

8 COMMITMENT PROCEDURE

Description

- 8.1 Under the **commitment procedure**, ADB, at the borrower's request, irrevocably agrees to reimburse a commercial bank for payments made or to be made to a supplier against an LC.
- 8.2 ADB's payment assurance under this procedure is limited to the amount available in the loan account.
- 8.3 Under this procedure, the LC issued by the borrower's bank (LC issuing bank) becomes operative only if and when ADB issues its commitment letter to the advising or negotiating bank in the supplier's country.
- 8.4 A commitment letter issued by ADB under this procedure is irrevocable in the sense that ADB's obligation is not affected by the suspension or cancellation of the loan.

Basic Requirements

- 8.5 A signed application for issuance of commitment letter in the form ADB-CL (*see Appendix 6*) is submitted to ADB together with a summary sheet for the commitment letter (*see Appendix 9*) and the required supporting documents. A separate application is required for each currency in which a commitment letter is requested.

Supporting Documents

- 8.6 Supporting documents to be submitted to ADB with the application for commitment letter include
- a contract or confirmed PO, if not yet submitted earlier to ADB; and
 - two signed copies of the LC against which ADB's commitment letter is requested.

Issuing the Commitment Letter

- 8.7 Upon approval of the borrower's application for a commitment letter, ADB issues a commitment letter (*see Appendix 15*) to a commercial bank specified in the LC. A copy of the commitment letter is also provided to the borrower for information.

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- 8.8 In cases that the letter of credit indicated separate advising bank and nominated commercial bank, ADB will issue the commitment letter to the nominated commercial bank, with a copy provided to the advising bank. Indicating “negotiation with any bank” is not acceptable.
- 8.9 No commitment letter is issued if shipment or LC expiry date fall beyond the loan closing date.

Accepting the Commitment Letter

- 8.10 The nominated commercial bank’s first request for payment under the commitment letter constitutes its acceptance of the terms and conditions of ADB’s commitment.

Payment to Commercial Banks

- 8.11 ADB pays from the loan account after the receipt of the confirmation from the supplier’s nominated commercial bank (normally a negotiating bank) which has paid for or agreed to pay in accordance with the LC terms.
- 8.12 Requests for reimbursement from the nominated commercial bank are made in authenticated SWIFT or tested telex. The words “**(i) LC terms have been fully complied with, (ii) documents were presented within the original expiry date or expiry date as extended, and (iii) discrepancies, if any, have been referred to and accepted by LC issuing bank**” or the word “**Condiment**” must be written on the request for reimbursement. (*see Appendix 16 for ADB’s payment instructions to the advising or negotiating bank*).

Amendments to the LC

- 8.13 The borrower requests ADB’s approval of amendments to the LC as soon as the LC amendment is obtained from the LC issuing bank (*see Appendix 17*). Copy of the signed amendment must be attached to the request.
- 8.14 ADB communicates its approval to the nominated commercial bank and the borrower by the form shown in *Appendix 18* or by authenticated SWIFT, tested telex, or a formal letter of approval.
- 8.15 ADB can allow the borrower, in urgent cases, to send its application for approval to amend the LC by fax. The message is to include loan number, commitment letter number, LC number, and nature and reason for the amendment. Copy of the LC amendment should be attached to the application.
- 8.16 The message must state that the amendment has been made by the LC issuing bank and that the application for approval of amendment of LC and a copy of the LC amendment are being airmailed to ADB.

- 8.17 Amendments to the LC for: (i) extending the expiry date and shipping dates **up to the loan closing date**; and (ii) other amendments except those mentioned in para. 8.18 need not be submitted to ADB for approval. The borrower merely informs ADB using the standard form (*see Appendix 19*) and submits a signed copy of the amendment. This will ensure ADB's prompt payment of claims received from the nominated commercial bank.

Amendments Requiring ADB's Prior Approval

- 8.18 ADB's prior approval is required for amendments to the LC involving changes such as
- extension of the LC expiry date beyond the loan closing date of the loan account, as specified in the loan agreement, or otherwise extended by ADB;
 - change in the LC's value or currency;
 - description or quantity of goods;
 - country of origin;
 - beneficiary; and
 - terms of payment.
- 8.19 The nominated commercial bank(s) are to copy all proposed amendments to ADB for its information or approval.

Limitation of ADB's Commitment

- 8.20 A borrower, when requesting a commitment letter, agrees in the application form that if the US Dollar or SDR¹ equivalent as specified in ADB's commitment is exceeded at the time of ADB's payments due to currency fluctuations, ADB may use the uncommitted portion of the loan to cover the deficiency. If the uncommitted portion of the loan is insufficient, the borrower agrees to pay the remaining obligation promptly under the LC after receiving ADB's notice.

Discrepancies

- 8.21 ADB is unable to honor the payment claim of the nominated commercial bank if there is any discrepancy between the shipping documents and the LC terms. In such event, the nominated commercial bank must seek through the LC issuing bank the borrower's authorization to pay despite such discrepancy.

¹ Special Drawing Rights (SDR) refers to a basket of currencies consisting of US dollar, Japanese yen, pound sterling, and euro.

Linking the LC to the Commitment Letter

8.22 The LC is linked to ADB's commitment letter with the following clause:

"This letter of credit is established under Asian Development Bank Loan ____ (number) and becomes effective only if and when the Asian Development Bank issues its commitment letter to the nominated commercial bank. For payment, please follow the instructions contained in the commitment letter."

8.23 Alternatively, the LC need not have the clause. Instead, it is immediately operative on the strength of the LC issuing bank's commitment to finance the transaction. ADB's commitment, if and when issued, will shift the financing commitment from the LC issuing bank to ADB. In this case, the LC contains the following clause:

"The financing of this letter of credit is undertaken by _____ (LC issuing bank). However, it is established under Asian Development Bank Loan _____ (number), and if and when the Asian Development Bank issues its commitment letter to the advising or negotiating bank, the latter shall follow the provisions contained in the said commitment letter, and claim payment or reimbursement from the Asian Development Bank."

8.24 The narrative procedures for the commitment procedure are in *Appendix 20*.

CHECKLIST

The Letter of Credit

1. Are the contract terms reflected correctly in the LC?
2. Does the LC contain a clause relating it to the commitment letter?
3. Is the LC free of any restrictive clause against or in favor of any ADB member country (e.g., shipping restriction or preference)?
4. Are the LC expiry date/shipping dates and warranty period within the loan closing date?
5. Does the LC indicate only one advising bank?

The Application

1. Are the goods being procured from ADB member countries?
2. Has the pertinent contract been sent to ADB?
3. Is the application for commitment letter signed by an authorized signatory?
4. Are expenditures eligible for financing under ADB loans?
5. Has a separate application been accomplished for each currency?