Our response and approach to COVID-19
Impact of COVID-19 on Africa

The on-going outbreak of COVID-19 is having a significant global impact on social and economic activities around the world. Africa is witnessing late transmission of the virus which is unstable and rapidly changing. As at 8 April 2020, the confirmed cases and deaths were over 10,000 and more than 530 respectively in 50 countries. Though Africa remains one of the regions with the fewest cases, to further limit human casualties, most of the countries are putting in place robust measures to prevent the spread of the virus.

Despite these efforts, it is anticipated that the COVID-19 pandemic will have a significant effect on economies in African countries. According to projections, the economic cost of COVID-19 in Africa is unprecedented. The immediate impact is the increased unplanned health expenditure estimated to reach USD 10.6 billion. Being dependent on export of primary products, disruption of global supply chains and demand side shocks will significantly affect commodity prices and result in reduced exports, low tax revenues, weak foreign exchange positions, and increased inflation in African economies.

The continent could lose up to USD 200 billion, with the following sectors bearing the major impact: oil, mining, tourism, remittances, and employment, and the oil sector alone accounting for revenue losses of about USD 65 billion. Several countries have been downgraded, or face a downgrade, from the ratings agencies. Given the continent’s heavy debt burden, the impact of COVID-19 is expected to increase debt service pressure for many African countries over the short to medium term and translate into increased poverty and reduced economic growth. The continent’s growth is expected to drop from 3.2% to 1.8% in 2020.

The impact of this pandemic on much-needed infrastructure, extractives and other major projects, foreign direct investment, and investor confidence cannot be underestimated. Large-scale projects in Africa will face disruptions and delays with the possibility of slowing down and risks of cancellation of on-going projects, as the paralysis of the global economy affects entire supply chains.

The African Legal Support Facility (“ALSF” or “Facility”) was established to respond to some of these challenges arising from COVID-19. The ALSF provides legal advice and technical assistance in negotiation of complex commercial transactions, creditor litigation and capacity building to African countries.

The ALSF also develops and maintains related knowledge resources and publications in its key sectors, i.e. natural resources and extractives, infrastructure, power, and sovereign debt. The aim is to encourage countries and investors to conclude equitable, bankable and sustainable agreements that deliver value to African countries while protecting their sovereign rights.

As Africa takes decisive steps to protect its citizens and economies from this pandemic, our mandate is not just relevant but critical in the support it provides to our Regional Member Countries (RMCs). The ALSF is uniquely designed and positioned to appreciate and assist our RMCs to respond to their immediate concerns, and in the long term recover from the effects of COVID-19.
ALSF's Response to COVID-19

COVID-19 is threatening to leave deep social, economic and political scars for the years to come, particularly in African countries weighed down by fragility, poverty and conflict. In close collaboration with various development agencies and other stakeholders, African governments will need to strengthen partnerships and coordination to maximize the impact of their interventions during these challenging times.

As a key development partner, the ALSF is fully operational, and equipped to respond to the extraordinary needs that this crisis is generating. We are acutely aware of our role and responsibility in continuing to meet the needs of our RMCs. The ALSF will play a vital role in responding to the immediate needs and in helping with the recovery in the medium and longer term.

Guided by our strategy, the ALSF is moving fast to provide flexible responses aimed at reducing the severe economic and social impact of this pandemic on its RMCs and Africa’s private sector. Specifically, the ALSF is:

- **Helping African countries obtain legal advice to**
  - negotiate and conclude equitable and sustainable complex commercial transactions related to: extractive resources, and PPP / infrastructure (Power, Transport, etc.);

- **Providing expert legal assistance to African countries to**
  - develop public debt management and creditor litigation strategies and achieve equitable and sustainable outcomes to prevent debt distress whilst building in-country capacity; and

- **Equipping RMCs with relevant knowledge and skills to**
  - negotiate and conclude balanced investment and commercial agreements; and to adequately execute and manage sovereign debt transactions.
ALSF's Approach to the Effects of COVID-19

Long before this crisis, the ALSF had adopted a flexible working system in order to effectively coordinate support from across the continent and to deliver relevant legal, and development solutions to its RMCs. This flexibility enables us to work remotely and to efficiently respond to new requests for support.

Hence, ALSF’s legal counsel, its panel of international law firms and network of technical and financial experts are already assessing the impact of COVID-19 on sovereign transactions and projects and are poised to provide pertinent support to prevent or mitigate negative impact. Specifically, our approach will be to:

Provide Emergency Assistance: The ALSF has in place a “Crisis Response Toolkit”, i.e. project approval processes that can be deployed to provide expeditious emergency assistance. This includes:

- Emergency Assistance Projects for beneficiaries who require immediate legal assistance; and
- Rapid Assistance and Assessment Allocation to strengthen the assessment of project risks and (or) bankability of underlying transactions.

Both of these procedures allow the Facility to allocate funds and mobilize experts within swiftly. This flexibility ensures a reaction time which mitigates the impact of delays on the issues at hand and the consequences for governments of dealing with complex legal issues without adequate capacity.

Address complex legal implications in COVID-19 times and beyond: The complex legal implications arising out of the disruption of large-scale projects requires careful scrutiny of legal provisions including force majeure, material adverse change, price adjustments, liability limitations and exclusions, extensions of time, variations or change in law, termination; and potentially renegotiations.

For instance, public-private infrastructure projects and independent private producer power projects in sub-Saharan Africa have project debts capitalized in hard currencies such as the US dollar or Euro. As the global recession unfolds, the impact of currency fluctuation is likely to amplify some of the already existing strains on the African economies. Although the consequences of the global downturn on the currency of each country are still (for non-oil based economies) hard to predict at this stage, we can anticipate that several governments will face a drastic increase of their infrastructure related payments as the value of project debts rises due to the mere depreciation of local currency.

In the extractives sector, it is expected that the prices of most commodities will continue to fall. Consequently, royalties and other revenues derived from the extractive industries will drastically decrease, shrinking the fiscal income of African governments who are already facing rising expenditures due to the crisis.
The above described dynamics will pressure the contractual frameworks governing the concessions granted by African governments with respect to the extraction of many commodities. The ALSF anticipates significant needs from its beneficiaries in the development of a coherent approach for the legal issues, which will result from the significant shifts in the commercial conditions of these industries.

As all the aforementioned unfolds, African governments must contemplate the daunting prospect of revising fiscal policies, developing monetary strategies, re-evaluating their budgets, allowing their private partners to temporarily re-profile or fully restructure the project’s debt, renegotiating contracts and accessing relief from creditors whilst at the same time trying to manage a global pandemic. Often without the capacity or access to the specialist advisors to assist. Governments must engage leading legal experts, to navigate this legal minefield as investors and lenders gear up for the potential legal battles. The ALSF’s capacity to quickly mobilize and support African government will significantly ease the necessary negotiations to reach reasonable agreements for all parties.

**Utilize innovative, interactive technology:** The ALSF has adopted innovative, online capacity building programs and developed knowledge resource platforms which will be continually updated during this period. Indeed, the current context of physical distancing, travel restrictions and in-country lockdowns has rendered web-based solutions the new standard for capacity building and transaction support. Internet platforms, webinars, and legal hotlines will play a preponderant role in strengthening the ability of government officials and private sector professionals to monitor the implementation of existing contracts and negotiate new ones.

Along these lines, one of our flagship initiatives, the ALSF Academy (www.alsf.academy), offers high-quality online courses on complex transactions in the mining, oil & gas, power, infrastructure and sovereign debt sectors. The course materials developed for the ALSF Academy, which include video presentations, slides and course handbooks, complement other sectoral publications (www.aflsf.org/public-resources/publications) and online resources (www.negotiationsupport.org, www.a-mla.org, www.resourcecontracts.org) supported and/or developed by the Facility.

As their audience continues to increase, these platforms will require further technical enhancement and IT support, as well as contributions from local and international experts. These platforms will be key to our ability to address the challenges of the current crisis, and we look forward to receiving additional support from our donors for their development.
Set up legal hotlines: The ALSF has also successfully implemented legal hotlines to provide instant and specialized legal advice to ministries and other public entities’ relevant officials on specific legal issues. The objective is to give government experts involved in actual transactions the opportunity to call upon additional capacity where needed, without the need for legal counsel to travel to the beneficiary country.

Implement ALSF’s on-going projects: The ALSF will continue to implement and monitor its current active operations. As governments react to the impact of COVID-19, we have already taken steps to support our clients by quickly reaching out to reassure them that we are still fully operational and reviewing existing projects to identify and evaluate potential areas of vulnerability. This is the beginning of our planned rapid response, which is intended to provide decision-makers with the tools to strengthen their response to the COVID-19 crisis.

Identify new projects: Since the beginning of the crisis, ALSF’s workload and speed of execution has not slowed down. In the light of the pandemic, it is anticipated that the requests for assistance will increase. Towards the end of 2019 we saw an uptake in requests for assistance and this rise in requests has continued unabated in 2020, despite the global pandemic. In the first quarter of 2020, the Facility has 20 approved projects with a further 5 projects to present to the Management Board imminently.

This will exceed not only our predicted target for Q1 of 2020 but also Q2; and represents 58% of our annual predicted target (36 approved projects). In terms of commitments, we have already reached a figure of 9.2 million US dollars representing almost 50% of our annual predicted commitment of 21.1 million US dollars.

We have also seen a drastic increase in activity in many of the sectors across the continent, which has produced a healthy pipeline of potential ALSF projects. More specifically, we have noted an increase in projects relating to sovereign debt, which reflects the global concerns for rising debt levels on the continent. It is anticipated that this trend will not only continue but is set to increase as the continent seeks to recover from the pandemic and other economic shockwaves. With recent successful interventions in The Gambia and Somalia, the ALSF intends to leverage its experience in the sovereign debt sector to support other African countries in developing approach to mitigate the impact of the crisis.
Conclusion

In sum, the ALSF is ready to play its part by not only responding to requests for assistance, but by anticipating and identifying legal issues and offering effective solutions.

We shall also work with our stakeholders and development partners to support Africa during this time of uncertainty and prepare for the work that is to come. There is a critical need to support governments as they navigate their way through the crisis and assist them as they develop strategies to deal with the aftermath.
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