



BULLETIN ALSF

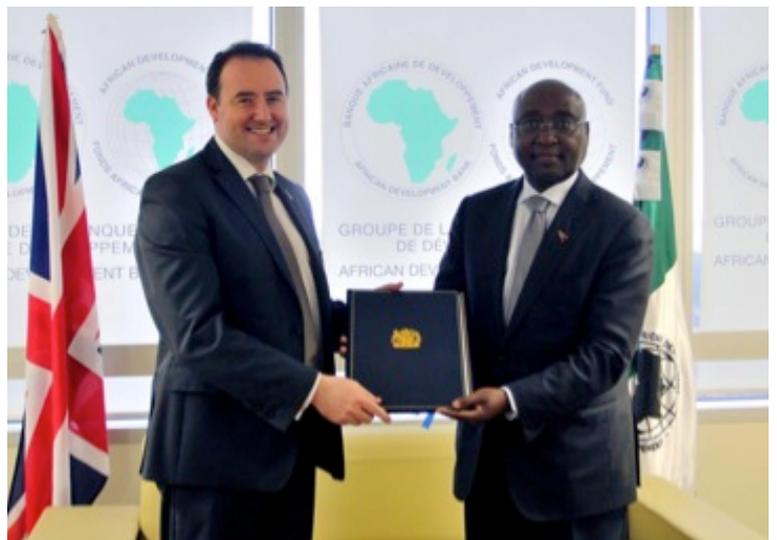
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If you have any questions concerning this article, please do not hesitate to contact us via the following email: alsf@afdb.org.

UK RATIFIES AGREEMENT ESTABLISHING THE ALSF

The Executive Director of the United Kingdom of Great Britain and Northern Island (UK) on the Board of the African Development Bank Mr. Dominic O'Neill deposited the Instrument of Ratification by the UK of the Agreement establishing the ALSF on 11th December 2014.

The Instrument was handed over to the President of the AfDB Dr. Donald Kaberuka in the presence of the Director of the ALSF and Senior Staff of the Bank at the AfDB Headquarters in Abidjan, Cote D'Ivoire.



The ratification of the ALSF Instrument places further emphasis on the commitment of the UK to supporting to the Facility following the provision of UK Pounds Sterling seven (7) million granted to the Facility in May 2014. The grant is expected to be used towards supporting African States obtain high level expertise when negotiating major agreements in the natural resource area as well as related infrastructure.

ALSF BOARD WINDS UP A TWO-DAY EXTENSIVE MEETING WITH VIBRANT CONCLUSIONS

The Management Board of the African Legal Support Facility (“ALSF” or “the Facility”) wound up its 14th meeting on 27 November 2014 in Abidjan, Côte d’Ivoire, and came up with conclusions including, approval of the Facility’s Work plan and budget for 2015 and adoption of substantive documents for transmission to the ALSF Governing Council.

“The two-day meeting in Abidjan was vital. We see it as an opportunity to exercise our oversight and advisory role over the Facility. In addition we are able to assess the progress made and share perspectives on the future of the Facility.” Board members said.



The Management Board reviewed the progress made by the Facility in implementing the 2014 Work Plan highlighting the key achievements, including: success in supporting one country to defend itself against a vulture fund; providing support to some Regional member countries in negotiating major deals in the extractive sector as well as infrastructure; building capacity to African experts; increasing membership as well as resource mobilization.

During the first day, the Board discussed and considered the Work Plan and Budget for 2015, which acknowledged the substantive growth of the Facility and its position in its field of expertise. According to the reports, the Facility, has registered an exponential increase in demand for its services, particularly in advisory services and capacity building. The Board underscored the need for the Facility to maintain continued growth while at the same time ensuring that the quality of the services is maintained.

The second day was dedicated to the theme “Mid-Term review of the ALSF’s Medium term Strategy” and provided a fruitful discussion about the Facility’s role to respond to continued demands for its services. Discussions covered an assessment of the last two years of the ALSF’s activities and provided a backdrop for the preparation of the mid-term review of the Facility’s Medium Term Strategy based on the lessons learnt from the experience of the four-year cycle since the launch of its activities in 2010.

The Management Board (MB) is the organ responsible for the efficient and effective conduct of all operations of the ALSF. It comprises five members of high integrity and competence, appointed by the Governing Council. They act in their personal capacity and do not represent any country or organization. The Management Board currently comprises Mr. Ibrahim Sixtus Vusi, a former AfDB senior official who is also the Chairman; Dr. Eve Sinare, a senior partner at a major law firm in Tanzania; Tim Turner AfDB Group risk officer; Pim De Keizer, expert in international and multilateral development policy and cooperation and Seward Cooper, International and corporate lawyer currently serving as legal advisor to the president of Liberia.

INTERVIEW WITH STEPHEN KARANGIZI, DIRECTOR, AFRICAN LEGAL SUPPORT FACILITY

The Director and CEO of the Facility, Stephen Karangizi, discussed the institution's attainments, activities and outlook with the Bulletin.

Editor: What are the key attainments by the Facility in 2014?

The Facility has continued to grow and deliver on its mandate of supporting African States to negotiate better Agreements especially in the natural resource sector and major infrastructure projects. The Facility was particularly able to intervene in some major projects that will have long lasting development impact.

The key projects were the support to Niger in negotiations of a new Agreement with AREVA subsidiaries; support to Tanzania in negotiating a new Port investment at Bagamoyo that has a multimodal dimension; and the success in one case against a vulture fund. These attainments have been successful due to financial support provided by the key funders of the Facility namely the AfDB, Canada, UK, France, Norway, the Netherlands, USAID and the Islamic Development Bank among others. In addition the Facility has benefited from having a small team of qualified and dedicated staff.

2. Four years after ALSF's creation, how many projects has the Facility approved and implemented in line with its objectives and to what extent would you say the Facility has helped African States to clamp down on vulture funds across the continent?

The Facility has now approved over 45 projects and supported more than 30 African States directly in its mandated area. However all African States have benefitted from the capacity building efforts of the Facility in negotiation of complex commercial agreements with external investors. With respect to vulture funds, this has been mixed picture. On the success part the Facility successfully defended the DRC against a major vulture Fund (FG Hemisphere) before the US Courts. The victory by the DRC in the case meant huge savings for the DRC in suit for which they would be required to pay over US\$ 100 million claimed by the vulture fund.



But there was also the loss by the DRC of one vulture fund case Des Moine and Themis that resulted in an award against the DRC. We believe there may be many more case out there and the Facility has continued its work of highlighting the dangers of vulture funds to the African States.

Our estimate indicates that the Facility has already supported deals worth over US Dollars 18 billion in the sectors mentioned. Above all the Facility has provided direct capacity needs in commercial legal issues to over 500 African experts from more than 45 African States that has raised awareness on the need to enhance negotiations capacity.

3. What is the role of ALSF in terms of the Africa's mining and natural resource sector? How does the work of the ALSF benefit the African States and contribute to their development?

The Facility has also supported and is facilitating African States in negotiating at least 15 major natural resource contracts. In addition the Facility is also assessing several others for possible assistance in the same area.

The Facility has also been supporting negotiations of many infrastructure deals thereby facilitating investment. By providing high level advisory services the Facility ensures that the asymmetry between the African States and the investing partners is addressed and the African States are well positioned to maximize their resources.

4. Please share an example of a success story of the Facility.

A major success story for the Facility in 2014 was the support provided to Niger who successfully negotiated a new mining concession with Areva following the end of the existing concession at the end of 2013. In August 2013, the ALSF was approached to provide legal and financial assistance to the Niger in relation to the negotiation of uranium mining concessions with the Areva Group. The main concern of Niger was how to negotiate the new mining concessions taking account of the 2006 mining law. With the support of the Facility and through the work carried out by the legal counsel and financial advisors, Niger and Areva agreed on several key issues going forward. Niger and Areva agreed on the application of the 2006 mining law while ensuring the continuation of the mining operations. The parties also agreed on increased royalties for Niger thus raising expected revenue for Niger. Niger will also be able to increase their involvement in the top level management of the mining subsidiaries. In addition Areva agreed on increasing their investment in local infrastructure. The parties also avoided a potential dispute that could have been very damaging.

The second major success story in 2014 was victory by the DRC government against a vulture fund (FG Hemisphere) before the courts in the US which meant a saving of over US\$100million, an amount that the vulture fund was claiming. The DRC has been sued by FG Hemisphere in an attempt to enforce two ICC arbitration awards relating to debt for the construction of a power generation and transmission project from the 1980s. FG Hemisphere has aggressively been trying to enforce this judgment around the world.

After key losses in Hong Kong and Jersey, the last active litigation where FG Hemisphere seemed to have an advantage was the case in California. In the lower court, the judge found in favour of FG Hemisphere, however, the judgment delivered in February 2014, overturned that decision. While it is possible for FG Hemisphere to continue appealing, this case showed that RMCs can successfully defend themselves in such suits with the assistance of the Facility.

CONFERENCE ON LEGAL CONSIDERATIONS PERTAINING TO SOVEREIGN BOND ISSUANCE IN AFRICA

Africa is set to raise a record number of sovereign bond sales this year, after countries including Morocco, Uganda, Ghana, Gabon, Kenya, Rwanda, Côte d'Ivoire, Senegal, and South Africa, issued notes. Debt issuance on local markets and international markets by African countries are likely to increase in the future.

Low interest rates in the US and in Europe have increased the attractiveness of African debt because of its relatively higher yields. However African countries lured by high yield may find refinancing of their sovereign bonds costly.

In this context, the ALSF plans to hold a conference in 2015 which will serve as a platform for African governments to identify and to discuss the legal challenges faced during the negotiations of the sovereign bond issuances and to share their experiences and the lessons learnt. It will also be an opportunity to discuss the effectiveness of any transfer of knowledge during the negotiations which involve international advisers. African Governments will use this forum to identify practical measures that can be taken to tackle these challenges.

ALSF PARTNERS WITH THE WORLD BANK TO DEVELOP THE AFRICAN MINING LEGISLATION ATLAS



The Management Board of the ALSF approved on 25 August 2014 a project allowing the ALSF to partner with the World Bank to develop an innovative knowledge product in the mining sector as a one-stop resource for African countries entitled the African Mining Legislation Atlas (AMLA).

AMLA is a legislation gathering, organization and dissemination project which aims at collecting and transforming all of Africa's mining laws and regulations into an online database with interactive features to provide comparative data and a guiding template with a menu of options and examples for the full range of issues covered under a mining law. By supporting the development of this product the ALSF contributes to strengthening the legal expertise and promotes better access and understanding of the mining sector and related legislation in Africa.

The ALSF participated in AMLA's first training course held at the University of Cape Town in Cape Town, South Africa, from November 27 until December 5, 2014. The training included information on the mechanics of the mining sector, mining concession negotiations and legislative drafting, customized instructions on research, analysis and processing of legislation for the purpose of the mineral sector, as well as information technology training on the quality review system of the intelligence platform.

This course trained about 25 students from different universities across Africa, amongst which only 12 students will be selected to form part of the AMLA legal research team that will be responsible for adding content to the website.

THE ALSF LAUNCHES A PPP TOOLKIT FOR THE SECTOR OF ENERGY IN TANZANIA

At the occasion of the 2nd “Powering Africa: Tanzania” meeting that took place on 13-14 November, 2014 in Dar Es Salam, Tanzania, the ALSF launched a PPP toolkit that provides information and guidance on how to structure and prepare competitive selection process for gas fired power projects with private sector involvement. The developed by an international legal counsel also includes a range of model documents to be used on a project-by-project basis in combination with the toolkit. The objective was to produce a user-friendly and accessible toolkit, so as to ensure that it will actually be used.

The toolkit reflects the legal counsel’s experience and the best international practices in the energy sector, and particular best practices in Africa. It resulted in a toolkit document that can be read by lawyers, engineers and/or commercial or operational staff and members of the government.

The toolkit is supplemented by a number of template documents that can be used during the competitive process (a model Request for Qualification, a Project Information Memorandum, a model Request for Proposal, and a model Response Package (to RFQ or RFP). The toolkit also contains a model implementation agreement and a model power purchase agreement (PPA) to serve as a starting point for negotiations with IPPs.

This toolkit is part of a more global assistance to the Government of Tanzania and more particularly the Tanzania Investment Centre (TIC). The objective of the project is to support TIC in creating a smooth pathway for the implementation of the PPP Act of 2010 and the PPP Regulations of 2011. In addition to the PPP toolkit, the ALSF assists the Government through the development of PPP regulations, and the provision of a "visiting legal expert" to assist the internal group of experts formed by the government on complex legal issues related to PPP.

ALSF PARTNERS WITH COLUMBIA ON SUSTAINABLE INVESTMENT ON SUSTAINABLE INVESTMENT, THE WORLD BANK AND THE NATURAL RESOURCE GOVERNANCE INSTITUTE IN SUPPORTING A RESOURCE CENTER

Following the approval of the ALSF Management Board on 25 August 2014, the ALSF is actively contributing to the ResourceContracts.org website created and supported by the Columbia Center on Sustainable Investment (CCSI), the World Bank (WB), and Natural Resource Governance Institute (NRGI).

This cooperation consists namely in providing documents that have been developed with ALSF support that could be included for publication on the ResourceContracts.org website. ResourceContracts.org currently hosts more than 175 oil, gas and mining contracts. By supporting a resource center which provides free, web-based practical guidance on natural resource contract transactions, the ALSF is strengthening the negotiating capacity of African civil society and governments to engage in a full and informed discussion of legislative options in the oil, gas and mining sectors.

FRANCE RATIFIES AGREEMENT ESTABLISHING THE FACILITY

France completed the ratification of the Agreement Establishing the African Legal Support Facility on 26 November 2014 with the official publication of the Adhesion authority. France has been a member of the Facility since 11 February 2013. France is also a member of the Governing Council of the Facility.

France also provided financial support to the Facility in 2012 when they extended a grant of US\$ 5 million to the Facility in addition to prior support of Euro 544,000 provided in 2011 for technical assistance.

ALSF SUPPORTS SADC LAW ASSOCIATION (SADCLA) ANNUAL CONFERENCE; AUGUST 2014 IN VICTORIA FALLS, ZIMBABWE

As part of its wider capacity building activities focused on strengthening local and regional bar associations the African Legal Support Facility ("ALSF") hosted a plenary session on complex contract negotiations at the SADCLA Annual conference on 22- 23 August 2014 in Victoria Falls Zimbabwe. The Project followed a request for support of the conference from SADCLA one of the first regional Bar Associations to sign a Memorandum of Understanding with the ALSF.

The session entitled "Mining agreements as a tool for building trust between stakeholders" The session attracted an audience of approximately 200 delegates. The importance of building legal mining capabilities in the SADC region cannot be overestimated and the training session was an introduction to the salient issues in this sector.

The session was moderated by Mr. Clement Fondufe Partner and Global Head of the Africa practice at Latham Watkins LLP who opened the session and included presentations by Olivier Bonyingo (Director Afriwise Consult, South Africa), Otsile Matlou (Director ENSafrica, South Africa), Martin Kudnig (Partner Ashurst LLP, United Kingdom), and Alexander Keepin (Partner and Head of Mining Berwin Leighton Paisner LLP United Kingdom).

The presentations were accompanied by training materials produced by the trainers and the ALSF that were disseminated to the audience. The response to session highlighted the thirst for training in this sector and delegates were given directions on where to ascertain updates and relevant information. It also provided an opportunity to alert lawyers in region to the work of the Facility in capacity building and contract negotiation.

The ALSF is looking forward to working more collaboratively with SADCLA going forward. More specifically the ALSF is examining the development of "sector specific" continuing legal education "CLE") courses and will continue discussions with SADCLA and other regional and national bar associations. With a view to enhancing existing programmes or assisting jurisdictions that are in the process of setting up CLE programmes for its members. The ALSF welcomes comments, contributions and enquiries from national and regional bar associations and law societies.

ALSF AGREES TO ASSIST LIBERIA IN THE NEGOTIATION OF A PUBLIC PRIVATE PARTNERSHIP

The Management Board of the ALSF approved on 28 July 2014 a financial aid package to the Republic of Liberia in the form of a grant of seven hundred thousand United States Dollars (USD 700,000) to cover the fees and costs of legal advice services in respect of legal and technical assistance with the negotiations for the development of a 175MW coal based thermal power plant and a biomass power plant that will provide a minimum of 10 MW (gross) / 8.5 MW (net) of electricity.