

3 DISBURSEMENT POLICIES

Basic Principles

- 3.1 The *Agreement Establishing the ADB* (the *Charter*) states three main principles of disbursement for development projects:
- The proceeds of any loan, investment, or other financing provided by the Bank shall be used only for procurement in member countries of goods and services produced in member countries unless specifically permitted by its Board of Directors (*Article 14[ix]*).
 - The borrower shall be permitted by the Bank to draw its funds only to meet expenditures in connection with the project as they are actually incurred (*Article 14[x]*).
 - Proceeds of any loan made, guaranteed, or participated by the Bank are used only for the purposes for which the loan was granted and with due attention to consideration of economy and efficiency (*Article 14[xi]*).
- 3.2 The borrower can withdraw loan funds only after the loan agreement becomes effective.

Loan or Grant Regulations

- 3.3 General standard terms and conditions governing loans or grants made by ADB are in the *Ordinary Operations Loan Regulations*, the *Special Operations Loan Regulations*, the *Special Operations Grant Regulations*, the *Asian Tsunami Fund Grant Regulations*, or the *Pakistan Earthquake Fund Grant Regulation*. These documents are expressly incorporated in the associated loan agreement, guarantee agreement or grant agreement. If any provision of a loan agreement, guarantee agreement, or grant agreement is inconsistent with a provision of these regulations, the provision of the loan agreement, guarantee agreement, or grant agreement governs.

Loan Documents

- 3.4 The **loan agreement** for a project sets out the loan's terms and conditions. In addition, other agreements may also form part of the legal documentation, as follows:

-
- A **guarantee agreement** is an agreement between ADB and a borrowing member country as guarantor of the loan when ADB lends directly to a nonmember entity.
 - A **project agreement** is an agreement between ADB and the project executing agency (EA) of the borrower specifying requirements related to physical implementation of the project, procurement provisions, and financial aspects, including the maintenance of project accounts and the use of imprest fund and statement of expenditures (SOE) procedures.
 - A **subsidiary loan agreement** is a relending or onlending agreement between borrowing member country and its sub-borrower.
 - Other financing agreement that may be required to form part of the legal documentation prior to disbursement under private sector operations such as common terms agreement, participation agreement, and inter-creditor agreement.

Loan Milestone Event Dates

3.5 Major loan milestone event dates include the following:

- **The approval date** is the date the loan is approved by ADB's Board of Directors. This date is also used for determining the loan amortization schedule as shown in Schedule 2 of the loan agreement. For a loan under Multitranches Financing Facility (MFF), the approval date is the date the subproject/loan is approved by Management.
- **The signing date** is the date the loan agreement is signed by the borrower and ADB. For OCR loans, commitment charges will start to accrue on the 60th day after the loan signing date.
- **The effective date** is the date, as determined by ADB, when all conditions of effectiveness of the loan agreement have been fulfilled by the borrower and disbursements may be made from the loan account.
- **The project completion date** is the date on which the project is considered physically completed. This date precedes the loan closing date.
- **The loan closing date** is the date ADB may terminate the right of the borrower to make withdrawals from the loan account. Expenditures incurred after the loan closing date will not be financed under the loan. In special circumstances, ADB may allow up to 3 months after the loan closing date for the borrower's withdrawal applications to reach ADB or for the borrower to liquidate fully expenditures incurred before the loan closing date or refund any outstanding imprest account balances.

Retroactive Financing

- 3.6 **Retroactive financing** is the financing of project expenditures incurred by the borrower before a loan agreement becomes effective.
- 3.7 ADB may approve retroactive financing, at the borrower's request, to finance some expenditures incurred prior to loan effective date but not earlier than 12 months before signing the loan agreement. Period longer than 12 months may be allowed if justified in the Report and Recommendation of the President (RRP). The loan agreement contains a specific authorization indicating the amount and category of expenditures and the date from which the expenditures are considered eligible.
- 3.8 Retroactive financing applies to all eligible expenditures as agreed between ADB and the borrower.

Reallocating Loan Proceeds

- 3.9 The proceeds of an ADB loan are used only for the purposes for which the loan was granted. No disbursements therefore are made directly from the "unallocated" category of the loan agreement. ADB may agree to a borrower's request to reallocate funds from the "unallocated" or other categories to another allowable category for purposes of the project. Normally the loan proceeds are reallocated after project progress has been reviewed with the borrower during a review mission.

Loan Cancellation

- 3.10 Provisions for loan cancellation, suspension, and acceleration of maturity are contained in the *Loan Regulations*¹ which provides that after consultation with ADB and with the concurrence of the guarantor, if any, the borrower may, by notice to ADB, cancel any amount of the loan which has not been withdrawn. The effective cancellation date is when ADB receives the borrower's notice of such cancellation.
- 3.11 Under the *Loan Regulations*, ADB may also, by notice to the borrower and the guarantor, if any, cancel² any unwithdrawn amount of the loan when:
- the borrower's right to make withdrawals from the loan account has been suspended for a continuous 30 days;
 - ADB determines, at any time and after consultation with the borrower, that any amount of the loan will not be required for purposes of the project;

¹ Loan Regulations refer to Ordinary Operations Loan Regulations and Special Operations Loan Regulations, unless specified.

² The effective date of cancellation is the date of such notice by ADB to the borrower or the date specified in the notice to the borrower.

-
- ADB determines, with respect to any contract to be financed out of the proceeds of the loan, that corrupt or fraudulent practices were engaged in by representatives of the borrower, the guarantor, or any beneficiary of the loan during the procurement of goods or services, consultants' selection or the execution of the contract, without the borrower or guarantor having taken appropriate action to remedy the situation;
 - ADB determines that the procurement of any goods and services to be financed out of the proceeds of the loan is inconsistent with the procedure set out in the loan agreement; or
 - an amount of the loan remains unwithdrawn from the loan account by loan closing date.

Upon giving such notice, ADB cancels any unwithdrawn amount of the loan.

Suspending Withdrawals

3.12 ADB may suspend in whole or in part the borrower's right to withdraw from the loan account, as provided in the *Loan Regulations* if, after the date of the loan agreement, there is

- nonpayment of principal, interest, or any other charge;
- nonperformance of any obligation under the loan, guarantee, or project agreements;
- nonfulfillment by the borrower, the guarantor, or the EA of certain conditions necessary for carrying out its project successfully;
- suspension or cessation of membership of the borrower;
- misrepresentations made by the borrower or the guarantor;
- dissolution of the borrower or EA; or
- any other event as specified in the loan agreement.

Accelerating Maturity

3.13 If certain events as indicated in the loan agreement or in the *Loan Regulations* occur and continue for the period, ADB may declare as due and payable immediately the principal of the loan then outstanding, together with all accrued interest and other charges.