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**COMMON MARKET FOR EASTERN AND**

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Twenty Second Meeting of the Sub-Committee on

Audit and Budgetary Matters

Lusaka, Zambia

28 October – 1 November, 2019

***STATUS OF MEMBER STATES FUNDS***

***PART II: RESERVE FUNDS***

*AM/2019*

Contents

[**A.** **FRAMEWORK** 3](#_Toc22461176)

[**B.** **MOVEMENTS FROM 01 JANUARY TO 31 AUGUST 2019** 3](#_Toc22461177)

[**C.** **PROSPECTS – ISSUES AND RISKS** 7](#_Toc22461178)

[Risk management – Key issue 1: Depletion of Reserve Fund 8](#_Toc22461179)

[Risk management – Key issue 2: Non-remittance of contributions erodes confidence of Cooperating Partners 9](#_Toc22461180)

[**D.** **RECOMMENDATIONS** 9](#_Toc22461181)

[**E.** **STATUS OF IMPLEMENTATION OF DECISIONS OF COUNCIL ON RESERVE FUND** 9](#_Toc22461182)

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# **FRAMEWORK**

*[For Translators: use the Financial Rules, to reduce Translation]*

1. The financial regulatory framework for the Reserve Fund is established under the, as below: -

**Rule 44 (Reserve Fund)**

The Council shall establish a fund to be known as the Reserve Fund.

**Rule 45 (Receipts into the Reserve Fund)**

1. The Reserve Fund shall be credited with

(a) Payment of Arrears contributions from Members States;

(b) Excess contributions of Member States over the total expenditure of the COMESA Secretariat;

(c) Interest earned from the investment of the fund;

(d) Monetary donations; and

(e) Proceeds from services rendered by the Secretariat and its Institutions.

**Rule 46 A (Use of the Reserve Fund)**

1. The Reserve Fund shall be used for the following specific purposes:

(a) payment of recurrent expenditure at the beginning of the year, pending receipt of contributions from member States. Upon receipt of contribution the amount shall be transferred back to the reserve;

(b) unbudgeted for but urgent and unforeseen expenditure, which cannot be deferred to the following financial year without adversely affecting the operations of the COMESA subject to the approval of the Bureau;

(c) incurrence of capital expenditure in respect of which covering policy has been previously approved by the Council;

(d) payment of expenditure on approved supplementary budget; and

(e) investment subject to the approval of the Bureau.

**Rule 46 B (Authorisation to use the Reserve Fund)**

Pursuant to Rule 46(A), the Reserve Fund shall be used upon approval of the Bureau or the Council of Ministers.

# **MOVEMENTS FROM 01 JANUARY TO 31 AUGUST 2019**

1. The COMESA Secretariat is required to appraise Council through its relevant Technical Committees on the movements made into and from the Reserve Fund on a regular basis. The movements are shown in Table 2 below: -

**Table 2 (i): Movements on Reserve Fund from 01 January 2019 to 31 August 2019 (COM$)**

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**Table 2 (ii): Fund Reconciliation as at 31 August 2019 (COM$)**

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**Table 2 (iii): Detailed movements on Reserve Fund from 01 January 2019 to 31 August 2019 (COM$)**

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***Notes to the Table***

*A: Reserve Fund balances are kept at Banks. These amounts are supported by bank statements*

*B: Receipts from Member States , in respect of 2018 and prior years assessed annual Member States contributions.*

*C: Receipts on other services rendered by the COMESA Secretariat.*

*D: Utilisation of Reserve Fund, pending receipt of current year assessed annual Member States contributions.*

*E: Use of Reserve Fund to pay annual budget requirements.*

*F: Supplementary funding for Federation of National Associations of Women in Business in Eastern and Southern Africa AGM.*

***C Arrears from contributions from Member States received in 2019***

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# **PROSPECTS – ISSUES AND RISKS**

1. This Report gives an outline of significant matters impacting on the adequacy and management of the Reserve Fund, as follows: -
2. **Receipts**

Receipts of arrears from annual Member States contributions are transferred into the dedicated Reserve Fund. As at 31 August 2019, Member States owed COMESA Reserve Fund, an amount of US$13,886,524 in outstanding annual Member States contributions. These:

1. Arrears are part of the accumulated fund, as they had been recognised as income in prior financial years. Upon receipt, relevant entries are made (Debit: Accumulated Fund; Credit: Reserve Fund); and
2. Funds are transferred into the Reserve Fund, to replace funds that had been utilized to pay for approved budget of COMESA, pending receipt of annual Member States contributions.
3. **Withdrawals**

Majority of withdrawals of funds from the Reserve Fund relate to the pre-financing of the budget of COMESA.

## Risk management – Key issue 1: Depletion of Reserve Fund

**(Risk Rating: High)**

1. Remittances towards annual Member States contributions are still outside the provisions of the Treaty, as outlined in Schedule 1.
2. The COMESA Secretariat continues to appraise Council and the Bureau on the completeness of receipts and appropriateness of utilisation of the Reserve Fund.

#### Utilisation of Reserve Fund to pay for 2019 Work Programme

1. Council at its meeting held on 25 November 2018 approved the withdrawal of Reserve Fund to pay for the 2019 Expenditure Budget, pending receipt of assessed annual Member States contributions, as indicated below: -



1. As no remittance has been made by 11 March 2019, the COMESA Secretariat has continued to utilize Reserve Fund for the implementation of 2019 Work Programme.

#### Assessed contributions from new Member States

1. The 2019 Budget, provided for funding from new Members, namely Somalia (US$174,895) and Tunisia (US$1,878,029). As at 11 March 2019,
2. The amount due from Tunisia is reduced from US$1,878,879 to US$1,001,113 as Tunisia submitted the instrument of ratification to become a Member State of COMESA in June 2019.
3. The amount from Somalia is not collectible, as the Member State is yet to submit instrument of ratification to become a Member State of COMESA.
4. The implication of the reduction of 2019 assessed contribution on available funding has been discussed under paper on assessed contributions, as well as 2019 Budget utilisation of Member States funds.
5. With the low remittance rate of 2019 assessed annual Member States contributions, the implementation of 2019 work programme by COMESA Policy Organs and Institutions (COMESA Secretariat; Competition Commission; Federation of National Associations of Women in Business in Eastern and Southern Africa; and Regional Investment Agency) is being financed by a withdrawal of Reserve Fund.

## Risk management – Key issue 2: Non-remittance of contributions erodes confidence of Cooperating Partners

**(Risk Rating: High)**

1. The level of unremitted annual Member States contributions is considerable. It adversely impacts on the commitment that Member States should give. Provisions under the Treaty and Decisions of the Authority aimed at ensuring financial obligations of Member States are complied with should be adhered to by Member States and all Organs of COMESA. These provisions are outlined in Schedule 1, below.
2. Considerable outstanding assessed annual Member States Contributions erodes confidence of Cooperating Partners. This may over time lead to reduced grant funding.

# **RECOMMENDATIONS**

1. The Reserve Fund reports are submitted for consideration and adoption by COMESA Policy Organs.

# **STATUS OF IMPLEMENTATION OF DECISIONS OF COUNCIL ON RESERVE FUND**

1. Agenda Item no. 9.4, gives a Report on the status of implementation of audit recommendations arising from the report of the Auditors General on the audit of the Reserve Fund for the period 01 Jan 2005 to 31 Dec 2016. As explained in the Report, there are three (3) outstanding issues:

**ISSUE 1: USE OF CONTROL ACCOUNT TO MONITOR RESERVE FUND**

**Requirement:**

* Amounts due into Reserve Fund, e.g. interest receipts should be recorded into Reserve Fund control account.
* At end of each reporting month, the control account reconciled to ensure completeness of transfer into Reserve Fund.

**Action Taken**

* Amounts due into Reserve Fund are directly transferred into Reserve Fund.

**Status:**

* Whilst the control account is not in use, the control weakness has been addressed. All the cash meant for Reserve Fund are being transferred into the Reserve Fund bank account, with reports reviewed each month.

**ISSUE 2: SECRETARIAT TO PROPOSE REVIEW OF FINANCIAL RULE 45(1)(B) REQUIRING EXCESS ANNUAL MEMBER STATES CONTRIBUTIONS OVER EXPENDITURE TO BE DEPOSITED INTO RESERVE FUND, FOR EASE OF ADMINISTRATION OF THE RESERVE FUND, AS ANNUAL SURPLUSES DO NOT TRANSLATE INTO RECEIPTS INTO THE RESERVE FUND.**

**Status:**

* Review of Financial Rules and Regulations to be carried out in 2020.
* The review will incorporate clarity, where it is the realized cash surplus of Member States receipts less States expenditure funded from Member States receipts, which is transferrable into Reserve Fund.

**Issue 3: Components of Reserve Fund**

**Requirement:**

* Reserve Fund to be analysed into its components.

**Action Taken**

* Reserve Fund that is managed by Secretariat has been analysed, shown in Table 1 below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Table 1: Reserve Fund balances as at 31 December, 2017 (US$)** | |  |  |
| **Institution** | **Held at the Secretariat** | **Held at the Institution** | **Total Reserve Fund** |
| COMESA Secretariat | 8,130,559 | - | 8,130,559 |
| COMESA Competition Commission | 1,567,371 | 247,774 | 1,815,145 |
| Federation of National Associations of Women in Business in Eastern and Southern Africa | 194,425 | 835 | 195,260 |
| COMESA Regional Investment Agency – *after adjusting for exchange rate for funds held at RIA* | 208,276 | 14,037 | 222,313 |
| **Total** | **10,100,631** | **262,646** | **10,363,277** |

The following can be noted***: -***

1. **Secretariat:** The amount of US$10.1million was held in the following accounts; Barclays Bank fixed deposit – US$5,000,000; Standard Chartered Bank Reserve Fund - US$3,122,504; Ecobank Zambia Plc – US$1,194,674 and COMESA Operational account - US$783,435;
2. **COMESA RIA:** The workings indicate that cash attributed to the Reserve Fund is US$ 43,103. This amount has since reduced to US$14,037 on account of the depreciation of the Egyptian Pound to the US dollar from 5.8 in December 2010 to in December 17.81 in 2017;
3. **COMESA Competition Commission:** The amount of US$247,774 was held in the COMESA Competition Commission Operational bank account at Standard Bank Malawi Plc; and
4. **COMESA FEMCOM:** The amount of US$835 was held in the COMESA FEMCOM Operational bank account at Standard Bank Malawi Plc;

**RECOMMENDATION**

***The Sub Committee on Audit and Budgetary matters is invited to adopt the: -***

1. ***Status of Reserve Fund, as analysed into its components***
2. ***Risk management action, where all Reserve Fund will be maintained in US$ currency, which is the COMESA functional currency***

**ISSUE 4: CONSOLIDATION OF ALL RESERVE FUND FUNDS, INCLUDING TRANSFER OF FUNDS FROM COMESA INSTITUTIONS TO THE SECRETARIAT**

**Requirement:**

* In 2011 and 2014, the Council decided that Reserve Fund cash be transferred into one dedicated bank account maintained by Secretariat on behalf of COMESA.
* In July 2018, Council decided (124(iii)(f)) that a Sub Committee on Audit and Budgetary matters constitute a Team to work with COMESA Secretariat and Boards and management of RIA; CCC; and FEMCOM in coming up with a proposal on transfer of other income and excess of receipts over spending (of annual Member States contributions) from the COMESA Agencies to COMESA Reserve Fund. This will facilitate compliance with Financial Rule 45(1)(e).

**Action Taken - Analysis of the existing legal framework**

* In preparing for the work of the Team, incorporating the Sub Committee on Audit and Budgetary matters, the COMESA Secretariat held a meeting with Competition Commission; Federation of National Associations of Women in Business in Eastern and Southern Africa; and Regional Investment Agency in April 2019.

The Meeting reviewed and analysed the existing legal framework to establish the framework of ensuring consistent: -

1. Receipting of funds into Reserve Fund; and
2. Transfer of funds from entities into COMESA Reserve Fund.

The Meeting noted that the legal instruments establishing the two Institutions and the Agency namely: COMESA Competition Commission; COMESA RIA and FEMCOM had different provisions regarding establishment and management of the Reserve Fund. The Meeting noted that it is important to understand the different contexts under which the three organizations are established and the environment in which they execute their respective mandates.

***Entity 1: COMESA Competition Commission (CCC)***

Article 55(3) of the Treaty requires the Council of Ministers to make Regulations to regulate competition in the Common Market. Pursuant to Article 6 read together with Rule 6 of the COMESA Competition Regulations and Rules, the Council of Ministers established the CCC as an autonomous institution of COMESA which enjoys international legal personality and it has the right to sue and/or be sued in its corporate name. Further, the Regulations under Article 12 establishes the Board of Commissioners who shall be the Supreme Policy Body of the Commission. Among the functions of the Board is to enact Regulations and Rules for the management and utilization of the Reserve Fund. Consequently, the Commission has issued through its Board of Commissioners its Financial Rules which contain provisions on the establishment and utilization of the Reserve Fund. Specifically, Rule 53 of the CCC 2017 Financial Rules reads as follows:

***“A Reserve Fund for the Commission shall be established by the Board of Commissioners and shall be housed in the host country”.***

The Board of Commissioners of the Commission are appointed by the Council of Ministers and as mentioned above, the Board is given powers to enact governing instruments pertaining to the operations of the Commission.

***Entity 2: COMESA Regional Investment Agency – Article 21 of the Charter***

As regards COMESA RIA, the meeting observed that while it did not have an autonomous status like the CCC in that Article 1(2) of its Charter expressly states that it has been established as an agent of COMESA, the Charter has a specific provision relating to the Reserve Fund as cited below: -

***Article 21: “Reserve Fund – The Agency shall maintain a Reserve Fund into which any budgetary surplus in any financial year shall be deposited. The Reserve Fund shall be employed in such a manner and for such purposes as the Board may determine.”***

It was therefore observed that the COMESA RIA Board had power to establish mechanisms of managing the reserve fund. However, in the absence of this mechanism, all the unused funds of RIA shall be managed and utilized as per COMESA Secretariat’s financial rules and regulations until such a time when RIA establishes its own financial rules and regulations for management of the reserve fund.

***Entity 3: Federation of the National Association of Women in Business in Eastern and Southern Africa (FEMCOM)***

Regarding FEMCOM, it was observed that FEMCOM is a COMESA Institution established pursuant to article 155 of the COMESA Treaty and is governed by its Charter. The Charter in Article 8 provides functions of the Board which includes determining financial rules of FEMCOM. FEMCOM is currently using the COMESA Financial rules and regulation in the management of funds. In view of this all the unused funds of FEMCOM shall be managed and utilized in accordance with the COMESA financial rules and regulations.

**Overall observations and conclusions**

The Meeting observed that the Reserve Fund was important for the respective institutions, for among other policy objectives: -

1. Capitalisation of the institutions, which gives assurance to Cooperating Partners of long-term commitment of Member States of COMESA. Cooperating partners require assurance of sustainability of institutions and of their going concern into the unforeseeable future.
2. Accumulate funds to enable major programme investments, which ordinarily would not be met from annual budget appropriations. It is not feasible to use assessed annual contributions to deliver on major programme investments.
3. Cushioning implications of late remittances of annual Member States contributions, which otherwise would result in non-implementation of approved work programs.
4. Provide funding for additional expenditure requirements, outside those provided for in the approved annual budgets.

The meeting observed that the other COMESA Organ and Institution namely; COMESA Court of Justice and Africa Leather and Leather Products Institute maintain their own Reserve Fund.

Based on review of existing legal instruments and policy objectives of Reserve Fund, the Meeting made the following conclusions: -

1. COMESA Competition Commission has specifically mandated its Board of Commissioners to make policy decisions regarding the establishment and management and Reserve Fund;
2. As regards Regional Investment Agency, the Charter under Article 21 provides for the establishment and management of the Reserve Fund.
3. As regards the Federation of National Associations of Women in Business in Eastern and Southern Africa, the Charter under Article 8 provides functions of the Board which includes determining financial rules of FEMCOM.
4. Retention and custodianship of Reserve Fund by each of the COMESA Institutions will give assurance to Cooperating Partners of strength of their capitalization. This should however be implemented pursuant to the relevant legal instruments.

**RECOMMENDATION**

***As decided by the Council and talking into account, existing Reserve Fund regulatory framework, the Sub Committee on Audit and Budgetary matters is invited to engage the Boards of COMESA Institutions on transfer of funds into the COMESA Reserve Fund.***