



SUMMARY OF KEY FEATURES

This note summarizes the key features of the African Legal Support Facility (“**ALSF**”) whose establishment was endorsed by the Board of Directors of the African Development Bank (“**AfDB**”) on April 30, 2008 as described in Revised Board paper ADB/BD/WP/2008/47/Rev.1, dated April 21, 2008 (the “**AfDB Board Paper**”)

1. Background

The ALSF is a response to calls from African finance ministers to: (i) assist AfDB’s regional members address litigation brought against them by vulture funds (and other such entities) which creates obstacles to obtaining the full range of debt relief available; and (ii) create an avenue for regional members of the AfDB to access technical advice when negotiating complex commercial transactions (especially in the area of natural resources). The AfDB Board Paper notes that “the Facility shall provide services similar to legal aid societies that work to remove asymmetric technical capacities and level the field of expertise among parties”.

2. Summary of the Key Features

The proposal endorsed by the Board of Directors of the AfDB creates a new international organization that will be known as the “African Legal Support Facility” which will operate independently from the AfDB and be governed according to the terms of the Agreement for the Establishment of the African Legal Support Facility (the “**Agreement**”) (Article I). The Agreement has now been approved by 42 member countries of the AfDB and 2 international organizations. The key features of the Agreement are as follows:

- **Purpose:** The ALSF will provide the following services: (i) provision of technical legal advice to its members in creditor litigation; and (ii) provision of technical legal assistance to members to strengthen their legal expertise and negotiating capacity in matters pertaining to debt management, natural resources and extractive industries management and contracting; investment agreements and related commercial and business transactions (Article II).
- **Membership and Headquarters of the Facility:** Membership is open to: (i) all member states of the AfDB, (ii) other states; (iii) the AfDB; and (iv) other international organizations and institutions who meet the conditions governing eligibility for membership determined by the

ALSF's Governing Council (Article IV). The ALSF will be headquartered in the territory of a member state as selected by the Governing Council (Article V).

- **Financial Resources:** The financial resources will consist of voluntary contributions, allocations of net income from AfDB and income accruing from the ALSF's endowment fund (the AfDB's Executive Board recommended that the AfDB's Board of Governors contribute an initial US\$16 million) (Article VI).
- **Governance and Management Structure:** The ALSF will have a Governing Council, a Management Board, a Director, and such other staff necessary to perform the functions and carry out the activities of the ALSF (Article VII).
- **Entry into Force and Duration:** The Agreement came into force on December 15, 2008 when 29 member countries and one international organization signed it, some of whom deposited their instruments of ratification/acceptance/approval/accession with the Secretary General of the AfDB in his capacity as the Provisional Depositary of the Agreement (Articles XXVII and XXIX). The Agreement shall be in force for a period of fourteen (14) years from the date of entry into force, and may be extended or reduced by a decision of the Governing Council (Article XXVIII).
- **Privileges and Immunities:** The ALSF enjoys similar privileges and immunities to other international organizations. Specifically: each member state is required to take all legislative action under its own national law to enable the ALSF to effectively fulfill its purposes (Article XVI), and the Agreement specifically provides that the ALSF shall enjoy immunity from every form of legal process, except in cases arising out of its own borrowing powers (Article XVII); the property and assets of the ALSF are immune from all forms of seizure, taking or foreclosure by executive or legislative action (Article XVIII); the archives shall be inviolable (Article XX); and all members of the Governing Council, Management Board, Director, Staff, consultants and experts performing missions for the ALSF shall be immune from legal process (Article XXII). According to the AfDB Board Paper, the ALSF is intended to be independent and liability remote from the AfDB.

3. Objectives of the Director and staff in the coming months

The Annex lists member countries of the AfDB who are yet to sign the Agreement. A key objective of the Ag. Director and his staff will be to approach such countries and encourage them to sign the Agreement.

The ALSF already has certain applicant countries seeking support. The Ag. Director and his staff will work to increase support of the ALSF in order to produce a pipeline of applicant countries across the continent.

Tunis, 14 April 2010

