

Seychelles

African Development Bank and Fund Decree Decree 12 of 1979

Legislation as at 30 June 2012

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African Development Bank and Fund Decree

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Seychelles

African Development Bank and Fund Decree

Decree 12 of 1979

Commenced on 26 February 1979

[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]

1. Short title

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

2. Interpretation

In this Decree, unless the context otherwise requires—

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

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

3. Certain provisions of Agreements to have force of law

The provisions of that Bank Agreement set out in Part 1 of the Schedule and the provisions of the Fund Agreement set out in Part II of the Schedule shall have the force of law in Seychelles:

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

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

Schedule

Part 1 – Provisions of the bank agreement which have the force of law in Seychelles

Article 23 – General powers

In addition to the powers provided elsewhere in this Agreement, the bank shall have power to:

- (a) Borrow funds in member countries or elsewhere, and in that connexion to furnish such collateral or other security as if shall determine provided always that:
 - (i) before making a sale of its obligations in the market, the Bank shall have obtained its approval;
 - (ii) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval; and
 - (iii) where the funds to be borrowed are to be included in its ordinary capital resources, the Bank shall have obtained, where appropriate, the approval of the members referred to in sub-paragraph (i)

and (ii) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions:

- (b) buy and sell securities the bank has issued or guaranteed or in which it has invested provided always that it shall have obtained the approval of any member in whose territory the securities are to be bought or sold;
- (c) guarantee or underwrite securities in which it has invested in order to facilitate their sale;
- (d) invest funds not needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities;
- (e) undertake activities incidental to its operations such as, among others, the promotion of consortia for financing which serves the purpose of the Bank and comes within its functions;
- (f)
 - (i) provide all technical advice and assistance which serve its purpose and come within its functions; and
 - (ii) where expenditure incurred by such a service is not reimbursed, charge the net income of the Bank therewith and, in the first five years of its operations, use up to one per cent of its paid-up capital on such expenditure; provided always that the total expenditure of the Bank on such services in each year of that period does not exceed one-fifth of that percentage; and
- (g) Exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 24 – Special borrowing powers

1. The Bank may request any member to loan amount of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of that member for the purpose of a project to be carried out in the territory of another member.
2. Unless the member concerned invokes economic and financial difficulties which, in its opinion, are likely to be provoked or aggravated by the granting of such a loan to the Bank, that member shall comply with the request of the Bank, that member shall comply with the request of the bank. The loan shall be made for a period to be agreed with the Bank, which shall be in relation to the duration of the project which the proceeds of that loan are designed to finance.
3. Unless the member agrees otherwise, the aggregate amount outstanding in respect of its loans made to the Bank pursuant to this Article shall not, at any time, exceed the equivalent of the amount of its subscription to the capital stock of the bank.
4. Loans to the Bank made pursuant to this Article shall bear interest payable by the Bank to the lending member, at a rate which shall correspond to the average rate of interest paid by the Bank on its borrowing for Special Funds during a period of one year preceding the conclusion of the loan agreement. This rate shall in no event exceed a maximum rate which the Board Governors shall determine from time to time.
5. The Bank shall repay the loan, and pay the interest due in respect thereof, in the currency of the lending member or in a currency acceptable to the latter.
6. All resources obtained by the Bank by virtue of the provisions of this Article shall constitute a Special Fund.

Article 27 – Use of currencies

1. Members may not maintain or impose any restrictions on the holding or use by the bank or by any recipient from the Bank, for payments anywhere, of the following:
 - (a) gold or convertible currencies received by the Bank in payment of subscriptions to the capital stock of the Bank from its members;

- (b) currencies of members purchased with the gold or convertible currencies referred to in the preceding sub-paragraph;
 - (c) currencies obtained by the Bank by borrowing, pursuant to paragraph (a) of Article 23 of this Agreement, for inclusion in its ordinary capital resources;
 - (d) gold or currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraphs (a) to (c) or in payment of commissions or fees in respect of guarantees issued by the Bank; and
 - (e) currencies, other than its own, receives by a member from the Bank in distribution of the net income of the Bank in accordance with Article 42 of this Agreement.
2. Members may not maintain or impose any restrictions on the holdings or use by the Bank or by any recipient from the Bank, for payments anywhere, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless:
 - (a) that member declares that it desired the use of such currency to be restricted to payments for goods or services produced in its territory; or
 - (b) such currency forms part of the special resources of the Bank and its use is subject to special rules and regulations.
 3. members may not maintain or impose any restrictions on the holdings or sue by the Bank, for making amortizations or anticipatory payments or for repurchasing – in whole or in part – its obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.
 4. The Bank shall not use gold or currencies which it holds for the purchase of other currencies of its members except:
 - (a) in order to meet its existing obligations; or
 - (b) pursuant to a decision of the Board of Directors adopted by a two-thirds majority of the total voting power of the members.

Article 28 – Maintenance of value of the currency holdings of the Bank

1. Whenever the par value of the currency of a member is reduced in terms of the unit of account defined in paragraph 1(b) of Article 5 of this Agreement, or its foreign exchange value has, in the opinion of the Bank, depreciated to a significant extent, that member shall pay to the Bank, depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an amount of its currency required to maintain the value of all such currency held by the Bank excepting currency derived by the Bank from its borrowing.
2. Whenever the par value of the currency of a member is increased in terms of the said unit of account, or its foreign exchange value has, in the opinion of the Bank, increased to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.
3. The Bank may waive the provisions of this Article where a uniform proportionate change in the par value of the currencies of all its members takes place.

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 actions shall, however, be brought by members or persons acting for or deriving claims from members.
2. The property and assets of the Bank shall, whenever 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, control 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 the 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 jurisdiction 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 Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Article 52, 54, 56, and 57 of this Agreement in cases where its action would in its opinion, further the interest 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 interest of the Bank.

Part II – Provisions of the Fund agreement which have the force of law in Seychelles

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 connexion 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 used.
2. Notwithstanding the provisioned 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 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 by-laws and regulations 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 (10) 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 forms 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 of 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

- (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 restriction 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 obligations 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 service 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 mission for it.