

Project Administration Instructions

PAI 1.03
Revised June 2009
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SIGNING OF LOAN, GRANT AND TECHNICAL ASSISTANCE LETTER/AGREEMENTS

A. Introduction

1. This PAI outlines the procedures for dealing with delays in loan, grant and technical assistance signing and establishes a time frame for such actions.

B. Loans and Grants

1. Delays in Signing and Lapsing of Approval

2. The borrower or recipient and ADB sign the loan agreement or grant agreement after the Board's approval of an ADB loan or grant to a developing member country (DMC) or its agency. The loan agreement or grant agreement is signed by an authorized representative of the borrower or the recipient and the President (or an authorized representative of the President). Subsequently, the ADB loan agreement or ADB grant agreement becomes effective after the borrower or recipient complies fully with the conditions of effectiveness as stipulated in the agreement and the relevant regulations. Every effort should be made to sign related agreements (i.e., project agreement and guarantee agreement) at the same time.

3. Timely signing of the loan agreement or grant agreement and subsequent fulfillment by the borrower or recipient of the conditions necessary for loan or grant effectiveness are essential for smooth project implementation under the implementation schedule outlined in the report and recommendation of the President (RRP) and the project performance report. Given the limited resources available to ADB and considering the increasing demands of the DMCs for external assistance, every effort should be made by the borrower or recipient and ADB to have loan agreements or grant agreements signed without undue delay. Provisions are made in the project performance rating system for monitoring loan agreement or grant agreement signing and effectiveness (PAI 5.10).

4. The validity of ADB approval of a loan or grant lapses automatically within a maximum period of 12 months after the date of Board approval for the loan or grant unless the loan or grant and related agreements are signed within that period or the validity is extended. The precise period of validity of the approval for each loan or grant will be agreed between the borrower or the recipient and the regional department concerned, and such agreement documented appropriately. The operations coordination division/unit (OCD/U) will indicate the validity period to the borrower or recipient concerned in a routine communication after loan approval.

5. The regional or resident mission (RM) or, if required, OCD/U concerned will regularly send formal reminders to the DMC requesting early signing.

6. One month prior to the expiry of the specified validity period, if the loan agreement or grant agreement remains unsigned, the director general concerned will send a final reminder advising the DMC concerned of the impending expiry of validity.

7. One week prior to the expiry of the specified validity period, if the loan agreement or grant agreement still remains unsigned, the director general may send a memorandum to the vice-president concerned recommending extending its validity for a maximum of three months (or longer if special circumstances prevail).

8. The vice-president's decision will depend on the recommendation of the director general and an assessment of the case. This will include whether delay will affect benefits and costs, and the commitment of the DMC government or recipients to the project and its priority.

9. If extended, the validity of the approval of the loan or grant will lapse on expiry of the extension. The RM or, if required, OCD/U will inform the borrower or recipient of the extension, emphasizing that this is the only extension and that the loan or grant will lapse when the extension expires. The Board is informed of this extension through the Quarterly Portfolio Updates. The RM or, if required, OCD/U will advise the Central Operations Services Office (COSO) and OGC about the extension.

10. When a loan or grant approval lapses, the director general concerned will immediately communicate this to the borrower or recipient. The RM or, if required, OCD/U will prepare and circulate a brief Board information paper explaining the lapse of the validity of approval. The RM or OCD/U will advise COSO, OGC, and the Controller's Department (CTL) accordingly.

2. Following Signing

11. Once the loan, grant and any other legal agreements have been signed, OGC will prepare a loan or grant effectiveness letter stipulating all conditions the borrower or recipient must fulfill in order to have the loan or grant declared effective (PAI 1.04). The loan effectiveness letter is signed by the director, user division.

12. The RD concerned will deliver the original loan agreements or grant agreements to OGC after signing. Usually, one original of the signed loan agreement or grant agreement should be delivered by OGC to the executive director for the concerned DMC and the other original to the Office of the Secretary (SEC), with a copy to other relevant departments and offices such as the relevant regional department and CTL.

C. Technical Assistance

1. Delay in Signing and Lapsing of Approval

13. In the case of sovereign technical assistance (TA) approved by the relevant authority¹ within ADB, different scenarios can apply in relation to the agreement to be entered into with the DMC government. First, one needs to consider whether the DMC government has entered into a TA framework agreement (TAFAs) with ADB. If the DMC government has not entered into a TAFAs with ADB, a stand-alone TA agreement will need to be entered into between ADB and the DMC government. The stand-alone TA agreement will be prepared by the Office of the General Counsel (OGC). The stand-alone TA agreement is signed by authorized representatives of the DMC government and ADB.

¹ See Operations Manual section D12 for the authorities of ADB which can approve a TA.

14. If the DMC government has entered into a TAFA with ADB, two different procedures may apply.
15. The normal procedure is the "deemed approval" procedure which is described in Operations Manual section D12 Operational Procedures. The "deemed approval" procedure implies that the TA letter signed by ADB and sent to the DMC government² is deemed approved by the DMC government 21 days after the date of said TA letter without having to be signed by the DMC government.³ The TA letter is prepared by the project officer and, where necessary reviewed by OGC. The TA letter is signed by an authorized representative of ADB. The TA letter does not need to be signed by the DMC government.
16. In the case where the "deemed approval" procedure is not applicable,⁴ the TA letter will be signed by ADB and by the DMC government. The TA letter is prepared by the project officer and, where necessary, reviewed by OGC. The TA letter is signed by an authorized representative of ADB and sent for signing to the DMC government.⁵ The validity of ADB approval of a TA lapses automatically 12 months after the date of TA approval unless the related agreements are signed within that period or the validity is extended. The user department or office will indicate the validity period to the concerned DMC government in a routine communication after TA approval.
17. Timely signing of TA stand-alone agreement or TA letter⁶ is a prerequisite for smooth TA implementation, and in the TA performance report system for monitoring TA agreement signing (PAI 6.09).
18. The user department or office concerned will regularly send formal reminders to the DMC government requesting early signing.
19. One month prior to the expiry of the validity period, if the TA stand-alone agreement or TA letter remains unsigned, the head of the user department or office concerned will send a final reminder advising the DMC government concerned of the impending expiry of validity.
20. One week prior to the expiry of the validity period, if the TA stand-alone agreement or TA letter still remains unsigned, the head of the user department or office may send a memorandum to the vice-president concerned recommending extending its validity for a maximum of three months (or longer if special circumstances prevail).

² Where the executing agency for the TA is a legal entity different from the government, the TA letter is also sent to the executing agency (See Operations Manual section D12/ Operational Procedures for details).

³ Operations Manual section D12/ Operational Procedures specifies that the DMC government may require an extension of the 21 day period before the expiration of such 21-day period.

⁴ See Operational Manual section D12/Operational Procedures.

⁵ Where the executing agency for the TA is a legal entity different from the government, the TA letter is also sent for signing to the executing agency (See Operations Manual section D12/ Operational Procedures).

⁶ This only applies to a stand-alone TA agreement or to a TA letter where the DMC government has opted for the formal signing of the TA letter. In the case of a TA letter processed under the "deemed approval" procedure, the TA letter does not need to be signed by the DMC government.

21. The vice-president's decision will depend on the recommendation of the head of the user department or office and an assessment of the case. This will include whether delay will affect benefits and costs, and the commitment of the DMC government or recipients to the TA and its priority.

22. If extended, the validity of the approval of the TA will lapse on expiry of the extension. The head of the user department or office will inform the DMC government or recipients of the extension, emphasizing that this is the only extension and that the TA will lapse when it expires. The Board is informed of this extension through the Quarterly Portfolio Updates. The user department or office will advise the Central Operations Services Office (COSO) and OGC about the extension.

23. When a TA approval lapses, the head of the user department or office concerned will immediately communicate this to the DMC government or recipient. The user department or office will prepare and circulate a brief Board information paper explaining the lapse of the validity of approval. The user department or office will advise COSO, OGC, and the Controller's Department (CTL) accordingly.

2. Following Signing

24. In cases where the "deemed approval" procedure is not applicable, the original TA letter after signing is usually returned by the DMC government directly to the user department or office and it should be forwarded directly to SEC with a copy to COSO, CTL and OGC without delay. The transmittal memo to the Secretary, SEC, should clearly indicate the date the TA letter was signed on behalf of the government⁷ and the name and title of the authorized representative. If there is any doubt whether the TA letter has been duly signed on behalf of the government,⁸ OGC should be consulted. Stand-alone TA agreements should be handled in the same manner as a loan or grant agreement.

⁷ Where the executing agency for the TA is a legal entity different from the government, the date the TA letter was signed by the executing agency should also be indicated as well as the name and title of the authorized representative.

⁸ Where the executing agency for the TA is a legal entity different from the government, and there is any doubt whether the TA letter has been duly signed on behalf of the executing agency, OGC should be consulted.