

CONFORMED COPY

CREDIT NUMBER 2366 BEN

(Engineering and Technical Assistance Project)

between

REPUBLIC OF BENIN

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 26, 1992

CREDIT NUMBER 2366 BEN

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 26, 1992 between the REPUBLIC OF BENIN (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Republic of Togo has also requested the Association to assist in the financing of the Project described in Schedule 2 to this Agreement and by an agreement of even date herewith between the Republic of Togo and the Association (hereinafter called the "Togo Development Credit Agreement"), the Association is agreeing to provide such assistance in an aggregate principal amount equivalent to two million one hundred thousand Special Drawing Rights (SDR 2,100,000);

(C) pursuant to an agreement of even date herewith among the Republic of Togo, the Borrower, the Communaute Electrique du Benin (hereinafter called CEB) and the Association (such agreement hereinafter called the Joint Financing Agreement), the Project will be carried out by CEB with the assistance of the Borrower and the Republic of Togo, and as part of such assistance, the Borrower will make available to CEB the proceeds of the Credit as hereinafter provided and the Republic of Togo will make available to CEB the proceeds of the credit provided for under the Togo

Development Credit Agreement in accordance with the terms of said agreement;

(D) the Borrower, the Republic of Togo, and the Association intend that for the financing of the Project to be carried out by CEB, the proceeds of the Credit provided for in this Agreement be disbursed, *pari passu*, with the proceeds of the credit provided for in the Togo Development Credit Agreement;

WHEREAS the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the modifications set forth in Schedule 4 to this Agreement (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "CEB" means the Communaute Electrique du Benin, an international public enterprise established and operating pursuant to the Accord Relatif l'Institution d'un Code Daho-Togolais de l'Electricite et la Creation d'une Communaute Electrique du Benin, between the Borrower and the Republic of Togo, dated July 27, 1968, as the same may be amended from time to time; and "CEB Treaty" means said Accord;

(b) "CEET" means the Compagnie Energie Electrique du Togo, a public company established pursuant to Ordinance No. 63-12 of March 20, 1963, of the Republic of Togo and operating pursuant to statutes approved by Decree No. 63-152 of December 11, 1963, as such statutes may be amended from time to time;

(c) "SBEE" means the Societe Beninoise d'Electricite et d'Eau, a Societe d'Etat operating pursuant to statutes approved by Decree No 83-339 of September 27, 1983 of the Borrower, as such statutes may be amended from time to time;

(d) "Joint Financing Agreement" means the agreement of even date herewith among the Borrower, the Republic of Togo, CEB and the Association, as the same may be amended from time to time;

(e) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(f) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to an exchange of letters, dated respectively June 3, 1988, and June 17, 1988, and April 12, 1991 and June 5, 1991, between the Borrower and the Association; and

(g) "FCFA" means the currency of the Borrower.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to two million one hundred thousand Special Drawing Rights (SDR 2,100,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower shall, for the purposes of the Project, open and maintain in

FCAF a special deposit account in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 3 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be cancelled.

Section 2.03. The Closing Date shall be June 30, 1996 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on April 1 and October 1 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semi-annual installments payable on each April 1 and October 1 commencing October 1, 2002 and ending April 1, 2032. Each installment to and including the installment payable on April 1, 2012 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years, and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the French Republic is hereby specified for the

purposes of Section 4.02 of the General Conditions.

Section 2.09. CEB is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. The Borrower (a) declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, (b) shall carry out its obligations and exercise its rights under the Joint Financing Agreement, (c) shall cause CEB to perform in accordance with the provisions of the Joint Financing Agreement all the obligations of CEB therein set forth, (d) shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable CEB to perform such obligations, and (e) shall not take or permit to be taken any action which would prevent or interfere with such performance.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to the Joint Financing Agreement.

Section 3.03. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) shall be carried out by CEB pursuant to Section 2.03 of the Joint Financing Agreement.

Section 3.04. The Borrower shall cause CEB to furnish to the Association quarterly reports covering Project implementation and expenditures and containing key indicators for monitoring the progress of the Project.

Section 3.05. The Borrower shall cause CEB to submit, by October of each year, to the Association for approval, the program of activities to be carried out during the subsequent year.

Section 3.06. The Borrower shall ensure that the terms of reference of the studies under Parts A (e) and (f) of the Project, include an examination of any potential riparian issues.

Section 3.07. The Borrower shall cause (i) CEB to submit to the Association, not later than September 30, 1993, the conclusions of the studies under Part A (d) of the Project; and (ii) CEB and SBEE to implement the recommendations of such studies, as agreed upon between the Association and the Borrower, before the mid-term review referred to in Section 3.08 of this Agreement.

Section 3.08. The Borrower shall (a) not later than October 31, 1993, carry out jointly with the Association and CEB, a comprehensive mid-term review of the implementation of the Project. Such review shall, in particular, assess the progress achieved in carrying out Part A (a), (c) and (d) and Part B of the Project; and (b) cause CEB to furnish to the Association, not later than four weeks before the review referred to in the above subparagraph (a), a report on the implementation of the Project including an action plan proposing such measures as may be required for further implementation of the Project; and (c) implement with due diligence the recommendations of such review.

ARTICLE IV

Financial Covenants

Section 4.01. (a) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditures, the Borrower shall:

- (i) cause CEB to maintain in accordance with sound accounting practices, records and accounts reflecting such expenditures;
- (ii) ensure that all records (contracts, orders, invoices, bills,

receipts and other documents) evidencing such expenditures are retained until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made; and

(iii) enable the Association's representatives to examine such records.

(b) The Borrower shall cause CEB to:

(i) have the records and accounts referred to in paragraph (a) (i) of this Section and those for the Special Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested, including a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals; and

(iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) CEB shall have failed to perform any of its obligations under the Joint Financing Agreement;

(b) as a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that CEB will be able to perform its obligations under the Joint Financing Agreement;

(c) the Accord Ralatif l'Institution d'un Code Daho-Togalais de l'Electricite et la Creation d'un Communauté Electrique du Benin, dated July 26, 1968, or the Code de l'Electricite annexed to such Accord, shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of CEB to perform any of its obligations under the Joint Financing Agreement;

(d) the Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of CEB or for the suspension of its operations; and

(e) (i) the right of the Republic of Togo to withdraw the proceeds of the credit made available to it under the Togo Development Credit Agreement shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the Togo Development Credit Agreement, and (ii) subparagraph (i) of this paragraph shall not apply if adequate funds for the Project are available to CEB from other sources on terms and conditions consistent with the obligations of CEB under the Joint Financing Agreement.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) or (b) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower; and

(b) the events specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Joint Financing Agreement has been executed on behalf of the Borrower, the Republic of Togo and CEB; and

(b) the conditions precedent to the effectiveness of the Togo Development Credit Agreement, other than fulfillment of the conditions precedent to the effectiveness of this Agreement have been satisfied.

Section 6.02. The following is specified as an additional matter, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association namely, that the Joint Financing Agreement has been duly authorized or ratified by Togo, the Borrower and CEB, and is legally binding upon Togo, the Borrower and CEB in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. The obligations of the Borrower under Article 3 of this Agreement and the provisions of paragraphs (a) and (b) of Section 5.02 of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on the date twenty-five (25) years after the date of this Agreement, whichever shall be the earlier.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 of this Agreement, the Minister at the time responsible for finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Minister of Finance
B.P. 302
Cotonou

Cable address:

MINIFINANCES
Cotonou, Benin

Telex:

MINFIN or 5289

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

197688 (TRT),
248423 (RCA),
64145 (WUI) or
82987 (FTCC)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF BENIN

By /s/ Candide Ahouansou

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ F. J. Aguirre-Sacasa

Acting Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Equipment	340,000	100% of foreign expenditures or 90% of local expenditures
(2) Consultants' services and training	1,380,000	100%
(3) Refunding of Project Prepara- tion Advance	220,000	Amount due pur- suant to Section 2.02 (c) of this Agreement
(4) Unallocated	160,000	
TOTAL	2,100,000	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower; and

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower and the Territory of Togo; provided, however, that if the currency of the Borrower is also that of another country from the territory of which goods or services are supplied, expenditures in such currency for such goods or services shall be deemed to be "foreign expenditures".

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawal in an amount not exceeding the equivalent of SDR 100,000 or one hundred thousand may be made in respect of Category (2) on account of payments made for expenditures under Part I of the Project, before that date but after March 1, 1992.

SCHEDULE 2

Description of the Project

The objectives of the Project are to: (a) pave the way to minimize the long-term cost of electricity supply in Benin and Togo; (b) strengthen all facets of CEB's management and operations mainly through technical assistance and training programs; and (c) improve sector efficiency and regional cooperation and integration.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A:

Studies covering the following:

(a) Updating and integrating the generation, transmission and distribution master plans of Togo and Benin.

(b) Studying the short-term supply requirements of CEB, including the technical audit of the operation of existing thermal plants in Benin and Togo and their rehabilitation.

(c) Preparing the detailed engineering and the bidding documents of the northern interconnections.

(d) Tariff studies for CEB, SBEE and CEET, including the definition of a model for regional interchange, as well as a detailed analysis of long-term marginal costs and mark-ups applied.

(e) Environmental assessments for future generation and transmission projects.

(f) Updating as required the technical, economic and financial studies relating to the Adjarala hydroelectric project on the Mono river and to the Ketou hydroelectric project on the Oueme river or undertaking the feasibility study for the next generation and transmission project in the least-cost expansion plan.

Part B:

Institutional strengthening of CEB, in particular its legal, planning and computerization departments, as well as its relationship with CEET and SBEE.

Part C:

Technical assistance and training to CEB, including further reinforcement of CEB's training capabilities at its Abomey-Calavi training center, which will also benefit CEET and SBEE.

* * *

The Project is expected to be completed by December 31, 1995.

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) and (2) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to CFAF 60 million to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement; or

(b) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

SCHEDULE 4

Modifications of General Conditions

For the purpose of this Agreement, the provisions of the General Conditions are modified as follows:

1. The last sentence of Section 3.02 is deleted.

2. The following paragraph 21 is added at the end of Section 2.01:

"21. the term "Togo Development Credit Agreement" means the development credit agreement between the Republic of Togo and the Association for the purpose of the Project, of even date with the Development Credit Agreement, as such agreement may be amended from time to time."

3. The following paragraph (m) is added at the end of Section 10.03:

"(m) If any arbitration proceeding is instituted under this Section and if the controversies or claims to be submitted to arbitration involve a question of law or fact common to any controversy or claim submitted to arbitration under the Togo Development Credit Agreement, such arbitration proceedings shall be consolidated into one proceeding upon request by either party notified to the other, provided that if in such other arbitration proceeding a period shall have been fixed for the presentation of evidence, such notice shall have been given prior to the expiration of such period. A request for consolidation shall be promptly notified to the parties to such other arbitration proceeding and, if already appointed, to the Umpire of the arbitral tribunal constituted for such other proceeding. The Borrower and the Association hereby accept any consolidation of arbitration proceedings duly requested pursuant to Section 10.03 (m) of the General Conditions Applicable to the Togo Development Credit Agreement. The provisions of paragraph (a) through (l) of this Section shall apply, mutatis mutandis, to any consolidated arbitration proceeding, except that the parties shall be the Association on the one hand, and the Borrower and the Republic of Togo on the other, and the Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Association; a second arbitrator shall be appointed by the Borrower and the Republic of Togo; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If the Borrower and the Republic of Togo shall not agree on the appointment of a common arbitrator, the Borrower and the Republic of Togo shall each appoint one arbitrator and, in such event, the Association, on its part, shall appoint two arbitrators and the four arbitrators so appointed together with the Umpire appointed as provided above, constitute the Arbitral Tribunal. If any party shall fail to appoint an arbitrator, such arbitrator shall be appointed by the Umpire."