



# THE AFRICAN LEGAL SUPPORT FACILITY ALSF

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## HISTORY

# History of the ALSF



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- 2003
  - African Finance Ministers call for legal-technical facility to help HIPC address growing vulture funds litigations challenge
- 2005
  - Commission for Africa reiterates Finance Ministers call as 70% of US\$ 1 billion in vulture funds claims are won against RMCs
  - G8 recognizes vulture funds litigations as obstacle to debt relief arrangements reached at Gleneagles
- 2007
  - African Big Table calls for technical advisory facility to:
    - ✦ help RMCs negotiate extractive resources contracts
    - ✦ create appropriate, enabling environment with modern legal & regulatory frameworks for extractive resources sector

# Focus on Vulture Funds



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- **Vulture Funds Prey On:**
  - Indebted countries
  - More traditional creditors
  - Multilateral Initiatives such as HIPC and MDRI
- **They Do So By:**
  - Procuring huge debts at heavily discounted rates
  - Refusing to participate in voluntary restructurings
  - Litigating to recover full (original) value of debt
- **A Famous Example:**
  - Donegal vs. Zambia

# Focus on Extractive Contracts



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- Lack of Sound Pre-Contract Legal Advice Has Resulted In:
  - Constant renegotiation of contracts
  - Outright cancellation of contracts
- Constant Renegotiation and Cancellation Create:
  - Destabilizing and unattractive business environments in RMC economies
- A key Reason for the Constant Renegotiations is:
  - Capacity weaknesses in RMCs on the negotiation and drafting of complex contracts

# A Market-Friendly Regime



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- The ALSF will:
  - Assist RMCs to fight vulture funds litigations
  - Provide RMCs legal advise and preliminary analysis of vulture claims
  - Help RMCs to better under complex issues of commercial-transactional negotiation in the extractive industry space
- However,
  - The ALSF will not encourage non-compliance with loan covenants, non-enforcement of legitimate claims or non-compliance with good governance practice.



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## LEGAL EXISTENCE

# The ALSF Agreement



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- Came into Force on December 15, 2008:
  - After signatory by twenty-nine member countries and one international organization
- ALSF Membership is Open to :
  - AfDB member states;
  - Other States;
  - AfDB; and
  - Other international organizations
- Current Membership
  - Forty-two member countries
  - Three international organizations

# Full Juridical Personality



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- ALSF Agreement Confers on it the Status of:
  - An international institution
  - Full & separate juridical personality with legal capacity to:
    - Enter into contracts
    - Conclude agreements
    - Acquire and dispose of movable and immovable property
    - Be party to judicial and other legal and administrative proceedings



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## INSTITUTIONAL STRUCTURE

# Organization of the ALSF



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- The ALSF is Constituted By:
  - A Governing Council
  - A Management Board
  - A Directorate

# The Governing Council



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- **Composition: Representatives of**
  - Member states
  - AfDB
  - Other international organizations
- **Mandate**
  - Determine & approve policy
  - Appoint Management Board
  - Authorize resource replenishments
  - Appoint external auditors

# The Management Board



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- **Composition**
  - Five persons appointed by the Governing Council
- **Mandate**
  - Implement powers delegated to it by the Governing Council
  - Approve Annual Budget and Work Programs
  - Issue By-Laws, Rules & Regulations
  - Ensure efficient and effective operations
  - Oversee the management of the ALSF Endowment Fund

# The Directorate



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- **Composition**
  - A Director who was appointed in March 16, 2010
- **Mandate**
  - Chief Executive Officer
  - Day-to-day administration
  - Submission of independently audited financial reports to the Management Board and the Governing Council
  - External representation of the ALSF
  - Appointment of a staff of professionals, office administrators, and a support staff



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## OPERATIONALIZATION

# The Constitutive Assembly



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- Tunis Meeting (June 2009):
  - Approval of By-laws and General Regulations
  - Election of Governing Council
  - Governing Council approval of its Rules and Procedure
  - Governing Council appointment of Management Board and Draft Operational Guidelines
  - Appointed in March 2010 to fully operationalize activities
- The ALSF became fully operational by the appointment of the Interim Director in March 2010.



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## APPROVAL AND IMPLEMENTATION OF OPERATIONS

# Projects:



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- ❖ As of today, ALSF has approved and is implementing three projects in line with its objectives:
  1. The ALSF / Djibouti Advisory Services Project.
  2. The ALSF/PALU Capacity Building Project.
  3. The ALSF/ DRC Advisory Services in Litigation Project.
  
- ❖ ALSF's project pipeline is robust and continues to grow with increased awareness of ALSF amongst RMCs and also efforts of ALSF staff to publicize the Facility.

# Advisory Services



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The ALSF/Djibouti advisory services Project is in line with the second ALSF objective related to the provision of technical advise for the negotiation of complex commercial transactions. The ALSF/Djibouti advisory services project will benefit from a US\$ 500,000 grant to assist the Government of Djibouti in the review of contractual issues with the Dubai Port Authority and recruiting an international experienced law firm to represent the Government. A Letter of Agreement between ALSF and the Government of Djibouti was signed in July 2010.

# Capacity Building Project



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The ALSF/PALU Project is in line with the third ALSF objective of providing training to lawyers and aims to provide financial assistance in the form of a US\$ 900,000 grant to PALU for organizing seminars in Africa for lawyers working within Government institutions and dealing with complex commercial transactions:

The objectives of the Regional Seminars, are to:

Assess as well as build capacity for complex international commercial negotiations in Africa;

- Assess as well as build capacity for international commercial dispute resolution and also defence of Vulture Fund Litigation in Africa;
- Market ALSF and motivate ratifications/accessions amongst African States that have not yet done so;
- Build a database of knowledgeable, skilled and experienced international commercial lawyers in Africa.

# Advisory Services- litigation



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- The ALSF/DRC Project – Advisory Services- litigation FG–HEMISPHERE is in line with the first ALSF objective of assisting RMCs address litigation brought against them by vulture funds (and other such entities). Following ALSF’s mission to the DRC in August 2010, the Facility received a formal request from DRC to assist in a case against the vulture fund FG Hemisphere, by recruiting an experienced international law firm to represent DRC. The ALSF/DRC Project will benefit from a grant in the amount up to US\$ 500,000 towards legal fees for the appointment of international legal counsel in order to assist the Government of DRC.

# Ressources Mobilisation

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- ALSF continues to prioritize resource mobilization and fund raising.
- Brazil, UK, Sweden, Norway, Algeria, France, Belgium, WB, IDB, IFC and UE have pledged to contribute financially to the Facility and discussions with these countries are underway.
- France and Algeria have committed to provide technical assistance to ALSF.
- ALSF is also lobbying other RMCs to join the Facility and continues to solicit financial contributions from all Facility members. The need for additional financial contributions is now more acute given the increased number of requests for assistance being received from ALSF participating members.



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## QUESTIONS?