establishment other than an alteration involving a major re-organization or a substantial reduction in the number of employees;
- (f) allocate functions and delegate powers to officers of the Corporation; and
- (g) perform the duties and exercise the powers imposed on or vested in him by any Act of the Community.

The Board of Directors

3. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, it shall be the duty of the Board of Directors—

- (a) to provide air transport services, and facilities relating thereto, within the Partner States and elsewhere;
- (b) to determine policy governing the operation of the Corporation;
- (c) to keep the Communications Council informed of the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;

- (d) to approve the annual programme of services and the financial estimates submitted by the Director-General;
- (e) to prepare in respect of every five-year period in the operations of the Corporation a development plan, including estimates of expected traffic growth, proposals for the development of air routes and for the use and operation of aircraft, and estimates of probable revenue and expenditure for submission to the Communications Council;
- (f) to submit to the Communications Council for approval any proposals affecting tariff policies in respect of international air services, which the Corporation wishes to put forward to the International Air Transport Association;
- (g) to submit to the Communications Council for approval any proposals for an alteration in the tariff of rates, fares and other charges in respect of air transport services provided within the Partner States; and
- (h) to give effect to any directions given to it by the Authority.

4. Subject to this Treaty and to any directions of a general nature which may be given to the Board of Directors by the Communications Council, the Board of Directors may—

- (a) approve any minor alteration in the tariff of rates, fares and other charges in respect of any service or facility, other than an air transport service provided within the Partner State;
- (b) approve any minor alteration in salaries or other conditions of service of employees;
- (c) approve any individual capital work, not included within a development programme approved by the Communications Council or by the Authority, of which the estimated cost does not exceed 5,000,000 Kenya shillings or such other sum as the Authority may, by order, determine;
- (d) consider legislative proposals and recommend their enactment;
- (e) provide services or facilities requested by a Partner State so however that where the amount of the fares or other charges able to be recovered by the Corporation in respect of such services or facilities is less than the cost thereof, the Corporation shall not be obliged to provide such services or facilities unless that Partner State undertakes to make good the amount of such loss;
- (f) approve any alteration in the organization or establishment of the Corporation which is beyond the competence of the Director-General; and
- (g) give policy directions to the Director-General.

The Communications Council

5. It shall be the responsibility of the Communications Council—

- (a) to receive and consider the information concerning the Corporation provided by the Board of Directors, and upon being consulted by the Board to assist it with advice or directions;
- (b) to give to the Board of Directors directions of a general nature on matters of policy;
- (c) to keep the Authority informed about the affairs of the Corporation, and to consult it where appropriate and give effect to its directions;
- (d) to consider and approve in principle legislative proposals submitted by the Board of Directors.

6. Subject to this Treaty and to any directions which may be given to the Communications Council by the Authority, the Communications Council may—

- (a) give directions of a general nature to the Board of Directors;
- (b) approve any alteration in the tariff of rates, fares and other charges in respect of air transport services provided within the Partner States;
- (c) approve any tariff proposals, in respect of international air services, which the Corporation wishes to put forward to the International Air Transport Association;
- (d) approve the annual programme of services and the financial estimates of the Corporation;
- (e) approve, in respect of every five-year period in the operations of the Corporation, the development plan submitted to it by the Board of Directors;
- (f) approve any major alteration in salaries or other conditions of service of employees of the Corporation;
- (g) approve any individual capital work of which the estimated cost exceeds 5,000,000 Kenya shillings or such other sum as the Authority may, by order, determine; and
- (h) give directions to the Board of Directors concerning any matter of policy involving agreement with, or the interests of, a foreign country.

The Authority

7. Subject to this Treaty and to any Act of the Community, the Authority shall be responsible for the general direction and control of the Corporation.

8. The Authority may—

- (a) give directions of a general nature to the Communications Council;
- (b) give directions to the Board of Directors as to the exercise and performance of the functions of the Corporation in relation to any matter which appears to the Authority to affect the public interest; and

- (c) determine matters referred to it by the Communications Council or by the Board of Directors.

General

9. If there is a difference of opinion between the Communications Council and the Board of Directors concerning what constitutes a minor or a major alteration in the tariff of rates, fares and other charges or a minor or major alteration in salaries or other conditions of service of the employees of the Corporation, the difference shall be referred to the Authority to be resolved.

Interpretation

10. In this Part, unless the context otherwise requires—

“air transport services and facilities relating thereto” includes, without prejudice to the generality of the expression, air transport services and services for the provision of hotel and catering facilities, for the carriage of passengers to and from airports and aerodromes, and for the collection, delivery and storage of baggage and freight;

“air transport services” means services for the transport of passengers or freight by air;

“international air services” means air transport services provided to or from any place outside the Partner States.

(Article 86)

ANNEX XIV—DECENTRALIZATION AND RELATED MEASURES

PART A—SERVICES ADMINISTERED BY THE COMMUNITY

The East African Customs and Excise Department

1. (a) There shall be appointed for each Partner State a Commissioner of Customs and Excise who shall be an officer in the service of the Community.

(b) There shall be a Commissioner-General of the East African Customs and Excise Department who shall, subject to this Treaty and to any law, have the general control of the Department.

(c) Subject to the general control of the Commissioner-General, a Commissioner of Customs and Excise shall control the operations of the Department, including revenue collection, within the Partner State for which he is Commissioner, and shall have the duty to supply the Minister responsible for finance of that Partner State with such information, including statistical information, as may be required from time to time by that Minister.

(d) Notwithstanding sub-paragraph (c) of this paragraph, the Commissioner-General shall retain control over functions which are necessary to ensure effective co-ordination in the three Partner States.

The East African Income Tax Department

2. (a) There shall be appointed for each Partner State a Commissioner of Income Tax who shall be an officer in the service of the Community.

(b) There shall be a Commissioner-General of the East African Income Tax Department who shall, subject to this Treaty and to any law, have the general control of the Department.

(c) Subject to the general control of the Commissioner-General, a Commissioner of Income Tax shall control the operations of the Department, including revenue collection, within the Partner State for which he is Commissioner, and shall have the duty to supply the Minister responsible for finance of that Partner State with such information, including statistical information, as may be required from time to time by that Minister.

(d) Notwithstanding sub-paragraph (c) of this paragraph, the Commissioner-General shall retain control over functions which are necessary to ensure effective co-ordination in the three Partner States.

Directorate of Civil Aviation

3. (a) There shall be appointed for each Partner State a Director of Civil Aviation who shall be an officer in the service of the Community.

(b) There shall be a Director-General of Civil Aviation who shall, subject to this Treaty and to any law, have the general control of the Directorate.

(c) The Director of Civil Aviation for a Partner State shall be responsible to the Director-General but shall have as much control of the operations of the Directorate as is practical within the territory of the Partner State for which he is Director.

(d) The area of control of each Director shall be determined by the Director-General and need not correspond exactly with the territorial boundaries of the Partner States.

(e) In accordance with a programme to be agreed by the East African Ministers, Sub-Flight Information Centres shall be established at Dar es Salaam and Entebbe to handle air movements, in Tanzania and Uganda respectively, below flight level 145 as from time to time determined in accordance with the rules for international air navigation of the International Civil Aviation Organization.

(f) The programme referred to in sub-paragraph (e) of this paragraph shall give priority to the establishment of the Sub-Flight Information Centre at Dar es Salaam.

East African Meteorological Department

4. (a) The operations of the Department shall in each Partner State be placed under the control of a senior officer in the service of the Community.

(b) Each of the senior officers responsible for the operations of the Department in a Partner State shall have comparable status and responsibilities and their functions and the services which they control shall be gradually developed in accordance with the availability of staff and finance.

PART B—THE CORPORATIONS

The East African Railways Corporation

1. (a) Strong and functionally comparable regional railway headquarters, including revenue and accounting services, shall be established in Dar es Salaam, Kampala and Nairobi.

(b) The Board of Directors and the Communications Council shall, when considering the capital development programme of the Corporation, give a high priority to sanctioning expenditure to enable—

- (i) Mwanza to become the operating headquarters of the inland marine services (but the workshops and dockyard shall remain at Kisumu);
- (ii) diesel locomotive facilities and carriage and wagon depots to be established in Uganda.

(c) The Board of Directors and the Communications Council shall, within sensible operating and financial parameters and for an initial period to be agreed, give preference to Tanzania and to Uganda in establishing new services and facilities.

(d) The Board of Directors and the Communications Council shall give consideration to the initiation of a preliminary economic and engineering survey of a possible new line of communication between Musoma, Arusha and Tanga.

The East African Harbours Corporation

2. The Board of Directors and the Communications Council shall, when considering the capital development programme of the Corporation, give special consideration to the development of harbours in Tanzania.

The East African Posts and Telecommunications Corporation

3. (a) Strong and functionally comparable regional headquarters, including revenue and accounting services, shall be established in Dar es Salaam, Kampala and Nairobi.

(b) The implementation of sub-paragraph (a) of this paragraph shall involve a measure of devolution of functions from the headquarters of the Corporation to the regional headquarters in each Partner State and there shall be a corresponding adjustment of establishments.

The East African Airways Corporation

4. The Board of Directors and the Communications Council shall ensure that future development should, so far as possible, be sited in Uganda and Tanzania, the first priority being given to development in Uganda, and in particular that—

- (i) a workshop be established in Uganda for the overhaul of all Pratt and Whitney piston engines; and
- (ii) the maintenance and overhaul base for Friendship, Dakota and other piston-engined aircraft be transferred to Entebbe.

(Article 90)

ANNEX XV—TRANSITIONAL PROVISIONS

1. The amounts collected by the East African Income Tax Department and the East African Customs and Excise Department which immediately before the coming into force of this Treaty fall to be paid to the Distributable Pool Fund of the Common Services Organization but have not been so paid, shall, upon the coming into force of this Treaty, be paid to the Distributable Pool Fund of the Community.

2. Until rules governing the procedure of the Assembly are made under paragraph 17 of Annex XI to this Treaty, the Standing Orders of the Central Legislative Assembly, established by Article 16 of the Constitution of the Common Services Organization, shall apply for regulating the procedure of the Assembly with such modifications as the Authority may prescribe by order published in the Gazette of the Community.

3. The Service Commission established by Article 62 of this Treaty shall assume its functions under this Treaty on such date as may be appointed by the Authority by notice published in the Gazette of the Community and until that date those functions shall be performed by the Secretary General.

4. Upon the coming into force of this Treaty, the Secretary General and the Legal Secretary of the Common Services Organization shall assume the offices of Secretary General of the Community and Counsel to the Community respectively and shall be deemed to have been appointed thereto under Article 63 of this Treaty.

5. Until provision is made by Act of the Community for the salary of an office to which Article 69 of this Treaty applies there shall be paid to the holder of that office such salary as shall be determined by the Authority.

6. Until the Assembly first meets after the coming into force of this Treaty, the Authority may, in anticipation of the enactment of an Appropriation Act in accordance with Article 66 of this Treaty and notwithstanding the provisions of that Article, authorize money to be paid from the General Fund for any purpose for which the Assembly might lawfully appropriate money in accordance with this Treaty in any case where the payment of such money is not already provided for in any law.

7. References—

(a) in sub-paragraph (a) of paragraph 5 of Article 82 of this Treaty to a charge upon the funds of the East African Posts and Telecommunications Corporation shall, in respect of any period commencing on the day of the coming into force of this Treaty and ending on the day of the establishment of that Corporation, be construed as references to a charge upon the Posts and Telecommunications Fund; and

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(b) in sub-paragraph (b) of paragraph 5 of Article 82 of this Treaty, to a charge upon the funds of the East African Railways Corporation or of the East African Harbours Corporation shall, in respect of any period commencing on the day of the coming into force of this Treaty and ending on the day of the establishment of those Corporations, be construed as references to a charge upon the Railways and Harbours Fund.

DONE at Kampala, Uganda, on the sixth day of June, in the year one thousand nine hundred and sixty-seven.

IN FAITH WHEREOF the undersigned have placed their signatures at the end of this Treaty and the Annexes thereto.

*For the Government of
the United Republic of
Tanzania*

*For the Government of
the Sovereign State of
Uganda*

*For the Government of
the Republic of
Kenya*

JULIUS K. NYERERE
President

A. MILTON OBOTE
President

JOMO KENYATTA
President