



March 2009

Establishment of the Asia Pacific Disaster Response Fund

Asian Development Bank

ABBREVIATIONS

ADB	–	Asian Development Bank
APDRF	–	Asia Pacific Disaster Response Fund
DMC	–	developing member country
H/RC	–	United Nations humanitarian/resident coordinator
MDB	–	multilateral development bank
US	–	United States

GLOSSARY

Disaster	A serious disruption to the functioning of a community or a society, causing widespread human, material, economic, or environmental losses, which exceed the ability of the affected community or society to cope using its own resources.
Disaster risk management	The systematic process of using administrative decisions, organizations, operational skills, and capacities to implement policies, strategies, and coping capacities of a society to lessen the impact of disasters.
Disaster risk reduction	A series of interconnected actions to minimize disaster vulnerability by avoiding (prevention) or limiting (mitigation and preparedness) the adverse effects of hazards within the broad context of sustainable development.
Hyogo Framework of Action	Strategic goals of the United Nations Second World Conference on Disaster Reduction to reduce disaster losses to be achieved 2005–2015. Signatories include 168 member states plus international agencies, including the Asian Development Bank.

NOTE

In this report, "\$" refers to US dollars.

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I. INTRODUCTION

1. The Disaster and Emergency Assistance Policy¹ of the Asian Development Bank (ADB), approved on 1 June 2004, recognizes the importance of addressing disaster and emergency assistance in an integrated fashion, financing not only long-term disaster reconstruction programs but also disaster risk management and disaster risk reduction activities. The action plan for this policy, approved by Management in April 2008, includes a recommendation to explore the provision of a quick disbursing fund for developing member countries (DMCs) impacted by a major natural disaster. This paper proposes the establishment of the Asia Pacific Disaster Response Fund (APDRF) as a special fund to provide such immediate assistance.

II. BACKGROUND AND RATIONALE

2. In 2007, 950 natural disasters (including seismic and climate-related events) were recorded worldwide, representing the single largest number of recorded disasters in any given year.² Compared to an average of just 150 in 1980 and 450 in 2005, this represents a marked increase in the frequency of natural disasters. While the number of disasters in 2008 was reduced to a total of 321, their impact caused a marked increase in deaths (235,816) and economic losses (\$181 billion).³

3. The Asia and the Pacific region is particularly vulnerable to the impacts of natural disasters.⁴ In 2008, 9 of the top 10 countries worldwide with the highest number of disaster-related deaths were in Asia. From June 1987 to December 2007, 26 DMCs (representing 54% of current borrowing members) received disaster or post-conflict assistance in the form of loans, technical assistance, and grants totaling over \$7 billion⁵ and financing some 288 disaster-related projects. The region's vulnerability results from a combination of natural factors (e.g., climate patterns and geographical features), location, demographics, and a general failure to apply basic disaster risk reduction practices (e.g., land use management, construction standards, building code compliance, and structural maintenance).

4. Disasters are increasingly recognized as a core development challenge. First, disasters can adversely impact social and economic development. During 1996–2005, disasters caused over \$670 billion in direct material losses worldwide, with economic losses 20 times greater (as a percentage of gross domestic product) in developing than in developed countries.⁶ For example, it is estimated that the People's Republic of China will require roughly CNY1.67 trillion (\$245 billion) to reconstruct infrastructure damaged in the 2008 Sichuan earthquake, including no less than 40,011 kilometers of highways; 4,026 kilometers of railways; 4,989 road bridges; 377 rail tunnels; 17,951 educational institutions; and 18,834 health care facilities. These cost

¹ Asian Development Bank (ADB). 2004. *Disaster and Emergency Assistance Policy*. Manila.

² Munich Re Group. 2007. *Natural Catastrophe Figures for 2007*. Press release. December 27. www.munichre.com/en/press/press_releases/2007/2007_12_27_press_release.aspx

³ United Nations. 2009. *Deaths and Economic Losses Jump in 2008*. Press release from the United Nations International Strategy for Disaster Reduction. 22 January. Geneva.

⁴ A World Bank–Columbia University study identified that 28 of the world's 60 countries most exposed to multiple hazards (based on land area) are in the Asia–Pacific region. Of these, 22 are DMCs. See World Bank. 2005. *Natural Disaster Hotspots: A Global Risk Analysis*. Hazard Management Unit. Washington, DC.

⁵ Figures are derived from relevant ADB databases and ADB. 2007. *Review of Disaster-Related Projects under ADB's Three Disaster Policies*. Consultant's report. Manila. In the 2007 consultant's report, the term "disaster-related projects" included ADB assistance provided to DMCs for mitigation, rehabilitation, and reconstruction associated with natural hazards, technological hazards, conflict, health emergencies, and environmental threats.

⁶ World Bank. 2008. *Development Actions and the Rising Incidence of Disasters*. Evaluation Brief 4. Washington, DC.

estimates, however, include neither the human cost nor the cost of addressing livelihood issues in affected communities. Second, the poor are often the most vulnerable to the impacts of natural disasters. According to the International Federation of Red Cross and Red Crescent Societies, “the marginalized and vulnerable risk not surviving the crisis or, if they do, they are then overlooked in plans to recover and regain their livelihoods.”⁷ This disproportionate impact is coupled with the added risk of resources, previously allocated to social programs and/or development projects, diverted in order to address immediate financial needs following a disaster.

5. The development community has responded to the challenge of natural disasters in the developing world. United Nations agencies, bilateral development partners, and multilateral development banks (MDBs) have recognized the need to strengthen country capacities to assess vulnerability and to identify and mitigate disaster risks. To cover the main components of disaster risk management, MDB disaster and emergency response programs include (i) support for hazard management and disaster risk reduction activities, (ii) immediate disaster recovery assistance, and (iii) longer-term reconstruction and rehabilitation assistance.

6. Most MDBs have policies governing the provision of immediate disaster relief, and augment aid provided by other donors in times of national crises. Separate pools of resources or contingency funds are kept to serve a variety of purposes and to provide flexibility for humanitarian relief immediately following a disaster. The Inter-American Development Bank, in particular, has (i) developed internal capacity to mainstream vulnerability assessment in country programming, and (ii) made available a range of financial instruments to respond to country needs. Comparative details of policies and modalities by MDBs are in Appendix 1.

7. Although ADB’s Disaster and Emergency Assistance Policy covers vulnerability and disaster risk planning as well as emergency assistance for long-term rehabilitation and reconstruction, unlike other MDBs, it does not have a specific modality that addresses DMCs’ immediate financial requirements as they face the initial cost of responding to a major natural disaster. Although ADB’s emergency assistance loan, designed to support longer-term reconstruction and rehabilitation assistance, provides for a quick disbursing component, even with accelerated loan preparation processes, it is unlikely that the funds could be available to the affected government and communities in less than 12 weeks.⁸ Therefore, as part of the implementation of ADB’s Disaster and Emergency Assistance Policy, the APDRF should be established to provide immediate financial assistance to affected DMCs.

III. OBJECTIVE AND SCOPE

8. The APDRF’s objective is to provide, in a timely fashion, incremental grant resources to DMCs affected by a natural disaster. The proposed APDRF will help bridge the gap between existing ADB arrangements that assist DMCs to reduce disaster risk through hazard mitigation loans and grants, and longer-term post-disaster reconstruction lending. The APDRF will provide quick-disbursing grants to assist DMCs in meeting immediate expenses to restore life-saving services to affected populations following a declared disaster⁹ and in augmenting aid provided by other donors in times of national crisis (e.g., purchase of water purification and sanitation

⁷ International Federation of Red Cross and Red Crescent Societies. 2007. *World Disaster Report*. www.ifrc.org/publicat/wdr2007/summaries.asp

⁸ This is the processing time frame envisaged for the emergency assistance loan in ADB’s disaster and emergency assistance policy.

⁹ The APDRF will apply to any natural disaster during or after which a DMC has declared a national state of disaster.

systems, transitional shelter, personal hygiene kits, emergency communication equipment, and aviation fuel as well as debris sifting, site clearance, and safe disposal of useless rubble).

9. The APDRF will respond to the urgent need for resources immediately after a disaster has occurred. If there is no justification for such urgency—either because the nature of the disaster is such that it does not require an immediate response from ADB or because the impacted DMC has sufficient resources to cover the expenses—ADB’s emergency assistance loan will be used.

IV. IMPLEMENTATION ARRANGEMENTS

10. ADB’s Regional and Sustainable Development Department will manage the APDRF in close consultation with regional departments and resident mission disaster focal points, and will be responsible for coordinating with various ADB departments with respect to activities to be supported by the APDRF. ADB’s Office of Cofinancing Operations will facilitate contributions and will act as the official channel of communications between external APDRF contributors and ADB for financial aspects. The Office of Cofinancing Operations will lead negotiations and discussions with contributors on procedural agreements for contributions to the APDRF.

11. All ADB DMCs will be eligible for grant assistance from the APDRF. Recipients will be central governments that may allocate funds to local governments, government agencies, and other suitable national or international entities, including nongovernmental organizations. Due to the need to provide grant assistance immediately after a disaster, ADB will not enter into a legal agreement with these entities—only with the central government—and will rely on the central government to ensure that the use of the grant is in accordance with the provisions of the grant agreement.

12. **Conditions for assistance.** Assistance may be granted only once the following emergency conditions have been met: (i) a natural disaster has occurred in a DMC, (ii) a statement of national emergency has been officially declared by the affected DMC, and (iii) the United Nations humanitarian/resident coordinator (H/RC)¹⁰ has confirmed the scale and implications of the disaster and has indicated a general amount of funding that would be required to assist in alleviating the situation.

13. **Form and amount of assistance.** Assistance from the APDRF will be provided in the form of a grant in an amount totaling up to \$3 million per event. Factors that may influence the size of the grant can be (i) geographical extent of damage; (ii) initial estimate of death, injuries, and displaced persons; (iii) the response capacity of key agencies in the country; and (iv) the date and magnitude of the last disaster that affected the country (thereby taking into account the cumulative effect of disasters on the country’s ability to respond). Each distinct, nationally-declared disaster will be regarded as a separate event and hence be eligible for assistance, irrespective of whether it is issued for the same disaster-affected DMC or in the same calendar year.

14. **Approval process.** The authority to approve such assistance will be delegated to the President, following this process:

¹⁰ The United Nations humanitarian/resident coordinator is responsible for initiating the United Nations’ Flash Appeal scheme, which is a request for funds from international donors, and the Central Emergency Response Fund, which is designed to jump-start relief operations within 72 hours of an emergency. Even with these instruments, however, only two thirds of the United Nations’ humanitarian appeals are typically met each year.

- (i) wherever possible, within 24 hours of emergency conditions having been met, the concerned regional department director general, in consultation with the resident mission country director, will assign a disaster coordinator (where practical, the resident mission country director should be assigned this function);
- (ii) the disaster coordinator will initiate discussions with the H/RC to determine the grant amount to be requested from the APDRF;
- (iii) the disaster coordinator will prepare and transmit a report to the regional department director general providing (a) an overview of the crisis and an outline of the rationale for ADB's emergency grant, including confirmation of a declaration of national emergency; (b) a summary of the assistance that the H/RC recommends or intends to recommend to the international community; (c) to the extent possible, the initial and proposed type and amount of assistance from other donor agencies; and (d) taking into account discussions with the H/RC, a recommendation of whether ADB should provide grant assistance from the APDRF and the total amount of the grant (up to \$3 million).
- (iv) The regional department director general's recommendation will be communicated to the respective ADB vice-president for consideration and endorsement to the President.
- (v) The grant will be approved by the President, allowing ADB to remit funds within days.

15. **Procurement.** Resources from the APDRF will be used by recipients to procure goods, works, and services related to disaster response efforts following procurement procedures suitable for emergency response. ADB's procurement guidelines¹¹ and ADB's guidelines on consultant use¹² will not apply. In particular, given the need to respond quickly to immediate needs following a disaster, to coordinate closely with other international organizations, and to facilitate work with potential cofinanciers, the procurement of goods, works, and services will be permitted both from ADB member and nonmember countries.

16. Recipients of financing from the APDRF must ensure that such financing will be used for its intended purpose on the same terms, conditions, and principles set forth in this paper.

17. **Disbursement.** For disaster response activities, speed and flexibility will be required. Disbursements will be allowed up to 100% of eligible costs (including applicable taxes). An imprest account, established by the recipient within the central bank or a commercial bank designated by the recipient, will be used to expedite disbursements. The entire grant will be disbursed to the imprest account¹³ in a single advance, and no ceilings will apply.

18. Unless otherwise agreed by ADB, the grant closing date will be 6 months after the signing of the grant agreement. The recipient will confirm the use of the grant through a statement of expenditure. The recipient will retain underlying documentation, such as contracts, invoices, and receipts, and ADB reserves the right to review them. Within 6 months of receipt of a statement of expenditure by ADB, the recipient's supreme audit institution or another audit

¹¹ ADB. 2007. *Procurement Guidelines*. Manila.

¹² ADB. 2007. *Guidelines of the Use of Consultants by ADB and Its Borrowers*. Manila.

¹³ Considering the need for quick disbursement, the depository bank of the imprest account will not be required to submit a comfort letter to ADB.

firm acceptable to ADB, will provide an audit report on the use of the grant, including the imprest account and the statement of expenditure.

V. ADOPTION OF NEW ASIA PACIFIC DISASTER RESPONSE FUND REGULATIONS

19. As part of the establishment of the APDRF, specific regulations have been formulated to govern the provision of grants for assistance from APDRF resources. Grants will be provided in accordance with the APDRF grant regulations as set forth in Appendix 2. The APDRF grant regulations will be incorporated by reference as an integral part of each grant agreement governing the specific terms and conditions for grants for assistance financed by the APDRF.

VI. CONTRIBUTIONS TO THE ASIA PACIFIC DISASTER RESPONSE FUND

A. ADB's Contribution

20. To achieve the APDRF's objectives, it is estimated that initial funds of \$40 million will be required,¹⁴ which ADB will transfer from the Asian Tsunami Fund.¹⁵

B. Other Contributions

21. ADB will accept, on an untied grant basis, contributions to the APDRF from bilateral, multilateral, and individual sources, including companies and foundations. To ensure cost-effective processing and reporting, the minimum contribution will be \$500,000 equivalent.

22. Contributions will be effected through instruments of contribution in Appendix 3, whereby each contributor agrees to contribute amounts to the APDRF in accordance with the terms and conditions in this paper.

23. Commitments by contributors shall not be subject to any conditions other than those provided in this paper. By depositing an instrument of contribution, the contributor shall have accepted the objectives, terms, and conditions outlined in this paper with respect to the resources contributed under such an instrument of contribution.

24. Contributions to the APDRF will be made in the form of cash in a freely convertible currency. Contributions will be deposited into a United States (US) dollar interest-bearing account (the Account) to be specified by ADB. For contributions received in currencies other than US dollars, ADB will, upon receipt of the funds, convert them into US dollars and transfer them to the Account.

25. Contributions will be held, administered, and invested at the discretion of ADB. Pending disbursement, ADB may invest and reinvest contributions in any instrument in which ADB is authorized to invest its own funds. Any income earned in respect of such investment and reinvestment, as well as interest earned and accrued in respect of the Account (collectively, the

¹⁴ Once this initial contribution of \$40 million has been substantially committed, replenishment may be sought. Any request for replenishment will be based on a review of the APDRF, including an assessment of its effectiveness and appropriateness of implementation arrangements.

¹⁵ ADB has consulted Asian Tsunami Fund contributors regarding the transfer who have no objections, subject to approval of the APDRF by the Board of Directors.

available funds net of expenses), will be credited to the Account and used for the purposes of the respective fund, including related administrative expenses.¹⁶

26. ADB will make withdrawals from the Account as necessary to provide grants to recipients. The available funds may be freely exchanged by ADB into currencies other than US dollars as required. Any fees and charges relating to such purchases will be paid out of the Account.

VII. ADMINISTRATION ARRANGEMENTS

27. Contributions will be held and administered by ADB separately from ADB's other resources. The APDRF will commingle all available funds in the Account. ADB will maintain records and accounts, in accordance with its standard procedures, that identify the contributions made and the commitments to be financed out of the available funds, including eligible activities and administrative expenses. ADB will provide financial statements on these records and accounts to external contributors and the Board of Directors. These statements will be audited annually by external auditors, with the cost of these audits charged to the Account.

28. In accordance with its standard procedures, ADB will charge a service fee to cover ADB's incremental costs for the administration, management, supervision, and operation of the APDRF. The service charge is currently 2% of the amount disbursed under a grant. The service charges will be paid from the available funds at the same time as disbursements.

29. ADB will promptly inform the external contributors and the Board of Directors of any condition that interferes, or threatens to interfere, with ADB's administration of the APDRF.

30. ADB may adopt, from time to time, additional rules for administering the APDRF that are substantially based upon the terms and conditions of this paper.

31. Unless otherwise agreed by external contributors and ADB, the APDRF will terminate on such date as the contributions have been substantially disbursed by ADB. At such time, except for actions necessary for the orderly and expeditious conclusion of APDRF activities, ADB's functions in relation to the contributions will be considered terminated.

32. Upon termination of the APDRF and subsequent liquidation of the Account, unless otherwise agreed with the contributors, any available funds will be returned to the individual external contributors and ADB in proportion to their respective contributions. Following termination of the APDRF, ADB shall, as soon as practicable, provide a final report on APDRF-support grants and activities to external contributors and the Board of Directors.

VIII. RECOMMENDATION

33. I recommend that the Board of Directors approve

- (i) the establishment of the proposed Asia Pacific Disaster Response Fund as a Special Fund substantially in accordance with the terms and conditions set forth in this paper;

¹⁶ Administrative expenses include service charges, costs of external audits, and finance charges that may be incurred in purchasing required currencies and in remitting funds.

- (ii) the transfer of \$40 million from the Asian Tsunami Fund to the Asia Pacific Disaster Response Fund;
- (iii) the acceptance and administration by ADB of contributions to the Asia Pacific Disaster Response Fund by bilateral, multilateral, and individual sources in accordance with the terms and conditions in this paper;
- (iv) delegated authority to the President to approve grants of up to \$3 million per declared national disaster, with each action reported separately to the Board of Directors for information;
- (v) a waiver of the application of ADB's procurement guidelines and guidelines on consultant use for the procurement of goods, works, and services financed in whole or in part from the Asia Pacific Disaster Response Fund; and
- (vi) the adoption of the Asia Pacific Disaster Response Fund grant regulations as set forth in Appendix 2.

Haruhiko Kuroda
President

COMPARATIVE DETAILS OF POLICIES AND MODALITIES BY MULTILATERAL DEVELOPMENT BANKS AND RELATED AGENCIES

1. The **African Development Bank** has supported emergency operations since the early 1970s. It provides emergency relief not exceeding \$500,000 per operation per country through its Special Relief Fund to alleviate human suffering, and to preserve the viability of development projects and programs. About \$5 million a year is budgeted under the fund to finance the grants.

2. The **Inter-American Development Bank (IADB)** is operating within an action plan based on three pillars: (i) country programming and portfolio management; (ii) bank policy, procedures, and financial products; and (iii) an organization-wide approach focusing on ex ante risk reduction. IADB's position is that it will not intentionally finance projects that, according to its analysis, could increase natural hazard-related threats. IADB also refined its disaster management financing modes, which now cover the disaster spectrum:

- (i) Pre-impact assistance. A disaster prevention facility provides loans up to \$5 million per country for DRR. A disaster prevention fund, created with resources from IADB ordinary capital and capped at \$1 million per grant, finances prevention strategies.
- (ii) A multidonor trust fund¹ finances TA and grant investments for disaster prevention and risk management. IADB is developing guidelines to address managing risk in public and private sector projects in vulnerable member countries, wherein the transaction costs of carrying out its DRM policy may be covered through its prevention modes.
- (iii) Disaster impact assistance. IADB has an immediate response facility that provides a fund to address basic service restoration 3–6 months after disaster, and which is also available to initiate reconstruction. In addition, IADB has an emergency technical cooperation grant capped at \$200,000 per event for humanitarian needs, which is used in conjunction with specialized agencies. In December 2008, IADB created a multilateral investment fund that will provide up to \$20 million to its Emergency Liquidity Facility, which was established in 2004, to assist Latin American and Caribbean microfinance institutions better manage economic crises and natural disasters.
- (iv) Post-impact: For this phase, IADB utilizes portfolio restructuring and reallocation.

3. The **World Bank** updated its disaster policy in March 2007² after recognizing that earlier policies paid little attention to prevention and mitigation; that relief focused only on areas of comparative advantage and prohibited unlisted activities; and that the flexibility needed for full cooperation with aid agencies and other partners in supporting comprehensive recovery was lacking. The policy revision reflected the need to (i) accelerate the entire emergency project cycle;³ (ii) ensure more transparency on risks in emergency operations; (iii) accelerate, consolidate, and simplify procedures for crises and emergencies, and streamline ex ante requirements; (iv) encourage use of effective instruments; and (v) address early recovery implementation and financing. The policy supports (i) rebuilding and restoring physical assets;

¹ Japan, Republic of Korea, and Spain have expressed interest in supporting the fund.

² On 1 March 2007, World Bank replaced the 1995 Operational Policy (OP) and Bank Procedures (BP) 8.50 (Emergency Recovery Assistance) with OP and BP 8.00 (Rapid Response to Crises and Emergencies).

³ World Bank's main assistance instrument, the emergency recovery loan, took 9 months on average to process, and was subject to additional delays and slow disbursement. More than two thirds of the loans required extensions to the 3-year closing date.

(ii) restoring the means of production and economic activities; (iii) preserving or restoring essential services; (iv) establishing or preserving human, institutional, and/or social capital, including economic reintegration of vulnerable groups; (v) peace-building; (vi) building capacity in initial stages for long-term reconstruction, disaster management, and risk reduction; and (vii) adopting measures to mitigate or avert imminent emergencies in high-risk countries. Provision also was made for a declaration of “corporate emergency” to mobilize resources across World Bank, establish a rapid response committee for strategic advice, and deploy trained emergency task teams. To accelerate and streamline processing and authorization of negotiations, emergency operations will undergo a single decision review meeting. The same process will be used to obtain all legal borrower documents to ease loan signing and fund advancement. Fiduciary and field staffs are empowered to approve simplified and accelerated procurement, or where counterpart capacity is too weak, to contract procurement directly. All emergency operations are now coded as such in operational and financial systems.

4. To support the HFA and ISDR, World Bank set up the Global Facility for Disaster Reduction and Recovery (GFDRR) in 2006 to further develop and implement risk-reduction strategies in disaster-prone low- and moderate-income countries, as well as to foster partnerships in building long-term commitments to mainstreaming hazard risk management. World Bank will manage GFDRR in partnership with the ISDR on behalf of participating partners, and will operate through multiple trust funds. GFDRR has three activity paths: (i) Track 1 is a grant supporting global and regional disaster risk reduction in low- and middle-income countries. It provides \$5 million in funds annually for 3 years to ISDR; (ii) Track 2 mainstreams DRR in 88 high-risk nations over 10 years using country assistance strategies and poverty reduction strategies as entry points. This is a multidonor trust fund costing \$350 million; and (iii) Track 3 is a standby recovery financing facility to support immediate recovery needs before the launch of medium- and long-term recovery programs. An additional \$1 billion per year is sought from the International Development Assistance for this track. The estimated cost of programs in all three tracks is \$2 billion for 2006–2016.

5. In March 2008, the World Bank developed a new credit line of up to \$500 million to assist middle-income countries that have declared a state of emergency from natural disaster. The assistance is designed to be available before the arrival of emergency aid. To be eligible, countries will have to agree to a risk management program monitored by the World Bank.

6. In March 2008, the **European Commission**, through its Disaster Preparedness program attached to the Humanitarian Aid Office (DIPECHO), and in line with its commitment to the United Nations’ Hyogo Framework of Action, allocated €27.325 million (\$42.7 million) to improve the capacities of communities at risk from natural disaster in Central America, Central Asia, and Southeast Asia. The fund will be used to assist at-risk communities better prepare themselves, through measures such as: exchange of information, documentation of lessons learnt and best practices which can be replicated and sustained. The programs have been developed in close cooperation with nongovernmental and international organizations, local authorities and other stakeholders. Of the total fund, €10 million (\$15.6 million) has been allocated to Southeast Asia (Cambodia, Indonesia, Burma-Myanmar, Philippines, Timor-Leste, and Viet Nam), and €7.25 million (\$11.3 million) allocated to Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan).

ASIA PACIFIC DISASTER RESPONSE FUND GRANT REGULATIONS

DATED _____

ARTICLE I

Purpose; Application to Grant Agreements

Section 1.01. **Purpose.** The purpose of these Regulations is to set forth certain terms and conditions generally applicable to grants for projects made by ADB from the Asia Pacific Disaster Response Fund.

Section 1.02. **Application of Regulations.** Any grant agreement between ADB and a Recipient relating to a grant provided from the Asia Pacific Disaster Response Fund may provide that the parties thereto accept the provisions of these Regulations. To the extent so provided in any such agreement, these Regulations shall apply and shall govern the rights and obligations of the parties thereto with the same force and effect as if they were fully set forth therein. No revocation or amendment of these Regulations shall be effective in respect of any such agreement unless the parties shall so agree in writing.

Section 1.03. **Inconsistency with Grant Agreement.** If any provision of a grant agreement is inconsistent with a provision of these Regulations, the provision of the grant agreement shall govern.

ARTICLE II

Definitions; Interpretation

Section 2.01. **Definitions.** Except where the context otherwise requires, the following terms have the following meanings wherever used in these Regulations or in a grant agreement to which these Regulations have been made applicable:

1. "ADB" means the Asian Development Bank;
2. "assets" includes property, revenues, and claims of any kind;
3. "currency" of a country or a territory means such currency as at the time referred to is legal tender for the payment of public and private debts in that country or territory;
4. "Dollars" or the sign "\$" each means the lawful currency of the United States of America;
5. "Effective Date" means the date on which the Grant Agreement shall have come into force and effect pursuant to Section 9.01;

6. "Grant" means the grant provided for in the Grant Agreement for a Project;
7. "Grant Account" means the account opened or to be opened by ADB on its books in the name of the Recipient to which the amount of the Grant has been or will be credited;
8. "Grant Agreement" means the particular grant agreement to which these Regulations shall have been made applicable, as such agreement may be amended from time to time; and such term includes these Regulations as thus made applicable, all agreements supplementary to the Grant Agreement and all schedules to the Grant Agreement;
9. "Grant Closing Date" means the date specified in the Grant Agreement after which ADB may terminate the right of the Recipient to make any withdrawals from the Grant Account, or such other date as may be agreed between ADB and the Recipient for such purpose;
10. "member" means a member of ADB;
11. "Project" means the activities relating to the provision of life preserving services for communities affected by the natural disaster as specified in the Grant Agreement;
12. "Recipient" means the party to the Grant Agreement to which ADB has agreed to provide the Grant; and
13. "taxes" includes imposts, levies, fees, and duties of any nature, whether in effect at the date of the Grant Agreement or thereafter imposed.

Section 2.02. **Interpretation.** Except where the context otherwise requires, (i) references in these Regulations to Articles or Sections are to Articles or Sections of these Regulations; (ii) the headings of the Articles and Sections and the Table of Contents are inserted for convenience of reference only and are not a part of these Regulations; (iii) singular may include plural and vice versa; and (iv) a reference to any gender includes any other gender.

ARTICLE III

Grant Account

Section 3.01. **Grant Account.** The amount of the Grant shall be credited to the Grant Account and may be withdrawn therefrom in accordance with the provisions of the Grant Agreement and these Regulations.

ARTICLE IV

Currency Provisions

Section 4.01. **Denomination of the Grant.** Except as ADB's Board of Directors may otherwise determine, the Grant shall be denominated in Dollars.

Section 4.02. **Currency of Withdrawal.** Except as ADB and the Recipient shall otherwise agree, withdrawals from the Grant Account shall be made in the currency in which the Grant is denominated.

ARTICLE V

Withdrawal of Grant Proceeds

Section 5.01. **Withdrawal from the Grant Account.** (a) Grant proceeds shall be used only for the purpose of responding to the declared natural disaster as specified in the Grant Agreement. Subject to any conditions or restrictions specified in the Grant Agreement, the Recipient shall be entitled to withdraw from the Grant Account the full amount of the Grant as a single payment.

(b) Except as ADB and the Recipient shall otherwise agree, no withdrawals shall be made on account of payments made prior to the Effective Date. ADB may refuse to finance a contract where goods and services have not been procured in accordance with procedures substantially in accordance with those agreed between the Recipient and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 5.02. **Application for Withdrawal.** When the Recipient shall desire to withdraw the full amount of the Grant from the Grant Account, the Recipient shall promptly deliver to ADB an application in such form and containing such statements, representations, warranties, and agreements, as ADB shall reasonably request.

Section 5.03. **Authority to Sign Applications.** Except as ADB and the Recipient shall otherwise agree, the person authorized to sign applications for withdrawal shall be the person who has signed the Grant Agreement on behalf of the Recipient.

Section 5.04. **Supporting Evidence.** The Recipient shall furnish to ADB such documents and other evidence in support of the application for withdrawal as ADB shall reasonably request, whether before or after ADB shall have permitted any withdrawal requested in the application.

Section 5.05. **Sufficiency of Applications and Documents.** Each application for withdrawal and the accompanying documents and other evidence furnished in connection therewith must be sufficient in form and substance to satisfy ADB that the Recipient is entitled to withdraw from the Grant Account the amount applied for and that the amount to be withdrawn from the Grant Account is to be used only for the purposes specified in the Grant Agreement.

Section 5.06. **Payment by ADB.** Payment by ADB of amounts which the Recipient is entitled to withdraw from the Grant Account shall be made to, or on, the order of the Recipient.

ARTICLE VI

Particular Covenants

Section 6.01. **Cooperation and Information.** (a) ADB and the Recipient shall cooperate fully to ensure that the purposes of the Grant are accomplished. To that end, ADB and the Recipient shall

- (i) from time to time, at the request of either one of them, exchange views with regard to any matters relating to the progress of the Project, the purposes of the Grant, the performance of their respective obligations under the Grant Agreement, and furnish to the other party all such related information as it shall reasonably request; and
- (ii) promptly inform each other of any condition which interferes with, or threatens to interfere with, the matters referred to in paragraph (a)(i) above.

(b) The Recipient shall afford all reasonable opportunity for ADB's representatives to visit any part of its territory for purposes related to the Grant.

Section 6.02. **Records and Accounts.** The Recipient shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other items of expenditure financed out of the proceeds of the Grant, to disclose the use thereof in the Project, and to record the progress of the Project (including the cost thereof).

Section 6.03. **Reports.** The Recipient shall furnish, or cause to be furnished, to ADB all such reports as ADB shall reasonably request concerning (i) the Grant, and the expenditure of the proceeds thereof; (ii) the goods and services and other items of expenditure financed out of the proceeds of the Grant; (iii) the Project; and (iv) any other matters relating to the purposes of the Grant.

ARTICLE VII

Exemption from Taxation

Section 7.01. **Exemption from Taxation.** The Recipient shall ensure that the Grant Agreement is exempt from any taxes levied by, or in the territory of, such member on, or in connection with, the execution, delivery, or registration thereof.

ARTICLE VIII

Suspension and Cancellation

Section 8.01. **Suspension by ADB.** If any of the following events shall have occurred at any time after the date of the Grant Agreement and be continuing, ADB may by notice to the Recipient, suspend in whole or in part the right of the Recipient to make withdrawals from the Grant Account:

- (a) The Recipient shall have failed to make payment of principal, interest charge, or any other charge required (i) under any loan agreement or guarantee agreement with ADB; or (ii) in consequence of any guarantee or other financial obligation of any kind extended by ADB to any third party with the agreement of the Recipient.
- (b) The Recipient shall have failed to perform any of its obligations under the Grant Agreement.
- (c) ADB shall have suspended in whole or in part the right of the Recipient to make withdrawals under any other grant agreement or any loan agreement with ADB because of a failure by the Recipient to perform any of its obligations under such grant agreement or loan agreement or any related guarantee agreement with ADB.
- (d) A situation shall have arisen or developed which, in the reasonable opinion of ADB, will or may make it improbable that the Project can be successfully carried out, or that the Recipient will be able to perform any of its obligations under the Grant Agreement.
- (e) The member in whose territory the Project is to be carried out shall have been suspended from membership in, or ceased to be a member of, ADB, or shall have delivered a notice to withdraw from ADB.
- (f) A representation made by the Recipient in, or pursuant to, the Grant Agreement or any statement furnished in connection therewith and intended to be relied upon by ADB in making the Grant, shall have been incorrect in any material respect.

- (g) ADB shall have determined, with respect to any contract to be financed in full or in part out of the proceeds of the Grant, that corrupt, fraudulent, collusive or coercive practices, as determined by ADB, were engaged in by representatives of the Recipient, or any beneficiary of the Grant during the procurement of goods and services, consultants' selection or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; or ADB shall have determined that the procurement of any goods or services to be financed out of the proceeds of the Grant is inconsistent with the relevant procedure set out in the Grant Agreement.
- (h) Any other event specified in the Grant Agreement for the purposes of this Section shall have occurred.

The right of the Recipient to make withdrawals from the Grant Account shall continue to be suspended in whole or in part, as the case may be, until the event which gave rise to such suspension shall have, in the reasonable opinion of ADB, ceased to exist or until ADB shall have notified the Recipient that the right to make withdrawals has been restored in whole or in part, whichever is earlier.

Section 8.02. Cancellation by ADB. If (i) the right of the Recipient to make withdrawals from the Grant Account shall have been suspended with respect to any amount of the Grant for a continuous period of 30 days; or (ii) at any time ADB determines, after consultation with the Recipient, that any amount of the Grant will not be required for the purposes of the Project; (iii) by the date specified in the Grant Agreement as the Grant Closing Date, an amount of the Grant shall remain unwithdrawn from the Grant Account; or (iv) at any time ADB determines, with respect to any contract to be financed in full or in part out of the proceeds of the Grant, that corrupt, fraudulent, collusive, or coercive practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the Grant during the procurement of goods and services, consultants' selection, or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; or (v) at any time, ADB determines that the procurement of any goods or services to be financed out of the proceeds of the Grant is inconsistent with the procedure set out in the Grant Agreement, ADB may by notice to the Recipient terminate the right of the Recipient to make withdrawals with respect to such amount, contract, or procurement. Upon the giving of such notice, the relevant amount of the Grant shall be cancelled.

Section 8.03. Cancellation by the Recipient. After consultation with ADB, the Recipient may, by notice to ADB, cancel any amount of the Grant which the Recipient shall not have withdrawn prior to the giving of such notice.

Section 8.04. Effectiveness of Provisions After Suspension or Cancellation. Notwithstanding any cancellation or suspension, all the provisions of the Grant Agreement shall continue in full force and effect except as specifically provided in this Article.

ARTICLE IX

Effectiveness

Section 9.01. **Effective Date.** Except as ADB and the Recipient shall otherwise agree, the Grant Agreement shall come into force and effect on the date when the Grant Agreement has been signed by ADB and the Recipient and delivered at the principal office of ADB.

ARTICLE X

Enforceability; Failure to Exercise Rights; Arbitration

Section 10.01. **Enforceability.** (a) The rights and obligations of ADB and the Recipient under the Grant Agreement shall be valid and enforceable in accordance with their terms and, notwithstanding the law of any state, or political subdivision thereof, to the contrary.

(b) Neither ADB nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of the Grant Agreement is invalid or unenforceable because of any provision of the Articles of Agreement Establishing the Asian Development Bank or for any other reason.

Section 10.02. **Failure to Exercise Rights.** No delay in exercising, or omission to exercise, any right, power, or remedy accruing to either party under the Grant Agreement upon any default shall impair any such right, power, or remedy, or be construed to be a waiver thereof or an acquiescence in any such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power, or remedy of such party in respect of any other or subsequent default.

Section 10.03. **Arbitration.** (a) Any controversy between the parties to the Grant Agreement, and any claim by any such party against any other such party arising under the Grant Agreement which shall not be settled by agreement of the parties, shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be ADB on the one side, and the Recipient on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by ADB; a second arbitrator shall be appointed by the Recipient; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, the Umpire shall appoint such arbitrator. In case any arbitrator appointed in accordance with this Section shall resign, die, or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator, and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought, and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after the giving of such notice, the other party or parties shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party or parties.

(e) If within 60 days after the giving of the notice instituting the arbitration proceeding the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The law to be applied by the Arbitral Tribunal shall be public international law, the sources of which shall be taken for these purposes to include

- (i) any relevant treaty obligations that are binding reciprocally on the parties;
- (ii) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognized as having codified or ripened into binding rules of customary law applicable to states and international institutions, as appropriate;
- (iii) other forms of international custom, including the practice of states and international institutions of such generality, consistency and duration as to create legal obligations; and
- (iv) applicable general principles of law.

(h) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(i) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Grant Agreement. Each party shall abide by, and comply with, any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(j) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by ADB on the one side, and the Recipient on the other

side. The Arbitral Tribunal shall determine any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs.

(k) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Grant Agreement, and any claim by either party against the other such party arising thereunder.

(l) If within 30 days, after the counterparts of the award have been delivered to the parties, the award shall not be complied with, any party may enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party, and may enforce such judgment by execution or may pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of the Grant Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member except as such procedure may be available otherwise than by reason of the provisions of this Section.

(m) Service of any notice or process in connection with any proceeding under this Section, or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section, may be made in the manner provided in Section 11.01. The parties to the Grant Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE XI

Miscellaneous Provisions

Section 11.01. **Notices and Requests.** Any notice or request required or permitted to be given or made under the Grant Agreement, and any other agreement between any of the parties contemplated by the Grant Agreement, shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, facsimile or electronic mail to the party to which it is required or permitted to be given or made at such party's address specified in the Grant Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 11.02. **Authority to Take Action.** Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Grant Agreement, on behalf of the Recipient, may be taken or executed by the representative of the Recipient designated in the Grant Agreement for the purposes of this Section or any person thereunto authorized in writing by him. Any modification of the provisions of the Grant Agreement may be agreed to on behalf of the Recipient, by written instrument executed on behalf of the Recipient by the representative so designated or any person authorized in writing by such representative; provided that, in the opinion of such representative or other person, such modification is reasonable in the circumstances and will not substantially increase the obligations of the Recipient under the Grant Agreement. ADB may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative or other person any modification of the provisions of the Grant Agreement

effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Recipient thereunder.

Section 11.03. **Evidence of Authority.** The Recipient shall furnish to ADB sufficient evidence of the authority of the person or persons who will, on behalf of the Recipient, take any action or execute any documents required or permitted to be taken or executed by the Recipient under the Grant Agreement and the authenticated specimen signature of each such person.

Section 11.04. **Execution in Counterparts.** The Grant Agreement may be executed in several counterparts, each of which shall be an original.

INSTRUMENT OF CONTRIBUTION

[date]

Asian Development Bank
6 ADB Avenue
Mandaluyong City
Philippines

[Name and identify of contributor] (hereinafter referred to as the "Contributor") hereby undertakes to contribute to the Asia Pacific Disaster Response Fund in an amount of [\$ ____] in accordance with the provisions of the Board Paper entitled "Establishment of the Asia Pacific Disaster Response Fund" of the Asian Development Bank (the "Paper") and subject to the terms and conditions set forth in the Paper.

The contribution will be paid to the Asian Development Bank in the form of immediately available funds on, or prior to, [specify date] in accordance with the following schedule [insert disbursement schedule].

The contribution shall be paid into [ADB to specify account details].

Date this _____ day of _____ 200__.

For and on behalf of
