



# CSO Regional Consultations: the Bank's Mandate and legal framework

# African Development Bank Group – a few Facts

- ▶ The African Development Bank (the “Bank”) is the Group's parent organization. It was founded by **The Agreement establishing the African Development Bank** (the Bank Agreement) which came into force on September 10, 1964.
- ▶ The Bank Agreement is a treaty under international law, essentially a binding agreement entered into by a number of countries. Today, the Bank's Shareholders consist of:
  - ▶ 54 African countries (known as Regional Member Countries)
  - ▶ 27 non-African countries (Non-Regional Member Countries)
- ▶ The Bank' Headquarters is located in Abidjan.
- ▶ The Bank Group includes two subsidiary entities offering concessionary financing (grants and more favourable than market loans) – the African Development Fund (ADF) and the Nigeria Trust Fund (NTF).

# The Bank Agreement – the Bank’s Mandate

- ▶ The Bank Agreement is our fundamental legal instrument: it lays down what the Bank can do and sets the frame within which the Bank operates. The Bank cannot engage into any activity that would be in contradiction with the provisions of the Bank Agreement.
- ▶ Article 1 sets out the “Purpose” of the Bank as follows:

*“The purpose of the Bank shall be to contribute to the sustainable economic development and social progress of its regional members individually and jointly.”*

# The Bank Agreement – the Functions

Article 2 of the Bank Agreement lists the “**Functions**” of the Bank as follows:

- ▶ To use the resources at its disposal for the financing of investment projects and programmes relating to the economic and social development of its regional members;
- ▶ To undertake, or participate in, the selection, study and preparation of projects, enterprises and activities contributing to such development;
- ▶ To mobilize and increase in Africa, and outside Africa, resources for the financing of such investment projects and programmes;
- ▶ Generally, to promote investment in Africa of public and private capital in projects or programmes designed to contribute to the economic development or social progress of its regional members;
- ▶ To provide such technical assistance as may be needed in Africa for the study, preparation, financing and execution of development projects or programmes.

# The Bank Agreement – Some notable limits and restrictions

## What the Bank must do:

- ▶ The resources and facilities of the Bank shall be used **exclusively** to implement its purpose and functions.(Article 12 of the Bank Agreement);
- ▶ The Bank shall be guided in **all** its decisions by the provisions related to its purpose and functions. (Article 2 (3) of the Bank Agreement);
- ▶ In carrying out its functions, the Bank shall seek to co-operate with African institutions, with international organizations pursuing a similar purpose and with other institutions concerned with the development of Africa. (Article 2 (2) and Article 14 (1) of the Bank Agreement);

# The Bank Agreement – Some notable limits and restrictions (cont'd)

## What the Bank can't do:

- ▶ The Bank shall not provide for the financing of a project in the territory of a country if that country objects to this project. (Article 17 (1) b. of the Bank Agreement);
- ▶ The Bank shall not provide financing unless it is satisfied that the recipient has the capacity to comply with the conditions of financing and shall use the financing exclusively for the purpose for which it was granted. (Article 17 of the Bank Agreement);
- ▶ The Bank shall not manage directly any institution or business. (Article 17 (1)j. of the Bank Agreement); and
- ▶ The Bank shall not interfere in the political affairs of any member country. (Article 38 of the Bank Agreement).

## Other Bank Regulations – Some examples

- ▶ The Bank essentially acts as trustee of the funds that have been entrusted to it, most of which is money originating from public sources, such as the shareholders and other countries. Consequently the Bank must have in place and comply with the highest standards of financial management and control.
- ▶ The following are some examples of other general Bank regulations that are aimed both at ensuring compliance with those standards and to ensure alignment with the Bank's mandate and functions:
  - ▶ The Environmental and Social Policies and Guidelines;
  - ▶ The Integrated Safeguards System;
  - ▶ The Rules and Procedures for Procurement of Goods and Works;
  - ▶ The Rules and Procedures for the Use of Consultants;
  - ▶ The Policy on Disclosure and Access to Information;
  - ▶ The Sanctions Procedure;
  - ▶ The Rules and Procedures of the Independent Review Mechanism

# Methods of Operations and direct relationship with outside parties

- ▶ **Project financing:** The Bank's operations consist in providing or facilitating financing to **eligible recipients** in the form of direct loans, grants, capital investments and loan guarantees. (Article 14 of the Bank Agreement);
- ▶ **Technical assistance;**
- ▶ **Procurement activities:** For projects or for its own corporate purposes, the Bank procures from **eligible entities** goods, works and services or the use of consultants; and
- ▶ **Partnerships:** The Bank can also cooperate with other entities to forward its mandate by entering into partnerships, formal or informal, under which the parties agree to share information and insight in areas of mutual interest or even agree to share resources to carry out an activity.

# Involvement of CSOs in projects

Although the Bank usually finances projects with sovereign entities (such as countries) or private sector projects delivered by eligible businesses, CSOs in particular may get involved indirectly:

- ▶ CSOs can act as the watchdogs or the social conscience in projects in participating in consultations, such as those under the Integrated Safeguards System, and can intervene in the Independent Review Mechanism;
- ▶ In a project design, for example a project brought to the Bank for funding by a country, it is possible that the sponsor provides for consultancy services to be procured from CSOs or that CSOs would implement a specific component of the project. This however is entirely dependent on the conditions of each particular project.

# Principles for collaboration with CSO partners

In addition to the above mentioned limits and requirements, the Bank has developed some guidelines that are applicable to CSOs, notably:

- ▶ **Legitimacy, credibility and reputation:** The Bank will not collaborate with a CSO if it may damage its legitimacy, credibility or reputation;
- ▶ **Alignment and Compliance:** The collaboration must be aligned with the Bank's Ten Year Strategy and the High 5s and comply with all relevant Bank policies and procedures;
- ▶ **Selectivity and Value Addition:** The collaboration with CSOs must add value to the relevant activities.

# Criteria for selection of CSO partners

The Bank has also developed eligibility criteria to help determine if some partners should be accepted or rejected:

- ▶ The CSO must be registered as a corporate entity, a trust or a philanthropic concern in a Bank member state or in a State Participant of the Fund, and have been in existence at least a year prior to the date of the envisaged partnership;
- ▶ The CSO has in place a social responsibility or a development support policy or program;
- ▶ The organization demonstrates evidence of leading expertise and experience in the field for which it is being considered for partnership.
- ▶ The CSO has not engaged in criminal or other activities likely to harm the reputation of the Bank and is not engaged in litigation the outcome of which could affect the CSO's ability to actively carry out its responsibilities under the envisaged partnership;

## Criteria for selection of CSO partners (cont'd)

- ▶ The CSO's activities should not (i) be in violation of the fundamental international labour standards; (ii) entail practices to the detriment of its staff; (iii) adversely affect the environment; (iv) pose risks to Bank's other safeguard policies;
- ▶ The CSO should not have links with any of the following industries: (i) arms (ii) tobacco (iii) pornography (iv) gambling (v) those considered immoral in the country hosting the partnership; and
- ▶ The CSO has not been debarred under the Bank's debarment procedures or those of any party to the Agreement for Mutual Enforcement of Debarment Decisions.

# Conclusion

- ▶ In summary: The Bank is an international financial institution with a specific purpose and specific functions. Any action of the Bank must be in compliance with its mandate and legal framework;
- ▶ Regarding CSOs in particular: the current regulatory environment of the Bank already provides for possibilities for certain CSOs to engage with the Bank in various capacities, as described above. In this regard, sharing of information on the Bank's requirements and capacity building can enable more CSOs to cooperate with the Bank in forwarding its mandate to promote sustainable economic growth and reduce poverty in Africa.