

AFRICAN DEVELOPMENT FUND

BOARD OF GOVERNORS

Resolution F/BG/2010/[]

(Adopted by correspondence on [] 2010)

The Twelfth General Replenishment of the Resources of the African Development Fund

THE BOARD OF GOVERNORS,

HAVING REGARD TO:

- (i) The relevant Articles of the Agreement (the “Agreement”) Establishing the African Development Fund (the “Fund”), in particular Articles 2 (Purpose), 4 (Resources), 7 (Additional Subscriptions by State Participants), 16 (Form and Terms of Financing), 19 (Technical Assistance) 23 (Board of Governors: Powers) and 26 (Board of Directors: Functions);
- (ii) The Report of the Board of Directors dated [] 2010 (**the “Report”**) on the implementation of Resolution F/BG/2009/13 authorizing the commencement of consultations for the twelfth general replenishment of the resources of the Fund (**the “Twelfth Replenishment”**), and in particular the recommendations of the Board of Directors contained in that Report;

CONSIDERING THAT:

- (i) In the Report, the Board of Directors, having regard to the needs and development requirements of the poorer and less developed regional members of the African Development Bank (the “Bank”), has recommended that the Fund should undertake a substantial replenishment of its resources to finance the Fund’s concessional lending programme for the three year period commencing **1 January 2011**;
- (ii) The State participants listed in Annex 1 hereto attached, and as the case may be the Bank, have indicated their intention to subscribe or contribute to the Twelfth Replenishment in accordance with the arrangements, terms and conditions set forth in this Resolution, it being understood that no commitment in that regard can be made by the State participants and the Bank until all necessary internal approvals of such State participants and the Bank have been obtained;

CONVINCED THAT:

- (i) There may arise a need for a portion of the amount of subscriptions made hereunder to be provided to the Fund as advance subscriptions that may be used for operational commitments before the entry into effect of the Twelfth Replenishment;
- (ii) It is desirable to authorize the Fund to provide financing in the form of grants in addition to loans in the circumstances referred to in the Report, and according to procedures to be determined by the Board of Directors of the Fund;

- (iii) It is desirable to encourage countries that have the economic capacity to be, but are not now, State participants to participate in the Twelfth Replenishment; and
- (iv) It is desirable to administer any remaining funds from previous replenishments during the Twelfth Replenishment;

RECALLING the terms of Board of Governors Resolution No F/BG/2006/12 concerning the Multilateral Debt Relief Initiative, and noting the updated cost estimates and the compensation amounts payable by donors during the Twelfth Replenishment disbursement period;

HEREBY ACCEPTS AND ENDORSES the final Report on the Consultative Meetings on the Twelfth Replenishment;

ADOPTS its conclusions and recommendations; and therefore,

DECIDES AS FOLLOWS:

1. Increase in the Resources of the Fund

- (a) **Authorization.** The Fund is authorized to proceed with the Twelfth Replenishment for a three-year period commencing **1 January 2011**.
- (b) **Subscriptions by State Participants.** The Fund is authorized to accept, from each of the State participants listed in Annex 1 to this Resolution, a Subscription in the amount specified for each such State participant in the applicable column of Annex 1.
- (c) **Additional Subscriptions and Contributions** Additional subscriptions and other resources in excess of the amounts indicated in Annex 1 hereto, may be accepted by the Fund with the approval of the Board of Directors and may be counted as part of the resources for the Twelfth Replenishment at the option of the State participant.
- (d) **Relation to Future Replenishments.** No State participant making an additional subscription pursuant to sub-paragraph 1(c) shall be obliged, on the occasion of a future replenishment of the Fund, to increase its subscription solely by reason of having made such an additional Subscription under this Resolution.

Paragraph 1(a) of the draft Resolution authorizes the Fund to proceed with the Twelfth Replenishment. The proposal contained in the draft Resolution is to fix the Replenishment Period for three years commencing January 1, 2011. Provisions are made in Paragraph 1(c) of the Draft Resolution for the acceptance by the Fund of subscriptions and other resources in excess of the subscription amounts pledged by the State participants (which would be set out in Annex I to the Resolution), subject to approval by the Board of Directors.

2. Instruments of Subscription by State Participants

- (a) **General Clause**. To make a subscription hereunder, each State participant shall deposit with the Fund an Instrument of Subscription formally confirming its intention to subscribe the amount specified in Annex 1 hereto, denominated in terms of the unit of obligation relating to the State participant, as determined pursuant to paragraph 3 hereof.
- (b) **Unqualified Subscription**. Except as specified in sub-paragraph (c) of this paragraph, such Instrument of Subscription shall constitute an unqualified commitment by the concerned State participant to pay the amount subscribed in the manner, and on the terms, set forth or contemplated by this Resolution. For the purpose of this Resolution, such subscription shall be called an “**Unqualified Subscription**”.
- (c) **Qualified Subscription**. As an exceptional case, where an unqualified commitment cannot be given by a State participant due to its legislative practice, the Fund may accept from that State participant an Instrument of Subscription which expressly contains the qualification that payment of all instalments of its subscription, is subject to subsequent budgetary appropriation. Such an Instrument of Subscription shall, however, include an undertaking by the State participant to exercise its best efforts to: (a) obtain such appropriation for the full amount specified in paragraphs 6(b) and 8(b) of this Resolution, by the payment dates indicated in paragraph 6 hereof; and (b) to notify the Fund as soon as the appropriation relative to each instalment is obtained. For the purpose of this Resolution, a subscription in this form shall be called a “**Qualified Subscription**”, but shall be deemed to be unqualified to the extent that appropriation has been obtained.

3. Denomination of Subscriptions

State participants shall denominate their subscriptions in Special Drawing Rights of the International Monetary Fund (SDRs), in a currency used for the valuation of the SDR, or in the currency of the State participant if such currency is freely convertible (the “unit of obligation”) and the economy of the State participant did not experience, in the period from **1 January 2008 to 31 December 2010**, a rate of inflation in excess of 10 per cent per annum on average, as determined by the Fund

The proposal contained in Paragraph 3 is for Subscriptions to be denominated in: (i) SDRs; or (ii) a currency used for the valuation of the SDR – which are currently the United States Dollar, Pound Sterling, Japanese Yen and Euro; or (iii) the currency of the State participant if the currency is freely convertible and provided the economy of the State participant has not experienced a rate of inflation in excess of 10% p.a. on average, as determined by the Fund, during the specified period agreed by the Deputies.

4. **Effective Date**

The Twelfth Replenishment shall come into effect on the date when State participants shall have deposited with the Fund, Instruments of Subscription representing an aggregate amount equivalent to at least thirty per cent (**30%**) of the **total intended subscriptions set forth in Annex 1 to this Resolution** (hereinafter called “the Effective Date”), provided that this date shall not be later than **1 January 2011** or such later date as the Board of Directors may determine.

5. **Allocation for Grants**

An amount of the total available resources¹ under the Twelfth Replenishment shall be set aside in the form of grants, including grant-based technical assistance, and in accordance with the Debt Sustainability Framework (DSF).

6. **Payment of Subscriptions**

- (a) **Payment Dates**. Except as otherwise provided in this Resolution each subscription made under this Resolution shall be paid in three equal annual instalments in SDRs, currencies used for the valuation of the SDR or in freely convertible currencies acceptable to the Fund. Subject to paragraphs 4 and 8 hereof and unless otherwise determined by the Board of Directors, the first of such instalments shall be paid on or before **15 January 2011**, or not later than 30 days after the Effective Date; with the second and third instalments falling due, respectively, not later than **15 January 2012** and **15 January 2013**. As an exceptional case, where a State participant cannot, due to its legislative procedures, make payment in respect of the first instalment by the date determined pursuant to the second sentence of this sub-paragraph, such instalment shall be paid not later than 30 days after the date of the deposit of the relevant Instrument of Subscription.
- (b) **Payment Dates for Qualified Subscriptions**. Payments in respect of a Qualified Subscription shall be made within 30 days as and to the extent that the relative subscription becomes unqualified and subject to the annual 2 payment dates specified in sub-paragraph (a) above. **A State participant who has deposited an Instrument of Subscription for a Qualified Subscription shall inform the Fund of the status of its subscription not later than 30 days after the annual payment dates specified in sub-paragraph (a) above.**
- (c) **Programme of Payments** At the time of depositing its Instrument of Subscription, each State participant shall indicate to the Fund its proposed programme of instalment payments on the basis of the arrangements set forth in the foregoing provisions of paragraph 6

¹ The total available resources refers to the total realizable resources that may be committed by the Fund during the Twelfth Replenishment period and includes the amount of aggregate subscriptions set forth in Annex 1 hereto, resources carried over from previous replenishments and internally generated resources (i.e. Advance Commitment Capacity).

- (d) **Optional Arrangements.** Any State participant may, by a written declaration, indicate to the Fund that it intends to make payment at earlier dates or in fewer instalments or different proportions not less favourable to the Fund than those specified in sub-paragraphs (a) and (b) above.
- (e) **Method of Payment.** Payments in respect of each subscription shall be made in cash or, at the option of the State participant making the payment, by the deposit of non-negotiable non-interest-bearing notes or similar obligations of the State participant, encashable on demand by the Fund at their par value in accordance with the terms of sub-paragraph (f).
- (f) **Encashment of Notes.** Unless otherwise decided by the Board of Directors, the Fund will encash the notes or similar obligations of State participants in accordance with the standard encashment schedule set out in Annex 2, provided that at the request of a State participant, the Fund may agree to vary the total encashment schedule for that State participant. With respect to a State participant that is unable to comply with one or more encashment requests, the Fund may agree with the State participant on a revised encashment schedule for such notes or similar obligations that yields at least an equivalent value to the Fund.
- (g) **Accelerated Encashments.** Notwithstanding paragraph 6(f) of this Resolution, a State participant which makes an Unqualified Subscription may request at the time of the deposit of the Instrument of Subscription or thereafter to pay part of its contribution noted in Annex 1 through the investment income derived from accelerated encashment of its instalment payments, subject to the terms and conditions set out in the Report.
- (h) **Conditions for Payment.** Notwithstanding the foregoing provisions of paragraph 6, no State participant shall be obliged to make any payment except when its subscription has become available for operational commitments as specified in paragraph 8 of this Resolution.

The proposal contained in Paragraph 6 of the draft Resolution is for subscriptions to be paid in three equal annual instalments in the unit of obligation acceptable to the Fund. Specific proposals are made about when such instalments should be paid. These proposals are subject to agreement by the Deputies. It is worth noting that State participants are allowed to specify earlier payment dates and different proportions provided this optional arrangement is no less favourable to the Fund than the arrangement applicable generally in accordance with the agreement amongst Deputies.

7. Advance Subscriptions

- (a) **Advance Subscription Level.** In order to avoid an interruption in the Fund's ability to make operational commitments pending the effectiveness of the Twelfth Replenishment, and if the Fund shall have received Instruments of Subscription from State participants whose subscriptions aggregate not less than the equivalent of **twenty per cent (20%) of the total amount of intended subscriptions listed in Annex 1 to this Resolution**, the Fund may deem, prior to the Effective Date, an amount equivalent to the first commitment tranche of each subscription for which an Instrument of

Subscription has been deposited by a State participant as an advance subscription, unless the State participant specifies otherwise in its Instrument of Subscription. It is understood that this Advance Subscription Scheme shall be implemented without prejudice to the Advance Facility Scheme under which any State participant may authorize the Fund to use any portion of its subscription for commitment purposes before the entry into effect of this Twelfth Replenishment.

- (b) **Uniformity of Terms.** The terms and conditions applicable to subscriptions under this Resolution shall apply also to advance subscriptions until the Effective Date, when such subscriptions shall be deemed to constitute payment towards the amount due from each State participant for its subscription.
- (c) **Interim Voting Rights.** In the event that the Twelfth Replenishment shall not have become effective by **1 January 2011**, voting rights for advance subscriptions shall, to the extent of payment therefore, be allocated to each State participant making an advance subscription as if it had been made as a subscription under this Resolution, and each State participant not making an advance subscription shall have the opportunity to exercise its pre-emptive rights with respect to such subscription on such conditions as the Fund shall specify.
- (d) **Utilisation of Advance Subscriptions for Operational Commitments.** Without prejudice to the provisions of the preceding sub-paragraphs, any State participant may, if it chooses, notify the Fund that its subscription, or a part thereof, shall be regarded as an advance subscription which may be available to the Fund for the purpose of making commitments prior to the attainment of the advance subscription level specified in sub-paragraph (a) of this paragraph. Upon the attainment of the advance subscription level, the provisions set forth in sub-paragraphs (b) and (c) of this paragraph shall be applicable to any amount made available to the Fund pursuant to the provisions hereof.

Pending the effectiveness of the Twelfth Replenishment, deposit with the Fund of Instruments of Subscription representing not less than 20% of the total amount of intended Subscriptions to be listed in Annex 1 to the Resolution will trigger the Advance Subscription provisions. The rationale for this provision is to minimize any disruption in the operations of the Fund pending the effectiveness of the Twelfth Replenishment. This should also facilitate a smooth transition from the ADF-XI Replenishment period to the ADF-12 Replenishment Period.

8. Commitment Authority

- (a) **Unqualified Subscriptions.** For the purpose of operational commitment and financing by the Fund under its operational programme for the period of the Twelfth Replenishment, each Unqualified Subscription shall be divided into three equal tranches, and shall be available for operational commitment as follows:

- (i) the First Tranche: on the Effective Date, provided that advance subscriptions may become available for operational commitment prior to the Effective Date pursuant to paragraph 7 of this Resolution;
 - (ii) the Second Tranche: as from **1 January 2012**; and
 - (iii) the Third Tranche: as from **1 January 2013**.
- (b) **Qualified Subscriptions**. Each Qualified Subscription shall become available for operational commitment as and to the extent that it becomes unqualified; which should occur in tranches of at least one third of the total amount of each subscription during the years **2011, 2012** and **2013**, respectively.
- (c) **Exceptions**: Notwithstanding the preceding sub-paragraphs, any State participant may authorize the use of the tranches of its subscription for operational commitments on a schedule more favourable to the Fund than that specified in sub-paragraphs (a) and (b) above.

As with previous replenishments, the draft Resolution establishes a clear schedule specifying when the resources subscribed to the Twelfth Replenishment are available for commitment. Specific dates for the release of tranches are proposed in the text. These proposals are subject to approval by the Deputies and would be subject to the effectiveness of the Twelfth Replenishment. Notwithstanding the qualification attached to Qualified Subscriptions and in order to achieve the objective of ensuring that the obligations of State participants are honored at a uniform rate, Qualified Subscriptions are also required to be unqualified and available for operational commitment in the years determined for Unqualified Subscriptions. It is also worth noting that the draft Resolution recognizes an exception to these arrangements in the possibility for a State Participant to authorise the application of a Schedule more favourable to the Fund.. In light of the Fund's experience in the application of this exceptional clause during the Seventh Replenishment, attempts have been made to simplify the provisions as well as remove any ambiguities with regard to the procedures. The specific proposals for improvement are highlighted on the text of the draft Resolution.

9. Consultative Meeting of State Participants

If, in the course of the Twelfth Replenishment, delays in the deposit of Instruments of Subscription, in the release of tranches of subscription for operational commitment pursuant to paragraph 8 hereof or in the payment of subscriptions cause or threaten to cause a suspension in the Fund's lending or grant operations or otherwise prevent the substantial attainment of the goals of the Twelfth Replenishment, the Fund shall, at the direction of the Board of Directors, convene a meeting of representatives of State participants to review the situation and agree on practical steps aimed at fulfilling the conditions necessary for the continuation of the Fund's operations or for the substantial attainment of those goals.

10. General

- (a) **Allocation of Voting Rights**. For the purpose of determining the proportionate share of a State participant of the aggregate votes of the State Participants under Article 29(3) of the Agreement and to the extent that payment has been made, each increase in subscriptions by a State participant hereunder, shall be added to the subscriptions made by it under Articles 6 and 7 of the Agreement on the 31st of March, 30th of June, 30th of September and

31st of December of each year beginning with the coming into effect of this Resolution.

- (b) **Acceptance by State Participants.** Each State participant accepts the provisions of sub-paragraph (a) herein to the extent that its acceptance is required under Article 29(3) of the Agreement.
- (c) **Election of Executive Directors.** For the purposes of Article 27(6)(b) of the Agreement, elections for the Board of Directors shall take place during the annual meeting of the Board of Governors of the Fund in the year **2013**.
- (d) **Maintenance of Value.** The rights and obligations of State participants making additional subscriptions pursuant to this Resolution, of other State participants, of the Bank, and of the Fund, in respect of the additional subscriptions provided for in this Resolution shall (except as otherwise provided for in this Resolution) be the same as those which govern the initial subscriptions of original participants made pursuant to Article 6 of the Agreement, save that for the purpose of the valuation of additional subscriptions authorised by this Resolution, paragraphs (1) and (2) of Article 13 of the Agreement are hereby waived and shall not be applicable.

In accordance with Articles 6, 7 and 13(1) of the Agreement, State participants were under an obligation to maintain the free convertibility and value of the currencies used for their initial subscriptions and subscriptions made under the First Replenishment. Likewise, the Fund under Article 13(2) of the Agreement was obligated to return to a State participant an amount of the State participant's currency if the par value of such participant's currency has increased in terms of the Unit of Account. Since the Second Replenishment, the Fund, the Bank and State participants have agreed to waive the maintenance of value provisions for each replenishment, without adversely affecting the

- (e) **Administration of Subscriptions under previous Replenishments.** On the Effective Date of the Twelfth Replenishment, any funds, receipts, assets or other resources held by the Fund under the previous Replenishments will be administered under the Twelfth Replenishment in accordance with the terms and conditions of the Replenishment. The Fund is authorized to use such funds to provide financing in the form of loans and grants, including technical assistance grants.
- (f) **General Authorization.** The Board of Directors shall take all such measures, as shall be necessary or expedient, for the proper implementation of this Resolution in the light of the policy objectives and the operational guidelines set out in the Report.

11. Exchange Rates

Subscriptions made under this Resolution, as shown against each State participant in Annex 1, have been determined on the basis of daily exchange rates, averaged monthly, expressed in terms of currency units per SDR as given by the International Monetary Fund, for the six months period commencing **1 December 2009** and ending on and including **31 May 2010**.

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

SUBSCRIPTIONS TO THE TWELFTH REPLENISHMENT OF THE AFRICAN
DEVELOPMENT FUND

ADF-XII Standard Encashment Schedule

Encashment Year	Encashment Percentage
2011	5.03%
2012	10.34%
2013	14.76%
2014	15.07%
2015	12.99%
2016	11.17%
2017	10.14%
2018	9.13%
2019	8.33%
2020	3.04%