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**Tel: [263] [4] 794478 Fax & Messages [263] [4] 793592
E-mail: veritas@mango.zw**

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H.B. 2, 2005

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**African Export-Import Bank (Membership of Zimbabwe
and Branch Office Agreement) Bill, 2005**

MEMORANDUM

This Bill will enable legal force to be given in Zimbabwe to the Agreement for the Establishment of the African Export-Import Bank ("Afreximbank"), which was concluded in Abidjan on May 8, 1993, and of which the Government of Zimbabwe is a signatory. It further incorporates into Zimbabwean domestic law the Agreement between Afreximbank and the Government of Zimbabwe concerning the location in Harare of Afreximbank's first branch office, together with the memorandum of understanding concerning the occupancy of a temporary branch office by Afreximbank and the transfer to Afreximbank of title to a parcel of land in Harare for the construction of its permanent branch office.

PRESENTED BY THE MINISTER OF FINANCE

BILL

To enable effect to be given within Zimbabwe to the Agreement for the Establishment of the African Export-Import Bank and the Agreement between the African Export-Import Bank and the Government of the Republic of Zimbabwe concerning the Location of the Branch Office of the African Export-Import Bank; and to provide for matters incidental to or connected therewith.

WHEREAS the Agreement for the Establishment of the African Export-Import Bank (hereinafter called "the Bank") was concluded on May 8, 1993, among certain African States and International Organisations (hereinafter called "the Bank Agreement"), including Zimbabwe, by virtue of which Zimbabwe became a member of the Bank;

AND WHEREAS by Article VI of the Bank Agreement it is provided that each member State shall take all legislative action under its national law and all administrative measures as are necessary to enable the Bank to effectively fulfil its purpose and carry out the functions entrusted to it and that, in particular, it shall accord to the Bank, in its territory, the status, immunities, exemptions, privileges, facilities and concessions set forth in the Bank Agreement;

AND WHEREAS by Article V of the Bank Agreement the Bank shall establish branch offices in the territories of African countries selected by the Board of Directors of the Bank;

AND WHEREAS at the General Meeting of Shareholders of the Bank held at Abuja, Federal Republic of Nigeria, on October 27 and 28, 1993, it was decided to locate the first Branch Office of the Bank in Harare, Zimbabwe, at a date to be determined by the Board of Directors;

AND WHEREAS the Board of Directors of the Bank at its 10th Meeting held on July 20, 1995, decided to open the Branch Office of the Bank in Harare, Zimbabwe, on July 1, 1996;

AND WHEREAS by Article V.4 of the Bank Agreement it is provided that the State in whose territory a branch office is to be located shall sign with the Bank, and take all necessary measures to make effective in its territory, an agreement regarding the location of the branch office:

NOW, THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows:—

1 Short title

This Act may be cited as the African Export-Import Bank (Membership of Zimbabwe and Branch Office Agreement) Act, 2005.

2 Interpretation

In this Act—

"Bank" means the African Export-Import Bank ("Afreximbank") established by the Bank Agreement;

"Bank Agreement" means the Agreement for the Establishment of the African Export-Import Bank ("Afreximbank") signed in Abidjan, Ivory Coast, by African States and certain International Organisations on the 8th of May, 1993;

"Branch Office Agreement" means the agreement regarding the location of the branch office of the Bank concluded in accordance with Article V.4 of the Bank Agreement;

"Memorandum of Understanding" means the Memorandum of Understanding between the Government of the Republic of Zimbabwe and the Bank concerning—

- (a) the grant of the use and occupancy of a temporary Branch Office of the Bank and related facilities until such time as the Bank constructs a permanent Branch Office building, and related facilities; and
- (b) the transfer by the Government of the Republic of Zimbabwe of title to a parcel of land in Harare, Zimbabwe, to the Bank for the construction of the permanent Branch Office of the Bank;

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

3 Provisions of Bank Agreement to have force of law

All the provisions of the Bank Agreement shall have the force of law in Zimbabwe, including in particular (but without prejudice to the generality of the foregoing) the provisions set out in the First Schedule:

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

- (a) entitling the Bank to import goods free of customs duty without any restriction on their subsequent sale; or
- (b) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold; or
- (c) conferring on the Bank any exemption from taxes which are in fact no more than charges for public utility services which are payable by other international organisations situated or represented in Zimbabwe.

4 Branch Office Agreement and Memorandum of Understanding to have force of law

The provisions of the Branch Office Agreement and the Memorandum of Understanding set out in the Second and Third Schedules shall have the force of law in Zimbabwe.

5 Minister's powers

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

FIRST SCHEDULE (Section 3)
SELECTED PROVISIONS OF THE BANK AGREEMENT

Article VIII
Immunity of Property and Assets

1. The property and assets of the Bank wherever located and by whomsoever held shall be immune from: (a) search, requisition, expropriation, confiscation, nationalisation and all other forms of seizure, taking or foreclosure by executive or legislative action; and (b) seizure, attachment or execution before the delivery of final judgment or award against the Bank.
2. Without prejudice to the provisions of paragraph 1 of this Article, the property and assets of the Bank shall be subject to due legal processes and judicial action taken by ordinary courts of competent jurisdiction.
3. For the purpose of this Article and Article IX of this Agreement, the term "property and assets of the Bank" shall include property and assets owned or held by the Bank in the ordinary course of business.

Article IX
Freedom of Property, Assets and Operations from Restriction

1. To the extent necessary to implement the purpose of the Bank and carry out its functions, each Participating State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that are likely to hinder in any manner the smooth functioning of the Bank or impair its operations.
2. To this end, the Bank, its property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative, executive, administrative, fiscal and monetary restrictions of any nature.

Article X
Immunity of Archives

The archives of the Bank and, in general, all documents belonging to, or held by the Bank shall be inviolable wherever located, except that the immunity provided for in this Article shall not extend to documents required to be produced in the course of judicial or arbitral proceedings to which the Bank is a party or proceedings arising out of transactions concluded by the Bank.

Article XI
Privilege for Communications

Official communications of the Bank shall be accorded by each Participating State the same treatment and preferential rates that it accords to the official communications of international organisations.

Article XII

Personal Immunities, Privileges and Exemptions

1. All Representatives, the President, Vice-Presidents, Directors, Alternate Directors, officers and employees of the Bank and consultants and experts performing missions for the Bank:
 - (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
 - (ii) shall be accorded the same immunities from immigration restrictions and alien registration requirements, and, not being local nationals, shall be accorded the same immunities from national service obligations and the same facilities as regards exchange regulations, as are accorded by each Participating State to representatives, officials and employees of comparable rank of other states or international organisations; and
 - (iii) where they are not resident nationals, shall be granted the same treatment in respect of travelling facilities as is accorded by Participating States to representatives, officials and employees of comparable rank of other states or international organisations.
2. The President, Vice-Presidents, officers and employees of the Bank:
 - (i) shall be immune from personal arrest or detention, except that this immunity shall not apply to civil liability arising from a road traffic accident or to a traffic offence; and
 - (ii) shall be exempt from any form of direct or indirect taxation on salaries, emoluments, indemnities and pension paid by the Bank.

Article XIII

Waiver or Immunities and Privileges

The immunities and privileges provided in this Agreement are granted in the interest of the Bank and may only be waived, to such extent and upon such conditions as the Board of Directors of the Bank shall determine, in cases where such a waiver would not, in its opinion, prejudice the interests of the Bank. The President of the Bank shall have the right and the duty to waive the immunity of any officer, employee, consultant or expert of the Bank in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive the immunity of the President or any Vice-President, Director or alternate Director of the Bank.

Article XIV

Exemption from Taxation

1. The Bank, its property, assets, income, operations and transactions shall be exempt from all taxation and customs duties. The Bank, and its receiving, fiscal and paying agents, shall be exempt from any obligation relating to the payment, withholding or collection of any tax or duty out of funds owned by, or otherwise appertaining to, the Bank.
2. Without prejudice to the generality of the provisions of paragraph 1 of this Article, each Participating State shall take all necessary action to ensure that the property and assets of the Bank, its capital, reserves and dividends, loans, credits, guarantees, securities, and other investments and transactions, interest, commissions, fees, profits, gains, proceeds or

realisation and other income, return and moneys of any kind, accruing, appertaining or payable to the Bank from any source shall be exempt from all forms of taxes, duties, charges, levies, and imposts of any kind whatsoever, including stamp duty and other documentary taxes, heretofore levied or hereafter imposed in its territory.

3. The provisions of paragraphs 1 and 2 of this Article shall be applied without prejudice to the right of the Participating States to tax their residents in the manner each state deems appropriate.

Article XV

Fiscal Exemptions, Financial Facilities, Privileges and Concessions

1. The Bank shall be accorded by each Participating State a status not less favourable than that of a non-resident corporation, and shall enjoy all fiscal exemptions, financial facilities, privileges and concessions granted to international organisations, banking establishments and financial institutions by the Participating States.
2. Without prejudice to the generality of the provisions of Article XI and paragraph 1 of this Article by reason of the following enumeration, the Bank may freely and without any restriction, but to the extent necessary to implement its purpose and carry out its functions, set forth in the Charter:
 - (i) carry on all forms of banking business and financial services authorised under the Charter;
 - (ii) purchase, hold and dispose of national currencies;
 - (iii) purchase, hold and dispose of convertible currencies, securities, bills of exchange and negotiable instruments, and transfer the same to, from or within the territory of any Participating State;
 - (iv) open, maintain and operate accounts in national currencies in the territories of the Participating States;
 - (v) open, maintain and operate convertible currency accounts in the territories and outside the territories of the Participating States;
 - (vi) raise funds and make loans in convertible currencies, provided that it shall seek the consent of the Participating State in whose market it intends to raise funds; and
 - (vii) carry out any operation authorised under the Charter.

SECOND SCHEDULE (Section 4)

BRANCH OFFICE AGREEMENT

PREAMBLE

The African Export-Import Bank and the Government of the Republic of Zimbabwe;

CONSIDERING the Agreement for the establishment of the African Export-Import Bank (hereinafter called the "Bank") concluded on May 8, 1993, among certain African States and International Organisations (hereinafter referred to as the "Bank Agreement");

HAVING REGARD TO the Charter of the Bank;

RECALLING the decision of the first General Meeting of Shareholders of the Bank held in Abuja, Federal Republic of Nigeria from October 27 to October 28, 1993, to locate the first Branch Office of the Bank in Harare, the Republic of Zimbabwe, at a date to be determined by the Board of Directors;

CONSIDERING that the Board of Directors, at its tenth meeting held on July 20, 1995, decided to open the Branch Office in Harare on July 1, 1996;

DESIROUS of settling by the present Agreement all matters relating to the establishment and functioning of the said Branch Office (hereinafter referred to as "the Harare Branch") of the African Export-Import Bank and to supplement in this respect the relevant provisions of the Bank Agreement;

HAVE AGREED as follows:

PART I
Article I
Definitions

In this Agreement, unless the context otherwise provides, requires or permits, the following terms shall have the meanings ascribed thereto below:

- (a) "Appropriate Authorities of the Republic of Zimbabwe", means national, municipal or other governmental authorities in Zimbabwe as may be appropriate in the context of and in accordance with the laws of the Republic of Zimbabwe;
- (b) "Directors and Alternative Directors" means respectively the Directors and alternative Directors for the time being of the Bank;
- (c) "Government" means the Government of the Republic of Zimbabwe;
- (d) "Harare Branch" means any land, building, structures and facilities which may be defined as being part of the Harare Branch by a supplementary agreement or exchange of letters between the Bank and the Government;
- (e) "Laws of Zimbabwe" includes the Constitution of the Republic of Zimbabwe, and legislatives, acts, decree, regulations and orders issued by, or under authority of, the Government or any appropriate authority in the Republic of Zimbabwe;
- (f) "Officials of the Bank", unless the context of this Agreement provides otherwise, includes all officers, officials, employees and other staff members who have been designated Professional Staff in the Staff Rules and Regulations of the Bank;
- (g) "President" and "Executive Vice-President" means respectively the President and any Executive Vice-President of the Bank or any other person designated to act in that behalf;
- (h) "Representatives" means Representatives of Shareholders to a General Meeting of Shareholders of the Bank and includes all delegates, deputy delegates, advisers and experts; and
- (i) "Shareholder" means a shareholder of the Bank.

PART I**Article II****Control and Protection of the Harare Branch**

1. The Harare Branch shall be inviolable and shall be under the control and authority of the Executive Vice-President acting on behalf of the President, as provided in this Agreement.
2. The Executive Vice-President acting on behalf of the President shall have the power to make regulations operative within the Harare Branch for the purpose of establishing therein conditions in all respects necessary for the conduct of its activities.

Article III

1. Officers or officials of the Republic of Zimbabwe whether administrative, judicial, military or police or any other person exercising any public authority within the Republic of Zimbabwe, shall not enter the Harare Branch to perform duties therein except with the consent of, and under the conditions agreed by the Executive Vice-President. The service of legal process, including the seizure of private property, shall not take place within the Harare Branch except with the express consent of the Executive Vice-President.
2. Without prejudice to the provisions of the Bank Agreement, the Executive Vice-President shall prevent the Harare Branch from becoming a refuge for persons:
 - (a) who are avoiding arrest under any Law of the Republic of Zimbabwe; or
 - (b) who are required by the Government for extradition to another State; or
 - (c) who are endeavouring to avoid service of legal process.

Article IV

1. The Government shall exercise due diligence to ensure that the tranquillity of the Harare Branch is not disturbed by any person or group of persons attempting unauthorised entry into or creating disturbances in the immediate vicinity of the Harare Branch. The Government shall provide on the boundaries of the Harare Branch the necessary Police force for the protection of the Harare Branch.
2. The Government shall whenever necessary provide the Police force for the protection of the Harare Branch.

Article V

1. The Government shall take whatever action as may be necessary in order to ensure that the Harare Branch shall not be dispossessed of its rights nor deprived of the enjoyment of such rights, except with the consent of the Executive Vice-President.
2. The Appropriate Authorities of Zimbabwe shall take all reasonable steps to ensure that the amenities of the Harare Branch are not prejudiced and that the purposes for which the Harare Branch is established are not obstructed by any use made of the land or buildings in the vicinity of the Harare Branch.

PART III

Article VI

Communications, Transport, Public Services and Utilities

1. The Harare Branch shall enjoy for its official communications treatment not less favourable than that accorded by the Government to diplomatic missions or to any other international organisation in the matter of priorities and rates on mails, cables, telegrams, radiograms, telephotos, telephones and other communications as well as press rates for information to press, radio or television.
2. All communications addressed to the Bank, Representatives, Directors, Alternate Directors, the President, Vice-Presidents, the Executive Vice-President or any other officials at the Harare Branch, and all outward official communications of the Bank, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference. Such immunity shall extend, without limitation by reason of this enumeration, to publications, documents, plans, blueprints and sketches, still and moving pictures, films and sound recordings.
3. The Harare Branch shall have the right to use codes and to dispatch and receive official correspondence and, without limitations by reason of this enumeration, publications, documents, plans, blueprints and sketches, still and moving pictures, films and sound recordings either by courier or in sealed bags which shall enjoy the same immunities, exemptions and privileges as diplomatic couriers and bags.

Article VII

1. The Harare Branch shall be entitled to install and operate such equipment for its exclusive official use as may be necessary for the proper performance of its functions hereunder.
2. Without prejudice to the generality of the provisions of paragraph (1) of this Article, the Bank shall have the authority to install and operate at the Harare Branch a radio sending and receiving station or stations subject to the provisions of Article 44 of the International Telecommunications Convention relating to Harmful Interference. At the request of the President, the Government shall assign suitable frequencies for the operation of any such station. It shall communicate frequencies without delay to the International Frequencies Registration Board.

Article VIII

The Harare Branch shall be entitled, for its official purposes when necessary, and in cases where the Government makes such transport available, to use Government transport facilities on terms and conditions not less favourable than those accorded by the Government to any other international organisation or diplomatic mission accredited to the Republic of Zimbabwe.

Article IX

The Appropriate Authorities of the Republic of Zimbabwe shall exercise to the extent requested by the President, or in his absence by the Executive Vice-President, the powers which they possesses with respect to the supply of public services to ensure that the Harare Branch shall be supplied on equitable terms with the necessary public services, including electricity, water, post, telephone, telegraph, transport, drainage, collection of refuse, fire protection and

other similar services. In the case of any interruption or threatened interruption of any such service, the Government shall consider the needs of the Harare Branch as being of equal importance with similar needs of essential agencies of the Government, and shall take steps accordingly to ensure that the work of the Harare Branch is not prejudiced.

PART IV

Article X

Exemption from Taxation

1. The Bank, the Harare Branch, its property, assets, income, operations and transactions shall be exempt from all forms of direct taxes and from all customs duties; it being understood that the Bank shall not claim exemption from taxes which are in fact no more than charges for public utility services and which are payable by other international organisations situated or represented in the Republic of Zimbabwe.
2. The Bank, the Harare Branch, its property, assets, income, operations and transactions shall be entitled to a sales tax refund and other indirect taxes in the same manner and to the same extent as are enjoyed by international organisations situated or represented in the Republic of Zimbabwe.
3. The Government shall furnish to the Harare Branch a list of all direct and indirect taxes and levies, as modified from time to time upon any change in or amendment to the laws of the Republic of Zimbabwe. Any amount paid by the Bank or the Harare Branch in respect of direct or indirect taxes from which the Bank and the Harare Branch are exempt shall within thirty days of receipt of a claim submitted by the Harare Branch, be refunded in its entirety by the Government.
4. Without prejudice to the generality of the provisions of paragraphs 1 and 2 of this Article, the Appropriate Authorities of the Republic of Zimbabwe shall take all necessary action to ensure that the property and assets of the Bank (or, as the case may be the Harare Branch), its capital, reserves and dividends, loans, credits, guarantees, securities, and other investments and transactions, interest, commissions, fees, profits, gains, proceeds of realisation and other income, return and moneys of any kind, accruing, appertaining or payable to the Bank or the Harare Branch from any source shall be exempt from all forms of taxes, duties, charges, levies, and imposts of any kind whatsoever, including stamp duty and other documentary taxes, heretofore levied or hereafter imposed in the territory of the Republic of Zimbabwe.
5. No direct or indirect taxes shall be levied by the Government or any authority in the Republic of Zimbabwe on or in respect of salaries, emoluments, indemnities and/or pension paid by the Harare Branch to the Executive Vice-President, officers and employees of the Bank and consultants and experts performing missions for the Harare Branch.
6. Articles imported or exported by the Harare Branch for official purposes shall be exempt from customs and other levies, and from prohibitions and restrictions on imports and exports. Such articles may include, but shall not be limited to, materials necessary for the construction of the Branch Office building, motor vehicles and automobiles required for official purposes of the Harare Branch, publications and office furniture, equipment and materials; it being understood that the disposal or re-exportation of imported articles shall

be subject to the same conditions as are applicable to diplomatic missions or other international organisations.

7. The Government shall grant exemption in respect of allotments of petrol or other required fuels and lubricating oils for each vehicle or automobile operated by the Harare Branch or its personnel in quantities prevailing for diplomatic missions or institutions of comparable rank in the Republic of Zimbabwe. The Government shall, whenever gasoline or other fuels and lubricating fuels are scarce in Harare, if requested, assist the Harare Branch in the procurement of gasoline or other fuels and lubricating oils for each such vehicle or automobile.

PART V

Article XI

Fiscal Exemptions and Financial Facilities

1. Without prejudice to the generality of Articles VII, VIII and XIV of the Bank Agreement by reason of the following enumeration, the Harare Branch may freely:
 - (a) carry on all forms of banking business and financial services authorised under the Charter of the Bank;
 - (b) purchase, hold and dispose of national currencies;
 - (c) purchase, hold and dispose of convertible currencies, securities, bills of exchange, negotiable instruments, and transfer the same to, from or within the territory of the Republic of Zimbabwe;
 - (d) open, maintain and operate accounts in national currency within the territory of the Republic of Zimbabwe;
 - (e) open, maintain and operate convertible currency accounts in the territory and outside the territory of the Republic of Zimbabwe
 - (f) raise funds and make loans in convertible currencies; and
 - (g) carry out any operations authorised under the Charter of the Bank.
2. The Government may assist the Harare Branch to obtain the most favourable conditions as regards exchange rates, banking commissions on exchange transactions and other similar transactions.
3. The Harare Branch shall, in exercising its rights under this Article, pay due regard to any representations made by the Government and shall give effect to such representations without prejudicing its interest or the interest of the Bank.

PART VI

Article XII

Access, Transit and Residence

1. The Appropriate Authorities of the Republic of Zimbabwe shall not impede in any way and shall take all necessary measures to facilitate, the entry into, sojourn in, transit through and exit from the territory of the Republic of Zimbabwe of any person proceeding to the Harare Branch to perform official duties or at the invitation of the Bank.

2. To this end, the Government shall authorise, without delay, the entry and residence in its territory and exit therefrom, while they are engaged on business with the Harare Branch of:
 - (a) the President;
 - (b) Directors of the Bank and their Alternates;
 - (c) Vice-Presidents;
 - (d) the Executive Vice-President and other officials of the Harare Branch;
 - (e) persons other than the Executive Vice-President and officials of the Harare Branch performing missions for the Bank;
 - (f) other persons invited under the authority of the President to visit or to perform their duties at the Harare Branch;
 - (g) dependent members of the family of the persons referred to in subparagraph (d) of this paragraph, while the latter are engaged on business with the Bank, as well as one personal employee of the Executive Vice-President.
3. Visas for persons referred to in paragraph 2 of this Article, where required, shall be granted promptly and free of charge.
4. No measure excluding the residence in the Republic of Zimbabwe of any such person shall be taken on account of any activities performed by such person in his official capacity. In case of abuse of privilege by any such person in their activities in the Republic of Zimbabwe outside that capacity, measures for excluding or restricting residence there may only be taken after prior consultation of the Minister for the time being responsible for Foreign Affairs of the Republic of Zimbabwe in accordance with paragraph 5 hereinbelow.
5. Without prejudice to the generality of the provisions set forth in paragraph 4 hereof, no person referred to in paragraph 2 of this Article shall be required to leave the Republic of Zimbabwe save in the event of an abuse of the right of residence, in which case the following procedure shall apply:
 - (a) no proceedings shall be instituted to require any such person to leave the Republic of Zimbabwe, except with the prior approval of the Minister for the time being responsible for Foreign Affairs of the Republic of Zimbabwe;
 - (b) in the case of a Representative of an African State, such approval shall be given only after consultation with the Government of the Representative concerned;
 - (c) in the case of the President, a Director or an Alternate Director, such approval shall be given after consultation, and in agreement with, the Chairman of the General Meeting of the Bank;
 - (d) in the case of any other person referred to in paragraph 2 of this Article, such approval shall be given only after consultation with the President, and if expulsion proceedings are taken against any such person, the President, shall have the right to appear or to be represented in such proceedings on behalf of the person against whom such proceedings are instituted.

Persons who are entitled to privileges and immunities under this Agreement shall not be required to leave the Republic of Zimbabwe, otherwise than in accordance with the customary procedure applicable, as the case may be, to (i) members of the staff of international organisations situated or represented in the Republic of Zimbabwe or

- (ii) heads of diplomatic missions and diplomatic agents and members of the diplomatic Staff accredited to the Republic of Zimbabwe.
- 6. The provisions of this Article shall not prevent the requirements of reasonable evidence to establish that persons claiming the rights granted by this Article come within the classes described in paragraph 2 of this Article, or the reasonable application of quarantine and health regulations.

Article XIII

The President and the Appropriate Authorities of the Republic of Zimbabwe shall, at the request of either of them, consult with each other and agree on the procedure for facilitating entrance into the Republic of Zimbabwe by persons other than those referred to in paragraph 2 of Article XII.

PART VII

Article XIV

Head of the Harare Branch

1. The Executive Vice-President or any other Officer of the Bank designated to act in that capacity shall be the Head of the Harare Branch in the Republic of Zimbabwe.
2. In this capacity, the Head of the Harare Branch shall be the principal liaison officer between the Bank and the Government and between such other countries as shall be specifically designated by the President.
3. The Head of the Harare Branch shall enjoy in the territory of the Republic of Zimbabwe, while exercising his functions and during his journey to and from the Harare Branch, the same immunities, exemptions and privileges as are accorded by the Government in conformity with international law to resident representatives of comparable rank of other international organisations.
4. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the Head of the Harare Branch.

PART VIII

Article XV

Officials, Experts and Consultants of the Bank

Officials, experts and consultants recruited by the Bank or on secondment to serve at the Harare Branch shall enjoy in the territory of the Republic of Zimbabwe, the following immunities, exemptions and privileges:

- (a) immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity;
- (b) where they are not nationals of Zimbabwe, immunity from personal arrest or detention;
- (c) immunity from seizure of their personal and official baggage;
- (d) exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the Bank for their service with the Bank;

- (e) immunity, together with dependent members of their families and the personal employee of the Executive Vice-President, from all immigration restrictions and alien registrations;
- (f) the same privileges in respect of exchange facilities as are accorded by the Government to members of diplomatic missions or staff of international organisations of comparable rank;
- (g) exemption from any form of direct taxation on income derived from sources outside the Republic of Zimbabwe; the freedom to maintain within the Republic of Zimbabwe accounts in local currency, and elsewhere foreign currency accounts; freedom to own in the Republic of Zimbabwe foreign securities and other property as is accorded to staff and other officers of diplomatic missions and international organisations of comparable rank; and, while employed in the service of the Harare Branch and upon the termination of such employment, the right to transfer funds out of the Republic of Zimbabwe in any convertible currency without any restriction or limitation, provided that the officials concerned can show good cause for their lawful possession of such funds;
- (h) the same right to import their furniture and personal effects, including motor vehicles and spare parts therefor, on first taking up their permanent posts at the Harare Branch, or thereafter, and the same privileges and immunities as regards goods, including motor fuel, purchased in the Republic of Zimbabwe, as are accorded in the Republic of Zimbabwe to the resident members of diplomatic missions and international organisations of comparable rank;
- (i) exemption from registration fees in respect of their automobiles;
- (j) the same repatriation facilities for themselves, dependent members of their families and the personal employee of the Executive Vice-President, and the same right to protection by the authorities of the Republic of Zimbabwe in time of international crisis or national emergency, as members of diplomatic missions;
- (k) other privileges and exemptions which are or may be accorded by the Government to members of diplomatic missions of comparable rank or to officials, experts and consultants of comparable rank of other international organisations.

Article XVI

All officials of the professional category and experts and consultants of the Bank serving at the Harare Branch shall be provided by the Ministry of Foreign Affairs of Zimbabwe with an identity card certifying that they are officials of the Bank, experts or consultants - as the case may be – and that they are entitled to the immunities, exemptions and privileges provided in this Agreement.

Article XVII

The immunities, exemptions and privileges accorded in Article XV of this Agreement are granted in the interests of the Bank and the Harare Branch and not for the personal benefit of the persons concerned. The Executive Vice-President shall with the consent of the President have the duty to waive the immunity of any such person in any case where, in his opinion, such

immunity would impede the course of justice and can be waived without prejudice to the overriding interests of the Bank.

PART IX
Article XVIII
General Provisions

The Executive Vice-President and the officials of the Bank serving at the Harare Branch shall co-operate at all times with the Government to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the immunities, privileges, facilities and exemptions accorded by virtue of the Bank Agreement and this Agreement. Should the Government consider that an abuse has occurred, the Executive Vice-President shall with the consent of the President consult with the Appropriate Authorities of the Republic of Zimbabwe without delay.

PART X
Article XIX
Interpretation, Application, Amendments

The provisions of the Bank Agreement and of this Agreement shall, where they relate to the same subject-matter, be treated, wherever possible, as complementary so that the provisions of both shall apply, neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this Agreement shall prevail.

Article XX

1. The Government and the Bank may enter into such supplementary agreements as may be necessary to fulfil the purpose of this Agreement.
2. Consultations with respect to any amendment to this Agreement shall be entered into at the request of either party hereto.

Article XXI

Wherever this Agreement imposes obligations on the Appropriate Authorities of the Republic of Zimbabwe, ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

Article XXII

The Government hereby undertakes to provide to the Bank specific facilities and financial incentives set forth in the Memorandum of Understanding attached as a Schedule to the present Agreement. The Schedule is incorporated herein and forms an integral part of this Agreement.

PART XI
Article XXIII
Settlement of Disputes

Any dispute between the Bank and the Government concerning the interpretation or application of this Agreement or of any supplementary agreement which is not settled by

negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be appointed by the President; one to be appointed by the Minister for the time being responsible for Foreign Affairs of the Republic of Zimbabwe and the third who shall be Chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third arbitrator or should either party fail to appoint an arbitrator within one month of receipt of notice of arbitration addressed by the other party, such arbitrators shall be appointed by the President of the International Court of Justice at the request of the President or the Government.

PART XII

Final Provisions

This Agreement shall cease to be in force:

- (a) by mutual accord of the Parties hereto; and
- (b) if the Harare Branch is removed from the territory of the Republic of Zimbabwe.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, duly authorised for this purpose, have signed the present Agreement.

DONE AT this day of in two originals in the English language both texts being equally authentic.

FOR THE AFRICAN EXPORT-
IMPORT BANK

.....

CHRISTOPHER EDORDU
PRESIDENT

FOR THE GOVERNMENT OF THE
REPUBLIC OF ZIMBABWE

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ISACK STANISLAUS
GORERAZVO MUDENGE
MINISTER OF FOREIGN AFFAIRS

THIRD SCHEDULE (Section 4)

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this 18th day of July, 1996, by and between the Government of the Republic of Zimbabwe (hereinafter called "the Government"), of the one part, and the African Export-Import Bank (hereinafter called "the Bank"), of the other part;

WHEREAS the first General Meeting of Shareholders of the Bank at a meeting held in Abuja, Nigeria, from October 27-28, 1993, decided to establish the first Branch Office of the Bank in Harare, Zimbabwe, at a time to be determined by the Board of Directors of the Bank;

WHEREAS the Branch Office Agreement between the Republic of Zimbabwe and the African Export-Import Bank (hereinafter referred to as the "Branch Office Agreement") was signed in Harare on 18th July, 1996;

WHEREAS an offer was made by Authorities of the Republic of Zimbabwe to provide to the Bank a fully serviced building and facilities in the central business district of Harare to serve as the Bank's temporary Branch Office until such time as the Bank shall have constructed its permanent Branch Office building;

WHEREAS the Government has agreed to place at the disposal of the Bank temporary offices as well as certain services and facilities at Eastgate Building, Robert Mugabe Road, Harare;

AND WHEREAS the Government has also agreed to grant to the Bank full and unencumbered title to a parcel of land in the central business district of Harare for the construction of the permanent Branch Office of the Bank:

NOW, THEREFORE, this Memorandum of Understanding Witnesses as follows:

Article I

In this Memorandum of Understanding, unless the context shall otherwise require the expression:

(a) "Temporary Offices" means:

- (i) the offices occupied or used by the Bank in Zimbabwe, as more fully described in Annex A to the present Agreement; and
- (ii) any other land, building or premises which may be placed by the Government at the disposal of the Bank and defined as being part of the Temporary Offices of the Bank by the simple Exchange of Letters between the Bank and the Government.

(b) "Permanent Offices" means:

- (i) the parcel of land measuring five hundred and ninety-five square metres (595m²) transferred free of charge to the Bank pursuant to the Lease Agreement; and
- (ii) any other land or premises which may be granted to the Bank and defined as being part of the Harare Branch Office by a simple Exchange of Letters between the Bank and the Government.

Article II

Temporary Offices and Related Facilities

- (a) The Government shall within 30 days following the signature of this Memorandum of Understanding and for a period of two years or until the Permanent Branch Office building is completed, whichever date is earlier, place at the disposal of the Bank for the Bank's use and occupancy, fully-serviced temporary offices at Eastgate Building, Robert Mugabe Road, Harare, as more fully described in Annex A to the present Memorandum of Understanding.
- (b) Notwithstanding the provisions of the preceding paragraph, but without prejudice to the obligations of the parties thereunder, the parties may agree that the Bank may use the Temporary Offices or any part thereof before taking possession thereof.
- (c) The Government shall provide to the Bank at the Temporary Offices the additional facilities set forth in Annex B to the present Memorandum of Understanding. The Bank shall pay to the Government for the use and occupancy of the Temporary Offices and facilities a sum of one US dollar.

Article III
Maintenance and Repair of Temporary Office

- (a) The Bank shall, in accordance with the Lease Agreement to be concluded between the Reserve Bank of Zimbabwe and Old Mutual Properties, be responsible after taking possession of the Temporary Offices, for the orderly maintenance and minor repair of the Temporary Offices. The Government shall be responsible for all charges in respect of the supply of public utility services (including electricity, water and rates) and/or any taxes on real property, tenancy taxes, insurance or any other charges that may be required by the laws of Zimbabwe.
- (b) The Government shall, in accordance with the Lease Agreement with Old Mutual Properties, be responsible for the prevention and repair of any major damage to the Temporary Offices and for the installation and repair of public utility and related essential services and air-conditioning installations.
- (c) The Bank and the Government shall consult with each other and agree on any alterations, modifications or extensions to the Temporary Offices, as may be considered necessary by the Bank.
- (d) The Government shall take the necessary steps to ensure that the use made of areas and buildings in the vicinity of the premises shall not diminish the amenities of the premises or otherwise adversely affect their usefulness for the purposes for which they are used by the Bank.
- (e) The Bank agrees to provide passes to duly authorised officials or agents of the Government for the purpose of enabling them to inspect, repair, maintain, construct and relocate utilities, conduits, mains and sewers within the premises of the Temporary Offices.

Article IV
Permanent Offices

- (a) By virtue of the Lease Agreement, the Government hereby grants to the Bank, without consideration and/or charge, the parcel of land at Stand No. 782, George Silundika Avenue, Harare Township, the full description of which is attached as Annex C to the present Memorandum of Understanding, to enable the Bank to construct its Permanent Branch Office Building.
- (b) The Government hereby warrants and covenants as follows:
 - 1. That it is the absolute and exclusive owner of the land and has undisputed title to such land.
 - 2. That it can dispose of the land by grant to the Bank without consideration and without requiring further consent, approval or ratification.
 - 3. That the said land is free from any and all claims, encumbrances, third party rights, titles, liens or interests.
 - 4. That it will sign all necessary papers and forms and take all appropriate steps necessary to ensure the transfer of title from the Government to the Bank.
 - 5. That it shall keep the land free and clear of all future claims, encumbrances, rights, titles, liens or interest arising from past and future legal, contractual or other obligations of the Government or of any other source. To this effect and in relation

thereto, the Government undertakes that it will forever defend against any and all claims, encumbrances, rights, titles, liens or interests and all or any encroachments of any nature whatsoever against the land and that the Bank shall have full and quiet possession and enjoyment of the land.

6. Title to the land shall, at all times, remain vested solely in the Bank.
7. The Bank shall not transfer title to all or any part of the land, except with the consent of the Government, which consent shall not be unreasonably withheld. If the Branch Office of the Bank is removed its Board of Directors from Zimbabwe, the land shall revert to the Government, subject to payment by the Government of fair compensation established by agreement with the Bank and based upon the fair value of the buildings and installations constructed thereon at the Bank's expense; it being understood that the land shall automatically revert to the Government without payment of any expenses. In the absence of agreement between the parties on the amount of fair compensation for such buildings and installations, such amount shall be determined in accordance with the procedure set forth in Article XXIII of the Branch Office Agreement.

Article V

Accommodation Facilities for the Bank's Personnel

Upon entry into force of the present Agreement, the Government shall assist the Bank in identifying suitable accommodation and making such accommodation available to Bank Staff in the diplomatic zones of Harare. The Government undertakes to permit the Bank to purchase in its name up to six (6) immovable residential properties and to lease the same to Bank Staff.

Article VI

General Provisions

- (a) Upon termination by the Bank of its occupancy and use of the Temporary Offices under this Memorandum of Understanding, the Bank shall return to the Government the Temporary Offices in good order, provided that the Bank shall not be bound to restore the Temporary Offices or any part thereof to its original state before any alteration which was carried out in pursuance of this Memorandum of Understanding.
- (b) All the provisions of the Branch Office Agreement relating to the "Harare Branch", as defined in paragraph (d) of Article I of the said Branch Office Agreement, shall *mutatis mutandis* be deemed to apply to the Temporary Offices during the Bank's occupation and use thereof.
- (c) The provisions of Part X of the Branch Office Agreement shall apply to the operation and interpretation of the present Memorandum of Understanding.
- (d) The provisions of this Memorandum of Understanding shall be complementary to the provisions of the Branch Office Agreement. In so far as any provisions of this Memorandum of Understanding and any provision in the said Branch Office Agreement relate to the same subject-matter such provision shall, whenever possible, be treated as complementary, so that both provisions shall be applicable and neither provision shall narrow the effect of the other.

IN WITNESS WHEREOF, the parties hereto each acting through its authorised representative, have signed the present Memorandum of Understanding on the date first above written.

FOR THE AFRICAN EXPORT-
IMPORT BANK

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CHRISTOPHER C. EDORDU
PRESIDENT

FOR THE GOVERNMENT OF THE
REPUBLIC OF ZIMBABWE

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HERBERT MUCHEMWA MURERWA
MINISTER OF FINANCE