



# Agreement Establishing

March 2015

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## Agreement Establishing<sup>1</sup>

Corporación  
Andina de  
Fomento

THE GOVERNMENTS OF THE REPUBLICS of Ecuador, Bolivia, Colombia, Chile, Peru and Venezuela, sharing a mutual wish of achieving the economic integration of their countries as quickly as possible, in order to accelerate the economic and social development of their people, in accordance with the principles set forth in the Treaty of Montevideo, in the Punta del Este Charter, in the Declaration signed in Bogota by the Presidents of Colombia, Chile and Venezuela and by the Presidents of Bolivia, Ecuador and Peru, represented by their personal delegates, and in the Declaration of the Presidents of America at Punta del Este:

EXPRESSING the need for each one of the countries which signed the Declaration of Bogota to have the creation of more favorable economic conditions as its objective, in order to participate in the Latin American Common Market;

STATING that in order to achieve the foregoing purposes, the difficulties which arise due to the various levels of development, the different general economic conditions and particularly, those of the markets, must be overcome, so as to achieve the harmonic and balanced growth of the subregion;

TAKING into account that the Declaration of Bogota created the Mixed Committee and other entities as bodies of promotion, consultation and coordination of the policies that must be adopted in the various countries of the subregion, and recommended the creation of an entity which implements and takes the actions agreed upon, specially with respect to the study and performance of multinational projects, and which serves as a dynamic element in the operation and achievement of a subregional integration agreement;

1. This Agreement has been amended several times, as evidenced from the Annex. For the purposes of this edition, the footnotes only refer to the latest amendment filed.

DEEMING that for the better performance of the various activities the said entity shall develop in the subregion in order to achieve its goal, it is convenient for each one of the countries to issue the pertinent legal, regulatory and administrative provisions;

CONSIDERING that the participation of the public and private sectors of the countries within the subregion and of other countries, as well as that of international financing entities is very important, due to the contribution in the manner of technical, scientific, financial, and technology assistance that they may furnish;

EXPRESSING that the joint action of the countries of the subregion is important to achieve a balanced and harmonic economic development, along with the other Latin American nations which shall constitute the Common Market through their integration;

HAVE RESOLVED to create a corporation of development, and to such end, to effect its Agreement, designating their plenipotentiary representatives for said purpose, who have agreed to incorporate the Corporacion Andina de Fomento, to be governed by the provisions hereinbelow, after the said representatives exhibited their respective Full Powers and having the same been found in good and due form.

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## CHAPTER I

### **Name, Legal Nature, Headquarters, Purpose and Functions**

#### Article 1. Name and Legal Nature

The High Contracting Parties hereby create the Corporación Andina de Fomento (Andean Development Corporation). The Corporation is a legal person of international public law and is governed by the provisions herein contained.

#### Article 2. Headquarters

The headquarters of the Corporation are in Caracas, Republic of Venezuela. The Corporation may establish the agencies, offices or representations that may be necessary to develop its functions, in each one of the participating countries and elsewhere.

#### Article 3. Purpose<sup>2</sup>

The purpose of the Corporation is to promote sustainable development and regional integration, by providing multiple financial services to clients in the public and private sectors of its Shareholder Countries.

#### Article 4. Functions<sup>3</sup>

To achieve the purpose mentioned in the preceding article, the Corporation has the following functions:

- a) To carry out studies intended to identify investment opportunities and conduct and prepare the appropriate projects;
- b) To divulge the results of its research in the countries of the area, so as to adequately direct the investment of the available resources;
- c) To directly or indirectly furnish the technical and financial assistance needed to prepare and carry out multinational or complementary projects;
- ch) To obtain internal or external credits;

2. As amended by Decision N<sup>o</sup> 164/2005 and Modificatory Protocol 2005.

3. As amended by Decision N<sup>o</sup> 187/2009.

- d) To issue bonds, debentures and other obligations, the placement of which may be made inside or outside of the Shareholder Countries;
- e) To promote the raising and use of resources;  
In the exercise of the functions to which this and the preceding literals refer, it shall be subject to the legal provisions of the countries where such functions are exercised, or in the local currency of which the said obligations are denominated;
- f) To promote capital and technology contributions in the most favorable conditions;
- g) To grant loans and bonds, avals and other guaranties;
- h) To promote underwriting operations, and grant said guaranties when the appropriate conditions are met;
- i) To foster the creation, expansion, modernization or conversion of companies, and to such effect being able to subscribe shares or participations.  
The Corporation may transfer the shares, rights and obligations which it acquires, offering them first of all to public or private entities of the Shareholder Countries. If the latter were not interested, the Corporation shall offer the same to third parties who may be interested in the economic and social development thereof;
- j) To carry out, in the conditions it determines, the duties or specific steps related to the object thereof, as may be entrusted to it by its shareholders or third parties;
- k) To coordinate its actions with those of other national and international entities to develop the Shareholder Countries;
- l) To recommend the coordination mechanisms needed by the entities or bodies of the area which furnish investment resources;
- ll) To acquire and dispose of personal and real property, to file or answer judicial and administrative actions and, in general, to carry out all kinds of operations, acts, contracts and agreements needed to achieve its purposes.

## Capital, Shares and Shareholders<sup>4</sup>

### Article 5. Capital

The authorized capital of the Corporacion Andina de Fomento is fifteen billion United States dollars (US\$ 15,000,000,000.00) divided into Ordinary Capital shares and Callable Capital shares, as follows:

- 1) Ordinary Capital Shares, for a total of ten billion United States dollars (US\$ 10,000,000,000.00), distributed in three Series: “A”, “B” and “C,” as follows:
  - A. Series “A” comprising fifteen (15) registered shares for a value of one million two hundred thousand United States dollars (US\$1,200,000.00) each, for a global amount of eighteen million United States dollars (US\$ 18,000,000.00), for subscription by the Government of each Member Country or by public, semipublic or private institutions as the former may designate.
  - B. Series “B” comprising one million six hundred thousand (1,600,000) registered shares for a value of five thousand United States dollars (US\$ 5,000.00) each, for a global amount of eighth billion United States dollars (US\$ 8,000,000,000.00), for subscription by governments or public, semipublic or private entities of Member Countries.
  - C. Series “C” comprising three hundred and ninety-six thousand four hundred (396,400) registered shares for a value of five thousand United States dollars (US\$ 5,000.00) each, for a global amount of one billion nine hundred and eighty-two million United States dollars (US\$ 1,982,000,000.00), for subscription by legal entities or natural persons from outside the Member Countries.
- 2) Callable Capital shares for a total amount of five billion United States dollars (US\$ 5,000,000,000.00), distributed in two Series: “B” and “C,” as follows:
  - A. Series “B” comprising seven hundred thousand (700,000) registered shares for a value of five thousand United States dollars (US\$5,000.00) each, for a global amount of three billion five hundred million United States dollars (US\$ 3,500,000,000.00),

4. As Amended by Decision N° 219/2015

for subscription by the governments or public, semipublic or private entities of Member Countries.

- B. Series “C” comprising three hundred thousand (300,000) registered shares for a value of five thousand United States dollars (US\$ 5,000.00) each, for a global amount of one billion five hundred million United States dollars (US\$ 1,500,000,000.00), for subscription by legal entities or natural persons from outside the Member Countries.
  - C. Payment of Callable Capital shares shall be subject to call, upon prior resolution by the Board of Directors, as needed to meet the Corporation’s financial obligations, if the Institution is unable to meet them from its own funds.
  - D. When the Corporation issues a call for a shareholder to pay the subscribed Callable Capital then due, the latter shall make the payment in United States dollars.
  - E. Calls for payment of Callable Capital shall be made pro rata, in accordance with the holding of each shareholder of the Corporation.
  - F. The shareholders’ obligations to meet calls for payment of unpaid subscribed shares of Callable Capital shall subsist until fully paid.
- 3) Series “B” shares may be subscribed by private entities in Member Countries, provided that their equity participation does not exceed forty-nine percent (49%) of the holding for that series, by each shareholder country.
  - 4) Series “C” shares of Ordinary Capital may be converted into Series “B” shares of Ordinary Capital after complying with the conditions for adhesion to the Agreement establishing the Corporacion Andina de Fomento by the respective Member Country as resolved by the Shareholders’ General Meeting.

#### Article 6. Issuance of Shares for the Account of Non-Subscribed Authorized Capital<sup>5</sup>

The Board may decide with respect to the subscription of the non-subscribed authorized capital, with the favorable vote of half plus one Directors, in the following cases:

5. As Amended by Decision N° 187/2009.

- a) For the issuance of new Series “B” shares, which shall be offered first to the For the issuance of new Series “B” shares, which shall be offered first to the shareholders, proportionately to the shares owned by them, with respect to all of the capital. shareholders, proportionately to the shares owned by them, with respect to all of the capital.
- b) For the issuance of shares in case of admission of a new country. At said time such country may subscribe directly, or through the entity designated by it, one Series “A” share and a number of Series “B” shares, in the conditions agreed upon by the Board.
- c) For the issuance of Series “C” shares, the characteristics of which shall be determined in each case by the Board, to be subscribed to by corporations or individuals from outside the Member Countries.
- d) For the issuance of Series “B” and “C” shares, corresponding to the Callable Capital.

#### Article 7. Special Subscription Right

Notwithstanding the provision of letter a) of the foregoing article, any country which has a number of the Series “B” shares lower than that of the other countries may at any time subscribe to shares, against the authorized capital, up to a number equal to the one of the largest shareholder.

#### Article 8. Gearing and Leverage<sup>6</sup>

1. The maximum limit of indebtedness of the Corporation, calculated as the sum of deposits, bonds, third party loans and other similar obligations, shall be three and one half (3.5) times its net worth, this being understood as the sum of its paid-in capital, equity reserves, surplus, accrued net income and other equity accounts.
2. The total amount of the loan and investment portfolio of the Corporation plus the total of guaranties and avals may not exceed an amount equivalent to four (4) times its net worth.

6. As Amended by Decision N° 120/1996.

## Article 9. Capital Increase or Decrease

The capital may be increased or decreased as decided by the Shareholders' Meeting.

## Article 10. Transferability of Shares<sup>7</sup>

Series "A" shares shall be transferred within each country, with the prior consent of the respective Government, to such public, semipublic or private law entity established for social and public purposes, as the latter shall designate. Series "B" shares shall be transferable only to natural or juridical persons within the respective country, provided that the proportion allocated to private entities specified in Article 5(3) is observed. Subject to prior approval by the Board of Directors, Series "C" shares shall be transferable to natural or juridical persons outside the Member Countries.

7. As Amended by Decision N° 187/2009.

## Shareholders' Meetings

### Article 11. Shareholders' Meetings

Shareholders' Meetings may be Regular or Special. They shall be composed of the shareholders or of their representatives or attorneys-in-fact, who shall meet with the quorum and in the conditions herein established.

### Article 12. Regular and Special Meetings<sup>8</sup>

The Regular Meeting shall be held once a year within ninety (90) days following the close of the year, after a call has been made by the Executive President of the Corporation. The Special Meeting shall be held after a call has been made at the initiative of the Executive President of the Corporation, or of the Board, or of at least forty per cent (40%) of Series "A" shareholders, or of shareholders representing at least twenty-five percent (25%) of the paid-in capital. The call for the Special Meeting shall be made thirty (30) calendar days prior to the date of the Meeting, stating the reason why it is being called.

### Article 13. Powers and Functions of the Regular Meeting<sup>9</sup>

The powers and functions of the Regular Meeting shall be the following:

- a) To consider the annual report of the Board, the balance sheet and the profit and loss statement, with the prior report of the external auditors, and to determine the use to be given to the profits; including, at its discretion, the allocation of the profits to the funds mentioned in the following literal b).
- b) To constitute special funds for particular purposes.
- c) To elect the Board members according to the norms herein contemplated;
- ch) To designate the external auditors;
- d) To fix the compensation of the Board members and of the external auditors;
- e) To consider any other matter expressly submitted to it and not specifically entrusted to a particular organ.

8. As Amended by Decision N° 187/2009.

9. As Amended by Decision N° 204/2012.

#### Article 14. Powers and functions of the Special Meeting

The powers and functions of the Special Meeting shall be the following:

- a) To increase, decrease or restore the corporate capital;
- b) To dissolve the Corporation;
- c) To change the headquarters of the Corporation, when the Board so proposes;
- ch) To consider any other matter expressly submitted to it and for which no other body of the Corporation is competent.

Only those matters expressly included in the call may be discussed at the Special Meeting.

#### Article 15. Amendments<sup>9</sup>

The Special Meeting shall be sufficiently empowered to amend the provisions governing the Corporation in all such administrative and procedural matters as are needed for a better fulfillment of the purposes stated. Likewise, with the affirmative vote of all Series “A” shareholders, plus half plus one of the other shares represented at the meeting, the Special Meeting may modify the Board structure and adapt the corresponding provisions it deems pertinent, maintaining in any case the basic criteria hereof.

With respect to the other provisions related to the structure of the Corporation itself, the Special Meeting may recommend the amendments that in its judgment should be submitted to the approval of the Contracting Parties.

#### Article 16. Quorum<sup>9</sup>

A plural number of persons representing at least eighty per cent (80 %) of Series “A” shares and fifty per cent (50%) of the other shares shall constitute quorum for the regular or special Shareholders’ Meetings. In case a Regular or Special Shareholders’ Meeting may not be held due to the lack of quorum, another Meeting shall be called at least thirty (30) calendar days in advance, stating in the call that the meeting shall be convened disregarding the number of those present thereat.

#### Article 17. Decisions<sup>9</sup>

Decisions at Regular Shareholders’ Meetings shall be adopted by a ma-

9. As Amended by Decision N° 187/2009.



majority representing at least sixty per cent (60%) of Series “A” shares, plus half plus one of the other shares represented at the meeting. The majority required for decisions to be adopted at Special Shareholders’ Meetings shall be eighty per cent (80%) of Series “A” shares, plus half plus one of the other shares represented at the meeting. In case of a second call of a Regular or Special Meeting, decisions shall be adopted with the affirmative vote of at least forty per cent (40%) of Series “A” shares, plus the absolute majority of the other shares represented at the meeting.

#### Article 18. Suspension of the Exercise of Voting Rights

Shareholders who are in arrears in the payment of their capital contributions shall have no voting right.

#### Article 19. Delivery of Reports and Balance Sheets

Every shareholder is entitled, during the fifteen (15) calendar days prior to the Shareholders’ Meeting, to review in the Corporation’s headquarters the inventory and the list of shareholders, and to request a copy of the balance sheet and of the auditors’ report. The reports and balance sheets must be remitted to all shareholders at least fifteen (15) calendar days prior to each Meeting, to the address registered in the Corporation.

#### Article 20. Minutes

The discussions and agreements of the Meetings shall be evidenced in a special Minute Book.

#### Article 21. Voting

The Board members and the Executive President may not vote to approve the balance sheet or with respect to other matters in which their responsibility may be involved. Neither, can they represent other shareholders at Shareholders’ Meetings.

#### Article 22. Binding Effect of Decisions

The decisions of the Shareholders’ Meetings, within the limits of their powers hereunder, are binding for all shareholders, even for those who were not present thereat.

## Board Of Directors

### Article 23. Composition<sup>10</sup>

The Board shall be composed in the manner described in Article 24, which follows.

The Directors, will be elected for a term of three (3) years, and they may be re-elected. Each Director shall have a personal Alternate, elected for the same term and in the same manner as the Principal Director.

### Article 24. Appointments and Elections<sup>11</sup>

Directors shall be named as follows:

- A. One (1) Director and his respective Alternate, appointed one (1) per share of each Series "A" shareholder.
- B. One (1) Director and his respective Alternate, who shall be appointed by the holders of the Series "B" shares from each of the Member Countries, who have the right to such designation, and who are neither private banking nor private financial entities.
- C. One (1) Director and his respective Alternate, who shall be elected by the private banking and financial entities of the Member Countries, which are shareholders of the Corporation.
- D. Two (2) Directors and their Alternates, who shall be elected by the holders of the Series "C" shares.

For elections to the Board each shareholder shall have a number of votes equal to the number of paid in shares held or represented by him. Directors and Alternates of Series "C" shareholders shall be of different nationalities.

### Article 25. Quorum<sup>12</sup>

The Board shall meet validly when no fewer than half plus one of the shareholders are present.

### Article 26. Resolutions<sup>12</sup>

Each Director shall have one vote at Board meetings. Resolutions shall

10. As Amended by Decision N° 187/2009.

11. As Amended by Decision N° 204/2012.

12. As Amended by Decision N° 187/2009.

be taken by a majority no fewer than half plus one of the Directors present. In those cases contemplated in Article 6 and under letters a), c), h), i), ll) and n) of Article 27, the affirmative vote of at least half plus one Directors shall be required.

#### Article 27. Powers and Functions of the Board<sup>13</sup>

The Board shall have the following Powers and Functions:

- a) To establish and conduct the financial, credit and economic policies of the Corporation;
- b) To annually elect one of the Directors to preside over the meetings of the Board and of the Shareholders;
- c) To designate and remove the Executive President;
- d) To determine the remuneration of the Executive President;
- e) To approve the annual expense budget, as proposed by the Executive President;
- f) To approve the credit operations, both for loans and for savings, investments operations or any other operation which is within the purpose of the Corporation and that is proposed to it by the Executive President;
- g) To authorize on the issuance of bonds, debentures or other financial obligations and to determine their conditions; to carry out underwriting operations for equities and securities in general; to operate in participation certificates; to authorize trust operations;
- h) To delegate in an Executive Committee, in other subsidiary bodies the creation of which is deemed convenient by the Board itself, or in the Executive President or other officers recommended by him, the functions to which literals; f) and g) refer, in such cases when the amount of the operation does not exceed the limit established by the Board itself;
- i) To resolve upon the proposal of the Executive President those matters not contemplated within this Agreement, as well as the full interpretation thereof; in this case, the Board shall render account to the Shareholders at their next Meeting;

13. As Amended by Decision N° 204/2012.

- j) To present the annual report and balance sheet to the Shareholders' Meeting;
- k) To propose the distribution of profits to the Shareholders' Meeting;
- l) To propose the establishment of reserves to the Shareholders' Meeting;
- ll) To issue and amend the internal regulations of the Corporation;
- m) To propose to the Shareholders' Meeting the creation of special funds for particular purposes.
- n) To agree the call of the Regular Shareholders' Meetings whenever the Agreement so requires, and of the Special Shareholders' Meetings whenever required by the interests of the Corporation, when the Board itself deems it convenient or whenever requested by the shareholders of the Corporation, in accordance with Article 12 of this Chapter, and
- ñ) To propose the change of headquarters to the Shareholders' Meeting, when it deems it convenient due to reasons of undoubted need.

#### Article 28. Replacement<sup>14</sup>

In order to replace an unable or deceased Director, or a Director who has resigned, the following norms shall be followed:

- a) In case of a Director who represents Series "A" shares, he shall be directly designated by the owner of the share represented thereby, and
- b) In case of a Director who represents Series "B" shares, the Board shall designate the respective Alternate as Director and, in the absence of the Alternate, the Board shall request the Member Country whose Series "B" shareholders are represented in the Board to do what is necessary to designate the Director and its Alternate. The Director so designated shall hold office only for the period needed to complete the term of the Director replaced.
- c) In case of a Director who represents the private banking and financial entities of the Member Countries which are shareholders of the Corporation, or the holders of Series "C" shares, the Director shall be replaced by his Alternate.

14. As Amended by Decision N° 204/2012.

In the absence of the latter, the Director shall be designated as provided in the last section of Article 24.

#### Article 29. Meetings<sup>15</sup>

The Board shall meet whenever it agrees to do so, when called by its Chairman, upon the request from at least twenty five per cent (25%) of Directors, or upon the request from the Executive President. The meetings shall take place at the Corporation's headquarters, except if the Board itself agrees otherwise, and when the Board itself determines to meet.

#### Article 30. Minutes

The discussions and agreements of the Board shall be evidenced in a special Minute Book.

15. As Amended by Decision N° 187/2009.

## **Executive President and other Officers**

### Article 31. Duties of the Executive President

The Executive President, an international officer, shall be the legal representative of the Corporation and shall have the following functions:

- a) To exercise the immediate management and the administration of the Corporation;
- b) To decide and be in charge of any matter not expressly entrusted to the Shareholders' Meeting, the Board, the Executive Committee and other subsidiary bodies created by the Board, in addition to those matters entrusted to him;
- c) To participate in Board Meetings, with the right to speak but no right to vote.

### Article 32. Term of Office

The Executive President shall hold office for five (5) years, and he may be reelected. He shall hold office until his replacement is elected and is duly qualified.

### Article 33. Temporary Absences

The temporary absences of the Executive President shall be filled in by the Vice-President of greater hierarchy, or else by the officer designated by the Board.

### Article 34. Definitive Absence

In case of definitive absence of the Executive President, the Board shall designate the person who shall replace him.

### Article 35. Powers

The Executive President may grant powers of attorney to represent the Corporation in or out of Court, with the powers he deems necessary. He may also grant special powers of attorney for the purposes which may be of interest to the Corporation.

#### Article 36. Vice-Presidents<sup>16</sup>

The Executive President shall designate the Vice-Presidents who may be necessary for the activities of the institution, indicating in each case the powers and functions, duties and remunerations which may correspond thereto. These designations shall be made trying that said officers are of different nationalities, within the Member Countries.

#### Article 37. Designation of Staff<sup>17</sup>

The designation of the staff and the determination of its powers and functions, responsibilities and remunerations shall be in the hands of the Executive President. The designation of the Vice-Presidents shall be made prior consultation with the Board.

#### Article 38. Selection of Staff<sup>18</sup>

In order to select the Corporation's staff, the efficiency, competency and honesty shall be taken into account in the first place. However, at the same time, importance shall be given to the need for the staff to be selected based on a geographic criterion, preferably within the Member Countries, as broad as possible.

#### Article 39. International Character of Staff

In the performance of its duties, the staff shall not seek or receive instructions from any Government or from any other authority external to the Corporation. It shall refrain from any action which might reflect on their position as international officials responsible only to the Corporation.

16. As Amended by Decision N° 187/2009.

17. As Amended by Decision N° 120/1996.

18. As Amended by Decision N° 187/2009.

## **Financial Year, Balance Sheet and Profits**

### Article 40. Financial Year

The financial year of the Corporation shall correspond to a calendar year. The starting date shall be determined by the Board.

### Article 41. Balance Sheet and Evidence of Profits and Losses

By the end of the financial year, the accounts shall be closed in order to prepare the annual balance sheet and the profit and loss statement for the respective year.

### Article 42. Reserves and Special Funds<sup>19</sup>

A quota of at least ten percent (10%) shall be separated annually from the net profits in order to create a reserve fund until the same reaches not less than fifty percent (50%) of the subscribed capital. The Shareholders' Meeting may authorize the establishment of special funds, in accordance with Article 13, and of other reserves and the distribution of the remainder among the shareholders through dividends.

The special funds shall have the purpose and functions which in each case are thereby stipulated, and the Corporation shall be responsible for their administration, which in turn may delegate the same to a third party. The special funds shall be governed by the provisions of this Article and those which, in each case, may be established by the Board.

The resources of the special funds shall be completely independent from the resources of the Corporation and shall be so maintained, accounted for, presented, used, invested, committed and otherwise disposed of.

In regards to the use of the special funds, the financial responsibility of the Corporation, as administrator, is hereby limited to the net assets and reserves of each of the constituted special funds. The Corporation shall have no residual interest in the net assets of the special funds.

### Article 43. Auditors

The Corporation shall retain the services of an auditing firm of international well-known prestige, which shall certify the annual balance sheet to be considered by the Regular Shareholders' Meeting.

19. As Amended by Decision N°204/2012.



## **Liquidation and Arbitration**

### Article 44. Liquidation

Once the dissolution of the Corporation is agreed, the liquidation shall be carried out by one liquidator or by a liquidation committee, according to the decision made by the Shareholders' Meeting to such effect. The liquidator or the liquidation committee shall represent the Corporation during the liquidation process, it shall pay outstanding debts, collect the credits, distribute the remainder among the shareholders proportionately to the paid-in capital represented by each share; and in general, it shall perform all duties pertaining to the liquidation process. The Shareholders' Meeting which designates the liquidator or the liquidation committee, shall establish the term of their office and the basic rules which shall govern the liquidation process. At the end of their mission, or of the terms fixed by the Shareholders' Meeting, the liquidators shall render a detailed account of the activities carried out, and at the end of their task they shall submit a detailed report of the entire liquidation.

### Article 45. Arbitration

In case of any disagreement between the Corporation and the shareholders thereof, the said controversy shall be submitted to the arbitration of a court formed by three individuals.

One of the arbitrators shall be designated by the Board of the Corporation, another one by the interested party and the third one, by mutual agreement of the arbitrators. If they may not reach an agreement in this regard, the Corporation or the interested party may request the designation of the third arbitrator to the Mixed Committee or to the Body which eventually replaces the same.

None of the arbitrators may be of the same country as the party interested in the controversy.

If all attempts to reach a unanimous agreement fail, decisions shall be taken by a majority vote. The third arbitrator may decide all procedural and competence matters in case the parties are in disagreement with respect to them.

## **Immunities, Exemptions and Privileges**

### Article 46. Scope of this Chapter

In order to achieve the objectives contemplated in this Agreement, the High Contracting Parties agree that the Corporacion Andina de Fomento shall enjoy the immunities, exemptions and privileges set forth in this Chapter within the territory of each one of them.

### Article 47. Immunity from legal process, search or any form of seizure

The goods and other assets of the Corporation, wherever they may be, shall enjoy immunity from expropriations, inquiries, requisition, confiscation, seizure, sequestration, attachment, retention or any other form of seizure by administrative or executive measures carried out by any of the Contracting States. Said goods and assets shall enjoy the same immunity from judicial actions as long as no final judgement is passed against the Corporation.

### Article 48. Possibility of Transfer and Conversion

The assets of any kind owned by the Corporation may be freely transferred and converted.

### Article 49. Archives

The archives of the Corporation shall be inviolable.

### Article 50. Exemption from Restrictions, Regulations, Controls and Moratoria

To the extent necessary for the Corporation to achieve its objective and to perform its functions and operations hereunder, the goods and other assets of the Institution are exempt from all kinds of restrictions, regulations and control and moratorium measures, unless otherwise contemplated in this Agreement.

### Article 51. Privileges for Communications and Correspondence

With regard to its official communications, the Corporation shall be

accorded the same treatment given by the Contracting States to their official communications.

The correspondence of the Corporation, including packages and printed matters, whenever they bear its postage seal, shall circulate exempt from postage of the Contracting States.

#### Article 52. Exemptions from taxes and customs duties

- a) The Corporation is exempt from all kinds of tax encumbrances, and in the appropriate cases, of customs duties imposed on its income, goods and other assets, as well as the operations and transactions carried out hereunder.

The Corporation is also exempt from any responsibility related to the payment, withholding or collection of any tax, contribution or fee.

- b) No tax shall be levied in respect of salaries and emoluments paid by the Corporation to its Directors, their alternates, its officers and employees, who are not citizens or nationals where the Corporation has its headquarters or offices.
- c) No taxes whatsoever shall be levied on the bonds or securities issued by the Corporation, including dividends or interest thereon, irrespective of who the holder thereof may be:
1. If such taxes make a discrimination against said bonds or securities only due to the fact of having been issued by the Corporation.
  2. If the only basis for jurisdiction for said taxes is the place or the currency of issuance of said bonds or securities, or the place or currency in which said bonds or securities are paid or payable, or the place of any office or domicile of the Corporation.
- d) No taxes whatsoever shall be levied either on bonds or securities guaranteed by the Corporation, including dividends or interest thereon, disregarding who the holder thereof may be:
1. If such taxes make a discrimination against said bonds or securities only due to the fact of having been guaranteed by the Corporation.
  2. If the only basis for jurisdiction for said taxes is the place of any office or domicile of the Corporation.

### Article 53. Personal Immunities and Privileges

The Directors, Executive President, Vice-Presidents and professional, technical and head officers of the Corporation shall enjoy the following privileges and immunities:

- a) Immunity from judicial and administrative procedures with respect to acts performed by them in the exercise of their functions, unless the Corporation expressly waives such immunity;
- b) If they were not nationals of the country where they are, the same immunities with respect to immigration restrictions, foreigners registration requirements and military service obligations, and the same advantages with respect to currency exchange provisions that the country grants to representatives, officers and employees of similar rank of other member countries, and
- c) The same privileges with respect to travel advantages that the Contracting States grant to the representatives, officers and employees of a similar rank of other Contracting States.

### Article 54. Judicial Procedures

Judicial actions against the Corporation may only be filed before a court of competent jurisdiction in the territories of a Contracting Party where the Corporation has an office, or where it has designated an agent or attorney-in-fact with power to accept service of process or notice of a judicial complaint, or where it may have issued or guaranteed any securities.

The Contracting States hereof, the persons who represent them or who derive their rights therefrom, may not file a judicial action against the Corporation.

However, the shareholders may enforce said rights according to the special procedures indicated herein or in the regulations of the Institution, or in the contracts that may be executed, in order to solve the controversies that arise among them and the Corporation.

## Withdrawal and Suspension of Series “A” Shareholders

### Article 55. Right of Withdrawal<sup>20</sup>

Any Series “A” shareholder may withdraw from the Corporation, in which case the latter shall acquire the share in question. Notification of this decision shall be made in writing to the Board of Directors. Series “A” shares shall be paid for according to their book value, and the Board of Directors shall, with due regard for the Corporation’s financial situation, determine the period of payment, which may not exceed five (5) years. Series “B” shares held by natural or juridical persons in the country to which the Series “A” shareholder that has decided to withdraw from the Corporation belongs may be freely transferred within the Member Countries, provided that the proportions allocated to private entities specified in Article 5 (3) is observed. In the event of the withdrawal of a Series “A” shareholder, the next Ordinary Shareholders’ Assembly shall bring the pertinent provisions of the present Agreement into line with the new situation thus created, in accordance with the general sense of the Agreement.

### Article 56. Suspension

The Series “A” shareholder which, to the judgment of the Board, is in serious breach of any of its obligations towards the Corporation, may be suspended whenever the Shareholders’ Meeting so decides. The suspended shareholder shall automatically cease being a member of the Corporation fifteen (15) months after the date of suspension, unless otherwise decided by the Shareholders’ Meeting. During the suspension period, the shareholder may not exercise any of the rights conferred upon him by this Agreement, except its withdrawal right.

20. As Amended by Decision N° 187/2009.

## Final Provisions

### Article 57. Entry into Force

This Agreement shall enter into force after the deposit with the Ministry of Foreign Affairs of Venezuela of the instruments of ratification, by the representatives of three (3) of the signatory countries, among which the country of the headquarters must be. If in the period of one year following the deposit of the ratification instruments by the last of the three countries, the remaining countries have not complied with the deposit of the ratification instruments, the Board shall call a Special Shareholders' Meeting in order to adapt the pertinent provisions hereof to the number of countries which has ratified this Agreement. The countries having deposited their ratification instrument prior to the entry into force of this Agreement, shall be members as of said date. The other countries shall be members as of the date when they file their ratification instruments.

### Article 58. Reservations

The signature, ratification or accession hereto may not be made with reservations.

### Article 59. Adhesion<sup>21</sup>

This Agreement is open to the adhesion of all countries of Latin America and the Caribbean that meet the conditions for their incorporation as determined by the Shareholders' Meeting. The instruments of adhesion shall be deposited in the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela.

The Agreement shall enter into force for the adherent country thirty (30) days after the Shareholders' Meeting determines that the conditions for its adhesion have been complied with, including the presentation of the aforementioned corresponding instrument. The Shareholders' Meeting shall consider and approve the adjustment of the pertinent provisions of this Agreement, caused by the adhesion of a new State.

21. As amended by Decision N° 164/2005 and Modificatory Protocol 2005.

## Article 60. Reincorporation

The Shareholders' Meeting shall determine the conditions for the reincorporation of a Series "A" shareholder who had withdrawn.

## Transitional Arrangements

First: As of the entry into force of this Agreement, the country where the headquarters are shall call a first Shareholders' Meeting within the period of sixty (60) calendar days.

Second: Within the period comprised between the entry into force of this Agreement and the Shareholder's Meeting referred to in article 57, the Corporación Andina de Fomento shall be temporarily managed in the manner set forth by its Shareholders' Meeting, according to the general criteria indicated herein.

Third: If three (3) countries ratify this Agreement and the country where the headquarters are does not ratify it, after a period of three (3) months following the date of the last deposit of the ratification instrument, the ratifying countries may agree to chose another headquarters.

Given in the City of Bogota, on the seventh day in the month of February, Nineteen Hundred and Sixty -Eight, in Spanish, in six counterparts which are equally authentic.

In witness whereof, the plenipotentiary representatives whose signatures appear below have signed this Agreement:

For the Government of the Republic of Ecuador    Gonzalo Apunte.

For the Government of the Republic of Bolivia    Tomás Guillermo Elio.

For the Government of the Republic of Colombia    Jorge Valencia Jaramillo.

For the Government of the Republic of Chile    Salvador Lluch.

For the Government of the Republic of Peru    José de La Puente.

For the Government of the Republic of Venezuela    Héctor Hurtado.

A N N E X

## Amendments of the Chapter

DECISIONS	DATE	PURPOSE
1. No. 21 S.M.I /74	Nov. 21-22/74	Increase of Capital
2. No. 29 S.M.II/77	Jan.18-19/77	Series “A” and “B” only to be subscribed by Governments or public and semipublic institutions, or institutions of private law with a social and public purpose. To express the convenience for Chile to remain as a CAF member within a special regime.
3. No. 33 R.M. VIII/77	Oct.01/77	Withdrawal of Chile (articles 5, 12, 15, 23, 24, 25 y 26)
4. No. 34 R.M.VIII/77	Oct.01/77	Increase of Capital, (article 5).
5. No. 73 S.M.III/86	Jun.06/86	Increase of Capital, (article 5)
6. No. 75 S.M.IV/86	Oct.30/86	Articles 5, 6, 23, 24, 25 y 26
7. No. 79 R.M.XVIII/87	Mar.30/87	Articles 5 and 10
8. No. 90 S.M.V/89	Oct.30/89	Increase of Capital: Issuance of Series “B” (article 5).
9. No. 91 S.M.V/89	Oct.30/89	Articles 5, 23 y 24
10. No. 96 S.M.VI/90	Jun.12/90	Increase of Capital (article 5)
11. No. 97 S.M.VI/90	Jun.12/90	Article 5
12. No. 120 S.M.VII/96	Jul.02/96	Articles 5, 6, 8, 10, 23, 24, 27, 37 y 55
13. No 128 R.M. XXIX/98	Mar.06/98	Articles 5,10 y 55
14. No 130 S.M. VIII/98	Dec.02/98	Article 5
15. No 149 S.M. IX./02	Mar.01/02	Articles 5, 23, 24, 25
16. No 164 S.M.X./05	Jun.06/05	Articles 3, 59
17. No. 179 S.M.XI/08	Mar.25/08	Article 5
18. No. 187 S.M.XIII/09	Dec.08/09	Articles 4, 5, 6, 10, 12, 15, 16, 17, 23, 24, 25, 26, 28, 29, 36, 38 y 55
19. No. 204 S.M.XV/12	Mar.06/12	Articles 13, 24, 27, 28, 42.
20. No. 219 S.M.XVIII/15	Mar 10/15	Article 5

Note:

R.M. = Regular Meeting

S.M. = Special Meeting