

Appraisal / Approval

Document Type:

Legal Agreements for Public Sector Projects and Programs

Applicable Documents:

- Loan Agreement (Ordinary Resources/Project or Program, etc.)
- Loan Agreement (Special Resources/Project or Program)
- Project or Program Agreement
- Guarantee Agreement
- Grant Agreement (Project or Program)
- Financing Agreement
- TA Loan Agreement
- TA Financing Agreement
- MFF Loan Agreement (Ordinary resources)
- MFF Loan Agreement (Special resources)
- MFF Project Agreement
- MFF Grant Agreement
- MFF Guarantee Agreement

PCP Disclosure Requirements:

1. Public sector loan agreements, Asian Development Fund (ADF) grant agreements, and project agreements entered into on or after 1 September 2005 are posted on ADB's website together with its associated RRP. These are posted on ADB's website after excising confidential information. Any amendments thereto are also posted on the website within 2 weeks of effectivity of the amendments (PCP para. 103).
2. Public sector loan agreements, project agreements, and any amendments entered into by ADB before 1 January 1995 will need government's consent before making such documents available (PCP para. 101).
3. Public sector loan agreements, project agreements, and any amendments entered into by ADB between 1 January 1995 and 1 September 2005 will be made available upon request, after excising confidential information specified as such by the government during negotiations (PCP para. 102).
4. Legal agreements pertaining to private sector projects contain confidential business information and are not disclosed, as per paragraph 104 of the PCP (2005).

Guide to Staff:

1. During loan negotiations, OGC counsel explains to the government the disclosure requirements and exceptions to presumed disclosure pertaining to legal agreements. OGC staff must ask the government if it wants to remove confidential information or withhold the document in accordance with the list of exceptions to presumed disclosure in PCP paragraph 126. This should be noted and reflected in the minutes of the loan negotiations.
2. A DMS planning form for the legal agreement of a project is created once a project record is created in DMS. This can be viewed only by OGC staff.

Public Communications Policy: Disclosure and Exchange of Information

For inquiries, call the InfoUnit at ext. number 5316 or send an e-mail to disclosure@adb.org

Initial Submission of the Legal Agreement Prior to Board Consideration

3. Upon circulation to the Board, OGC counsel/assistant submits the soft copy of the negotiated draft (unsigned legal agreement) to DMS for temporary internal storage. OGC counsel should first remove confidential information from the document as specified during loan negotiations (see Procedure for Removing Confidential Information in paras 14-16 below).
4. To submit the document, OGC counsel/assistant need to log into [DMS](#), open the project record and search for the project using the 5-digit project number or title of the project in the 'Search' field.
5. In the document form, staff clicks on 'Edit', indicates the appropriate subtype, enters the document title as it appears on the cover of the legal agreement, attaches the pdf version of the unsigned legal agreement, and clicks on 'Save & Exit'.
6. If the entire document is considered confidential and will be withheld from public disclosure, the document should not be uploaded in DMS and OGC counsel/assistant will need to delete the legal agreement document type in DMS by clicking on the trash can icon to indicate that the document is deemed confidential and will not be disclosed (see Procedure for Withholding the Entire Document from Public Disclosure in paras 17-18 below).

Replace Unsigned Legal Agreement and Approve Posting to Web

7. When the RRP for the project has been approved, DMS will send an email alert to ogcdms@adb.org. The OGC coordinator monitoring this email address enters DMS through the email alert and verify whether the negotiated draft (unsigned legal agreement) has been submitted to DMS, or if needed, replace the previously submitted document, and approve the posting on ADB's website.
 - a. If the unsigned legal agreement has not been submitted yet, OGC coordinator reminds the OGC counsel/assistant to submit it in DMS by following the initial submission process above (nos. 4 and 5). When the agreement is in DMS, OGC coordinator checks the record and clicks on 'Approved' in the 'Select Action'. Coordinator then clicks on 'Save & Exit' to send the document to the web queue.
 - b. If the legal agreement has been submitted and no edits on the document were made, coordinator selects 'Approved' in the 'Select Action' and clicks on 'Save & Exit'. This will send the document to the web queue.
 - c. If the legal agreement has already been submitted but an error was made, staff OGC counsel/assistant clicks on 'Replace Unsigned' in the 'Select Action' and attaches the document to DMS. This will overwrite the previously submitted legal agreement. Clicking on 'Save & Exit' will send the document to the web queue.

Submit Signed Copy of the Legal Agreement for Posting to Web

8. Once the legal agreement for a project is signed in-country, OGC counsel/assistant submits the signed agreement in DMS and removes confidential information as indicated by government, if not done before.
9. To submit the signed agreement in DMS OGC counsel/assistant logs into DMS and opens the project record and follow these steps:
 - Click on 'Update' and select 'Signed' under 'Select Action
 - Click on the calendar icon to indicate the date when the legal agreement was signed for the field Signed Agreement Date
 - Click on 'Attach File' to submit the signed legal agreement

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- Click on 'Save & Exit' to send the signed legal agreement to web queue for posting on the web
10. The signed agreement will replace the unsigned agreement previously submitted and posted on the web.

Submit Amended or Restated Legal Agreements for Posting to Web

11. During project implementation, there may be amendments to the legal agreement. OGC counsel/assistant submits these amendment documents to DMS for public disclosure within 2 weeks of their effectiveness.
12. OGC counsel/assistant logs into DMS and opens the project record and follow these steps:
 - Click on 'Update' and select one of the following under 'Select Action'
 - ✓ 'Restated' if the signed legal agreement posted on the web needs to be replaced
 - ✓ 'Amended' if the amendment document (usually in the form of a letter signed by the borrower and ADB) needs to be appended to the signed legal agreement posted on the web. If this action is chosen, OGC staff also has to enter the date of effectivity of the amendment in the calendar icon.
 - Click on 'Attach File' to submit the document
 - Click on 'Save & Exit' to send document to web queue for posting on the web
13. If the same amendment letter applies to several types of legal agreements, OGC counsel/assistant must submit the file to append the amendment to each type.

Procedure for Removing Confidential Information:

14. OGC counsel removes confidential information in the legal agreement as indicated by the government during loan negotiations before submitting the document for public disclosure.
15. A disclaimer should also be included on the cover page of the legal agreement to state: "This document has confidential information removed in accordance with paragraph 126 or exceptions to presumed disclosure of ADB's Public Communications Policy."
16. For legal agreements that will exclude confidential information, remove only the confidential text, not the headings. In place of the confidential text, insert the following, in brackets: "this information was deemed confidential according to exception # [cite number] of ADB's Public Communications Policy."

Procedure for Withholding the Entire Document from Public Disclosure:

17. If the entire document must be withheld from disclosure because all of its contents meet the exception criteria in PCP paragraph 126, OGC counsel/assistant clicks on the trash icon in DMS to remove the document type to indicate that the document will not be disclosed to the public.
18. In accordance with PCP paragraph 123, staff must still make reference to the document on the web site. Submit the document title to DER at docs4web@adb.org indicating that the document itself will not be made publicly available.

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