

AFRICAN DEVELOPMENT BANK GROUP



FRAMEWORK OF THE ZIMBABWE MULTI-DONOR TRUST FUND

REGIONAL DEPARTMENT
SOUTH REGION A (ORSA)

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1. CONTEXT

Zimbabwe's economic and social situation deteriorated significantly over the last ten years culminating in a severe humanitarian crisis in 2008; including widespread food shortages and a cholera epidemic. Following the signing of a Global Political Agreement (GPA) in September 2008, there has been an on-going dialogue between the Government of Zimbabwe (the "Government") and donors. The African Development Bank (the "Bank"), being a significant and committed contributor to development in Africa, having been established for the purpose of contributing to the sustainable economic development and social progress of its African member states, has been requested by a group of donors who are willing to assist Zimbabwe to establish and administer the Zimbabwe Multi-Donor Trust Fund (the "Zim-Fund"), as a complement to the on-going Analytical Multi-Donor Trust Fund ("AMDTF"), administered by the World Bank.

2. PURPOSE

The purpose of the Zim-Fund is to contribute to early recovery and development efforts in Zimbabwe by mobilizing donor resources and promoting donor coordination in Zimbabwe, so as to channel financial assistance to such efforts. Complementary to other existing funding mechanisms, the thematic scope of the ZimFund will focus initially on infrastructure investments (rehabilitation and/or construction works) in the areas of water & sanitation and energy. Critical to the achievement of these goals are: financial and technical support to activities that are consistent with the recovery priorities of the Government; mobilization of pooled donor resources based on a common understanding of the country's recovery needs and linked to effective coordination and complementarity with other related activities funded outside the trust fund; and efficient monitoring and evaluation of outputs and impact. . In line with the evolving Government needs, the scope can be reviewed and adjusted by the POC.

3. ESTABLISHMENT AND EFFECTIVENESS

- 3.1 The Zim-Fund was established on 31 May 2010 when the Board of Directors of the Bank approved, in accordance with Article 32 of the Agreement Establishing the African Development Bank, the recommendations contained in a document titled: Establishment of a Multi-Donor Trust Fund for Zimbabwe.
- 3.2 This Framework will become effective and the Zim-Fund operational on the date when the Bank will have received from donors to the Zim Fund ("Donors") pursuant to this Framework duly signed Contribution Letters or Agreements for funding in the form of grants (the "Contribution(s)") in an aggregate amount equivalent to forty million United States Dollars (USD 40,000,000).

4. CONTRIBUTIONS

- 4.1 Any state or any entity acceptable to the Bank may become a Donor.
- 4.2 This Framework will govern:

- 4.2.1 the participation in and contribution to the Zim-Fund by Donors; and
 - 4.2.2 the administration of Contribution(s) by the Bank for purposes of the Zim-Fund.
- 4.3 Each Donor will make Contributions to the Zim-Fund, in a specified amount to be made available in one or more tranches. The amount of each Contribution and the payment schedule for the Contribution will be agreed with each Donor and set out in a Contribution Letter or Agreement signed by the Donor and the Bank. The Contribution Letter or Agreement may be in the form provided in the Annex hereto.
- 4.4 Each Donor will on the specific dates agreed with the Bank deposit the proceeds of its Contribution in a United States Dollar special account to be opened by the Bank for the purpose of receiving the Contributions (hereinafter referred to as the "Zim-Fund Account"). The Bank may accept Contributions in any other currencies provided they are freely convertible, and will convert such Contributions into United States Dollars when received. The Bank will determine in its sole discretion whether a currency is convertible.
- 4.5 The Contributions will be administered and utilized by the Bank in accordance with the terms of this Framework and the Bank's rules and regulations exclusively for the purpose referred to in Section 2 of this Framework.
- 4.6 Contributions to the Zim-Fund will be for the benefit of all eligible activities and projects under this Framework. Unless otherwise decided by the POC, the Bank will not accept any Contribution that is conditional upon the Contribution being earmarked exclusively for one or more specified activities or projects.
- 4.7 The proceeds of the Contributions may be exchanged by the Bank into other currencies as may facilitate the utilization and administration of the resources contributed.
- 4.8 The Bank may invest and reinvest the proceeds of the Contributions, including accrued interest, pending their application for the purposes provided hereunder. The income from such investment or reinvestment will be retained in the Zim-Fund Account for use for the same purposes as provided herein.
- 4.9 Disbursements from the Zim-Fund will be in accordance with the terms of this Framework.

5. ELIGIBILITY

- 5.1 Subject to the terms of this Framework, financial assistance in the form of grants will be provided exclusively to support categories of projects as will be determined by the Program Oversight Committee (POC) of the Zim-Fund referred to in Section 6 of this Framework. All such grants (the Grants) will be provided consistent with the terms of this Framework and the Contribution Letters or Agreements.

- 5.2 The nominal recipient of the Grants (the Recipient) will be the Government which will be the party to the agreements with the Bank (the Grant Agreements). Disbursement of the Grants will be subject to the Bank's relevant rules and procedures, which will permit only direct payment to suppliers and contractors except in the case of very small amounts when payment will be made using a special account managed by the MMU or any agent designated by the MMU for that purpose. Project activities will be carried out through implementing agencies which may include United Nations Agencies, international organizations, civil society organizations, non-governmental organizations and private sector entities. Unless otherwise authorized in writing by the Bank, each of these implementing agencies will always use the services of an internationally renowned procurement agent approved by the Bank.

6. THE PROGRAM OVERSIGHT COMMITTEE OF THE FUND

- 6.1 The Bank will establish a Program Oversight Committee (the "POC") comprising as voting members, two representatives of the Government (one of whom will come from the Ministry of Finance and the second to be nominated by the Government), and representatives of one or more donors who have disbursed into the Zim Fund as at the date of effectiveness thereof, or who subsequently disburse into the Zim Fund a cumulative total of five million United States Dollars (USD 5,000,000). Donors who contribute less than USD5,000,000 may therefore pool their resources for purposes of obtaining representation on the POC. The tenure of those donors' representatives will be three (3) years; provided that donors as a whole will always be represented by at least 3 members on the POC. Should fewer than three donors or groups of donors qualify for representation on the POC by virtue of payments into the Zim-Fund as aforesaid, then donor representation on the POC will be by nominees of the three Donors who have paid the highest amounts into the Zim-Fund. In addition, the UN Resident Coordinator and a World Bank representative will be offered observer status on the POC. These arrangements are subject to continual review by the POC. The POC may invite representatives of other entities to attend one or more of its meetings as observers. The Head of the MDTF Management Unit referred to in Section 7.1 of this Framework will be the Secretary to the POC.
- 6.2 The POC will have two co-chairs: the Government of Zimbabwe and a representative of the contributing donors (on an annual rotational basis). The co-chairs will be responsible for facilitating the efficient and consensual working of the POC and effective implementation of the Zim-Fund. These co-chairs will not have a voting right and thus will have another voting member representing them at POC during this period. In the event that one or both Chairpersons of the POC are absent, the members of the POC may designate one of the other members to chair a meeting.
- 6.3 The functional responsibilities of the POC will be to oversee the implementation of the Zim-Fund generally, ensure the alignment and coherence of the activities of the Zim-Fund with the Government's recovery and development programmes, endorse project briefs and project proposals including the project costs¹ (by category) and budget, and recommend to the Bank the allocation of funding amounts to the endorsed projects in coordination with other activities funded within the priority sectors. The POC will also review progress in the

¹ See Operations Manual for clarity on what would represent eligible projects costs

implementation of the Zim-Fund and serve as a forum for continuous policy dialogue between the Government, the Bank and donors to the Zim-Fund.

- 6.4 The POC will determine its own procedures for the purpose of regulating its proceedings. Decisions of the POC will be made by consensus among voting members. In cases where consensus can not be reached, decisions may be taken exceptionally by a qualified majority (2/3), with one vote per member and with any decision receiving both Government votes. Two-thirds of the members of the POC will constitute a quorum. This mode of decision making will be assessed within 12 months.
- 6.5 As a rule the POC will meet quarterly but may meet more often at the initiation of the two Co- Chairs.

7. ADMINISTRATION OF THE FUND

- 7.1 Except as otherwise provided herein, or in operational procedures adopted by the Bank for purposes of the Zim-Fund, the Bank, as the Administrator of the Zim-Fund, will in accordance with its rules, regulations and policy guidelines, administer the Contributions through its own organization, services, officers and staff. As Administrator of the Zim-Fund, the Bank will be responsible for overall management of the resources of the Zim-Fund as well as the technical oversight, appraisal, quality control and the preparation, supervision and monitoring of projects. The Bank will set up an MDTF Management Unit (“MMU”) in Harare, Zimbabwe, which will be responsible for the collection and quality control of specific project proposals as submitted by implementing partners and the GoZ to be financed under the Zim Fund, as well as for the appraisal and processing of these projects. The MMU will provide the POC with operational and financial information on the Zim-Fund as necessary, to facilitate the discussions and decisions of the POC. Where necessary the MMU will be supported by the Bank’s Fragile States Unit, which may be charged with responsibility for the implementation of some of the Bank’s duties under this Framework.
- 7.2 This Framework is consistent with the terms and conditions set out in the paper titled “Establishment of a Multi-Donor Trust Fund for Zimbabwe” approved by the Board of Directors of the Bank. The Framework provides accordingly the more detailed implementation procedures which will govern the operations of the MDTF. Contributions will be administered in accordance with the terms of this Framework as may be modified or replaced from time to time by the mutual consent of the Donors and the Bank. The Bank will keep the resources of the trust fund separate and apart from all other accounts and assets of, or administered by the Bank.
- 7.3 The Board of Directors of the Bank will approve requests for financing exceeding the equivalent of two million Units of Accounts Units (UA 2,000,000). All other requests for financing will be approved in accordance with the Bank’s delegation of authority in respect of its Fragile States Facility.
- 7.4 The Bank will be responsible only for performing those functions specifically set out in this Framework Agreement and the Contribution Letters or Agreements between donors and the AfDB, and will not be subject to any other duties or responsibilities to the Donors, including, without limitation, any duties or obligations that might otherwise apply to a fiduciary or trustee under general principles of trust or fiduciary law. Nothing in this Framework will be considered

a waiver of any privileges or immunities of the Bank under the Agreement establishing the Bank or any applicable law.

- 7.5 In administering the Contributions, the Bank will exercise the same care in the discharge of its functions under this Framework as it exercises with respect to the administration and management of its own resources and affairs, and will have no further liability to any of the Donors in respect thereof.
- 7.6 When making payments, Donors will instruct their relevant service/financial intermediary to advise the Treasury Department of the Bank by SWIFT as to the amount of each payment into the Fund Account, the name and other relevant particulars of the Donor making payment, and the date of such payment.
- 7.7 All financial accounts and statements prepared in relation to the Zim-Fund will be expressed in United States Dollars.
- 7.8 The management of the Contributions will be subject to the usual internal financial control and audit procedures of the Bank.
- 7.9 The Bank will maintain separate records and ledger accounts in respect of the Contributions and disbursements thereof.
- 7.10 In the discharge of its operational functions, the Bank will:
 - 7.10.1 to the extent applicable, use the methods it employs to control disbursement of its own resources; and
 - 7.10.2 ensure that payments from the proceeds of the Contributions are made exclusively for the purposes of the Zim-Fund.
- 7.11 The selection and engagement of consultants, and the procurement of goods and services financed by the Contributions will be carried out in accordance with the Bank's Rules and Procedures for the Use of Consultants and the Rules and Procedures for Procurement of Goods and Works, respectively, both as amended from time to time; and the Procurement Principles for the Zim-Fund appended hereto. In the event of contradiction between the Bank's Rules and Procedures and the Procurement Principles, the latter will prevail.
- 7.12 The Bank's Policy requires it to charge a minimum of five percent (5%) of funds placed in its hands for administration, as administrative fees. In line with that policy, the Bank will deduct a non-refundable fee of five per cent [5%] of each Contribution upon receipt of the first payment of such Contribution, and will apply the amount deducted towards meeting the costs and expenses of administering the Contributions.

These costs and expenses will include, but may not be limited to costs pertaining to staff, equipment, rent, travel expenses, media, workshops, audits, and services required to perform the functions of the Zim-Fund Administrator. Costs and expenses in excess of five percent (5%) of the Contributions will be subject to prior agreement between the Bank and POC.

8. REPORTING

- 8.1 The Bank will, in accordance with its usual procedures, keep and maintain separate records of account of the proceeds of the Contributions and financial assistance provided from the Zim-Fund.
- 8.2 The Bank will furnish the Donors with the following documents, reports and financial statements:
 - 8.2.1 half-yearly reports on the implementation of the Zim-Fund and the use of the Contributions, which reports will include the monitoring and evaluation results pertaining to the Zim-Fund, within 90 days of the end of the reporting period;
 - 8.2.2 audited annual financial statements of Contributions received and the use of funds by project, in accordance with AfDB normal accounting practice and procedures and submitted within six months of the relevant accounting period;
 - 8.2.3 upon request by the Donors, at the Donors' cost and in consultation with the POC, produce exceptional financial audits, in respect of a specific project or the entire Zim-Fund; and
 - 8.2.4 A final report, to be submitted within one (1) year of the expiration of the Zim-Fund, including audited financial statements, summarizing assistance provided under the Zim-Fund, results achieved and overall Bank comments as to the efficacy of the Zim-Fund.
- 8.3 An independent Mid Term Review of the Zim-Fund will take place after two years of its operation, the cost of which will be met from the resources of the Zim-Fund.

9. TERMINATION OF THE FUND

- 9.1 If at any time after consultation with the Donors and the Government in the POC the Bank determines that the purposes of the Zim-Fund can no longer be effectively or appropriately carried out, it may terminate the Zim-Fund by giving the Donors not less than three (3) months' prior written notice to this effect.
- 9.2 Upon termination of the Zim-Fund, and unless the parties otherwise agree, any agreement entered into between the Bank on behalf of the Zim-Fund, an eligible beneficiary, and/or any third party prior to the effective date of the termination of the Zim-Fund will not be affected by the termination and the Bank will be entitled to continue to receive and disburse on behalf of the Zim-Fund the proceeds of the Contributions in respect of such agreements to the extent necessary in order to fulfil the Zim-Fund's obligations under such agreements as if the Zim-Fund had not been terminated. Except as otherwise agreed by each Donor, upon termination of the Zim-Fund, and following disbursements for any costs incurred in terminating the Zim-Fund (including, but not confined to, audit fees), the Bank will return to each Donor a *pro rata* portion of the funds in the Zim-Fund Account.
- 9.3 Any Contributing Donor or the AfDB may, upon three (3) months prior written notice, withdraw from the Fund. Upon withdrawal, a donor may cancel all or part of its share of any unutilised balance of funds in the Zim-Fund (calculated pro-rata on the basis of the withdrawing donor's payments into the Zim-Fund, as compared to the total of all payments by donors into the Zim-Fund) provided that

an amount equivalent to such payments has not been approved and/or allocated by the POC – at final project approval stage – and the Bank for financing of any project(s). The Bank will return such share of the unutilised balance to the withdrawing donor. Upon the expiration of the notice period the donor will be released from any obligations to make further payments to the Fund.

- 9.4 In the event a Donor or the AfDB chooses to withdraw from the Zim-Fund before formal POC commitment of funding but after approval by the POC of the Project Brief, the POC will be required to take a view on whether the project(s) should still proceed in its current form. If so, donors may agree to fill in the resulting financing gaps in the project(s). Withdrawing donors will be responsible for their pro-rata share of costs incurred in project preparation at the time of withdrawal. The Bank will not process any project that is not fully financed.
- 9.5 Should the terms of this Framework or a Contribution Letter not be met by either the Bank or one or more donors, any donor or the Bank may terminate their involvement in the Fund. For the Bank this would mean that all costs incurred in administering the fund will be met from the resources available within the Fund. For the donors this will mean that they will not be obligated to make any additional payment of their Contributions, and the relevant portion of the Donor funds will be returned to the Donor in accordance with Section 9 of this Framework.

10. AMENDMENT OF THE FRAMEWORK

- 10.1 Subject to prior agreement of all donors who have made payments into the Zim-Fund, this Framework may be modified with the approval of the Bank; provided that any amendments will not be inconsistent with the purpose, scope and overall objectives of the Zim-Fund. Donors will be promptly informed of any amendments to this Framework.

11. DISPUTE RESOLUTION

- 11.1 Any dispute arising out of or in connection with this Framework, including disputes concerning the interpretation or application of any provision herein contained will be settled amicably by the parties.

12. GENERAL PROVISIONS

- 12.1 Administration of the Zim-Fund will not be assigned by the Bank without the prior consent of the Donors.
- 12.2 In the event that the approval of the Donors is sought by the Bank on any matter, such matter will be deemed approved by a Donor if it will not have communicated its concurrence or objection to such matter within thirty (30) days from the date of receipt of the request.
- 12.3 The Zim-Fund will be effective for a period of [five (5)] years from its effective date, unless extended by mutual agreement of the Bank and at least two (2) Donors.

ANNEX

[On Donor's Official Letterhead]

The Secretary General
African Development Bank
15 Avenue de Ghana
B.P. 323-1002 Tunis Belvédère
TUNISIA

Dear Sir/Madam:

[Name of Donor] hereby promises to pay its Contribution to the Zimbabwe Multi-Donor Trust Fund (the “Zim-Fund”) as follows:

Date of Payment	Currency of Payment	Amount of Payment
Total		

[Name of Donor] agrees that the Framework of the Zim-Fund will govern: (i) its participation in and contribution to the Zim-Fund; and (ii) the administration of its Contribution(s) to the Zim-Fund by the Bank.

[In administering the Contribution, the Bank will not knowingly violate the relevant laws of the Donor countries relating to the use of the Contribution.]²

[The Contribution shall be administered in accordance with the Bank's applicable policies and procedures, as the same may be amended from time to time, including its Framework to Prevent Combat Fraud and Corruption, and its strategy for the Prevention of Money Laundering and Terrorist Financing in Africa, in line, to the extent applicable, with the relevant decisions of the Security Council, taken under Chapter VII of the Charter of United Nations. The Donor acknowledges that this provision does not create any obligations of the Bank under the anti-terrorist financing and asset control laws, regulations, rules and executive orders of an individual member country that may apply to the Donor, nor shall it be deemed a waiver, express or implied, of any of the privileges and immunities of the Bank.]

² Optional: to be used by Donors who may wish to include this sentence.

Done at [City] this day of , 20[]

For and on behalf of [Name of Donor]

Accepted for and on behalf of the African Development Bank

[Signatory]