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LIITE 3:

AFRICAN DEVELOPMENT FUND

BOARD OF GOVERNORS
Resolution F/BG/2023/04
Adopted at the First Sitting of the Forty-Ninth Annual Meeting of the Board of Governors of the African Development Fund, on 23 May 2023

AMENDMENTS TO THE AGREEMENT ESTABLISHING THE AFRICAN DEVELOPMENT FUND

THE BOARD OF GOVERNORS, HAVING REGARD TO:
i (i) The Agreement Establishing the African Development Fund (the "Fund Agreement"), particularly Article 8 (Other Resources), Article 23 (Board of Governors: Powers), Article 26 (Board of Directors: Functions), Article 29 (Voting) and Article 51 (Amendments); and

i (ii) The recommendations of the Board of Directors contained in Document ADF/BG/WP/2023/04 entitled "Leveraging ADF Equity via the Market Borrowing Option";

HEREBY DECIDES to pursue the following amendments to the Fund Agreement, and following the relevant acceptance, approval and/or ratification of the proposed amendments by the participants in accordance with Article 51 of the Fund Agreement, the Fund Agreement shall be amended to read as follows:

1. AMENDMENT TO ARTICLE 2 OF THE FUND AGREEMENT

The purpose of the Fund shall be to assist the Bank in making an increasingly effective contribution to the economic and social development of the Bank's members and to the promotion of cooperation (including regional and sub-regional co-operation) and increased international trade, particularly among such members. It shall provide finance on concessional or non-concessional terms for purposes which are of primary importance for and serve such development.

Explanatory Note 1: The proposed amendment includes reference to the Fund providing financing "on non-concessional terms". This amendment provides the Fund with the flexibility to determine *the concessionality of the financing it provides, without being limited to providing financing only on concessional terms.*

2. AMENDMENT TO ARTICLE 8(5) OF THE FUND AGREEMENT

5. The Fund may borrow funds in member countries of the Bank or elsewhere on such concessional or non-concessional terms as it deems appropriate, and in that connection furnish such collateral or other security as it shall determine provided always that:

(a) before making a sale of its obligations in the market of a member, the Fund shall have obtained its approval;
(b) where the obligations of the Fund are to be denominated in the currency of a member, the Fund shall have obtained its approval; and
(c) the Fund shall have obtained, where appropriate, the approval of the members referred to in subparagraph (a) and (b) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions. *Explanatory Note 2: The proposed amendment enables the Fund to borrow funds either on a bilateral basis or in the capital markets. As with the African Development Bank and most other multilateral development institutions, the Fund would need to seek the approval of members in whose territory the transaction takes place or in whose currency the obligations are denominated.*

3. AMENDMENT TO ARTICLE 14(1) OF THE FUND AGREEMENT

1. The Fund shall provide financing for projects and programmes to further economic and social development in the territory of members, particularly those members whose economic situation and prospects require such financing to be on concessional terms.
Explanatory Note 3: The proposed amendment clarifies that the Fund can provide financing to all members of the Bank, particularly those members whose economic situation and prospects require such financing to be on concessional terms.

4. AMENDMENT TO ARTICLE 15(2)(b) OF THE FUND AGREEMENT

(b) In making financing available for entities other than members, the Fund shall take all necessary steps to ensure that the benefits of its financing accrue only to members or other entities which should, taking into account all the relevant circumstances, receive some or all of those benefits. *Explanatory Note 4: The proposed amendment, which is to be read with Article 14(1) as amended above, emphasizes that the Fund will be selective in deciding which members or entities will benefit from its financing.*

5. AMENDMENT TO ARTICLE 16(2)(a) OF THE FUND AGREEMENT

(a) Subject to the provisions of the foregoing paragraph, financing by the Fund shall be on such terms as may be appropriate. *Explanatory Note 5: The proposed amendment removes the reference to the Fund providing financing on "concessional terms". Removing this reference does not imply that the Fund may not provide finance on concessional terms; it merely ensures that the Fund is not obliged to provide financing only on concessional terms.*

6. AMENDMENT TO ARTICLE 20 OF THE FUND AGREEMENT

1. In addition to the powers provided for elsewhere in this Agreement, the Fund may undertake such other activities incidental to its operations as shall be necessary or desirable in furtherance of its purposes and consistent with the provisions of this Agreement, including:

(a) buying and selling securities it 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;

(b) guaranteeing or underwriting securities in which it has invested in order to facilitate their sale;

(c) investing funds not needed in its operations in such obligations as it may determine including in marketable securities; and

(d) undertaking activities incidental to its operations such as, among others, the promotion of consortia for financing which serve the purpose of the Fund and come within its functions.

2. Every security issued or guaranteed by the Fund shall bear on its face a conspicuous statement to the effect that it is not an obligation of any government unless it is in fact the obligation of a particular government, in which case it shall so state.
Explanatory Note 6: The proposed amendments add to the powers accorded to the Fund as a corollary to its borrowing powers under Article 8(5) of the Fund Agreement as amended. The warning to be placed on securities is standard language to be found in the charters of several multilateral development banks, including the African Development Bank.

7. AMENDMENT TO ARTICLE 26(2) OF THE FUND AGREEMENT

2. in conformity with the general directives of the Board of Governors, take decisions regarding individual loans and other forms of financing provided and borrowing of funds undertaken by the Fund under this Agreement; *Explanatory Note 7: The proposed amendment adds the approval of borrowing transactions to the powers given to the Board of Directors of the Fund under the Fund Agreement.*

8. AMENDMENT TO ARTICLE 31 OF THE FUND AGREEMENT

3. The Fund shall not lend to the Bank, except that this shall not preclude the Fund from investing funds not needed for the financing of its operations in obligations of the Bank or the Bank from investing funds not needed for the financing of its operations in obligations of the Fund. *Explanatory Note 8: Article 31 is amended by the insertion of a new paragraph 3, with the present paragraph 3 of Article 31 becoming paragraph 4: While the proposed amendment does not prohibit the Fund from borrowing from the Bank, it prohibits the Fund from lending money to the Bank. The amendment also clarifies that the Fund can invest in securities issued by the Bank and vice versa.*

9. AMENDMENT TO ARTICLE 43(1) OF THE FUND AGREEMENT

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 borrowing powers, 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 issued or guaranteed securities. 11
Explanatory Note 9: The proposed amendment clarifies that the Fund's immunities do not apply in connection with the exercise of its borrowing powers and indicates the circumstances under which the Fund may be sued.

10. ENTRY INTO FORCE

The amendments to the Fund Agreement contained in this Resolution shall enter into force following the adoption of this Resolution and acceptance of the amendments therein by the participants, in accordance with Article 51 of the Fund Agreement. *Explanatory Note 10: Following the adoption of this Resolution by the Board of Governors, the proposed amendments will be submitted to the participants for acceptance or ratification pursuant to Article 51 of the Fund Agreement, which requires that the following procedure be followed for a valid and effective amendment of the Fund Agreement:*

i *(i) Adoption by the Board of Governors of the proposed amendments by a three-fourths (75%) majority of the total voting power of the participants (Arts. 29(7) and 51(1));*

ii *(ii) Submission of the amendments to the participants and the acceptance of such amendments by three-fourths (75%) of the number of participants having eighty-five percent (85%) of the voting power (Art. 51(1));*

iii *(iii) Formal communication by the Fund, to each participant, certifying the acceptance of the amendments by the prescribed majority (Art. 51(1)); and* iv *(iv) Entry into force of the amendments three (3) months after the date of the formal communication to the participants or other date specified by the Board of Governors (Art. 51(1)).*

Once the resolution has entered into force, but before the Fund commences its non-concessional borrowing activities, the Fund would need to revise its policies, regulations and guidelines, including its Financial Regulations, in terms of which the Board of Directors of the Fund will approve a borrowing programme for the Fund on an annual basis.

GENERAL COUNSEL'S NOTE: The italicized text in boxes throughout this Resolution is for explanatory purposes only and shall not be binding on participants.