

## **OPERATIONS MANUAL BANK POLICIES (BP)**

*These policies were prepared for use by ADB staff and are not necessarily a complete treatment of the subject.*

### **GUARANTEE AND SECURITY ARRANGEMENTS FOR ADB LOANS<sup>1</sup>**

#### **A. Introduction**

1. Article 11 of the *Agreement Establishing the Asian Development Bank* (the Charter) states that ADB may provide or facilitate financing to any member, agency, instrumentality, or political subdivision of a member, entity or enterprise operating in the territory of a member, or international or regional agency concerned with the economic development of the region. Article 15.2 of the Charter provides that, if the recipient of loans or guarantees of loans is not a member of ADB, ADB may, when it deems advisable, require that the member in whose territory the project concerned is to be carried out, or a public agency or any instrumentality of that member acceptable to ADB, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.

#### **B. The Policy**

2. When making a loan to a member, ADB may generally rely on the full faith and credit of the member for repayment of the loan. When making a loan to a nonmember, a guarantee by the relevant member is the most effective means of protecting ADB's interests.

#### **C. Scope of the Policy**

3. In making a loan to a developing member country (DMC), ADB pays particular regard to the financial viability of the project and the creditworthiness of the proposed borrower. However, ADB, like any financial institution, must consider whether to take additional measures to protect itself in the event of default by the borrower.

4. When ADB makes a loan to a DMC, the full faith and credit of the member stands behind the obligations of repayment. No special safeguards to protect ADB in the event of default are considered necessary.

5. When ADB makes a loan to an agency, instrumentality, or political subdivision of a member, it must examine in detail the borrower's standing in terms of the full faith and credit of the DMC government. To the extent that such standing falls short of the full faith and credit of the DMC government, the fullest protection against default may be possible only through securing for the loan a guarantee from the DMC government.

---

<sup>1</sup> This OM section does not deal with policies and procedures regarding guarantee operations of ADB for loans from others, nor with ADB's private sector operations.

6. When the borrower is any other entity or enterprise in the territory of a DMC, ADB needs to consider whether to obtain a guarantee from a third party, e.g., the DMC government, and/or to obtain from the borrower some other appropriate form of security in order to protect itself in the event of default by the borrower. In general, a guarantee by the relevant DMC government is the most effective means of protecting ADB's interests. Therefore, ADB normally protects itself against default by obtaining a government guarantee from the DMC government concerned. If the DMC government lacks the necessary guarantee power, consideration is given to making the loan to the DMC government for onlending to the nonmember, or through a public agency that can, in effect, pledge the full faith and credit of the DMC government. Alternatively, the loan might be made through a public agency when the DMC government is empowered to guarantee the loans to such agency. These considerations are particularly applicable in the case of loans from Special Funds resources.

7. When the borrower is a regional or international agency, appropriate safeguards against default depend on the character and composition of the agency. If member governments participate in the agency, ADB has to determine the extent to which they have subscribed to the financial liabilities of the agency to determine the appropriate safeguards. If such an agency is not formed on the basis of participation of member governments, its status as a borrower may legally or virtually be the same as a private entity borrowing from ADB, and may involve nearly the same factors in the consideration of safeguards against default.<sup>2</sup>

8. ADB's standard form of government guarantee agreement gives ADB the legal right of prompt collection from the guarantor as soon as a qualifying default occurs. This empowers ADB to demand repayment of the loan without the necessity of prior demand on the borrower. The guarantee agreement provides that the obligations of the guarantor will not be impaired by any extension of time or other concession granted to the borrower, or by failure of ADB to press available remedies. It also reinforces the provision of ADB's loan regulations that the validity and effect of a guarantee agreement is not affected by municipal or any other applicable law.

---

<sup>2</sup> OM Sections D9 (Guarantee Operations) and D10 (Private Sector Operations) provide guarantee and related policies applicable to ADB's private sector operations.

- Basis:** This OM section is based on:  
  
ADB. 1970. Doc. R45-70. *Guarantee and Other Security Arrangements*, 26 August. Manila.
- Compliance:** This OM section is subject to compliance review.
- For inquiries:** Questions may be directed to the General Counsel, Office of the General Counsel.

**OPERATIONS MANUAL  
OPERATIONAL PROCEDURES (OP)**

*These procedures were prepared for use by ADB staff and are not necessarily a complete treatment of the subject.*

**GUARANTEE AND SECURITY ARRANGEMENTS FOR ADB LOANS**

This OM section does not contain operational procedures.