

Project Administration Instructions

PAI 1.04
Revised December 2001
Page 1 of 2

CONDITIONS AND DECLARATION OF LOAN EFFECTIVENESS

A. Introduction

1. This PAI outlines the types of conditions that may be included in loan agreements, and describes the procedure for declaring or extending loan effectiveness. The Ordinary and Special Operations Loan Regulations detail the standard loan effectiveness conditions (Appendix 1).

B. Conditions of Effectiveness

2. Conditions should be minimized to avoid delaying loan effectiveness. Generally, they should be limited to the legal requirements (such as legal opinion, cross-effectiveness of cofinancing, and execution of subsidiary loan agreements). Other important conditions involving substantive sectoral or institutional changes should generally be made conditions of processing, loan negotiation, or Board presentation. Some may also be included as conditions of contract award or disbursement, or as time-bound covenants.

C. Waiver of Conditions

3. Conditions of loan effectiveness should be limited to the extent possible, as fulfillment of a condition stipulated in the loan agreement cannot be waived unless exceptional circumstances exist. In such cases, prior approval of the Board is required to waive any condition.

D. Declaration of Loan Effectiveness, Extension of Deadline

4. The requirements and deadline for loan effectiveness are stipulated in the loan agreement. The project counsel reviews the documents submitted by the borrower from the legal point of view and advises the project officer whether the legal requirements are met. If the sector division, or regional or resident mission (RM) is also satisfied that all conditions have been met, the director, sector division or the country director, RM, if processed by RM will then formally declare loan effectiveness and, through the operations coordination division or unit (OCD/U), advises the borrower and executing agency. A copy of this advice is also given to the RM, project counsel, the assistant controller, and directors, Project Coordination and Procurement Division (COPP) and Office of Cofinancing Operations (OCO), if cofinanced.

5. If the borrower cannot meet the deadline for loan effectiveness, it can request an extension and give reasons for it. If no request to extend is received by the deadline, an interim extension of 15 days may be granted by the director, sector division, or the country director, RM, if processed by RM.

6. When a request to extend is received, the director, sector division or country director, RM may grant an extension for up to one year after consulting with the RM and OCD/U concerned. Extensions beyond one year require approval by the director general, after consulting with the Office of the General Counsel (OGC). Notice of any extension is given to COPP, RM, and OGC.

E. Two-Stage Effectiveness

7. Sometimes a project that is covered by one loan agreement¹ consists of two or more distinct parts. When execution of one part can commence without the conditions of the other parts being fulfilled, and fulfillment of the conditions applying to the other parts are related to successful implementation of those parts only, the loan can be made effective in stages. In such cases, the loan agreement will stipulate that parts of the loan may become effective in separate stages.

8. Two-stage effectiveness should be used in exceptional circumstances and where it is preferable to the normal or alternative arrangements, such as conditions of disbursement or award of contract. The need for such an arrangement should be carefully evaluated during appraisal, with OGC. Due to the exceptional nature of the two-stage effectiveness arrangement, the arrangement should be highlighted in the back-to-office report after appraisal and at the staff review committee meeting. The RRP should contain a brief background and explanation of this arrangement. Authority for formal declaration of effectiveness and extension of the effectiveness deadline for each stage will be the same as those stipulated in paras. 4-6 of this PAI.

¹ Two loan agreements are in force when a project is financed by a blend of ordinary capital resources and Special Funds resources or, in some cases, when two or more project agreements are needed.

Articles Of Ordinary And Special Operations Loan Regulations

Conditions Precedent to Effectiveness

Section 10.01 of Ordinary Operations Loan Regulations (LIBOR-Based Loans) and Section 9.01 of Ordinary and Special Operations Loan Regulations. The Loan Agreement and the Guarantee Agreement, if any, shall not become effective until evidence satisfactory to ADB shall have furnished to ADB that

- (a) the execution and delivery of the Loan Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary corporate and governmental action;
- (b) where there is Guarantee Agreement, the execution and delivery of the Guarantee Agreement on behalf of the Guarantor have been duly authorized or ratified by all necessary corporate and governmental action;
- (c) where there is a Project Agreement, the execution and delivery of the Project Agreement on behalf of the Project Executing Agency shall have been duly authorized or ratified by all necessary corporate, administrative, and governmental action;
- (d) where the Borrower is not a member, the condition of the Borrower, as represented to ADB at the date of the Loan Agreement, has undergone no material adverse change between such date and the date agreed upon between the Borrower and ADB for the purposes of this Section, provided that ADB shall have requested such evidence;
- (e) where neither the Borrower nor the Guarantor, if any, is a member, the requirements of [Section 4.06(b) and Section 8.01(b) of the Ordinary Operations Loan Regulations (LIBOR-Based Loans)] and [Section 4.08(b) and Section 7.01(b) of the Ordinary and Special Operations Loan Regulations] have been fulfilled; and
- (f) all other events specified in the Loan Agreement as additional conditions to its effectiveness have occurred.