

Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]

Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]

## Multilateral Development Banks

- 2.1 Multilateral development banks are financial institutions that provide financial support and professional advice for economic and social development activities in developing countries.<sup>1</sup>
- 2.2 The term 'multilateral development banks' typically refers to the World Bank Group and the following four Regional Development Banks:
  - the African Development Bank;
  - the Asian Development Bank;
  - the European Bank for Reconstruction and Development; and
  - the Inter-American Development Bank Group.<sup>2</sup>

---

1 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

2 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

- 2.3 These financial institutions are characterised by a broad membership, including both borrowing developing countries and developed donor countries. Membership of these institutions is not limited to countries from the region in which the institution is based.<sup>3</sup>
- 2.4 Each financial institution has its own independent legal and operational status. However, given that these institutions all have a similar mandate and a considerable number of members in common, the multilateral development banks maintain a high level of cooperation.<sup>4</sup>
- 2.5 Australia has for some time been a member of the Asian Development Bank<sup>5</sup> and the European Bank for Reconstruction and Development.<sup>6</sup> The proposed treaty action being considered here will make Australia a member of the African Development Bank and its subsidiary, the African Development Fund.<sup>7</sup>

## The African Development Bank

- 2.6 The African Development Bank (the Bank) was first established in 1964 with a membership of 20 newly independent African countries. The Bank began with a capital stock of US\$250 million and a staff of ten.<sup>8</sup>
- 2.7 The objective of the Bank is to:
- ...support the economic development and social progress of African countries individually and collectively, by promoting investment of public and private capital in projects and programs designed to reduce poverty and improve living conditions.<sup>9</sup>
- 2.8 The Bank's efforts are focussed on mobilising internal and external resources to promote investment and provide technical assistance to

---

3 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

4 World Bank, *Affiliates* < <http://go.worldbank.org/CGC782MDY0> >, accessed 7 December 2012.

5 Asian Development Bank, *Members* < <http://www.adb.org/about/members>>, accessed 7 December 2012.

6 European Bank for Reconstruction and Development, *Our shareholders* <<http://www.ebrd.com/pages/about/who/shareholders.shtml> >, accessed 7 December 2012.

7 National Interest Analysis [2012] ATNIA 23 with attachment on consultation, *Agreement Establishing the African Development Fund, done at Abidjan on 29 November 1972, as amended* [2012] ATNIF 17, and *Agreement Establishing the African Development Bank, done at Khartoum on 4 August 1963, as amended* [2012] ATNIF 18, (Hereafter referred to as 'NIA') , para 1.

8 African Development Bank (AfDB), 2012, *AfDB in Brief*, p 4.

9 AfDB, 2012, *AfDB in Brief*, p 4.

African countries. Resources are usually provided through bilateral or multilateral cooperation with other development agencies.<sup>10</sup>

2.9 The Bank's resources come from ordinary and special resources. Ordinary resources comprise:

- the subscribed shares of the authorised capital, a portion of which is subject to call in order to guarantee Bank borrowing obligations;
- funds received in repayment of Bank loans;
- funds raised through Bank borrowings on international capital markets;
- income derived from Bank loans; and
- other income received by the Bank, e.g. income from other investments.<sup>11</sup>

2.10 The Bank's special resources come from administering and managing special funds which are consistent with its purposes and functions, including:

- the African Development Fund (discussed in detail below);
- the Arab Oil Fund;
- the Special Emergency Assistance Fund for Drought and Famine in Africa;
- the Special Relief Fund.<sup>12</sup>

2.11 In December 2011, the Bank's authorised capital stood at US\$101.4 billion.<sup>13</sup> Currently, the Bank maintains a AAA credit rating.<sup>14</sup>

2.12 The Bank's institutional structure consists of a Board of Governors that issues general directives concerning the policies of the Bank. Each member country has a Governor on the Board.<sup>15</sup>

2.13 Everyday management of the Bank is conducted by the Bank's Board of Directors. The Bank has 20 Directors, 13 of whom are from African countries and seven of whom are from non-regional member countries.<sup>16</sup>

---

10 AfDB, 2012, *AfDB in Brief*, p 4.

11 AfDB, *The African Development Bank*, < <http://www.afdb.org/en/about-us/african-development-bank-afdb/> > accessed 5 November 2012.

12 AfDB, *The African Development Bank*, < <http://www.afdb.org/en/about-us/african-development-bank-afdb/> > accessed 5 November 2012.

13 AfDB, 2012, *AfDB in Brief*, p 7.

14 AfDB, 2012, *AfDB in Brief*, p 5.

15 AfDB, 2012, *AfDB in Brief*, p 9.

16 AfDB, 2012, *AfDB in Brief*, p 9.

## Membership

- 2.14 For the first 19 years of its existence, only African nations were eligible for membership of the Bank. By 1982 it was clear that the bank's limited financial resources were insufficient to meet the growing demand for investment from African countries. Consequently, membership was opened to non-regional members.<sup>17</sup>
- 2.15 With a larger membership, the Bank was able to contribute to the economic and social development of its regional members countries through low interest loans. The larger membership also increased the expertise of the Bank and improved access to regional markets for companies from non-regional members.<sup>18</sup>
- 2.16 While permitting wider membership, the Bank maintains an African focus, being located in and investing only in Africa. Its President is also always an African.<sup>19</sup>
- 2.17 The Bank's *Annual Report 2011* claims a membership of 78 countries, including 53 African countries and 25 non regional countries.<sup>20</sup> Non regional members include not only most of the developed industrial economies, notably 17 Organisation for Economic Co-operation and Development (OECD) countries, but also a number of OPEC countries as well as some middle income South American and Asian countries.<sup>21</sup>
- 2.18 Since the publication of the *Annual Report 2011*, South Sudan has also become a member.<sup>22</sup>

## African Development Fund

- 2.19 To become a member of the Bank, non-regional countries must first become members of the African Development Fund (the Fund).<sup>23</sup>
- 2.20 The Fund was established in 1972, by the Bank and 13 non regional countries. The Fund emerged as the solution to the Bank's limited resources and the nature and terms of the loans the Bank made to the poorest African countries, particularly for projects with long-term maturities or non-financial returns such as roads, education and health.<sup>24</sup>

---

17 AfDB, 2012, *AfDB in Brief*, p 5.

18 AfDB, 2012, *AfDB in Brief*, p 5.

19 AfDB, 2012, *AfDB in Brief*, p 5.

20 African Development Bank (AfDB), *Annual Report 2011*, pvi.

21 AfDB, 2012, *AfDB in Brief*, p 5.

22 AfDB, *Member Countries*, < <http://www.afdb.org/en/about-us/members/>>, accessed on 3 December 2012.

23 AfDB, 2012, *AfDB in Brief*, p 5.

24 AfDB, 2012, *AfDB in Brief*, p 3.

- 2.21 The Fund's primary purpose is to contribute to the promotion of economic and social development in 40 least developed African countries by providing concessional funding for projects and programs, as well as technical assistance for studies and capacity-building.<sup>25</sup>
- 2.22 No interest is charged on Fund loans; however, the loans carry a service charge of 0.75 per cent per annum on outstanding balances, and a commitment fee of 0.50 per cent per annum on undisbursed commitments. Project loans have a 50-year repayment period, including a 10-year grace period. Lines of credit have a 20-year repayment period with a five-year grace period.<sup>26</sup>
- 2.23 The Fund's resources come from:
- subscription by State Participants usually on a three year basis;
  - subscription by the Bank;
  - funds derived from operations accruing to the Fund; and
  - other resources received by the Fund.<sup>27</sup>
- 2.24 In December 2011, the fund's resources amounted to US\$27.5 billion.<sup>28</sup>
- 2.25 The Bank's Board of Governors is also responsible for the policy direction of the Fund. The Fund is run by a Board of 14 Directors, seven each from African countries and non regional member countries.<sup>29</sup>

## Overview and national interest summary

- 2.26 Between 2001 and 2010, Africa's economic growth outstripped the global average, with total Gross Domestic Product of all African nations growing by an annual average of 5.2 per cent.<sup>30</sup>
- 2.27 However, Africa is the continent with the highest proportion of people living in extreme poverty. By 2015, 40 per cent of the world's extreme

---

25 AfDB, *African Development Fund* <<http://www.afdb.org/en/about-us/african-development-fund-adf/>> accessed 5 November 2012.

26 AfDB, *African Development Fund* <<http://www.afdb.org/en/about-us/african-development-fund-adf/>> accessed 5 November 2012.

27 AfDB, 2012, *AfDB in Brief*, p 7.

28 AfDB, 2012, *AfDB in Brief*, p 7.

29 AfDB, 2012, *AfDB in Brief*, p 9.

30 NIA, para 14.

poor are expected to be living in Africa. Sub-Saharan Africa is the region least likely to meet the Millennium Development Goals.<sup>31</sup>

- 2.28 According to the Australian Agency for International Development (AusAID), Australia's decision to seek membership of the Bank follows the results of four reviews:
- the Independent Review of Aid Effectiveness, which was intended to ensure that Australia's increased aid budget was delivered efficiently and effectively. The independent review recommended that Australia join the Bank to ensure aid was delivered effectively through partners that focus on Africa;
  - the Australian Multilateral Assessment, an evidence based assessment of the effectiveness of the Australian aid program's multilateral partners and their relevance to Australia's interests;
  - the 2011 United Kingdom Multilateral Aid Review, an United Kingdom equivalent of the Australian Multilateral Assessment; and
  - Multilateral Organisation Performance Assessment Network, a network of 16 donor countries with an interest in determining the most effective multilateral aid organisations.<sup>32</sup>

## **Reasons for Australia to take the proposed treaty action**

- 2.29 The following summary of the proposed treaty action and its benefits is taken from the National Interest Analysis (NIA).
- 2.30 AusAID argued that the results of the abovementioned reviews indicated that the Bank and Fund would be effective partners that focussed on areas critical to Australia's national interest.<sup>33</sup> Further, the Bank and Fund's priorities are well aligned with the aid program's strategic goals as set out in Australia's Comprehensive Aid Policy Framework<sup>34</sup> and also with Australia's current approach to delivering aid in Africa.<sup>35</sup>
- 2.31 According to AusAID, while other groups work in a similar or expanded space, such as the World Bank, simply increasing project level funding to such organisations would not advance Australia's interests to the same

---

31 NIA, para 14.

32 Mr Paul Griffiths, Assistant Director-General, Multilaterals and Bilateral Partnerships Branch, AusAID, *Committee Hansard*, 26 November 2012, p. 1.

33 NIA, para 10.

34 AusAID, *Australia's Comprehensive Aid Policy Framework* <<http://www.ausaid.gov.au/makediff/Pages/capf.aspx>>, accessed 5 November 2012.

35 NIA, para 7.

extent as membership of the Bank, nor would increasing levels of project funding be likely to help Australia's reciprocal global agenda to the same degree, as these options would not provide Australia with any degree of representation or influence over policy and programming in Africa.<sup>36</sup>

2.32 Other potential partners, including civil society groups, simply cannot operate on the scale or in the range of areas that the Bank works.<sup>37</sup>

2.33 Membership would place Australia in a good position to participate in and influence Africa's development through a respected and credible regional institution. The Bank has demonstrated that it is a valuable contributor to Africa's development and, according to AusAID, Australia's own assessment supports this. The Australian Multilateral Assessment concluded that:

..the Australian Government can have a reasonably high degree of confidence that increases in the AfDB core funding will deliver tangible development benefits in line with Australia's development objectives, and that the investment will represent good value for money.<sup>38</sup>

2.34 In addition, AusAID argues that membership will also give Australia access to new networks in Africa, which can assist in pursuing Australia's multilateral interests, including free trade, climate change, human rights and peace and security.<sup>39</sup>

2.35 As a shareholder, Australia could contribute to the Bank's governance and continue to push for ongoing reforms and improvements in operational and development performance. It would also be consistent with Australia's role as a developed Group of Twenty economy and OECD member, and reinforce Australia's increased policy dialogue and practical cooperation in Africa.<sup>40</sup>

2.36 Membership will also assist in creating business opportunities for Australian companies via procurement opportunities and infrastructure development.<sup>41</sup>

---

36 NIA, para 10.

37 NIA, para 10.

38 NIA, paras 8-9.

39 NIA, para 11 & 13.

40 NIA, para 11 & 13.

41 NIA, para 12.

## Obligations

### *Financial*

- 2.37 Upon becoming a member of the Fund, Australia is required to make an initial subscription. Australia would also be required to make an initial capital contribution to the Bank.<sup>42</sup>
- 2.38 As Australia is seeking to join both bodies simultaneously, and membership of the Fund is a prerequisite for membership of the Bank, the Bank has requested that a commitment be made to pay Australia's initial contribution to the Fund in full, in the form of a single promissory note (although this payment will be drawn down over eight years).<sup>43</sup>
- 2.39 This would allow Australia to join the Bank immediately on admission to the Fund instead of waiting three years, as would be the case if Australia's initial contribution were paid in annual instalments.<sup>44</sup>
- 2.40 Both the Agreements require Australia to maintain the value of its currency holdings. If, in the opinion of the Bank or Fund, the currency used by Australia to make its payments were to appreciate or depreciate significantly, Australia will either be reimbursed or be required to make further payments in order to maintain the value of its holdings.<sup>45</sup>

### *Governance*

- 2.41 Australia would be obliged to abide by the governance arrangements set out in both agreements, including (but not limited to) representation, voting rights and financial arrangements.<sup>46</sup>
- 2.42 On joining, Australia will immediately obtain a place on the Board of Governors, and will be eligible to nominate for a non regional country place on the Board of Directors of both the Bank and the Fund.

## Costs

- 2.43 The final estimate of the initial contributions are yet to be determined by the Government. The minimum and maximum amounts are outlined by the Bank and relate to Australia's economic size relative to other donors. Payments are denominated in International Monetary Fund Special

---

42 NIA, para 25.

43 NIA, para 25.

44 NIA, para 25.

45 NIA, para 27.

46 NIA, para 28.



Drawing Rights (called SDRs) and therefore subject to exchange rate movements between Australian dollars and SDRs.<sup>47</sup>

- 2.44 The Bank currently estimates a minimum initial payment to the Fund of about SDR 106 million (A\$165 million) drawn down over eight years, with the initial capital subscription to the Bank being between approximately SDR 29.6 – 59.2 million (A\$46 – A\$92 million) drawn down over eight years.<sup>48</sup>
- 2.45 Each member country is given an opportunity to make regular additional contributions to the Fund (in the form of individual subscriptions) which would allow it to maintain its relative voting power. While there is no legal obligation to make such payments, there is an expectation that Australia will make such regular additional contributions at the three-yearly replenishment meetings.<sup>49</sup>
- 2.46 The size and conditions around these payments would be decided by the Australian Government, in consultation with the Fund and its other donor countries.<sup>50</sup>
- 2.47 Similarly, in relation to the Bank, each member has the right to purchase newly issued shares (which may arise through a general or special capital increase). While there is no obligation, there is the general expectation that members will purchase such shares. Capital increases are approved by the Board of Governors.<sup>51</sup>
- 2.48 As part of its initial contribution, Australia will take on a contingent liability with the Bank of between SDR 463 – 926 million (approximately A\$721 million – A\$1.4 billion), which would be called on if the Bank is unable to meet its financial liabilities.<sup>52</sup>
- 2.49 In assessing the benefits of joining the bank, Treasury and AusAID undertook appropriate due diligence. Among other things, this found that:
- ...in the event of a default, Australia would only cover between 0.7 to 1.4 per cent of the outstanding debt (equivalent to our share of AfDB capital) - other member countries would be liable for the remainder.<sup>53</sup>

---

47 NIA, para 32.

48 NIA, para 33. (May 2012 exchange rates)

49 NIA, para 33. (May 2012 exchange rates)

50 NIA, para 34.

51 NIA, para 35.

52 NIA, para 36.

53 Department of Treasury, *Submission 1*, p. 3.

- 2.50 Should the Bank require this extra capital, members will be required to contribute from their callable capital in proportion to their holding of Bank shares. The Bank has never called on this extra capital, nor has any other multilateral development bank with similar provisions for callable capital.<sup>54</sup>
- 2.51 If Australia ceased to be a Bank member, the Bank would, subject to certain conditions, arrange for the repurchase of Australia's shares at the value shown by the Bank's books on the termination date.
- 2.52 If Australia ceased to be a Fund member, the Fund and Australia would proceed to a settlement of accounts and agree on the amount to be paid to Australia on account of its subscription. If no such agreement is reached within six months from the date on which Australia ceased to be a member, or such later date as agreed, the Fund Agreement provides that, among other provisions, the Fund shall return to Australia its subscription or the principal repayments derived therefrom and held by the Fund on the date on which Australia ceased to be a member of the Fund, except to the extent that, in the opinion of the Fund, such funds will be needed by the Fund to meet its financial commitments.<sup>55</sup>

## Implementation

- 2.53 New enabling legislation is required for Australia to ratify the Fund and Bank Agreements and to make financial contributions. This legislation will prescribe the conditions under which Australia's initial and future contributions are made.<sup>56</sup>
- 2.54 According to the Department of the Treasury, the legislation will be similar to that used to ratify Australia's Asian Development Bank and Asian Development Fund subscriptions, the *Asian Development Bank (Additional Subscription) Act 2009*, and the *Asian Development Fund Act 1992* respectively.<sup>57</sup>
- 2.55 The Asian Development Bank and Fund legislation included an appropriation from the Consolidated Revenue Fund to cover the purchase of shares in the Asian Development Bank and financial contributions to the Asian Development Fund.<sup>58</sup>

---

54 NIA, para 36.

55 NIA, para 37-38.

56 NIA, para 29.

57 Mr Shaun Anthony, Acting General Manager, International Finance and Development Division, Department of the Treasury, *Committee Hansard*, 26 November 2012, p. 4.

58 See for example, s.6 of the *Asian Development Bank (Additional Subscription) Act 2009*.

- 2.56 If a policy decision is taken not to deduct income tax from the salaries of Australian staff working at the Bank, legislation would be required to provide an income tax exemption under Australian domestic law. Specifically, regulations would need to be made under the *International Organisations (Privileges and Immunities) Act 1963*.<sup>59</sup>
- 2.57 Enabling legislation for all other development bank and development fund treaties is administered by the Department of the Treasury, and payments are made by the Treasurer.<sup>60</sup> The NIA indicates that the enabling legislation for the Bank and the Fund will reflect Australia's relationship with other multilateral development banks. Treasury will manage the relationship between Australia and the Board of Governors (including Governors' votes), the Board of Directors, and payment of capital to the Bank.<sup>61</sup>
- 2.58 Should the treaties be ratified, AusAID will manage the relationship on operational matters with the Fund and Bank, as well as the Fund replenishment rounds.<sup>62</sup>

## Conclusion

- 2.59 Given that Australia has been a member of the Asian Development Bank and the European Bank for Reconstruction and Development for some time now, it seems something of an oversight that Australia is not already a member of the African Development Bank.
- 2.60 Australia's developed competitors in Asia, Europe and North America have long and well established relationships with African countries.
- 2.61 The Committee hopes that, with the ratification of these treaties, Australia will form a closer relationship with African nations.

---

59 NIA, para 30.

60 See for example the *Asian Development Bank (Additional Subscription) Act 2009*.

61 NIA, para 31.

62 NIA, para 31.

**Recommendation 1**

**The Committee supports the *Agreement Establishing the African Development Fund done at Abidjan, Côte d'Ivoire on 29 November 1972 as amended [2012]* and recommends that binding treaty action be taken.**

**Recommendation 2**

**The Committee supports the *Agreement Establishing the African Development Bank done at Khartoum, Sudan on 4 August 1963 as amended [2012]* and recommends that binding treaty action be taken.**