

CHAPTER 39:08
AFRICAN DEVELOPMENT BANK AND FUND
ARRANGEMENT OF SECTIONS

SECTION

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Act 27, 1974,
Act 9, 1976.

An Act to provide for Botswana's accession to the African Development Bank and the African Development Fund, to provide for the carrying out of Botswana's obligations as a result thereof, and to provide for matters incidental thereto and connected therewith.

[Date of Commencement: 20th December, 1974]

WHEREAS at the Conference of African Finance Ministers held at Khartoum in the Sudan in July and August, 1963, there were drawn up Articles of an Agreement (hereinafter referred to as "the Bank Agreement" which expression shall include any subsequent amendment thereto) for the establishment and operation of the African Development Bank (hereinafter referred to as "the Bank");

AND WHEREAS on 17th March, 1972, Botswana acceded to the Bank Agreement and acquired full membership status with effect from 31st March, 1972;

AND WHEREAS Botswana's Instrument of Accession has been deposited with the Secretary-General of the United Nations;

AND WHEREAS as the Conference of Plenipotentiaries held at Abidjan in the Ivory Coast on 29th November, 1972, there were adopted Articles of an Agreement (hereinafter referred to as "the Fund Agreement" which expression shall include any subsequent amendment thereto) for the establishment and operation of the African Development Fund (hereinafter referred to as "the Fund");

NOW THEREFORE BE it ENACTED by the Parliament of Botswana as follows:

1. Short title

This Act may be cited as the African Development Bank and Fund Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**Bank**" means the African Development Bank;

"**Bank Agreement**" means the Articles of Agreement for the establishment and operation of the Bank;

"**Fund**" means the African Development Fund;

"**Fund Agreement**" means the Articles of Agreement for the establishment and operation of the Fund;

"**Membership Resolutions**" means resolutions adopted by the Boards of Governors of the Bank and the Fund respectively.

3. Accession to Agreement

The accession of Botswana to the Bank Agreement is hereby ratified.

4. Financial provisions relating to membership of Bank

(1) There shall be charged upon and paid out of the Consolidated Fund without further appropriation than this Act all payments required to be made from time to time by the Government to the Bank and Fund under the terms of the Bank Agreement and Fund Agreement and any Membership Resolution.

(2) For the purpose of providing any sums required for making payments under this section, the Minister may, on behalf of the Government, make such arrangements as may be necessary, and may raise loans by the creation and issue of securities, whether interest-bearing or otherwise and subject to such conditions as to repayment, redemption or otherwise as he thinks fit, and the principal and interest (if any) of such securities and the charges and expenses incurred in connection with their issue shall be charged on and paid out of the Consolidated Fund.

5. Financial provisions relating to membership of Fund

(1) If the Fund Agreement is signed in accordance with the provisions of section 4, then the provisions of this section shall have effect.

(2) There shall be charged upon and paid out of the Consolidated Fund without further appropriation than this Act all payments required to be made from time to time by the Government to the Fund under the terms of the Fund Agreement and any Membership Resolution.

(3) For the purpose of providing any sums required for making payments under this section, the Minister may, on behalf of Government, make such arrangements as may be necessary and may raise loans by the creation and issue of securities, whether interest-bearing or otherwise and subject to such conditions as to repayment, redemption or otherwise as he thinks fit, and the principal and interest (if any) of such securities and the charges and expenses incurred in connection with their issue shall be charged upon and paid out of the Consolidated Fund.

6. Certain provisions of Agreements to have force of law

The provisions of the Bank Agreement set out in the First Schedule and the provisions of the Fund Agreement set out in the Second Schedule, shall have the force of law in Botswana:

Provided that nothing in the Bank Agreement or in the Fund Agreement shall be construed as-

- (i) entitling the Bank or the Fund to import goods free of customs duty without any restriction on their subsequent sale in Botswana;
- (ii) conferring on the Bank or the Fund any exemption from duties or taxes which form part of the price of goods sold; or
- (iii) conferring on the Bank or the Fund any exemption from duties or taxes which are in fact no more than charges for services rendered.

FIRST SCHEDULE PROVISIONS OF BANK AGREEMENT HAVING FORCE OF LAW IN BOTSWANA

(Section 6)

ARTICLE 51

Status in Member Countries

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity:

- (a) to contract;
- (b) to acquire, and dispose of, immovable and movable property; and
- (c) to institute legal proceedings.

ARTICLE 52

Judicial proceedings

1. The Bank 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 used only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued guaranteed securities. No action shall, however, be brought by members or persons acting for or deriving claims from members.

2. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

ARTICLE 53

Immunity of Assets and Archives

1. Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

2. The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

ARTICLE 54

Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 55

Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

ARTICLE 56

Personal Immunities and Privileges

1. All governors, directors, alternates, officers and employees of the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (ii) where they are not local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

2. Experts and consultants performing missions for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys in connection therewith.

ARTICLE 57

Exemption from Taxation

1. The Bank, its property, other assets, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business

maintained by the Bank.

ARTICLE 59

Application of Immunities, Exemptions and Privileges

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Articles 52, 54, 56 and 57 of this Agreement in cases where its action would, in its opinion, further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

SECOND SCHEDULE

PROVISIONS OF FUND AGREEMENT HAVING FORCE OF LAW IN BOTSWANA

(Section 6)

ARTICLE 11

Use of Currencies

1. Currencies received in payment of, or under Article 13 in respect of, subscriptions made pursuant to Article 5 and Article 6(2) may be used and exchanged by the Fund for any of its operations and, subject to the approval of the Board of Directors, for the temporary investment of funds not needed in its operations.
2. The use of currencies received in payment of, or under Article 13 in respect of, subscriptions under Article 6(3) and Article 7(1) and (2) or as other resources under Article 8 shall be governed by the terms and conditions pursuant to which such currencies are received or, in the case of currencies received under Article 13, the use shall be governed by the terms and conditions on which the currencies whose value is so maintained were received.
3. All other currencies received by the Fund may be freely used and exchanged by the Fund for any of its operations and, subject to the approval of the Board of Directors, for the temporary investment of funds not needed in its operations.
4. No restriction shall be imposed which is contrary to the provisions of this Article.

ARTICLE 42

Status

The Fund shall possess full juridical personality and, in particular, full capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and
- (iii) to institute legal proceedings.

ARTICLE 43

Legal Process

1. The Fund shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to receive loans in accordance with Article 8, in which case actions may be brought against the Fund in a court of competent jurisdiction in the territory of a country in which the Fund has its office, or has appointed an agent for the purpose of accepting service or notice of process, or has otherwise agreed to be sued.
2. Notwithstanding the provisions of paragraph 1, no action shall be brought against the Fund by any participant or by any agency or instrumentality of a participant, or by any entity or person directly or indirectly acting for or deriving claims from a participant or from any agency or instrumentality of a participant. Participants shall have recourse to such special procedures for the settlement of disputes between the Fund and its participants as may be prescribed in this Agreement, in the bye-laws and regulation of the Fund, or in contracts entered into with the Fund.
3. The Fund shall also make provision for appropriate modes of settlement of disputes in cases which do not come within the provisions of paragraph 2 and of Articles 52 and 53 and which are subject to the immunity of the Fund by virtue of paragraph 1 of this Article.
4. Where by virtue of any of the provisions of this Agreement the Fund does not enjoy immunity from legal process, the Fund, and its property and assets wherever located and by whomsoever held, shall nevertheless be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Fund.

ARTICLE 44

Immunity of Assets

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

ARTICLE 45

Immunity of Archives

The archives of the Fund, and, in general, all documents belonging to it or held by it, shall be inviolable, wherever located.

ARTICLE 46

Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Fund, and subject to the provisions of this Agreement, all property and other assets of the Fund shall be free from restriction by financial controls regulations, or moratoria of any kind.

ARTICLE 47

Privilege for Communications

Official communications of the Fund shall be accorded by each State participant the same treatment as it accords to the official communications of other international financial institutions of which it is a member.

ARTICLE 48

Immunities and Privileges of Officials and Personnel

All governors and directors, and their alternates, the President and personnel, including experts performing missions for the Fund:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity,
- (ii) when they are not local nationals, shall be accorded no less favourable immunities from immigration restrictions, alien registration requirements and national service obligations, and no less favourable facilities as regards exchange regulations, than are accorded by the State participant concerned to the representatives, officials and employees of comparable rank of any other international financial institution of which it is a member; and
- (iii) shall be granted no less favourable treatment in respect of travelling facilities than is accorded by the State participant concerned to representatives, officials and employees of comparable rank of any other international financial institution of which it is a member.

ARTICLE 49

Exemption from taxation

1. The Fund, its assets, property, income, operations and transactions, shall be exempt from all direct taxation, and from all customs duties, or taxes having equivalent effect, on goods imported or exported for its official use. The Fund shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. Notwithstanding the provisions of paragraph 1, the Fund shall not claim exemption from taxes which are no more than charges for services rendered.
3. Articles imported under an exemption provided for by paragraph 1 shall not be sold in the territory of the State participant which granted the exemption except under conditions agreed with that participant.
4. No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to the President and personnel including experts performing missions for it.

ARTICLE 50

Waiver by the Fund

1. The immunities, exemptions and privileges provided in this Chapter are granted in the interest of the Fund. The Board of Directors may waive, to such extent and upon such conditions as it may determine the immunities, exemptions and privileges provided in this Chapter in cases where its action would in its opinion further the interests of the Fund.
2. Regardless of the provisions of paragraph 1, the President shall have the right and the duty to waive the immunity of any of the personnel, including experts performing missions for the Fund, in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Fund.