PART A OPERATIONAL MODALITIES

CHAPTER I CAPITAL OF THE FUND

Section 1 Mobilization of Fund

1. Pursuant to Articles 3 and 7 of the Charter, the SAARC Development Fund (SDF) may mobilize and generate funds from both within and outside the SAARC region. The funds for the SDF may be raised from: (i) assessed contribution by the Member States; (ii) voluntary contributions by the SAARC Member States; (iii) contributions from non-regional contributors; and (iv) contributions from private/public institutions from SAARC member states and individual philanthropists.

2. Depending upon the identification of regional infrastructure projects, the extent of requirements of funds, and such other purposes as may be decided by the Governing Council, the Fund may access capital market.

3. In addition, SDF may mobilize funds through Public Private Partnerships (PPP).

Section 2 Authorized Capital

1. The initial authorized capital of the Fund shall be SDR One Thousand Million, to be divided into callable capital and paid-up capital.

2. The initial paid-up capital of the Fund shall be SDR Two Hundred Million. The initial paid-up capital will be subscribed by the Member States in accordance with the proportion of the assessed contribution to the SAARC Secretariat budget and as set forth in **Annex-A** hereof. Future contributions to the paid-up capital will be raised as per decision of the Governing Council.

Section 3 Subscription of Contributions

1. Each subscription to the authorized capital shall be divided into paid-up capital and callable capital. The ratio of subscription to the callable capital will be subject to review by the Governing Council.

2. The Governing Council, from time to time, shall review the capital of the Fund and criteria for mobilization of additional funds. In case of an increase in the authorized capital, each SAARC Member State shall have a reasonable opportunity to subscribe, under such terms and conditions as the Governing Council shall determine.

3. The liability of the contributors shall be limited to the unpaid portion of their contributions. No contributor shall be liable for obligations of the Fund.

Section 4 Payment of Subscriptions

1. Subscriptions by each Member State to the initial paid-up capital of the Fund shall be made in five (5) equal installments. The first instalment shall be due within one month of entry into force of the SDF Charter.

2. The payment of subscriptions to the paid-up capital shall be made:
(a) Seventy (70) per cent in convertible currency; and
(b) Thirty (30) per cent in the currency of the contributing Member State:

Provided that the Fund shall accept promissory notes or other obligations issued by Government of a SAARC Member State or its designated depository in lieu of the amount to be paid in its own currency.

3. Each payment under sub-section 2(b) of this Section shall be in such amount as the Fund determines to be equivalent to the full value in terms of SDR of the portion of the subscription being paid.

4. Payment of the amount subscribed to the callable capital of the Fund shall be subject to call only, as and when required by the Fund, to meet its obligations and for inclusion in the monies of the Fund or on guarantees chargeable to such resources.

5. Subject to clause 2 of this Section, in the event of a call, payment may be made at the option of the contributor in convertible currency or in the currency required to discharge the obligations of the Fund for the purpose of which the call is made. Calls on unpaid subscriptions shall be uniform in percentage on all callable capitals.

Section 5

Payment of first installment of the initial authorized capital

1. The Fund shall determine the place for any payment made under Section 4, provided that, until the inaugural meeting of the Governing Council, the payment of the first installment shall be made to the SAARC Secretariat, as the temporary depository of the Fund.

CHAPTER II OPERATIONS, APPLICATION AND UTILISATION OF FUND

Section 6 Ordinary and Other Operations

1. The Operations of the Fund shall consist of Ordinary Operations financed from the monies of the Fund and Other Operations financed from sources mentioned in Section 7 of the Charter for specific purposes.

2. Expenses appertaining directly to the Other Operations shall be charged to other resources. Any other expenses shall be charged, as the Governing Council may determine.

Section 7 Methods of operation

1. The Fund shall carry out its operations in furtherance of its purpose and functions as set out in the Charter in any or all of the following ways:

- (i) by making or participating in direct loans;
- (ii) by managing its idle funds in a prudent and beneficial manner;
- (iii) by guaranteeing in whole or in part, loans for economic development and serving other objectives of the Fund, participated in by the Fund;
- (iv) by facilitating access to domestic and international capital markets by institutions or enterprise through the provision of guarantees, where other means of financing are not appropriate, and through financial advice and other forms of assistance;
- (v) by deploying other resources, in accordance with the agreements determining their use; and
- (vi) by or, through such other financial instruments, as the Governing Council may decide.

2. The Governing Council shall review at least annually the Fund's operations and lending strategy to ensure that the purpose and functions of the Fund are fully served.

Section 8 Limitations on operations

1. The total amount of outstanding loans and guarantees made by the Fund shall not at any time exceed the total amount of its unimpaired subscribed capital, reserves and surpluses included in the monies of the Fund.

Section 9 Provision of currencies for direct loans

1. In making direct loans or participating in them, the Fund may provide financing in any of the following ways:

(i) by furnishing the borrower with currencies other than the local currency, which are necessary to meet the foreign exchange costs of a project; or

by providing funds to meet local expenditures on the project concerned, where it can do so by supplying local currency without selling any of its holdings in convertible currencies. (ii)

Section 10 General Guidelines and Operating Principles

The operations of the Fund and implementation of the projects funded by SDF shall be guided by the 1 following general guidelines, as applicable:

- the operational modalities of the Fund would be adequately flexible to suit the nature and quantum (i) of funds that may change over time;
- Criteria for selecting projects and their implementation modalities may be different for the three (ii) Windows, depending upon their objective, nature and size;
- the Governing Council, while formulating disbursement criteria for the Windows and selecting projects, shall factor in the needs of the Member States and equitable geographical distribution (iii) apart from economic and financial considerations;
- the Fund would seek to leverage additional resources, through participation in Private Public (iv) Partnerships (PPP);
- projects spread in more than two countries may be split into country segments and the Fund may (v) finance, co-finance the whole or part of such projects; and
- the Infrastructure Window should, as far as possible, finance projects in collaboration with national, regional and international agencies to maximize development impact. (vi)

The operations of the Fund shall be conducted in accordance with international best practices, in particular 2 with the following principles:

- the Fund shall apply, as far as possible, sound banking principles to all its operations;
- the operations of the Fund shall provide for the financing of specific projects, whether individually (i) or in context of programmes, and for technical assistance, designed to fulfill the purpose and (ii) functions of the Fund:
- the Fund shall not finance any undertaking in the territory of a SAARC Member State if that (iii) country objects to such financing;
- the Fund shall seek to maintain reasonable diversification in all its lending operations;
- before a loan or, guarantee is granted, the applicant shall have submitted an adequate proposal and (iv) the CEO of the Fund shall have presented a written report regarding the proposal, together with his (v) recommendations;
- in providing or guaranteeing financing, the Fund shall pay due regard to the prospect that the borrower and its guarantor, if any, will be in a position to meet their obligations under the (vi) financing contract;
- in case of a direct loan made in phases, by the Fund, the borrower shall be permitted by the Fund (vii) to draw its funds only to meet expenditure as it is actually incurred;
- in its investments in individual enterprises, the Fund shall undertake its financing on terms and conditions which it considers appropriate, taking into account the requirements of the enterprise, (viii) the risks being undertaken by the Fund, and the terms and conditions normally obtained by private investors for similar financing;
- the Fund shall place no restriction upon the procurement of goods and services from any Member State; and shall, in appropriate cases, make its loans and other operations conditional on (ix) international invitations to tenders being arranged; and
- the Fund shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Fund, are used only for the purposes for which the loan was (x) granted.

Section 11

Loans, guarantees, commission and fees

In the case of loans made, participated in, or guaranteed by the Fund, the contract shall establish the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other fees, charges, maturities and dates of payment in respect of the loan or the guarantee, respectively, in conformity with the operating principles mentioned in Section 10 of this Bye Laws.

2. The Fund may, when it appears desirable, require the country in whose territory a project is to be carried out, or a public agency or any instrumentality of such recipient or recipients acceptable to the Fund, to guarantee the repayment of the principal and the payment of interest and other fees and charges of the loan in accordance with the terms thereof.

3. The Board of Directors may determine any other charges of the Fund in its operations and any commission, fees or other charges in its other operations.

Section 12 Special Reserve

1. The amount of commissions and fees received by the Fund pursuant to Section 11 of this Bye Laws shall be set aside as a Special Reserve, which shall be kept for meeting the losses of the Fund in accordance with Section 13. The Special Reserve shall be held in such liquid form as the Fund may decide.

2. If the Governing Council determines that the size of the special reserve is adequate, it may decide that all or part of the said commission or fees shall, form part of the monies of the Fund.

Section 13 Methods of meeting the losses

1. In cases of arrears of default on loans made, participated in, or guaranteed, the Fund shall take such action, as it deems appropriate. The Fund shall maintain appropriate provisions against possible losses.

2. Losses arising in the Fund's ordinary operations shall be charged in the following order:

- (i) to the provisions referred to in clause 1 of this Section;
- (ii) to net income;
- (iii) against the Special Reserve provided for in Section 12;
- (iv) against its general reserve and surpluses; and
- (v) against the paid-up capital.

Section 14 Allocation and Distribution of Net Income

1. The Governing Council shall determine what part of the Fund's net income, after making provisions for reserves and, if necessary, against possible losses under clause 1 of Section 13 of the Bye-laws, shall be allocated to surplus or other purposes.

Section 15 Review of access to funds

1. In cases where a Member State is in default in its commitments to the Fund, or in exceptional circumstances, the Governing Council shall review its access to Fund resources and may take appropriate decisions.

Section 16

Temporary suspension of operations

1. In an emergency, the Governing Council may suspend any or all of its operations temporarily in respect of new loans, guarantees, technical assistance and pending an opportunity for further consideration and action by the Board of Directors.

2. The Governing Council may discontinue any or all the operations of the Fund, if it deems necessary.

Section 17 Termination of Operations

1. The Governing Council may recommend termination of operations of the Fund for consideration of the Heads of State or Government.

Section 18 Liability of contributors and payment of claims

1. In the event of termination of the operations of the Fund, the liability of all contributors for all uncalled subscriptions to the capital of the Fund shall continue until all claims of creditors shall have been discharged.

2. Creditors holding direct claims shall be paid first out of the assets of the Fund, secondly out of the payments to be made to the fund in respect of outstanding paid–up capitals, and then out of payments to be made to the Fund in respect of callable capital. Before making any payments to creditors holding direct claims, the Governing Council shall make such arrangements as are necessary, in its judgment, to ensure a pro-rata distribution among holders of direct and holders of contingent claims.

Section 19 Distribution of assets

1. No distribution shall be made to the contributors on account of their subscriptions to the capital of the Fund until:

- (i) all liabilities to creditors have been discharged or provided for; and
- (ii) the Governing Council has so decided.

2. Any distribution of the assets shall be in proportion to the capital held by each contributor and shall be effected at such times and under conditions, as the Fund shall deem fair and equitable. No contributors shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations.

CHAPTER-III CURRENCIES

Section 20 Currency

1. All the monetary transactions shall be carried out in Special Drawing Rights (SDR) and the currency of the SAARC Member States.

2. The Fund shall also have authority to receive and possess monies, including currencies of any kind and maintain accounts in all currencies. The Fund shall freely transfer its monies to, from and within a Member State and exchange any currency in its possession into any other currency.

Section 21 Convertibility of currency

1. Whenever it shall become necessary to determine whether any currency is fully convertible for the purposes of the Bye-laws, such determination shall be made by the Governing Council.

Section 22 Use of currencies

1. The SAARC Member States shall not impose any restrictions on the receipt, holding, use or transfer by the Fund of the following:

- (i) convertible currencies received by the Fund in payment of subscriptions;
- (ii) currencies obtained by the Fund by borrowing;
- (iii) currencies and other monies administered by the Fund as contributions to Other Funds;
- (iv) currencies received by the fund in payment on account of principal interest, dividends or other charges in respect of loans or, the proceeds of disposal of such assets made out of any of the funds, or in payment of commission, fees or other charges; and
- (v) currencies received from the Fund in distribution of the net income of the Fund.

2. Nothing herein contained shall prevent the Fund from using the currency of any SAARC Member State for administrative expenses incurred by the Fund in the territory of that country.

CHAPTER - IV RESOURCE MOBILIZATION & MISCELLANEOUS POWERS

Section 23 Borrowing Powers

1. The Fund shall have the power to borrow in any SAARC Member State or elsewhere and in this respect to furnish such collateral or other security therefore as the Fund shall determine provided that:

- (i) before making a sale of its obligation in the territory of a SAARC Member State, the Fund shall obtain the approval of that country;
- (ii) where the obligations of the Fund are to be denominated in the currency of a SAARC Member State, the Fund shall obtain the approval of the country for such issues;

2. The Fund shall have the power to raise capital in the international financial market by issuing various securities as approved by the Governing Council.

Section 24 Miscellaneous powers

- 1. In addition to the powers specified elsewhere in the Bye-laws, the Fund shall have the powers to:
 - (i) to acquire, manage, hold, sell and generally deal with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or any financial assistance;
 - (ii) to hire or hire out, acquire, construct, maintain and alter any building or works or immovable property for the purpose of carrying on the business of the Fund;
 - (iii) provide technical advice and assistance which serves its functions and come within its functions;
 - (iv) to sell, improve, manage, develop, exchange, lease, mortgage, dispose of or turn into account or otherwise deal with all or any part of the property and rights of the Fund;
 - (v) to carry on the activities of hire purchase finance and leasing, including sub-leasing, cross-border leasing and lease syndication and to acquire to provide, on lease or on hire purchase basis, all types of plant, equipment, machinery, vehicles, building, and real estate;
 - (vi) to levy and collect interest, fees, commission, commitment, service and other charges for the loans and advances granted by the Fund, or for its financial or other assistance or in respect of indemnities, licenses, permissions, guarantees or counter-guarantees given by it or for the services rendered by the Fund to other persons;
 - (vii) to remunerate any person, firm, company or association of persons for services rendered or to be rendered to or on behalf of the Fund;
 - (viii) to create any reserve fund, sinking fund, or any other special fund;
 - (ix) to invest and deal with or to keep in deposit the money of the Fund;
 - (x) to exercise such powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions;
 - (xi) to establish and maintain agencies, offices, or branches;
 - (xii) to appoint or employ temporarily or permanently or obtain on deputation or engage any person or persons who may be required for purposes of the Fund and to pay for their services, wages, gratuities, provident fund and other contributions;
 - (xiii) to indemnify Directors, officers and servants of the Fund against proceedings, costs, damages, claims and demands in respect of anything done or ordered to be done, for and in the interest of Fund or for any loss or damage or misfortune whatever happens in execution of duties of their offices;
 - (xiv) to effect and maintain insurance against loss of or injury to any property of or any persons employed by the Fund or against any other loss to the Fund;
 - (xv) to conclude agreements of cooperation with any public or private entity or entities; and
 - (xvi) to undertake such other activities and provide such other services as may advance its purpose.

PART B ORGANIZATION AND GOVERNANCE

Section 25 Governing Council: Powers

1. All the powers of the Fund shall vest in the Governing Council.

2. The Governing Council may delegate to the Board of Directors any or all of its powers, except the power

to:

- (i) increase or decrease the authorized capital of the Fund;
- (ii) decide in case of review of access to funds as under Section15 of the Bye-laws;
- (iii) decide appeals from interpretations or applications of the Charter and Bye-laws;
- (iv) authorize the conclusion of general agreements for co-operation with other international organizations;
- (v) appoint the Chief Executive Officer of the Fund;
- (vi) determine the remuneration and other terms of the contract of service of the CEO;
- (vii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Fund;
- (viii) determine the reserves and the allocation of the net profits of the Fund;
- (ix) amend the Charter and Bye-laws; and
- (x) recommend to terminate the operations of the Fund and to distribute its assets;

3. The Governing Council shall retain full power to exercise authority over any matter delegated or assigned to the Board of Directors under paragraph 2 of this Section or, elsewhere in this Bye-laws.

Section 26 Governing Council: Working Procedure

1. The Governing Council shall hold an annual meeting and such other meetings, as may be required.

2. The governance of the Fund, including decision-making in the Governing Council shall be in accordance with the principles established in the SAARC Charter.

3. The Governing Council may, by circulation and without meeting, give its views or decisions on issues or specific questions referred to it by the Board of Directors.

4. The Governing Council may create and assign other entities, as and when required, for the smooth conduct of the business of the Fund.

Section 27 Board of Directors: Powers and functions

1. The powers and functions of the Board of Directors and its Chairperson shall be decided by the Governing Council.

2. Without prejudice to the powers of the Governing Council as provided in Section 25 of this Bye-laws, the Board of Directors shall be responsible for the general operations of the Fund and, for this purpose, shall, in addition to the powers assigned to it expressly in this Bye-laws, exercise all the powers delegated to it by the Governing Council, and in particular:

- (i) prepare the work of the Governing Council;
- (ii) establish, in conformity with the general directions of the Governing Council, policies and take decisions concerning loans, guarantees, borrowing by the Fund, the furnishing of technical assistance and other operation of the Fund;
- (iii) submit annual report and audited accounts for each financial year for approval of the Governing Council at each annual meeting; and
- (iv) approve the budget of the Fund.

- 3. The Board of Directors, in order for exercising its powers, shall perform functions to:
 - i. formulate detailed working procedure and operational modalities for the functioning of the Fund and the Permanent Secretariat;
 - ii. decide on the guidelines for mobilizing and generating funds from the financial markets in the region and the global financial market;
 - iii. approve projects and terms and conditions for funding the same;
 - iv. decide on the guidelines on the basis of which grants, concessional loans, and non-concessional loans are to be allocated;
 - v. decide on Special Invitees and their participation in the meetings of the Board;
 - vi. review the progress of the studies/ assignments undertaken;
 - vii. make recommendation to the Governing Council on amendment of the Charter and Bye-laws.

Section 28 Board of Directors: Working Procedure

1. The Board of Directors shall meet as often as the business of the Fund may require but shall meet at least twice a year.

2. The quorum of any Meeting of the Board of Directors shall be five.

3. Decision-making in the Board shall be in accordance with the principles established in the SAARC Charter.

Section 29 The Chief Executive Officer

1. The Governing Council shall appoint a Chief Executive Officer (*hereinafter called "CEO"*) of the Fund. The term of office of the CEO shall be five years, extendable by another term of five years. The Governing Council shall have the power to terminate the services of the CEO before the completion of the term.

2. The CEO shall be the legal representative of the Fund. He or she shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with Rules and Regulations. In appointing officers and staff, the CEO shall, subject to the paramount importance of efficiency and technical competence, pay due regard to recruitment on a wide geographical basis among members of the Fund.

3. The CEO shall be responsible for day-to-day business of the Fund, and shall function subject to general supervision and guidance of the Board of Directors.

PART C IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Section 30

Immunity from judicial process and other aspects of immunity

1. The Fund shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which case actions may be brought against the Fund only in a court of competent jurisdiction in the territory of a country in which the Fund has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Section, no actions shall be brought against the Fund by any Member State or by any agency or instrumentality representing it, or by any entity or person acting directly or indirectly for or deriving claims from a contributor.

3. Property and assets of the Fund, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, attachment, expropriation or any other form of taking or foreclosure by executive or legislative action.

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

5. All Directors and their Alternates, officers and employees of the Fund and experts performing missions for the Fund shall be immune from legal process with respect to acts performed by them in their official capacity, and shall enjoy inviolability of all their official papers and documents. They, for not being local nationals, shall be accorded the same immunities from immigration restrictions and national service obligations.

Section 31 Privileges

1. To the extent necessary to carry out the purpose and functions of the Fund effectively, and subject to the provisions of the Charter and the Bye-laws, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

2. The official communications of the Fund shall be accorded by each SAARC Member State the same treatment that it accords to the official communications of any other Member State.

3. All Members, Alternates, officers and employees of the Fund and experts of the Fund performing missions for the Fund shall be: (i) accorded same facilities as regards exchange regulations, (ii) granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other SAARC member states.

Section 32 Exemption from taxation

1. Within the scope of its official activities the Fund, its assets, property, and income shall be exempt from all direct taxes.

2. When purchases or services of substantial value and necessary for the exercise of the official activities of the Fund are made or used by the Fund and when the price of such purchases or services includes taxes or duties, the Member State that has levied the taxes or duties shall, if they are identifiable, take appropriate measures to grant exemption from such taxes or duties or to provide for their reimbursement.

3. Goods exported or imported by the Fund and necessary for the exercise of its official activities shall be exempt from all import and export duties and taxes, and from all import prohibitions and restrictions.

4. Goods acquired, exported or imported and exempted under this Section shall not be sold, hired out, lent or given away against payment or free of charge, except in accordance with conditions laid down by the Member States which have granted exemptions or reimbursements.

Section 33 Waiver of immunities, privileges and exemptions

1. The Governing Council may waive to such extent and upon such conditions as it may determine, any of the immunities, privileges and exemptions conferred under this Part, as regards the functions of the Fund, in cases where such action would, in its opinion, be appropriate in the best interests of the Fund.

2. The Governing Council shall have the right to waive any immunity, privilege or exemption in respect of the person of the CEO, where, in its opinion, the immunity, privilege or exemption would impede the course of justice and can be waived without prejudice to the interests of the Fund. The CEO shall have the right and the duty to waive any immunity, privilege or exemption in respect of any officer, employee or expert of the Fund under similar circumstances.

PART D MISCELLANEOUS PROVISIONS

Section 34 Accounting and Auditing Procedure of the Fund

The Accounting Year of the Fund shall be 1 January to 31 December. 1.

The accounts of the Fund shall be maintained in accordance with international accounting standards. 2.

The Financial Statement of the Fund shall be prepared within ninety (90) days from the closure of the 3. accounting year.

The Financial Statement of the Fund shall be audited by internationally reputed certified Chartered 4. Accountant, as approved by the Governing Council.

The Audited Financial Statements shall be submitted before the Annual Meeting of Governing Council, through the Board of Directors, together with the Annual Report of the Fund. It should also include copy of the Audited Balance sheet and statement of operating accounts.

Section 35 International character of the Fund

The Fund shall accept funds or, loans or, assistance that are in no way prejudicial to, or, deflect or 1. otherwise alter its purpose or functions.

In the decision-making process, the Fund, its CEO, officers and staff shall take into account only consideration relevant to the Fund's purpose, functions and operations, as set out in the Charter and the Bye-laws. Such considerations shall be weighed impartially in order to achieve and carry out the purposes and functions of the Fund.

The CEO, officers and staff of the Fund, in the discharge of their functions, shall owe their duty entirely to 3. the Fund and to no other authority or country.

Section 36 Inaugural meeting and commencement of operations

As soon as the Charter enters into force, each member state shall appoint a member to the Board of Directors and an Alternate. The Depository shall call the first meeting of the Governing Council no later than sixty (60) days of the entry into force of the Charter. The Board of Directors may meet prior to such a meeting, if so required.

At its first meeting, the Governing Council 2.

- may appoint the CEO; shall make arrangements for determining the date of the commencement of the Fund's operations; (i)
- (ii) shall decide matters related to payment of subscriptions; and
- shall make such other arrangements, as deemed necessary to prepare for the commencement of (iii) (iv)the Fund's operations.

<u>Annex A</u>

Details of Initial Contributions towards Paid-up Capital (Figures in SDR and in million)

Country	Initial Contribution
1. Islamic Republic of Afghanistan	10.00
2. People's Republic of Bangladesh	21.44
3. Kingdom of Bhutan	10.00
4. Republic of India	60.64
5. Republic of Maldives	10.00
6. Nepal	21.44
7. Islamic Republic of Pakistan	45.04
8. Democratic Socialist Republic of Sri Lanka	21.44
Total	200