

**AFRICAN DEVELOPMENT BANK SHARE TRANSFER
RULES**

2010

AFRICAN DEVELOPMENT BANK

BOARD OF GOVERNORS

Resolution B/BG/2010/12

Adopted at the First Sitting of the Forty-Fifth Annual Meeting
of the African Development Bank, on 27 May 2010

Amendment to the Share Transfer Rules of the African Development Bank

THE BOARD OF GOVERNORS,

HAVING REGARD to:

1. The Agreement Establishing the African Development Bank (the "Bank Agreement"), in particular Articles 1 (Purpose), 2 (Functions), 3 (Members and Geographical Area), 5 (Authorized Capital), 6 (Subscription of Shares), 7 (Payment of Subscription) and 29 (Board of Governors: Powers);
2. The Revised Share Transfer Rules adopted in 2000, pursuant to Resolution B/BG/Extra/2000/04 of the Board of Governors at the First Plenary Session of the Third Extra-Ordinary Meeting of the Board of Governors on 29 May 2000 (the "Rules"); and
3. Resolution B/BG/2010/11 authorizing the Sixth General Capital Increase of the Bank (the "GCI-VI Resolution");

HAVING CONSIDERED the Report of the Governors' Consultative Committee (GCC) of the African Development Bank (the "Bank") on the Review of the 2000 Share Transfer Rules of the Bank, as set forth in Document ADB/BG/WP/2010/14 (the "Report");

HEREBY ADOPTS the amended Share Transfer Rules attached as Annex I to the Report (the "Share Transfer Rules");

HEREBY DECIDES that the Share Transfer Rules as amended pursuant to this Resolution shall enter into force on the same date as the date of entry into force of the GCI-VI Resolution, and shall supersede all other previous Share Transfer Rules of the Bank.

RULE I: APPLICATION

The rules contained herein shall be referred to as the “Share Transfer Rules of the African Development Bank” and shall govern the re-allocations or transfers of Shares except where, in the case of Shares created after the entry into force of these Rules, the Resolution creating such Shares provides otherwise.

RULE II: DEFINITIONS

The following terms whenever used herein shall have the following meanings unless otherwise provided or required by the context:

“Bank” shall mean the African Development Bank;

“Bank Agreement” shall mean the Agreement establishing the Bank, as amended from time to time;

“Capital Stock” shall mean the authorized capital stock of the Bank, as defined in Article 5 of the Bank Agreement;

“Forfeited Shares” shall mean Shares which were subscribed in accordance with the terms of the Resolution creating such Shares, in respect of which the Bank shall not have received:

- (i) payment by the date on which such Shares shall become generally available for subscription by other members, as provided in the Resolution creating the Share or if not provided therein, by the date which is the one hundred and twentieth (120th) day following the due date for the relevant payment for all Shares issued under all General Capital Increases to which these Rules apply; or
- (ii) in the case of Qualified Shares, the written advice of the Member that it has obtained the budgetary appropriation for the payment of the Shares, by the date on which the Shares shall become generally available for subscription by other Members, as provided in the Resolution creating the Shares or by the date which is the one hundred and twentieth (120th) day following the due date for the relevant payment for all Shares issued under all General Capital Increases to which these Rules apply;

These Shares shall also be referred to as “Renounced Shares”.

“GCI” shall mean any general increase in the capital stock of the Bank from which Shares become available for re-allocation under these Rules.

“IMF” shall mean the International Monetary Fund located In Washington, D.C., United States of America or any successor institution;

“IMF Quota” shall mean the capital subscription paid by each member country at the IMF, and shall include the member country’s initial quota and any additions during quota revision exercises;

“Member” shall mean a member of the Bank;

“Participation Index” shall mean the ratio of a Member’s current relative shareholding in the Bank and its relative economic capacity as measured by applying the IMF Quota;

“Qualified Shares” shall mean Shares which in accordance with terms of the Resolution creating such Shares are subscribed pursuant to an Instrument of Subscription containing a qualification that payment for the relevant part of the subscription shall be subject to enactment by the legislature of the Member of the necessary budgetary and appropriation legislation;

“Share” shall mean shares of the Capital Stock of the Bank;

“Share Deals Account” shall mean the account created in the books of the Bank, pursuant to paragraph 4.1 below, for the deposit of an amount from the reserves of the Bank equivalent to the par value of Treasury Shares created and transferred to the Bank;

“Share Transfer Rules” or “Rules” shall mean the rules contained herein, as may be amended from time to time;

“Treasury Shares” shall mean Forfeited Shares which are deemed to have been transferred to the Bank pursuant to Article 6 of the Bank Agreement and on the terms and conditions provided in paragraph 4.1 herein;

“Unallocated Shares” shall mean Shares which in accordance with the terms of the Resolution creating such shares have not been allocated to a Member; and

“Unsubscribed Shares” shall refer collectively to Unallocated Shares, Forfeited Shares, and any Shares which have been allocated or for which notification to subscribe has been issued, and not accepted by the end of the period provided in the Resolution creating such Shares.

RULE III: RENUNCIATION OF SUBSCRIPTION

The subscription to any Share is automatically renounced on the day that is one hundred and twenty (120) days following the due date for payment of such Share or (a) as specified by the Resolution creating the Share or (b) the terms of the transfer notice for such Share if the Bank has not received the payment for the Share by such due date, or in the case of Qualified Shares, if the Bank has not received by such due date the written notice of the Member advising that the Member has obtained the budgetary and appropriations legislation necessary for the payment of such Shares.

RULE IV: TREASURY SHARES

- 4.1. Treasury Shares shall be created and transferred to the Bank only in the event that:
- (i) at the time of their creation, there is no Member with an outstanding and unsatisfied offer for additional Shares; or
 - (ii) the Board of Directors authorizes, subject to paragraph 4.4 below, the transfer to a Share Deals Account to be created for such purpose, of an amount of the reserves of the Bank equivalent to the par value of the Shares so transferred; or
 - (iii) the Board of Directors, taking into due account the authorized capital of the Bank, authorizes the President of the Bank to treat the Shares to be transferred to the Bank as Unsubscribed Shares; in which event the value of such Shares shall be deducted from the statement of the Bank's capital subscriptions and the fact of such deduction conspicuously stated and explained in the Bank's financial statements for the quarter in which such deduction was effected.
- 4.2. Following the creation of Treasury Shares, as provided herein, the Bank shall issue two new share certificates: (i) the first certificate shall state the reduced number of shares held by the relevant Member subsequent to the renunciation of its Shares, and shall be transmitted to the Member, and (ii) the second certificate shall state the number of Shares transferred to the Bank, and shall be held by the President of the Bank.
- 4.3. Voting rights or other rights of shareholders granted by the Bank Agreement shall not be exercisable by or on behalf of the Bank in respect of Treasury Shares.
- 4.4. The aggregate amount of reserves transferred to the Share Deals Account and retained therein shall not exceed the sum of thirty per cent (30%) of the total reserves and surplus of the Bank. Any amount transferred from the Share Deals Account as a result of the sale or cancellation of an equivalent value of Treasury Shares shall be credited to the source from which it was originally transferred to the Share Deals Account.
- 4.5. Treasury Shares shall be held by the President for maximum initial period of two years. At the end of each two-year period, the Board of Directors shall advise the Board of Governors of the level of the resources in the Share Deals Account and the advisability of the cancellation of the Treasury Shares held thereon.

RULE V: REALLOCATION OF UNSUBSCRIBED SHARES AND TREASURY SHARES

- 5.1. All unsubscribed Shares and Treasury Shares Shall be generally available for subscription in accordance with these Rules.

- 5.2 The Bank shall submit to the Members, together with the statements on the subscriptions to the Capital Stock and the voting rights of Members each time there are enough Shares available for re-allocation under these Rules, a report on the Shares that are available for subscription, in accordance with paragraph 5.1 above. Members shall thereafter submit a request for subscription of such Shares.
- 5.3 Provided that there is a demand to subscribe therefor, the Board of Directors shall, at the expiry of every financial year or at such other times that sufficient Shares exist for re-allocation under these Rules, make an allocation of all Unsubscribed and Treasury Shares.
- 5.4 Unsubscribed Shares shall not be allocated unless all Treasury Shares have been allocated; and no proposal shall be made to increase the capital of the Bank to provide for the admission of a new Member, regional or non-regional, unless all Unsubscribed Shares and Treasury Shares which may be subscribed by such new Member have been allocated to the new Member, and in the event of any shortfall after such allocation, the proposal to increase the Capital Stock of the Bank shall be limited to the amount required to make up for such shortfall and the corresponding amount of stock required to maintain the ratio of regional and non-regional stock prescribed by Article 5 (4) of the Bank Agreement.
- 5.5 In the allocation of Shares, the Board of Directors shall observe the following rules and order of priority:
- (i) Countries applying to become new Members of the Bank;
 - (ii) (a) 60% of any re-allocable Shares to eligible Members in accordance with their pro-rata or pre-emptive rights; and
 - (b) The remaining 40% of re-allocable Shares to eligible Members in accordance with the Participation Index as defined in these Rules; provided that first priority shall be given to Members with a Participation Index below 1.0, the next priority to Members with a Participation Index above 1.0 and so forth till Shares available for re-allocation under these Rules are exhausted.
- In the event of multiple requests for allocations under priority (ii)(b) above, the Board of Directors will allocate the available Shares to Members on the basis of the inverse proportion of their respective Participation Indices relative to other eligible applicants within the same group, regional or non-regional.
- 5.6 Notwithstanding paragraph 5.5 (ii)(b) above and the number of Shares requested, no Member may receive a re-allocation of Shares under these Rules which would result in that Member's Participation Index exceeding 2.
- 5.7 A Member may not receive an allocation under these Rules unless such Member shall have made all payments due in respect of previously issued Shares.

- 5.8 Shares transferred from regional Members or otherwise available for subscription by regional Members, shall be reserved for allocation to regional Members only; and Shares transferred from non-regional Members or otherwise available for subscription by non-regional Members, shall be reserved for allocation to non-regional Members.
- 5.9 The modalities for the calculation of the Participation Index as defined in these Rules shall be reviewed every three years.

RULE VI: PAYMENT

- 6.1 All Shares allocated pursuant to these Rules shall be subscribed and paid for, within one hundred and twenty (120) days of the allocation being communicated by the Bank to the Members to whom the allocation is made. Failing such payment, the said allocation shall immediately lapse and the Shares shall resume the character they had on the date of their allocation pursuant to these Rules.
- 6.1.1 In furtherance of the policy objectives of these Rules and in order to enable the Bank to constantly preserve paid-in capital level, Shares re-allocated pursuant to paragraph 6.1 above shall be paid for in two instalments when subscribed under these Rules as follows:
- 50% of the total amount due, 120 days following the notification of allocation of shares to the Member country; and
 - The remaining 50% of the total amount due, one year following the notification of allocation of shares to the Member country.
- 6.2 Notwithstanding the provisions of sub-paragraph 6.1, no votes or any other rights exercisable under the Bank Agreement by virtue of shareholding shall be exercised by a Member receiving an allocation of Shares under these Rules unless the conditions of such allocation are fulfilled as and when they fall due.

RULE VII: EFFECTIVENESS

These Share Transfer Rules shall be effective as of the date of entry into force of Resolution B/BG/2010/10 authorizing the Sixth General Capital Increase of the capital stock of the Bank or such other date as may be determined by the Board of Governors. These Share Transfer Rules shall supersede all previous share transfer rules, especially the Revised Share Transfer Rules of 2000.