

Probable Date of Board Presentation:
Not Applicable

FOR INFORMATION

MEMORANDUM

TO : THE BOARD OF DIRECTORS

FROM : Kordjé BEDOUMRA
Secretary General

SUBJECT : ESTABLISHMENT OF THE AFRICAN LEGAL SUPPORT FACILITY
FINAL VERSION*

Please find attached, for your information the **final version** of the above-cited document approved by the Board of Directors on 30 April 2008. This final version includes all the comments and corrections made by the Board of Directors, and notably:

- the post of Deputy Director of the Facility has been removed;
- the Facility shall be (temporarily) housed in the Bank while awaiting a final decision by its Governing Council;
- its Governing Council is now composed of five (5) Participating States which are regional member states of the African Development Bank representing the five regions of Africa to be appointed on a rotational basis between the Participating States from each region; four (4) members representing Participating States which are also member states of the Organization for Economic Cooperation and Development (OECD); one (1) member representing Participating States which are not members of OECD; one (1) member representing the African Development Bank; and one (1) member representing the other international organizations parties to the Facility's Agreement;
- precisions have been made as to the effect that assistance in the negotiation of complex commercial transactions in the natural resources sector, especially, will be granted for (i) the provision of legal advice for a fee to eligible RMCs in such negotiations, and (ii) carrying out any other activity that may advance the purpose of such negotiations; and
- separate accounts will be instituted to permit donors who so wish to either contribute to the Facility for Vulture Fund Litigation purposes or for Assistance in the Negotiation of Complex Commercial Transactions.

An indicative timeline for activities necessary to establish the Facility and make it operational is attached to this final document for your information as well.

Attach.

Cc : The President

***Questions on this document should be referred to:**

Mr. K. GADIO	Ag. General Counsel /Director	GECL	Ext. 2032
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**INDICATIVE TIMELINE FOR ACTIVITIES NECESSARY
TO ESTABLISH AND OPERATIONALIZE
THE AFRICAN LEGAL SUPPORT FACILITY**

- Transmit of a draft Resolution to the Board of Governors for the approval of the allocation of an initial contribution of UA 10,000,000 from the Bank's Surplus Account to the Facility.
- Signature of a letter from the President to Governors of member countries of the Bank requesting them to (i) sign the Agreement establishing the Facility; and (ii) take the necessary measures, following such signature, for the prompt ratification, approval or acceptance of the Agreement establishing the Facility to enable its entry into force.
- Once the Bank would have received the signatures of ten (10) Participating States and International Organizations as well as seven (7) instruments of ratification, acceptance or approval, an inaugural summit will be held during which (i) the twelve members of the Governing Council shall be appointed; (ii) the Governing Council shall determine the headquarters of the Facility in conformity with Article V(1) of the Agreement establishing the Facility; (iii) the Management Board of the Facility shall be appointed; and (iv) the Management Board shall appoint the Director of the Facility.
- It is expected that the Facility will normally begin its activities and be fully operational in January 2009.

ESTABLISHMENT OF THE AFRICAN LEGAL SUPPORT FACILITY

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LIST OF ACRONYMS AND ABBREVIATIONS

ADB	African Development Bank
ALSF	African Legal Support Facility
ECA	United Nations Economic Commission for Africa
HIPCs	Heavily Indebted Poor Countries
IMF	International Monetary Fund
ICJ	International Court of Justice
MDGs	Millennium Development Goals
RMCs	Regional Member Countries
WTO	World Trade Organization

EXECUTIVE SUMMARY

Establishment of an African Legal Support Facility is timely and driven by demand. African Finance Ministers, in June 2003, called for the establishment of a legal technical assistance facility to help HIPC countries address a growing problem of vulture funds. The Commission for Africa, in March 2005, also called for a legal technical assistance facility to assist African countries in dealings with these aggressive creditors. Greater than seventy per cent of the nearly one billion United States dollars in judgments awarded plaintiffs in lawsuits instituted by vulture funds have been against RMCs. These lawsuits have claimed the attention of the G-8 as obstacles to the debt relief arrangement agreed at Gleneagles in 2005.

The African Big Table, in February 2007, called for a technical advisory facility to help RMCs negotiate extractive resource contracts and create an appropriate, enabling environment with modern legal and regulatory frameworks for the extractive resource sector. Complementing this, the recently published African Development Report 2007, which was devoted exclusively to natural resources for sustainable development in Africa, noted the need for sound principles to guide the design of efficient contracts in Africa's natural resource sector.

This document is submitted in response to those demands. Management hired a respected technical external consultant¹, to conduct a study on the viability of such a facility. The study confirmed the pressing need for such a facility. It recommended an autonomous, independent, international organization with a focused approach concentrating on (i) combating vulture funds; (ii) assisting RMCs negotiate complex transactions; and (iii) building capacity of RMCs in these and related areas for sustained impact.

These focal areas relate directly to the Bank's mandate to promote the social progress and economic development of its RMCs. It supports the various debt relief initiatives of the Bank and other international financial institutions. Savings gained from debt relief that are earmarked for developmental purposes in RMCs are being diverted to pay vulture funds. This erodes the effectiveness of the debt relief arrangements. RMCs are also not strengthening their economies by optimizing the benefits from assets such as extractive resources, inter alia, because of inadequate technical advice.

The proposed Facility seeks to address these challenges. The Facility differs from other existing arrangements to provide advisory services. It is selective. It focuses on areas not being served by others. In many respects, 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.

The structure of the Facility includes a Governing Council of representatives of participating members, a Management Board, and a small technical staff headed by a Director. It is proposed that funding for the Facility will come from contributions from the Bank, member countries of the Bank, non-member countries of the Bank, and other international organizations. An endowment fund is proposed to ensure financial sustainability. A sunset provision for the expiry of the Facility is also proposed to allow the phase-out of the Facility after a fourteen year period during which period the Facility should have built the requisite capacity in RMCs to address the identified specific challenges that are the focus of the Facility.

¹ Professor Muna Ndulo, Professor of Law and Director of Cornell University Institute for African Development.

1. INTRODUCTION

1.1 A central plank of the Bank's strategy on Law for Development² is the establishment of an African Legal Support Facility ("ALSF" or "the Facility") aimed at providing technical assistance to the Bank's Regional Member Countries ("RMCs"). Critical challenges demanding assistance are the problems with the most intransigent of creditors, vulture funds that act against Highly Indebted Poor Countries ("HIPCs"), fragile states and post-conflict countries; and the inadequate capacity of RMCs to engage effectively through fiscal and legal regimes that optimize socio-economic benefits in complex business transactions, especially those involving extractive resources.

1.2 The imperative for the Facility has been consistently expressed and supported by various parties including African Finance Ministers, who, during a meeting at the United Nations Economic Commission for Africa ("ECA") in early June 2003, when discussing the topic of the International Monetary Fund ("IMF") and Africa, called for the rapid establishment of a legal technical assistance facility to help HIPCs deal with creditor litigation.³

1.3 The Commission for Africa ("the Commission") in March 2005 similarly called for action to relieve what it termed "dangerous debt." The Commission emphasized the importance of addressing the precarious component of HIPCs' debt owed to non-OECD (Organization for Economic Cooperation and Development) bilateral and commercial creditors who are not participating in the HIPC initiative. The Commission noted that the debt has increasingly become a target for lawsuits by the original creditors and disreputable speculators. The Commission supported the position of the African Finance Ministers and called for the establishment of a rapid response legal technical assistance facility, independent of the Bretton Woods Institutions, to help African countries pre-empt and avoid lawsuits, and change national debt relief laws.⁴

1.4 Additionally, the African Big Table ("the Big Table") held in February 2007, co-sponsored by the Bank and the ECA, recognized the skills gap of Regional Member Countries in negotiating contracts for extractive natural resources and called for appropriate intervention. The Big Table called specifically for the establishment of a facility to help RMCs develop expertise and capacity to negotiate extractive resource contracts. The Big Table observed that the natural resources sector is witnessing a commodity price boom, fuelled by global resource scarcity and the entrance into the commodity market of new global players. Given Africa's unique resource development, the Big Table concluded that this offers a window of opportunity for RMCs to extract better terms from natural resources exploitation and to promote growth and poverty alleviation across the continent. The Big Table noted the need to create an enabling environment, modern legal and regulatory frameworks, and competitive fiscal regimes. The Big Table also recognized the importance of reviewing the current generation of natural resource laws and regulations to better accommodate the interests of RMCs.⁵

² ADB/BD/IF/2001/06; ADF/BD/IF/2001/06

³ ECA Press Release No. 08/2003 African Ministers Pronounce on Aid, Trade, Debt, IMF, HIV/AIDS (2 June 2003)

⁴ *Our Common Interest: Report of the Commission for Africa* (March 2005). p. 357

⁵ The 2007 Big Table, *Managing Africa's Natural Resources for Growth and Poverty Reduction*, (1 February 2007) Summary Report, United Nations Economic Commission for Africa and African Development Bank

1.5 It is therefore widely recognised that many RMCs lack the specialist legal expertise or experience in vulture fund negotiations and litigation as well as in matters of complex commercial transactions. The purpose of the Facility is to assist RMCs primarily in acquiring effective legal assistance in dealing with vulture fund negotiations and litigation, and accessorially acquiring the requisite legal capacity on a reimbursable fee-basis to negotiate complex commercial transaction.

1.6 Accordingly, the objectives of the Facility focus on harnessing the gains from debt relief granted HIPC, minimizing the diversion of debt relief gains for purposes other than those agreed under the debt relief framework, strengthening relevant assistance granted fragile states and post-conflict countries, thereby enabling affected RMCs to address the challenges posed by vulture funds, and accessorially enhancing the capacity of all RMCs in complex commercial transactions, especially those in the natural resource sector.

2. VULTURE FUNDS IN THE SOVEREIGN DEBT CONTEXT

2.1 A secondary market for debt is a fundamental feature of sovereign borrowing and lending. When creditors can freely sell the debt they hold on the secondary market, there is less risk involved in lending to sovereigns, and creditors are therefore more likely to provide the capital sovereigns need.

2.2 In recent decades, as the secondary market for debt has developed, new players have arisen, leading some to question whether the “tradable debt model” for sovereign debt is appropriate. One set of such players is called “vulture funds” - the term given to entities that purchase distressed debt on the secondary market, where it trades significantly below its face value, and then seek to recover the full amount, often through litigation. These intransigent creditors are able to litigate because most debt relief initiatives such as that for HIPC do not alter the legal rights and obligations between HIPC and their external creditors. Accordingly, until the HIPC debtors and their creditors reach bilateral legal agreements in line with the HIPC initiative, creditors are legally entitled to use available legal mechanisms to enforce their credit claims against HIPC. In some instances, prior to decision point some HIPC have paid commercial creditors in full either because of the litigation or the threat of litigation, a desire to avoid disrupting a commercial relationship, or the fear of losing productive assets in cases where commercial debt was secured by collateral.⁶

2.3 Vulture funds buy debt often at deep discounts with the intent of suing the debtor for full recovery. Vulture funds have averaged recovery rates of about 3 to 20 times their investment, equivalent to returns of (net legal fees) 300%-2000%.⁷ The vulture fund *modus operandi* is simple: purchase distressed debt at deep discounts, refuse to participate in restructuring, and pursue full value of the debt often at face value plus interest, arrears and penalties through litigation, if necessary. The vulture funds grind down poor countries in cycles of litigation, a

⁶ International Development Association and International Monetary Fund: Enhanced HIPC Initiative-Creditor Participation Issues, prepared by the staffs of the World Bank and IMF, April 8, 2003.

⁷ Manmohan Singh, Recovery Rates Distressed Debt-Empirical Evidence from Chapter 11 Filings, International Litigation, and Recent Sovereign Debt Restructurings, IMF Working Paper, (WP/03/161), 2003.

practice referred to as “champerty” and largely unknown in African legal systems. Litigation is typically protracted with many lawsuits taking three to ten years to “settle.” Legal documents indicate six years as a conservative medium estimate for recovery, which suggests that annualized returns average 50 to 333 percent.⁸ Some of these claims were bought at roughly 10 percent of face value, implying very high gross recovery rates.⁹ Subtracting legal costs, often recouped from the sovereign, these recovery rates are probably the highest in the distressed debt market.

2.4 A willingness and ability to pursue litigation appears central to the strategy and success of the vulture funds.¹⁰ In one recent case against Zambia, a vulture fund, having bought a debt for US\$3 million, sued Zambia for US\$55 million and was awarded US\$ 15.5 million. The vulture funds exert pressure on the sovereign debtor by attempting to obtain attachment of the government’s assets abroad. Such proceedings are always burdensome to the debtors concerned, and can complicate financial and reserve management. By precluding debt relief and costing millions in legal expenses, these vulture funds undermine the development of the most vulnerable RMCs.

2.5 The IMF reports that in some cases the claims by vulture funds constitute as much as 12 to 13 percent of a country’s gross domestic product (GDP).¹¹ The IMF reports that eleven HIPC have been targeted so far in forty-six lawsuits and that the litigators (plaintiffs) are concentrated in three countries.¹² The lawsuits are concentrated in only a few courts.¹³ Some lawsuits are reportedly also in HIPCs.

2.6 Generally, these vulture funds have won their lawsuits. Twenty-five judgments in favour of vulture funds so far have yielded nearly US\$1 billion. Out of this amount 72% of the judgments have been against RMCs. Significantly, the reported number of outstanding cases against debtor countries has doubled since 2004. On average eight new cases are filed each year. This figure includes lawsuits filed in year 2006 and part of 2007. It is anticipated that the success rate of past litigation would generate even more lawsuits against HIPCs. At least three RMCs namely Liberia, Cote d’Ivoire, and Sudan have large commercial creditor claims that are likely to be raised against these countries, although it is not yet clear who holds the various claims.

2.7 Litigation is costly for these debtor countries and distracts financial and other authorities from important policy issues. These lawsuits threaten the core objectives of the HIPC initiative. The lawsuits effectively reduce the impact of the debt relief for the HIPCs and cause inequitable burden sharing among creditors. The IMF foresees a risk of taxpayer backlash in the affected creditor countries when taxpayers realize the amount of their taxes being used to pay claims from

⁸ Ibid.

⁹ Highly Indebted Poor Countries Initiative—Status of Implementation, Annex III (SM/02/264).

¹⁰ *Donegal v. Zambia* 2007 EWHC 197 (Comm)

¹¹ These figures apply to Sao Tome and Democratic Republic of Congo, respectively.

¹² The situs of the lawsuits are USA (8), British Virgin Islands (7), and the United Kingdom (4). Presentation by IMF, *Litigating Creditors in the Context of the HIPC Initiative: An Overview – G-7 Debt Experts Meeting*, presented December 12, 2007, Paris, France

¹³ New York (15), London (7), and Paris (7) *Ibid.*

vulture funds. The vulture fund problem is encouraging opaque financial management, as HIPC's devise ways to shield or hide assets from aggressive creditors.¹⁴

2.8 The central criticism of the vulture funds is that, by purchasing distressed debt at discounted rates, refusing to participate in voluntary restructurings, and seeking to recover the full value of the debt through litigation, vulture funds are preying on both other creditors and on the indebted countries themselves. Countries whose debt is trading at deep discounts are almost by definition in deep financial trouble and many of them are poor. Holdout behaviour by vulture funds makes restructuring slower, more difficult, and uncertain. Debtors are harmed by the substantial uncertainty faced and also by being forced to repay individual creditors far more than the agreements negotiated with other creditors.

2.9 At least twenty heavily indebted poor countries have been threatened with or have been subjected to legal actions by commercial creditors and vulture funds since 1999¹⁵ including Sierra Leone by Greganti Secondo and ARCADE, and by Industrie Biscoti against Cote d'Ivoire and Burkina Faso. Other RMCs that have been targeted include Angola, Cameroon, Congo, Democratic Republic of the Congo, Ethiopia, Liberia, Madagascar, Mozambique, Niger, Sao Tome and Principe, Tanzania, and Uganda.¹⁶

2.10 A joint IMF and World Bank study¹⁷ has observed that although in many cases debtors have not made payments on court judgments obtained by creditors, in some cases debtors have made payments in excess of HIPC parameters. The study further observed that pending litigation and outstanding court judgments may also inhibit HIPC's from regularizing financial relationships with the international banking community. The World Bank estimates that more than one-third of the countries which have qualified for its debt relief have been targeted with lawsuits by at least 38 litigating creditors with judgments totalling \$1 billion in 26 of these cases.

2.11 The Paris Club has expressed concern with vulture fund litigation. Taking stock of the harmful consequences of litigation for HIPC countries and consistent with the Paris Club principle of comparability of treatment, in May 2007 the Paris Club resolved to avoid the sale of their claims on HIPC's to other creditors who do not intend to provide debt relief under the HIPC initiative. The Paris Club urges other creditors to follow suit. In cooperation with relevant international institutions, the Paris Club creditors agreed to intensify their work on this issue with a view to identifying concrete measures to tackle this problem.¹⁸ In a Pre-summit statement issued in Essen, Germany on 19 May, 2007, the G-8 Finance Ministers expressed concern about actions of some litigating creditors against HIPC's and agreed to work together to identify measures to tackle this problem based on the work of the Paris Club.¹⁹ On 12 December 2007,

¹⁴ *Ibid.*

¹⁵ Associated Press testimony presented by Neil Watkins, Of Jubilee USA, citing research by Debt Relief International before House Foreign Affairs subcommittee on Africa and Global Health, 22 May 2007.

¹⁶ *Ibid.*

¹⁷ International Monetary Fund and International Development Association, Heavily Indebted Poor Countries (HIPC) Initiative: Status of Implementation, Prepared by the Staffs of the IMF and World Bank, approved by Mark Allen and Gobind Nankani, August 20, 2004.

¹⁸ Press release of the Paris Club on the threats posed by some litigating creditors to heavily indebted poor countries, May 22, 2007.

¹⁹ G-8 Finance Ministers Meeting, May 2007

the G-7 Debt Experts invited the IMF, the World Bank and the Bank to a meeting in Paris chaired by the Secretary General of the Paris Club to discuss the impact of vulture funds on debt relief and measures that could be employed to minimize the adverse affect on economic development of HIPC's.

3. COMPLEX COMMERCIAL TRANSACTIONS

3.1 Problems faced by African countries in vulture fund litigation and exposed by recent litigation in this field are but a tip of a much larger problem, the lack of adequate legal representation for RMCs in vulture fund litigation and in the negotiation of complex commercial transactions.

3.2 RMCs receive certain large investments in natural resources or large infrastructure projects if the RMC government agrees to a wide range of concessions and contractual commitments with investors. Naturally, both the investor and the RMC seek to obtain the best possible terms over the life of such investments. Negotiation of these commitments is often difficult for RMCs that typically lack the financial and human resources to negotiate effectively or lack the appropriate fiscal, regulatory and legal framework. Corruption, differences in bargaining power and asymmetries of expertise pose major challenges.²⁰

3.3 Faced with a highly competent and experienced legal team on the investor side, the RMC may respond by delaying the negotiations, or cancelling the investment contract when it later understands the full meaning and effect of the contractual provisions. Either way, the investment is destabilized and is of less value to both sides.

3.4 In recognition of the tremendous importance legal representation and advice play in affecting outcomes of legal arrangements and disputes, indigents in many jurisdictions are provided legal aid to ensure proper legal advice and, if necessary, representation in litigation are obtained in matters affecting their interests. These domestic legal aid programs help eliminate disparities, strengthen dispute settlements and ensure courts reach fair and equitable judgments. The Facility shall provide legal aid to RMCs, remove imbalances and work towards sustainable, mutually beneficial agreements by levelling the field and creating modern regimes for natural resource and commercial transactions.

4. GOALS AND OBJECTIVES

4.1 The overarching goal of the ALSF is to help maximize resources available for economic development and social progress in RMCs. This will be done by enhancing the access of RMCs to technical legal advice in dealing with lawsuits and other claims brought by vulture funds as well as in some other ancillary areas that enable the building of capacity.

²⁰ Global Witness Digging in Corruption: Fraud, Abuse and Exploitation in Katanga's copper and cobalt mines (2006).

4.2 In accordance with the overarching goal, the objective of the Facility focus on harnessing the gains from debt relief granted HIPC, minimizing the diversion of those debt relief gains for purposes other than those agreed under the debt relief framework, strengthening assistance granted to HIPC, fragile states and post-conflict countries, thereby enabling those RMCs to address the challenges posed by vulture funds. Specifically, the Facility will provide resources for (a) obtaining specialist legal assistance for the negotiation and/or litigation of vulture fund claims, and (b) building legal capacity on the continent to deal with this primary objective. As an ancillary objective, the Facility will enhance the capacity of RMCs to negotiate complex commercial transactions, including those in the natural resource sector, but this will be done on a reimbursable fee-basis.

4.3 To enable achievement of the stated goals and the implementation of its work, grants of financial resources would be mobilized in support of the work of the Facility. Resources so mobilized will be kept segregated in order to permit donors to contribute to both or either of the objectives of the Facility.

4.4 The Facility will be lodged at the Bank and would be an instrument to compliment the Bank's work towards poverty reduction and the collective international efforts towards the Millennium Development Goals designed to improve the standard of living in developing countries.

5. RATIONALE

5.1 Despite the enormous importance of legal arrangements, the legal dimension is often recognized too late and at substantial costs. In matters involving vulture fund claims and litigation, RMCs are disadvantaged by the quality of legal representation. This disadvantage stems from the specialized, sometimes esoteric, nature of laws in subject matter and jurisdictions in which RMCs' counsels have inadequate technical knowledge. In negotiating some claims and in defending themselves in litigation, RMCs have unknowingly waived rights that otherwise would have created strong, valid legal defences. Consequently, hundreds of millions of US dollars (potentially billions of such dollars) saved by RMCs through debt relief, which have been earmarked to help meet the Millennium Development Goals ("MDGs"), are being diverted to avaricious, intransigent creditors. This diversion of resources frustrates the purposes of debt relief.

5.2 Failures of RMCs to negotiate effectively are supposed to have also led to opportunity costs estimated in billions of US dollars arising from various badly drafted contracts and other financial agreements. A number of reasons have been identified in studies for the failure of RMCs to adequately address these challenges. Key reasons are poor legal capacity, high costs of litigation, inexperienced government officials, corruption and lack of transparency. This is often compounded by the fact that RMCs do not have the necessary information to identify competent law firms for representation. Poorly qualified lawyers add to the cost and length of litigation. The cost of legal defence in a typical vulture fund litigation is about US\$1.5 million and the cost of expert legal advice in the negotiations of complex commercial transactions is roughly equivalent.

5.3 Precedents exist for international legal assistance aimed at removing legal imbalances in litigation and negotiations. Similar international legal aid mechanisms have been established by other international organizations to help ensure access to justice and to remove inequalities that impact negatively on the fulfilment of their respective mandates. For example, the International Court of Justice in The Hague has a Fund established to overcome impediments to the judicial settlement of disputes between nation-states, which works for the benefit of less developed countries that appear before the Court. Some member countries of the World Trade Organization are founding members of the Geneva-based Advisory Centre on WTO Law (“ACWL”), which provides technical legal assistance in dispute settlement and negotiations pertaining to WTO law. The Commonwealth Secretariat and the Commonwealth HIPC Clinic in London, England, provides limited advisory services to member countries of the Commonwealth.

6. AREAS OF INTERVENTION

To eliminate the asymmetry of expertise and the imbalance of knowledge in addressing the challenges posed by vulture funds and in an ancillary manner complex commercial transactions, especially relating to natural resources, the Facility will have two main program areas: (i) the provision of a legal advisory services and litigation expertise against vulture funds and (ii) a capacity enhancing and capacity building programme.

6.1 Implementation Period

The activities of the Facility would be implemented over a fourteen year period between 2008 and 2022. A sunset date of 2022 is proposed based on the goals and objectives of the Facility: (i) according special attention to various Bank initiatives such as those aimed at successfully defending litigation against vulture funds and keeping resources in the continent for poverty reduction ; (ii) giving particular consideration to Bank initiatives on debt relief and assistance for HIPCs, fragile states, and post-conflict countries as well as the increasing number of lawsuits filed annually by vulture funds against RMCs; (iii) allowing for the average length of time for such lawsuits; and (iv) estimating a reasonable timeframe for appropriate capacity building. A provision in the draft constitutive instrument of the Facility empowers the Governing Council with authority to expand or reduce the Facility’s period of existence.

6.2 Activities

The ALSF shall concentrate its work on two types of activities:

(a) Vulture Fund Litigation

- Financing legal fees on behalf of, or for, fragile and post-conflict and HIPC RMCs;
- Identifying and selecting law firms and negotiating standard reasonable fee agreements for the above activity;

- Developing a database and systems to make available and easily retrievable precedent setting decisions in vulture fund cases against sovereign debtors; and
 - Carrying out any other activity relevant to achieving this purpose.
- (b) Assistance in the Negotiation of Complex Commercial Transactions, especially in the Natural Resources Sector
- Researching and locating of legal experts who can assist with this purpose;
 - Providing legal advice to eligible RMCS for a fee to assist with negotiations of such transactions; and
 - Carrying out any other activity that may further advance this purpose.

7. ELIGIBILITY

7.1 Eligibility to access the services of the Facility shall be open to participating RMCs. The Facility shall levy participation fees and other fees for services rendered, especially in assisting with the negotiation of complex commercial transactions. Fees would be used to help sustain the Facility and ensure commitment on the part of participating-user countries. In instances where fees are levied for services, different levels of fees may be charged depending on the categorization of the participating-user country, as determined by the management of the Facility. In establishing categories, due consideration may be given to the economic categorization of the user country by international institutions such as the Bank and the United Nations.

7.2 RMCs that are not members of the Facility may request legal advice, which would be given on a non-priority basis.

7.3 Membership in the Facility shall be open to all member countries of the Bank. Membership in the Facility shall also be open to non-member countries of the Bank, intergovernmental and international organizations, which meet eligibility criteria established by the Governing Council of the Facility.

8. ACTIVITIES OF OTHER FACILITIES

8.1 The focus of activity for the proposed ALSF is different from any of the existing facilities. The foci of those facilities are dissimilar. The ACWL, for example, focuses on helping less developed countries navigate WTO law. The ACWL is not engaged in giving advice relating to vulture fund litigation or complex commercial transactions. The Commonwealth Secretariat and the Commonwealth HIPC Clinic, on the other hand, provide technical assistance to Commonwealth countries and some assistance on debt matters with a focus on reform of regulatory environments in those countries. The ALSF shall focus on providing assistance to all RMCs, irrespective of the RMCs legal tradition or historical ties, in legal proceedings involving

vulture funds. In an ancillary manner, it will equip lawyers from RMCs with skills to understand the intricacies of complex financial agreements, especially extractive resource contracts.

8.2 None of the existing facilities focuses on providing legal advice in vulture fund litigation and capacity building in legal competence in complex commercial transactions, natural resources contracts, project finance and investments agreements.

9. STRUCTURE OF THE FACILITY

9.1 The Facility shall be established as an independent institution, legally autonomous and liability-remote, though housed within the African development Bank. This would allow the ALSF to effectively assist members without endangering the neutrality of the Bank and would shield the Bank from any risk of liability. The Facility would have the legal status, privileges and immunities that would protect it from any potential retaliatory legal action. In respect of training and capacity building, the Facility will complement the work of the Bank's Legal Services Department.

9.2 The institutional structure of the Facility shall consist of a Governing Council, a Management Board, and a Director. It is further recommended that the Facility should have a small staff initially comprising: the Director, five (5) professionals, as well as two (2) office administrators and a support staff.

9.3 The Governing Council will be made up of representatives of ALSF member states, the Bank, and other international organizations. Its functions will include determining and approving policy, appointing a Management Board, authorising replenishments of resources, and appointing external auditors.

9.4 The Management Board would be composed of five (5) persons appointed by the Governing Council. The Director would be an ex-officio member of the Management Board. The Management Board functions will include implementing such powers as shall be delegated to it by the Governing Council, approving the annual budgets and annual work programmes, issuing By-laws, regulations and rules for the Facility, and making decisions necessary to ensure the efficient and effective operations of the Facility, and overseeing the management of the Facility's Endowment Fund.

9.5 The chief executive officer of the Facility shall be the Director who shall be appointed by the Management Board. The Director shall be responsible for the day-to-day administration of the Facility and shall appoint the staff of the Facility, submit independently-audited financial reports to the Management Board and the Governing Council, and represent the Facility externally.

9.6 The professional staff recruited by the Facility will be experienced in financial and commercial negotiations and litigation and will have demonstrated an interest in the

advancement of RMCs as well as an ability to work with government officials from African countries. An appropriate code of conduct would guide the staff of the Facility.

10. FUNDING

10.1 The success or failure of the Facility rests upon the mobilisation of funding to make the Facility operational. The Facility would be sustained through initial contributions to an Endowment Fund. For the Facility to be financially viable and effective, it should mobilise initial funding of UA50 million out of which UA30 million shall be placed in the Endowment Fund.

10.2 The objective is to make the Endowment Fund a major long-term source of funding. During a three year transitional period ending 2011, the Facility's annual budgets will be financed by annual contributions from the Bank and from Members. During this period, the revenues from the Endowment Fund and the fees for negotiating complex transactions will accrue to the Endowment Fund. In addition, bilateral donors may contribute funds or technical assistance to the Facility earmarked for the support of litigation involving specific debtor RMCs. In a manner similar to the World Bank's Debt Reduction Facility, the ALSF would be financed partially from transfers of ADB's net income and from grant contributions from other donors. The Facility may also provide soft loan advances payable directly to firms or experts to assist RMCs in the negotiation of complex commercial transactions. Such advances will be made on a reimbursable basis, conceptually in form similar to the Bank's Project Preparation Facility.

11. ACTION PLAN

11.1 The Facility would have two main activities (i) obtaining specialist legal assistance for the negotiation and/or litigation of vulture fund claims, and (ii) building legal capacity on the continent to deal with such claims and litigation. The legal advisory service will be implemented at the headquarters of the Facility, whereas the capacity building programmes will be implemented at headquarters, regional and country level.

11.2 Approval by the Bank's Board of Directors of the draft instrument for the establishment of the Facility.

11.3 Establishment of an Endowment Fund for the Facility through a grant by the Bank and other donors of initial resources. Bank members will be asked to contribute to the Endowment Fund. The levels and modes of contributions will have to be agreed and decisions made about whether the endowment contributions can be paid over a period of time.

11.4 In order to minimize costs, the Facility will be housed within the Bank. The Bank will take the appropriate steps to negotiate a Host Country Agreement with the Government of its Temporary Relocation Agency, and subsequently with that of the Bank's host country prior to returning to its headquarters, in the form attached to this paper for the Facility.

12. RISKS

12.1 The main risk posed is the possibility that vulture funds might seek to institute retaliatory lawsuits against those providing assistance for the defence of RMCs in claims raised by the vulture funds. This risk is mitigated by the design of the Facility as a separate legal entity that would benefit from immunities and privileges insulating the Facility and its members from such lawsuits.

12.2 Another risk is the inability of the Facility to raise funds to sustain its activities. This risk has been addressed through the proposal to establish an endowment fund and to empower the Facility to charge fees, as appropriate.

13. LINKAGES

13.1 The work of the Facility to assist RMCs address the problems posed by vulture funds is consistent with the goal of the international community and the Bank to grant debt relief to the least developed countries to enable strides towards meeting the MDGs. It is in harmony with global efforts on debt relief and is a legitimate and essential element of the package for dealing with the problems of sovereign debt.

13.2 The ancillary work of the Facility to aid RMCs in negotiating complex commercial transactions is consistent with the Bank Group's policy to improve financial management of assets and resources in RMCs.

13.3 The work of the Facility is congruous with the mandate of the Bank to promote the social progress and economic development of African countries. This will be done by ensuring that financial resources made available by the Bank and other creditors through grants of debt relief are used for the purposes intended and not diverted. This will also be done by enhancing the capacity of RMCs to optimize the returns generated from commercial transactions, investments and national assets, especially natural resources.

13.4 Work of the Facility in selected respects including strengthening the legal, regulatory and fiscal framework of RMCs to maximize investments will complement the work of Bank technical experts.

14. CONCLUSIONS AND RECOMMENDATIONS

14.1 Establishment of the ALSF conforms to requests by member countries of the Bank as expressed in various instruments, documents and public pronouncements. It is in furtherance of the Bank's mandate to contribute to the social progress and economic development of RMCs.

14.2 Accordingly, it is recommended that the Board of Directors:

(i) endorse the proposal to establish the African Legal Support Facility and authorize Management to proceed with implementation of the proposal; and

(ii) recommend to the Board of Governors the approval of an allocation of ten (10) million UA as initial contribution for the Facility out of the Bank's surplus account.

ANNEXURES

- **Annex I Draft Instrument for Establishing the ALSF**
- **Annex II Result Based Log Framework Matrix**
- **Annex III Indicative Start-up Budget**

ANNEX I

**Draft Instrument for the Establishment of the
African Legal Support Facility**

AGREEMENT

FOR

THE ESTABLISHMENT

OF

THE AFRICAN LEGAL SUPPORT FACILITY

THE STATES AND INTERNATIONAL ORGANIZATIONS,
PARTIES TO THE PRESENT AGREEMENT

RECALLING the declaration of the African Finance Ministers of 2 June 2003 on Aid, Trade, Debt, IMF, HIV/AIDs in which they called for the rapid establishment of a legal technical assistance Facility to help Heavily Indebted Poor Countries (“HIPCs”) in Africa address the problems of creditor litigation;

MINDFUL of the findings of the Commission for Africa that the debt of HIPCs had become a target of lawsuits by the original creditors and disreputable speculators, and its call for the establishment of a rapid response legal technical assistance Facility, independent of the Bretton Woods Institutions, to assist African countries pre-empt, avoid or successfully prosecute such lawsuits;

RECALLING the resolution of the African Ministerial Conference of February 2007, jointly organized by the African Development Bank and the United Nations Economic Commission for Africa, on the management of Africa’s natural resources for growth and poverty reduction, which acknowledged the skills disparity between African and industrialized countries in negotiating contracts for extractive natural resources, and called specifically for the creation of a facility to assist African countries develop expertise and capacity to negotiate and conclude fair and equitable arrangements for the management of Africa’s natural resources and extractive industries;

RECOGNISING that African countries lack expertise and capacity in creditor litigation and in negotiations of complex commercial transactions, and that their ability to acquire such expertise and capacity is constrained by financial and institutional limitations;

CONVINCED that beneficial commercial relationships and proper balance of rights and obligations in complex commercial transactions, investment agreements, natural resource contracts and creditor litigations can only be maintained if the parties thereto have full knowledge of their respective rights and obligations as well as equal opportunity and access to competent legal services;

NOTING the commendable efforts of the African Development Bank in promoting the establishment of an African legal support facility;

HAVE HEREBY AGREED AS FOLLOWS:

ARTICLE I Establishment

There is hereby established an international legal institution to be known as the “African Legal Support Facility” (hereafter called the “Facility”), which shall operate in accordance with the provisions of this Agreement.

ARTICLE II Purposes and Functions

1. The purposes for which the Facility is established are:
 - (i) To provide legal advice and services to African countries in creditor litigation;
 - (ii) To provide technical legal assistance to African countries to strengthen their legal expertise and negotiating capacity in matters pertaining to debt management and litigation; natural resources and extractive industries management and contracting; investment agreements; and related commercial and business transactions, as the case may be;
 - (iii) To strengthen process in African countries.
2. To serve its purposes, the Facility shall carry out the following functions and activities:
 - (i) identification of legal expertise on creditor litigation; debt management; as well as the case may be in extractive industries and other natural resources management and contracting; investment agreements;
 - (ii) provision of financing to African member states of the Facility to assist them with actual creditor litigation and negotiations of complex

- commercial transactions where should states shall be willing and able to reimburse the Facility for the latter services;
- (iii) investing in and organizing the training of legal counsel from African member states of the Facility to equip them with legal expertise necessary to address creditor/vulture fund litigation;;
 - (iv) provision of technical legal assistance, other than actual litigation services, to African member states of the Facility;
 - (v) establishing and maintaining a list of specialized law firms and legal experts to represent African member states of the Facility in creditor litigation and, as the case may be, negotiations of complex commercial transactions;
 - (vi) developing a database and systems for making available and retrieving precedents in creditor litigation cases involving sovereign debtors;
 - (vii) promoting an understanding, among African countries, of issues concerning identification and resolution of creditor litigation involving sovereign debtors against vulture funds, and, as the case may be, negotiations of complex commercial transactions, especially natural resource contracts; and
 - (viii) conducting such other related functions or activities as may advance the purpose of the Facility.

ARTICLE III

Legal Status

The Facility shall be an international institution with full juridical personality under the laws of the states parties to this Agreement (hereinafter called the “Participating States”), and shall, in particular, have the legal capacity to:

- (i) enter into contracts and conclude agreements;
- (ii) acquire and dispose of movable and immovable property;
- (iii) be a party to judicial and other legal or administrative proceedings.

ARTICLE IV

Membership

1. Membership of the Facility shall be open to: (a) all member states of the African Development Bank; (b) other states; (c) the African Development Bank; (d) other international organisations or institutions.
2. The conditions governing eligibility to membership shall be determined by the Governing Council of the Facility.
3. Any state or international organisation which has not signed this Agreement before the date on which this Agreement enters into force shall, as a condition precedent to membership in the Facility, adhere to this Agreement by depositing an instrument of accession with the Provisional Depository for the Depositors.

ARTICLE V

Headquarters of the Facility

1. The headquarters of the Facility shall be situated in the territory of a Participating State selected by the Governing Council of the Facility.
2. The Participating State in whose territory the headquarters of the Facility is to be located shall sign with the Facility, and take all necessary measures to make effective in its territory, an agreement regarding the headquarters of the Facility (the “Headquarters Agreement”).
3. The Headquarters Agreement shall be concluded by the parties thereto not later than ninety (90) days from the date of the first meeting of the Governing Council of the Facility and shall immediately upon signature become binding and effective.

ARTICLE VI

Financial Resources

1. The financial resources of the Facility shall consist of the following:
 - (i) Voluntary contributions by: (a) Participating States, (b) international organisations other than the African Development Bank, signatories to this Agreement, (c) non participating states, (d) private entities [approved by the Governing Council];
 - (ii) Allocations from the net income of the African Development Bank; and
 - (iii) Income accruing to the Facility from its endowment fund, including income in the form of interest, fees, and proceeds from sales of assets and publications.
2. The parties to the present Agreement and other contributors to the financial resources of the Facility specified in paragraph 1 of this Article shall deposit with the Facility instruments of commitment stating the specific amounts to be contributed. Payment of contributions shall be made in a freely convertible currency.
3. The parties to this Agreement shall be under no obligation whatsoever to provide financial support to the Facility beyond voluntary contributions. In addition, they shall not be responsible, individually or collectively, for any debts, liabilities or obligations of the Facility.

ARTICLE VII

Governance and Management Structure

The Facility shall have a Governing Council, a Management Board, a Director and such other staff as are necessary to perform the functions and carry out the activities of the Facility.

ARTICLE VIII
Governing Council: Powers

1. All the powers of the Facility shall be vested in the Governing Council.
2. The Governing Council may delegate to the Management Board all its powers, except the power to:
 - (i) appoint members of the Management Board;
 - (ii) appoint external auditors to audit the accounts of the Facility and certify the balance sheet and statement of the income and expenditures of the Facility;
 - (iii) authorise replenishments of the resources of the Facility;
 - (iv) expand the scope of the purposes and functions of the Facility;
 - (v) approve the policies of the Facility;
 - (vi) amend this agreement;
 - (vii) extend or reduce the duration/sunset date for the Facility; and
 - (viii) decide to terminate the operations of the Facility and distribute its assets.

ARTICLE IX
Governing Council:
Composition and Representation

1. The Governing Council shall be composed of twelve members, who shall be appointed by the Participating States; the African Development Bank; and international organizations, other than the African Development Bank, parties to this Agreement.
2. Five members shall represent Participating States which are regional member states of the African Development Bank representing the five regions of Africa to be appointed on a rotational basis between the Participating States from each region; four members shall represent

Participating States which are also member states of the Organisation for Economic Cooperation and Development (OECD); one member shall represent non-OECD Participating States; one member shall represent the African Development Bank; and one member shall represent the other international organisations parties to this Agreement.

ARTICLE X

Governing Council: Procedure

1. The Governing Council shall meet at the headquarters of the Facility, or at such other places as the Management Board may decide. It shall meet once a year, unless the business of the Facility requires otherwise.
2. Meetings of the Governing Council shall be convened by the Director of the Facility or at the request of two-thirds of the members of the Governing Council.
3. Two-thirds of the members present at any meeting of the Governing Council shall constitute a quorum.
4. The Governing Council shall adopt its own rules of procedure.

ARTICLE XI

Management Board: Powers and Functions

1. The Management Board shall exercise the powers and functions of the Facility delegated to it by the Governing Council or set forth in this Agreement. It shall be responsible for the direction of the general operations of the Facility. The Management Board shall, in particular:
 - (i) appoint the Director of the Facility;
 - (ii) approve the annual budgets and annual work programmes of the Facility;
 - (iii) issue the By-laws, regulations and rules of the Facility;
 - (iv) submit proposals to the Governing Council on the replenishment of the Facility's resources.

ARTICLE XII
Management Board: Composition

1. The Management Board shall be composed of five members, appointed by the Governing Council. The Director of the Facility shall be an ex-officio member of the Management Board, but the Director shall have no vote.
2. Members of the Management Board shall be persons of high integrity and competence in law, finance and development. They shall serve in their personal capacities and not as representatives of Participating States or international organisations parties to this Agreement.

ARTICLE XIII
Management Board: Procedure

1. The Management Board shall meet at the Headquarters of the Facility, or at such other places as it may decide. It shall meet twice a year, unless the business of the Facility requires otherwise.
2. Meetings of the Management Board shall be convened by the Director of the Facility or at the request of at least three members.
3. Three members present at any meeting of the Management Board shall constitute a quorum.
4. The Management Board shall adopt its own rules of procedure.

ARTICLE XIV
Director and Staff

1. The Director shall serve as the Chief Executive Officer of the Facility and shall be responsible for the day-to-day administration of the Facility. The Director shall be appointed by the Management Board. The Director shall be a person of high integrity and competence in legal aspects of debt management, extractive resources contracting, or commercial transactions, with considerable professional and managerial experience.

2. The Director shall be responsible to the Management Board for the management and operations of the Facility, in accordance with the provisions of this Agreement, and the decisions of the Governing Council and the Management Board.
3. The Director shall attend meetings of the Management Board in an ex-officio capacity and shall not have voting rights.
4. The Director shall serve for a term of five years and may be re-appointed for another term of five years, which shall not be renewable.
5. The Director shall appoint such other staff as are necessary to perform the functions and carry out the activities of the Facility.

ARTICLE XV

Cooperation Arrangements

The Facility may conclude cooperation arrangements with other institutions. In this connection, it may receive experts and personnel of other institutions on a secondment or exchange basis.

ARTICLE XVI

Immunities, Exemptions, Privileges, Facilities and Concessions

Each Participating State shall take all legislative action under its national law and all administrative measures, as are necessary, to enable the Facility to effectively fulfil its purposes and carry out the functions entrusted to it. To this end, each Participating State shall accord to the Facility, in its territory, the status, immunities, exemptions, privileges, facilities and concessions set forth in this Agreement, and shall inform the Facility of the specific action it has taken for this purpose.

ARTICLE XVII
Judicial Proceedings

The Facility shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a Participating State in which the Facility has its principal office, or in the territory of a Participating State or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.

ARTICLE XVIII
Immunity of Property and Assets

1. The property and assets of the Facility wherever located and by whomsoever held shall be immune from: (a) search, requisition, expropriation, confiscation, nationalization and all other forms of seizure, taking or foreclosure by executive or legislative action; and (b) seizure, attachment or execution before the delivery of final judgment or award against the Facility.
2. For the purpose of this Article XVIII, the term “property and assets of the Facility” shall include property and assets owned or held by the Facility and deposits and funds entrusted to the Facility in the ordinary course of business.

ARTICLE XIX
**Freedom of Property, Assets
and Operations from Restriction**

1. To the extent necessary to implement the purposes of the Facility and carry out its functions, each Participating State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that are likely to hinder in any manner the smooth functioning of the Facility or impair its operations.
2. To this end, the Facility, its property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and

other legislative, executive, administrative, fiscal and monetary restrictions of any nature.

ARTICLE XX

Immunity of Archives

1. The archives of the Facility and, in general, all documents belonging to, or held by the Facility shall be inviolable wherever located, except that the immunity provided for in this Article shall not extend to documents required to be produced in the course of judicial or arbitral proceedings to which the Facility is a party;
2. Without prejudice to the generality of the provisions of paragraph 1 of this Article, documents containing professional work products of or held by the Facility shall not be produced for judicial or arbitral proceedings.

ARTICLE XXI

Privilege for Communications

Official communications of the Facility shall be accorded by each Participating State the same treatment and preferential rates that the Participating State accords to the official communications of other international organizations.

ARTICLE XXII

Personal Immunities, Privileges and Exemptions

1. All members of the Governing Council, members of the Management Board, the Director and other employees of the Facility, personnel seconded to the Facility, and consultants and experts performing missions for the Facility:
 - (i) shall be immune from legal process with respect to acts performed by such persons in their official capacity;
 - (ii) shall be accorded the same immunities from immigration restrictions and alien registration requirements, and, not being local nationals, shall be accorded the same immunities from national service obligations and the same facilities as regards exchange regulations, as are accorded by each Participating State to representatives, officials and employees of comparable rank of other states or international organizations; and

- (iii) Where such persons are not resident nationals or permanent residents, shall be granted the same treatment in respect of travelling facilities as is accorded by Participating States to representatives, officials and employees of comparable rank of other states or international organizations.
2. The Director and other employees of the Facility:
 - (i) shall be immune from personal arrest or detentions, except that this immunity shall not apply to civil liability arising from a road traffic accident or to a traffic offence; and
 - (ii) shall be exempt from any form of direct or indirect taxation on salaries and emoluments, paid by the Facility
 3. A Participating State may, when depositing its instrument of ratification, acceptance or accession, reserve for itself and its political subdivisions the right to tax salaries and emoluments paid by the Facility to its nationals or residents.

ARTICLE XXIII

Waiver of Immunities and Privileges

The immunities and privileges provided in this Agreement are granted in the interests of the Facility and may only be waived, to such extent and upon such conditions as the Management Board of the Facility shall determine in cases where such a waiver would not, in its opinion, prejudice the interests of the Facility. The Director of the Facility shall have the right and the duty to waive the immunity of any employee, secondee, consultant or expert of the Facility in case where, in the Director's opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Facility. In similar circumstances and under the same conditions, the Management Board shall have the right and duty to waive the immunity of the Director of the Facility

ARTICLE XXIV
Exemption from Taxation

1. The Facility, its property, assets, income, operations and transactions shall be exempt from all taxation and custom duties.
2. Without prejudice to the generality of the provision of paragraph 1 of this Article, each Participating State shall take all necessary action to ensure that the property and assets of the Facility, and other instruments and transactions, interest, commissions, fees, and other income, return and moneys of any kind, accruing, appertaining or payable to the Facility from any source shall be exempt from all forms of taxes, duties, charges, levies, and imposts of any kind whatsoever, including stamp duty and other documentary taxes, heretofore levied or hereafter imposed in its territory.
3. The Facility shall also be exempt from any obligation relating to the payment, withholding, or collection of any tax or duty.

ARTICLE XXV
**Fiscal Exemptions, Financial Facilities,
Privileges and Concessions**

The Facility shall be accorded by each Participating State a status not less favourable than that of other international organizations, and shall enjoy all fiscal exemptions financial facilities, privileges and concessions granted to international organizations and other institutions by the Participating States.

ARTICLE XXVI
Interpretation and Settlement of Disputes

1. This Agreement shall be interpreted in the light of its primary purposes of enabling the Facility to fully and efficiently discharge its functions and fulfill its purposes.
2. The English and French texts of this Agreement shall be equally authentic.
3. Any dispute among the parties to this Agreement or between the Facility and a party to this Agreement regarding the interpretation or application of any

provision of this Agreement shall be submitted to the Governing Council of the Facility, whose decision shall be final and binding.

ARTICLE XXVII

Entry into Force

1. This Agreement shall be open for signature by or on behalf of the contracting parties and shall be subject to ratification, acceptance or approval
2. The present Agreement shall enter into force on the day when: (i) ten (10) Participating States and international organizations shall have signed the Agreement; and (ii) seven (7) instruments of ratification, acceptance or approval shall have been deposited.
3. This Agreement shall take effect for each contracting party on the date of deposit of its instrument of ratification, acceptance, approval or accession in accordance with its constitutional or other applicable statutory procedures.

ARTICLE XXVIII

Duration

The Facility shall be in force and effect for fourteen years from the date of entry into force of this Agreement; provided, however, that this period may be extended or reduced by a decision of the Governing Council.

ARTICLE XXIX

Depositary

1. Instruments of ratification acceptance, approval or accession shall be deposited with the Secretary General of the African Development Bank, who shall act as the provisional depositary of this Agreement (herein called the “Provisional Depositary”).
2. The Provisional Depositary shall register this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the regulations thereunder adopted by the General Assembly of the United Nations. The Provisional Depositary shall transmit certified copies of this Agreement to all contracting parties.

3. Upon commencement of operations of the Facility, the Provisional Depositary shall transmit the text of this Agreement and all relevant instruments and documents in the possession of the Provisional Depositary to the Director of the Facility, who shall then act as the Depositary.

DONE at _____ in _____ this _____ day of _____ 2008

ANNEX II

*African Legal Support Facility**Results-Based Logical Framework*

HIERARCHY OF OBJECTIVES	EXPECTED RESULTS	REACH	PERFORMANCE INDICATORS	INDICATIVE TARGETS TIMEFRAME	ASSUMPTIONS / RISKS
<p><u>Project purpose:</u></p> <p>Reduction in number of vulture fund litigation cases</p>	<p><u>Outcomes:</u></p> <p>Savings of Governments' revenue</p>	<p><u>Beneficiaries:</u></p> <p>RMC budgets</p>	<p><u>Outcome indicators:</u></p> <p>> Number of cases dismissed at various courts > Cases settled instead of reaching judgments > Reduced rate of new cases being filed</p>	<p><u>Progress anticipated in the medium term:</u> <u>Timeframe:</u> 0-10 years</p> <p>2008- Currently 11 RMCs targeted in 46 lawsuits 25 judgments awarded thus far for approximately US \$1 billion</p> <p>2018- 5 RMCs targeted in 25 lawsuits; consequential % reduction in amount of judgments</p> <p>Source >Reports from the Facility >RMC's submission of information >Case dockets</p>	<p><u>Assumption statement:</u></p> <p>Sufficient number of experienced lawyers to assist with litigation and sufficient resources to pay them</p> <p>Mitigation measure:</p> <p>Large pool of lawyers in the jurisdictions in which suits are brought. collaboration with national lawyers; reduced rates will be sought for representation of RMCs.</p> <p><u>Assumption statement:</u></p> <p>Facility is not itself target of lawsuits</p> <p>Mitigation measure:</p> <p>Facility will be set-up as a separate entity with standard international organization immunities</p>

					<p><u>Assumption statement:</u> Sufficient funding for costly defense of RMCs</p> <p><u>Mitigation measure:</u></p> <p>Facility will: (i) be selective as to cases that it can assist with; (ii) negotiate reduced rates with law firms.</p> <p>Facility may also request RMCs to reimburse cost of legal representation if they are awarded judgments; and charge fees to users based on ability to pay</p>
	<p><u>Outcomes:</u></p> <p>Positive increase in Governments' revenue from identified contracts</p>	<p><u>Beneficiaries:</u></p> <p>> Population of RMCs' local populations living in area affected by commercial activity; > local staff and their dependents employed by private companies</p>	<p><u>Impact Indicators:</u></p> <p>Country Revenue (\$) increased</p> <p>Share of Government's Investment in social sector (%) increased</p>	<p><u>Progress anticipated in the long term:</u></p> <p>% increase in RMC revenue</p> <p>Source: National Statistics</p>	<p><u>Assumption statement:</u></p> <p>Transparency in the allocation and use of Funds</p> <p><u>Mitigation Measure</u> Publication of income earned from contracts.</p> <p>Adoption of information disclosure policy for key sectors</p>

<p><u>Project purpose:</u></p> <p>Better contractual terms and legal environment for private sector and less dependency on outside consultants</p>	<p><u>Outcomes:</u></p> <p>Private sector laws that can accommodate complex contracts;</p> <p>Both sides of transaction have their expectations met throughout life of contract or investment resulting in less disputes and lower legal costs and increased used of national expertise</p>	<p><u>Beneficiaries:</u></p> <p>RMC budgets</p>	<p><u>Outcome indicators:</u></p> <p>> private sector laws that reflect “best practice” >More stable investment environment >Greater investment in country >Greater number of nationals who are exposed to experienced firms and best practices for contract terms and negotiations</p>	<p><u>Progress anticipated in the medium term:</u> <u>Timeframe:</u> 0-10 years</p> <p>Increase in number of countries with up-to-date contract/commercial laws</p> <p>increase in number of lawyers trained to deal with relevant international transactions</p> <p>Source >RMC budgets >ADB/IMF reports on investment >Local and international bar association figures; REC statistics ></p>	<p><u>Assumption statement:</u> Insufficient number of skilled nationals to assist in negotiations and revision of private sector laws</p> <p>Mitigation measure A large pool of experienced non-national lawyers and law firms</p>
<p><u>Inputs and Activities</u></p> <p><u>Development of best practices</u> > Capacity building of nationals including government officials to negotiate complex commercial contracts</p> <p>Information sharing > Develop a database of precedents in vulture fund litigation cases</p> <p>> Develop a database of precedents in complex contracts</p>	<p><u>Outputs</u> Government officials are better skilled at negotiating contracts and developing better private sector laws</p>	<p><u>Beneficiaries:</u> >Concerned ministries of RMCs >Private sector partners</p>	<p><u>Impact Indicators:</u> >Number of officials trained >Other capacity building activities (workshop, exchange visits, <u>secondment to law firms</u>)</p> <p>> Production of database</p>	<p><u>Progress anticipated in the long term:</u> less reliance on outside firms for negotiation of contracts</p> <p>>Better access to information</p>	<p><u>Assumption statement:</u> Motivating nationals to work for RMCs and to remain employed by them</p> <p>Mitigation measure International standards for remuneration</p> <p><u>Assumption statement:</u> RMCs are willing to share information about litigation and terms of contracts</p> <p>Mitigation measure RMCs benefit from such sharing of information</p>

ANNEX III

AFRICAN LEGAL SUPPORT FACILITY
First Three Year Projection

	YEAR 1	YEAR 2	YEAR 3	TOTAL IN UA	TOTAL IN USD
OPERATIONAL EXPENSES					
Legal Assistance to Countries (*)	4,816,956	4,816,956	4,816,956	14,450,867	22,500,000
Capacity Building	335,614	335,614	335,614	1,006,841	1,567,652
Mission (**)	49,563	49,563	49,563	148,689	231,508
Total Operational Expenses	5,202,132	5,202,132	5,202,132	15,606,397	24,299,160
Administrative Expenses					
Staff cost	1,271,202	1,176,531	1,207,545	3,655,277	5,691,267
Salaries	626,755	645,558	664,924	1,937,237	3,016,278
Benefits	376,950	388,258	399,906	1,165,115	1,814,083
Consultancy	127,850	127,850	127,850	383,550	597,187
2-IT consultants (Software, Website) for 30 days	76,200	76,200	76,200	228,600	355,930
1 other consultant (accounting) for 30 days	15,600	15,600	15,600	46,800	72,868
Translation Costs	36,050	36,050	36,050	108,150	168,390
Other Employee Expenses	139,647	14,865	14,865	169,376	263,719
					-
Overhead	345,663	347,164	348,680	1,041,506	1,621,625

Accommodation/Office Occupancy/Utilities	130,048	131,349	132,662	394,059	613,550
2 missions by staff (2 Senior +5 Professionals) :					
Equipment Rental, Repairs and Maintenance	1,388	1,402	1,416	4,206	6,548
16 missions, destination : international					
Communication Expenses	11,661	11,778	11,895	35,334	55,015
Printing, Publishing & Reproduction	4,624	4,624	4,624	13,871	21,598
Representation Expenses	10,000	10,000	10,000	30,000	46,710
External Audit Fees	15,000	15,000	15,000	45,000	70,065
Meetings / Assembly	135,942	135,942	135,942	407,825	634,984
2 Meetings of the Management Board	87,873	87,873	87,873	263,619	410,455
1 Annual meeting of the Assembly (12 persons)	48,069	48,069	48,069	144,206	224,529
Library / Research	37,000	37,070	37,141	111,211	173,155
Total Administrative Expenses	1,616,864	1,523,694	1,556,225	4,696,783	7,312,892
Capital Expenses					
IT equipment	109,505			109,505	170,500
Office equipment	75,000			75,000	116,775
Utility Vehicle	26,000			26,000	40,482
			-	-	
Total Capital Expenses	210,505			210,505	327,757
TOTAL	7,029,502	6,725,827	6,758,357	20,513,686	31,939,809
(*) Legal Assistance to Countries to pay lawyers fees					
5 cases a year					
(**) Mission					
10 days for each mission and Economy class.					