

Project Administration Instructions

PAI 1.05
Revised in June 2023
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CONDITIONS AND DECLARATION OF LOAN EFFECTIVENESS¹

1. This Project Administration Instruction (PAI) outlines the conditions included in the loan agreements and describes the procedure for declaring or extending loan effectiveness and cancelling a loan before its effectiveness. The relevant loan regulations set out the standard loan effectiveness conditions.

A. 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 to processing, loan negotiation, or Board consideration. Some may also be included as conditions of contract award or disbursement, or as time-bound covenants.

B. Waiver of Conditions

3. Conditions of loan effectiveness should be limited to the extent possible because 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.

C. Declaration of Loan Effectiveness²

4. The requirements and deadline for loan effectiveness are stipulated in the loan agreement. Upon receipt of the required documents from the borrower,³ the project counsel from the Office of the General Counsel (OGC) reviews the documents from a legal point of view and advises the project team leader whether the legal requirements are met. If the project team is satisfied that all conditions have been met, the project team leader requests the country director (CD) to declare loan effectiveness and advise the borrower through formal communication. A copy of this advice is also given to the sector director (SD); OGC; Loan and Treasury Accounting Section and Loan and Grant Disbursement Section (CTLA-LGD) of the Controller's Department; Public Financial Management Division (PFFM) and Portfolio Management Division (PFPM) of the Procurement, Portfolio, and Financial Management Department; and the Partner Funds Division (CCPF) of the Climate Change and Sustainable Development Department, if the loan is cofinanced.

¹ In this PAI, the term "loan(s)" includes grant(s) and the term "project(s)" includes program(s), unless the context requires otherwise. This PAI also applies to loans from external sources that are administered by Asian Development Bank (ADB), unless agreed otherwise between ADB and cofinancier(s).

² In case of a cofinanced loan, requirements for its effectiveness follow its cofinancing loan agreement.

³ In this PAI, the term "borrower" also refers to recipients of grants, executing agencies, and/or implementing agencies, unless the context requires otherwise.

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 with a maximum of 30 days may be granted by the country operations head, in consultation with the regional sector project administration unit head.⁴

6. When a request to extend is received, the CD may grant an extension for up to one year, in consultation with regional sector project administration unit head. Extensions beyond one year require approval by the regional director general in consultation with OGC and with the concurrence of the SD. Notice of any extension is given to the project team, CTLA-LGD, PFFM, PFFPM, OGC, and CCPF if the loan is cofinanced.

D. Cancellation of a Loan before Effectiveness

7. Asian Development Bank (ADB) may cancel all or part of the loan that was signed but did not become effective with an approval from the regional director general, with the concurrence of the senior sector director, if any of the following instances justifies such cancellation:

- (a) ADB determines, after consultation with the borrower, that there was no extension request from the borrower for more than 180 days after the deadline of loan effectiveness;
- (b) At any time ADB determines, after consultation with the borrower, that any amount of the loan will not be required for the purposes of the project;
- (c) At any time ADB determines, after consultation with the borrower, that an unforeseen change that causes the borrower not to undertake or proceed with the project;
- (d) At any time ADB determines, for any contract to be financed in full or in part out of the proceeds of the loan, that representatives of the borrowers or beneficiaries of the loan are engaged in corruption, fraud or other integrity violations. This could be during procurement, consultant selection, or execution of contracts, without the borrower taking timely and appropriate action, satisfactory to ADB, to remedy the situation;
- (e) At any time ADB determines that the procurement of any goods or services to be financed out of the proceeds of the loan is inconsistent with the relevant procedure set out in the loan agreement, ADB may, by notice to the borrower, terminate the right of the borrower to make withdrawals with respect to such amount, contract or procurement. Upon the giving of such notice, the relevant amount of the loan shall be cancelled; or
- (f) Any effectiveness conditions specified in the Loan Agreement is not fulfilled.

8. After consultation with ADB, the borrower may, by notice to ADB, cancel the loan. Outstanding amounts of commitment letters issued by ADB cannot be cancelled except as expressly provided in such commitment letters.

⁴ In case there is no extension request from the borrower after the first interim extension, further interim extensions of up to 30 days each may be granted by the CD, for a cumulative interim extension not exceeding 180 days.

9. After consultation with OGC, the project team will prepare a brief Board information paper explaining reason(s) of cancellation and submit to CD with the concurrence of SD for circulation to the Board with a copy to PFPM, OGC, CTLA-LGD, and CCPF if the loan is cofinanced.