
GOVERNMENT NOTICE

No. 916

NATIONAL TREASURY

18 September 2009

AGREEMENT

BETWEEN

THE AFRICAN DEVELOPMENT BANK AND
THE AFRICAN DEVELOPMENT FUND

AND

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

REGARDING THE ESTABLISHMENT OF
THE REGIONAL OFFICE OF

THE AFRICAN DEVELOPMENT BANK AND
THE AFRICAN DEVELOPMENT FUND

ON THE TERRITORY OF THE REPUBLIC OF SOUTH AFRICA

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PREAMBLE

The African Development Bank and the African Development Fund (hereinafter referred to as the "Bank" and the "Fund", respectively), on the one part, and the Government of the Republic of South Africa (hereinafter referred to as the "Government"), on the other part;

HAVING REGARD to the provisions of the Agreements Establishing the African Development Bank signed in Khartoum, Sudan on 04 August 1963 and the African Development Fund Agreement signed in Abidjan, Côte d'Ivoire on 29 November 1972;

CONSIDERING that the Bank and the Fund are financial institutions common to all African countries;

CONSIDERING that in September 1999 the Board of Directors of the Bank and the Fund resolved to jointly establish a representative office in order to efficiently conduct the activities of the Bank and the Fund in the Republic of South Africa as well as other Member Countries in the Southern Africa sub-region;

TAKING COGNIZANCE of the willingness expressed by the Government to accept the establishment on its territory of a representative office of the Bank and the Fund;

DESIRING to regulate by this Agreement all matters regarding the establishment and the functioning of the Regional Office and supplement in this respect the relevant provisions of the Bank and Fund Agreements;

HAVE AGREED as follows:

Article 1 Definitions

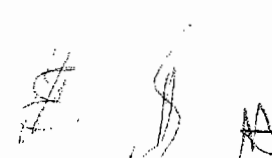
In this Agreement, unless the context otherwise requires, the following terms shall have the meanings ascribed thereto below:

- (a) "Archives of the Regional Office" means all records, correspondence, documents and other materials, including manuscripts, still and moving pictures and film recordings, computer programs and written materials, video tapes and discs, as well as discs or tapes containing data belonging to or held by or on behalf of the Regional Office;
- (b) "Bank" means the African Development Bank and the African Development Fund collectively;
- (c) "The Bank Agreement" means the Agreement Establishing the African Development Bank, signed in Khartoum, Sudan on 04 August 1963, and as amended from time to time;
- (d) "Executing Agencies" means the agencies designated by the Government to co-ordinate the implementation of projects financed by the Bank;
- (e) "Experts" means persons, other than Officials, appointed to perform specific tasks on behalf of the Bank or to undertake missions or special projects on behalf of the Bank;

- (f) "The Fund Agreement" means the Agreement Establishing the African Development Fund signed in Abidjan, Côte d'Ivoire on 29 November 1972;
- (g) "Government" means the Government of the Republic of South Africa;
- (h) "Meetings" means meetings of the Bank or the Regional Office, including any international conference or other gathering convened by the Bank or the Regional Office, and any commission, committee or subgroup of any such meetings;
- (i) "Members of the Family" means the dependants of Officials of the Regional Office, and includes their spouses, minor children and other members of their family forming part of their households who reside with, and are dependent on, such Officials for financial support and are officially recognised as such by the Bank;
- (j) "Officials of the Regional Office" means officers, and other employees recruited by the Bank or assigned to serve at the Regional Office in accordance with the provisions of the Bank Agreement, the Staff Regulations and other relevant instruments in force, and excluding all other persons recruited on Local Terms and assigned to hourly rates;
- (k) "Property and assets of the Regional Office" means all property and assets referred to in the Bank Agreement and vested by the Bank in the Regional Office;
- (l) "Premises of the Regional Office" means the buildings and parts of buildings and land used for the official purposes of the Regional Office.
- (m) "Laws of the Republic of South Africa" includes the Constitution of the Republic of South Africa and legislative acts, decrees, regulations and orders issued by, or under authority of, the Government or any appropriate authority in the Republic of South Africa;
- (n) "Recruitment on Local Terms" means recruitment made by the Bank or the Regional Office under separate instruments provided for the employment of personnel outside the principal office of the Bank;
- (o) "Regional Office" means the Office of the Bank in the Republic of South Africa for the African Development Bank and African Development Fund and includes the principal office in Pretoria, and any additional offices that may be established with the agreement of the Government at other locations in the Republic of South Africa;
- (p) "Resident Representative" means the principal executive officer of the Regional Office, appointed by the Bank, including any officer appointed to act on the Resident Representative's behalf during his absence from duty.

Article 2 Functions of the Regional Office

1. The principal functions to be performed by the Regional Office, as detailed in the Annex to this Agreement, concern working with borrowers, including governmental and non-governmental organisations in project identification and administration, project



implementation monitoring, disbursement and loan repayment procedures, assistance to the Government and the Executing Agencies regarding preparation of quarterly Progress Reports, annual Audit Reports and Project Completion Reports. The Regional Office will also assist in the participatory approach to the preparation of Country Strategy Papers, project design and making contacts with civil society and non-governmental organisations operating in the Republic of South Africa and co-ordinate the operations of the Bank and the Fund with activities of other donor agencies including SADC as well as represent the Bank in resource-mobilisation and aid-co-ordination meetings.

2. In addition to the foregoing functions, the Regional Office shall provide support to the Bank and the Fund for the preparation of economic reports, advise and conduct necessary dialogue with Government regarding economic policies and programmes, participate in project or programme related missions, and collect relevant economic information on the Republic of South Africa for transmission to the Bank and Fund.

Article 3 Legal Status

In accordance with Chapters VII of the Bank Agreement and Chapter VIII of the Fund Agreement, the Government recognises the juridical personality of the Bank and in particular its capacity:

- a. to contract;
- b. to acquire and dispose of immovable and movable property; and
- c. to institute judicial proceedings on the territory of South Africa directly and/or through the Regional Office.

Article 4 Immunities of the Regional Office

1. The Bank shall be immune from every form of legal process, and may be sued only in accordance with paragraph 1 of Article 52 of the Bank Agreement and paragraph 1 of Article 43 of the Fund Agreement.
2. The property and assets of the Regional Office, wherever located and by whosoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived by the Bank. It is however, understood that no waiver of immunity shall extend to any measure of execution.

Article 5 Premises of the Regional Office

1. In addition to the principal office in Pretoria, the Bank with the agreement of the Government may establish additional offices at other locations in the Republic of South Africa. The Government shall, at the request of the Bank, make arrangements in such manner as may be agreed upon in supplemental agreements for the use or acquisition by the Bank of appropriate Premises necessary for its functions.

2. The Regional Office shall be headed by a Resident Representative and shall be staffed with such other personnel appointed or assigned by the Bank.
3. The Regional Office shall be entitled to display the flag and the emblem of the Bank on its Premises, including the residence of the Resident Representative and on the motor vehicle of the Resident Representative.

Article 6 Inviolability of the Premises

1. The Premises of the Regional Office shall be inviolable and shall be under the exclusive control and authority of the Bank. The property and assets of the Regional Office, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
2. The Bank shall have the power to make rules and regulations operative within the Regional Office for the full and independent exercise of its activities and performance of its functions (as more comprehensively set out in the Annex attached hereto).
3. The archives of the Regional Office, wherever located and by whomsoever held, shall be inviolable.
4. No officer or official of the Government or person exercising any public authority in the Republic of South Africa be they administrative, judicial, military or police shall enter the premises to perform any duties therein except with the express authorization from or on express request by the Bank or the Resident Representative. The Resident Representative's consent to such entry may be assumed in the event of fire or other analogous emergency requiring urgent action.
5. Without prejudice to the terms of this Agreement, the Bank shall prevent the Premises of the Regional Office from becoming a refuge from justice for persons seeking to avoid arrest or service of legal process under the Laws of the Republic of South Africa. The Bank and its officials shall respect the Laws of the Republic of South Africa.

Article 7 Public Services and Security

1. The Regional Office shall receive the same level of treatment, in terms of service delivery by the relevant local authorities of necessary public services and utilities, as is provided to any other international organization accredited to the Republic of South Africa.
2. The Regional Office shall receive the same level of security and protection as is provided to any other international organization accredited to the Republic of South Africa.

Article 8
Exemption from Taxation

1. The Regional Office its assets, property, operations, transactions and income shall be exempt from all forms of taxation, it being understood, that the Regional Office will not claim exemptions from taxes which are, in fact, no more than charges for public utility services paid by other international organisations established in the Republic of South Africa
2. The Regional Office shall be exempt from all customs duties, prohibitions and restrictions on goods and articles, including motor vehicles and spare parts, publications, films, still and moving pictures, imported or exported for its official purposes. It is understood, however, that articles imported under such exemption will not be sold in the Republic of South Africa except under conditions agreed to with the Government.
3. While the Regional Office will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Regional Office makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 9
Financial Transactions

The Regional Office may hold and use funds or negotiable instruments of any kind. The Government recognises the right of the Regional Office to maintain and operate accounts in any currency and convert any currency held by it into any other currency. The Regional Office may, freely transfer its funds into South Africa and may also, at any time, freely transfer all or part of the balance thereof out of South Africa, through a non-resident bank account, which for that purpose, may be switched into any foreign currency.

Article 10
Freedom of Meeting and Discussion

The Bank shall have the right to convene meetings in the Premises of the Regional Office, and at other locations in the territory of the Republic of South Africa. Prior to such meetings, the Government shall be informed of the meetings to be held and in the event that the Regional Office requires additional security or other assistance from the Government for large meetings convened in the Republic of South Africa, this will be discussed with, and agreed to by the appropriate authorities.

Article 11
Communications

1. The Bank shall enjoy in the Republic of South Africa treatment no less favourable than that accorded to any other international organisation accredited to the Republic of South Africa, in the matter of priorities, rates and charges for telegraph, telexes, facsimile, telephone and

other means of communications. In this Article, "communications" includes publications, documents, plans, blue prints, sketches, still and moving pictures, films, sound recordings, electronic transmissions, and other modes of communication.

2. No censorship or any other type of interception or interference shall be applied to the official communications to and from the Regional Office by whatever means or in whatever form transmitted.
3. The Regional Office shall have the right in the Republic of South Africa to use codes and to dispatch and receive correspondence and other communications either by courier or in sealed bags which shall have immunities and privileges no less favourable than those accorded to diplomatic couriers and bags.
4. The Bank may install and operate in the Republic of South Africa point-to-point telecommunications facilities, including with the consent of the Government, radio sending and receiving station or stations and other state of the art communications and transmission facilities as may be necessary to facilitate communications with the Regional Office both from within and outside the Republic of South Africa. In this case, the Government shall assign adequate frequencies for the operation of the station or stations, and communicate those frequencies to the International Frequencies Registration Board. The Bank and the Independent Communications Authority of South Africa (ICASA) shall enter into an agreement for the purposes of implementing this provision on mutually acceptable terms.

Article 12

Privileges and Immunities of Officials of the Regional Office

1. The Government shall accord to:
 - a. The Resident Representative who is not a national or permanent resident of the Republic of South Africa and the members of his/her family, the same privileges and immunities, exemptions and facilities as accorded to officials of comparable ranks forming part of diplomatic missions.
 - b. the Officials of the regional Office exemption from taxation including mandatory charges, such as for social security, on or in respect of salaries and emoluments paid by the Bank.
 - c. Officials of the Regional Office who are not nationals or permanent residents of the Republic of South Africa, the following privileges and immunities:
 - (i) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - (ii) immunity from personal arrest or detention for acts performed in their official capacity;
 - (iii) inviolability of their official papers and documents;
 - (iv) immunity, together with members of their family, from immigration restrictions and alien registration;

- (v) the same privileges in respect of exchange facilities as are accorded to the officials of comparable rank forming part of international organizations or diplomatic missions accredited to the Republic of South Africa;
 - (vi) together with members of their families, the same repatriation facilities in time of international crisis as diplomatic envoys;
 - (vii) the right to import free of duty taxes their furniture and personal effects within a period of six months following their assumption of duty at the Regional Office.
 - d. Officials of the Regional office who are not nationals or permanent residents of the Republic of South Africa shall be granted the same level of immunities and privileges as that granted to officials of other similar international organisations accredited to the Republic of South Africa who are not nationals or permanent residents.
 - e. Officials of the Regional Office who are nationals or permanent residents of the Republic of South Africa, the immunities referred to in sub-Article 1((c)(i), (ii) and (iii)); provided that the parties in implementing the right of South Africa to tax the income of locally-recruited nationals and permanent residents of South Africa employed by the Regional Office shall not require the Bank to withhold, collect or pay such taxes.
2. The Bank shall communicate to the Government the names of those Officials and members of their family to whom the provisions of the present Article are applicable.
 3. The Officials of the Regional Office shall be provided by the Government with a special identity card which shall serve to identify the holder to the authorities of the Republic of South Africa and to certify that the holder enjoys the privileges and immunities specified in this Agreement. The Officials of the Regional Office, upon the termination of employment or reassignment from South Africa, shall return promptly to the Government the special identity card for cancellation.
 4. The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interests of the Bank and not for the personal benefit of the individuals themselves. The President of the Bank shall have the right and the duty to waive the immunity of any official of the Regional Office in cases where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.
 5. The Bank shall use its best efforts to ensure that the privileges, immunities, exemptions and facilities conferred by this Agreement are not abused and for this purpose shall establish such rules and regulations as it may deem necessary and expedient. Should the Government consider that an abuse has occurred; consultations shall be held between the Government and the Bank to determine whether any such abuse has occurred and, if so, to take any necessary action to ensure that no repetition occurs.

Article 13
Privileges and Immunities of Experts

1. Experts (other than Officials coming within the scope of Article 12) who are not nationals or permanent residents of the Republic of South Africa and who are performing missions for the Bank shall be accorded the following immunities and privileges as are necessary for the independent exercise of their functions during the period of their mission, including time spent on journeys in connection with their mission:
 - a) immunity from personal arrest or detention for acts in their official capacity;
 - b) immunity from seizure of their official baggage;
 - c) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind;
 - d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - e) the same protection and repatriation facilities with respect to themselves, their spouses and relatives dependent on and living with them as are accorded in time of international crises or national emergencies to diplomatic envoys;
 - f) for the purpose of their communication with the Bank, have the right to use codes and to receive papers or correspondence by courier or in sealed bags; and
2. Experts who are nationals or permanent residents of the Republic of South Africa, shall be afforded the immunities referred to in sub-Article 1(a), (b) and (c).
3. The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interests of the Bank and not for the personal benefit of the individuals themselves. The President of the Bank shall have the right and the duty to waive the immunity of any Expert of the Regional Office in cases where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

Article 14
Equality of Treatment

The Regional Office and Officials assigned to the Regional Office shall enjoy, subject to the provisions of this Agreement, the same treatment as that accorded to other similar international organisations in the Republic of South Africa.

Article 15
Settlement of Disputes

1. Any dispute between the Bank and the Government arising out this Agreement or any supplemental Agreement shall, unless amicably settled between the Bank and the Government, be referred for arbitration to a tribunal of three arbitrators. The Government and the Bank shall each designate one arbitrator, and the third arbitrator shall be appointed in agreement by both parties or, if no agreement is reached, by the President of the International Court of Justice.

2. The arbitrators shall fix the procedure of the arbitration and expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article 16
Amendment, Entry into Force and Termination

1. This Agreement shall enter into force on the date of signatures thereof by the Parties.
2. At the request of either the Government or the Bank, consultations shall take place regarding the implementation or modification of this Agreement. The Government and the Bank may enter into such supplementary agreements as may be necessary for the implementation or modification of this Agreement, in accordance with their respective constitutional procedures.
3. The provisions of the Bank Agreement and of this Agreement shall, where they relate to the same subject-matter, be treated, wherever possible, as complementary so that the provisions of both shall apply, neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this Agreement shall prevail.
4. Either Party to this Agreement may terminate the Agreement by giving one year's notice in writing to the other Party of its intention to terminate it. The Parties shall be bound by the terms of, and their obligations under, this Agreement until the expiration of the notice period.
5. Relevant provisions of this Agreement shall continue to be applied after its termination during a reasonable period for the settlement of the affairs of the Bank and the disposal of its property in the Republic of South Africa.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto, have signed this Agreement in duplicate in the English language.

Done at Cape Town on this 11th day of June 2009



For the Government of the Republic
of South Africa

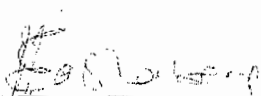


PRAVIN GORDHAN
Minister of Finance

For the African Development
Bank and the African
Development Fund



DR DONALD KABERUKA
President



MAITE NKOANA-MASHABANE, MP
Minister of International Relations and Cooperation

Certified by:

KORDJE BEDOUMRA
Secretary General



ANNEXE

FUNCTIONS AND RESPONSIBILITIES OF FIELD OFFICES**A. PRINCIPAL FUNCTIONS**

The primary purpose of the Field Offices is to assist the operational functions of the Bank in launching and follow-up of projects for their respective countries, and facilitate contacts between the Bank and the governments, the private sector and the civil society of member countries.

The principal functions of the Offices fall into four major areas: project and program administration, country dialogue, promotion of participatory approach, and aid co-ordination.

• Project and Program Administration

- a. Project and Program Implementation Monitoring. The Field Offices have primary responsibility in ensuring loan effectiveness, with minimum delay. In this regard, they will assist Governments and the Implementing Agencies in the fulfilment of conditions precedent to the effectiveness of Grant and Loan Agreements as well as monitor the fulfilment of other conditions.
- b. Disbursement and Loan Repayment. The Field Offices will assist the Governments and the Executing Agencies by explaining disbursement procedures, review all disbursement applications, and follow-up repayment of arrears on loans and subscriptions with the Governments.
- c. Procurement. The Field Offices will provide advisory and review services to Borrowers at all levels of the procurement process.
- d. The Field Offices will assist Executing Agencies in the preparation of quarterly Progress Reports and ensure the preparation and submission of annual Audit Reports;
- e. The Field Offices will organize regular coordination and following-up meetings on the portfolio of the projects and programs with the implementation units and concerned government agencies.

• Country Dialogue and Promotion of Participatory Approach

The offices serve as focal point of Bank Group macro-economic policy dialogue with the country and assist in the promotion of a participatory approach to CSP preparation, project design and preparation by making contacts with civil society and non-governmental organisations.

Also, the Offices will liaise and co-ordinate with sub-regional and regional organisations and engage in dialogue with Governments of constituent countries and regional institutions in order to promote economic integration.

- **Aid Co-ordination**

The Offices will co-ordinate Bank Group operations with activities of other agencies in the countries under their responsibility and represent the Bank in resource-mobilization and aid-co-ordination meetings.

B. SECONDARY FUNCTIONS

The Offices will assist/support Headquarters in the areas of country programming, project and program processing and economic and sector work.