
GOVERNMENT NOTICE

No. 916

NATIONAL TREASURY

18 September 2009

AGREEMENT

BETWEEN

THE AFRICAN DEVELOPMENT BANK AND
THE AFRICAN DEVELOPMENT FUND

AND

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

REGARDING THE ESTABLISHMENT OF
THE REGIONAL OFFICE OF

THE AFRICAN DEVELOPMENT BANK AND
THE AFRICAN DEVELOPMENT FUND

ON THE TERRITORY OF THE REPUBLIC OF SOUTH AFRICA

PREAMBLE

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

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

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

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

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

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

HAVE AGREED as follows:

Article 1 Definitions

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

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

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

Article 2 Functions of the Regional Office

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

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

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

Article 3 Legal Status

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

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

Article 4 Immunities of the Regional Office

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

Article 5 Premises of the Regional Office

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

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

Article 6 **Inviolability of the Premises**

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

Article 7 **Public Services and Security**

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