



ASIAN DEVELOPMENT BANK

Regulations of the Asian Development Fund

Dated 1 January 2017

**REGULATIONS
OF THE ASIAN DEVELOPMENT FUND**

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**REGULATIONS
OF THE ASIAN DEVELOPMENT FUND**

DATED 1 JANUARY 2017

The ASIAN DEVELOPMENT BANK (hereinafter called ADB) is empowered by its Articles of Agreement (hereinafter called the Articles) to establish and administer Special Funds and to carry out special operations financed from such Funds;

The Board of Governors of ADB, by Resolution No. 62, has authorized the establishment of a Special Fund to be known as the ASIAN DEVELOPMENT FUND (hereinafter called the Fund), intending that the Fund serve as an instrument for carrying out the concessional lending operations of ADB;

The Board of Governors, by Resolution No. 67 and Resolution No. 68, has approved arrangements for the establishment of the Fund and for the initial mobilization of resources in the form of contributions from developed member countries of ADB, and has directed the Board of Directors of ADB to make Regulations to govern the Fund and the administration of its resources;

The Board of Governors has from time to time adopted resolutions authorizing replenishments of the Fund, subject to the terms and conditions contained in the relevant authorizing Resolutions;

The Board of Governors has authorized ADB to provide, in addition to loans, financing in the form of grants;

The Board of Governors has authorized ADB, in accordance with such determinations as may be made by the Board of Directors, (i) to convert Fund resources held in various currencies into the currencies which constitute the Special Drawing Right (SDR), and (ii) to determine in case of the withdrawal of a Contributor from the Fund or the termination of the Fund, the value of Contributors' paid-in contributions and the value of all other resources of the Fund, including net income and surplus from ADB's ordinary capital resources transferred to the Fund, in terms of SDR;

The Board of Governors, by Resolution No. 372, has authorized ADB to terminate the loan operations of the Fund, and to transfer the loan and certain other assets of the Fund to ADB's ordinary capital resources. The Board of Governors has authorized ADB to provide financing from the Fund solely in the form of grants;

The Board of Governors, by Resolution No. 378, has authorized ADB, in accordance with such determinations as may be made by the Board of Directors, to convert Fund resources held in the currencies that constitute the SDR and other currencies into United States dollars; and

The Board of Directors, pursuant to the foregoing authority, has adopted the following Regulations for the administration of the Fund and the resources thereof.

ARTICLE I

The Fund

Section 1.01. Purpose of the Fund. The purpose of the Fund shall be to enable ADB more effectively to carry out its purpose and functions by providing resources on concessional terms for the economic and social development of the developing member countries of ADB, having due regard to the economic situation of such countries and to the needs of the less developed members.

Section 1.02. Application of Regulations. (a) The Fund and the resources thereof shall be governed by, and such resources shall be received, administered, used and disposed of in accordance with, these Regulations, as amended from time to time pursuant to Section 6.01, unless the relevant authorizing Resolution of the Board of Governors provides otherwise.

(b) The Special Funds Rules and Regulations adopted by the Board of Directors on 17 September 1968 shall not apply to the Fund or the resources thereof.

(c) For purposes of these Regulations, a Special Resolution of the Board of Directors is a resolution which is approved by a majority of Directors, representing not less than two-thirds of the total voting power of the members of ADB.

Section 1.03. Administration of the Fund. (a) Subject to the express provisions of these Regulations, the respective functions of the Board of Governors, the Board of Directors, the President and the staff of ADB in carrying out the responsibilities and exercising the powers of ADB with respect to the Fund, and the procedures to be followed in the exercise of such functions, shall be the same as those which apply in similar circumstances in the ordinary operations of ADB.

(b) The Board of Directors may adopt such guidelines and operating procedures, not inconsistent with these Regulations, as it shall consider necessary or appropriate for the efficient administration of the Fund.

ARTICLE II

Resources of the Fund

Section 2.01. Types of Resources. The resources of the Fund shall consist of:

- (a) amounts contributed to the Fund as provided in Section 2.02 and Section 2.04;
- (b) amounts accepted by ADB for the Fund as provided in Section 2.05;
- (c) amounts initially allocated to other Special Funds of ADB and transferred to the Fund (other than set-aside resources);

- (d) amounts accruing to the Fund by way of income or otherwise derived from operations of the Fund; and
- (e) amounts transferred from ordinary capital resources net income or surplus with the approval of the Board of Governors, as provided in Section 2.06.

Section 2.02. Contributions. (a) Any member of ADB may become a Contributor to the Fund by making a Contribution in such amount as may be specified by an authorizing Resolution of the Board of Governors; provided that no member shall be obligated by reason of such authorizing Resolution to make a Contribution.

(b) Each Contribution shall be made by the member depositing with ADB, in conformity with the relevant authorizing Resolution, an Instrument of Contribution specifying the amount of its Contribution, the manner in which payment thereof will be made to ADB, and such other matters as may be required or permitted by the authorizing Resolution.

(c) By depositing an Instrument of Contribution, the member shall be deemed to accept the application of these Regulations to the resources contributed under such Instrument.

Section 2.03. Payment of Contributions. Except as the Board of Governors in the authorizing Resolution may otherwise determine, each Contribution shall be paid in the currency of the Contributor, and shall be made available to ADB, at the option of the Contributor, either in cash or in notes or similar obligations issued by the Contributor or by the depository of the Contributor designated pursuant to Article 38, paragraph 2, of the Articles. Such notes or obligations shall be non-negotiable, non-interest-bearing and encashable by ADB at par upon demand, as required by ADB for the conduct of the operations of the Fund and to meet liabilities of the Fund.

Section 2.04. Increases in Contributions. (a) A Contributor may at any time, by agreement with ADB, increase the amount of its Contribution.

(b) The Board of Directors shall at appropriate intervals review the resource position of the Fund. If on the basis of such review it appears that a general increase in the amount of Contributions is warranted, the Board of Directors shall make recommendations to the Board of Governors, which may authorize such a general increase upon such terms and conditions as it shall determine.

(c) Except as the Board of Governors in authorizing a general increase under paragraph (b) of this Section 2.04 may otherwise determine, the provisions of the Regulations relating to Contributions shall apply equally to increased amounts contributed as contemplated by this Section 2.04.

Section 2.05. Supplementary Resources. (a) ADB, with the approval of the Board of Directors, may accept Supplementary Resources for the Fund from any member of ADB and, if authorized by a Special Resolution of the Board of Directors, from any non-member government or from any national or international entity, public or private.

(b) Supplementary Resources shall normally be accepted only in a freely convertible currency. Where the donor of such Resources is a government, however, the Board of Directors

may agree to accept such Resources in the currency of the donor even if this is not freely convertible, provided that satisfactory assurances are received concerning the application of such Resources of the principles laid down in Section 4.02.

(c) Notwithstanding the provisions of paragraph (a)(ii) of Section 4.03, Supplementary Resources accepted from a non-member may be used to finance procurement, in the territories of the donor of such Resources and of all member countries of ADB, of goods produced in and services supplied from such territories.

(d) The other terms and conditions governing ADB's administration and use of Supplementary Resources shall be consistent with the provisions of these Regulations relating generally to resources of the Fund. For the purposes of Section 5.01, Section 5.03 and Section 6.02, the term "Contributor" shall be deemed to include a donor of Supplementary Resources, and the term "Contribution" shall be deemed to include Supplementary Resources donated by such donor.

Section 2.06. Income and Surplus from Ordinary Capital Resources. After making provision for reserves pursuant to the Articles, the Board of Governors may transfer to the Fund net income or surplus from ordinary capital resources. The net income and surplus so transferred shall be used in such manner, not inconsistent with these Regulations, as the Board of Governors in making such resources available to the Fund may direct.

ARTICLE III

Operations of the Fund

Section 3.01. Methods of Operations. (a) The resources of the Fund may be used by ADB, alone or in combination with any other Special Funds resources of ADB, to provide financing under grants for projects and programs of high developmental priority. The term "project" as hereinafter used refers equally to a program.

(b) Grants shall be provided principally for specific projects, including those forming part of a national, sub-regional, or regional development program. ADB may also make grants to national development banks and other suitable entities, in order that these entities may finance specific development projects whose individual financing requirements are not, in the opinion of ADB, large enough to warrant the direct supervision of ADB.

(c) Subject to the provisions of these Regulations, the policies and procedures to be applied by ADB in making grants financed from the Fund shall be determined by the Board of Directors, giving particular recognition to the special responsibility of ADB to assist the less developed of its developing member countries.

Section 3.02. Eligible Recipients. Financing may be provided, in accordance with these Regulations, to developing members of ADB, to any agency, instrumentality or political subdivision of a developing member, or to any entity or enterprise operating in the territory of such a member, as well as to any international, regional or subregional agency or entity concerned with development in the region served by ADB.

Section 3.03. Commitment Authority. ADB shall make grant commitments from its resources pursuant to Section 2.01, including commitments based on amounts projected to be received by the Fund as investment income, pursuant to such procedures in respect of such commitment authority as the Board of Directors may authorize from time to time.

Section 3.04. Considerations Precedent to Financing. (a) Before any grant is made, the applicant shall have submitted an adequate proposal and the President shall have presented to the Board of Directors a written report concerning the proposal, together with his recommendations, on the basis of a staff study.

(b) In considering an application for a grant to be financed from the Fund, ADB shall pay due regard

- (i) to the ability of the recipient to obtain other financing, including financing from other sources of ADB, on terms and conditions which ADB considers reasonable for the recipient, taking into account all pertinent factors;
- (ii) to the relevant self-help measures being taken by the recipient and, where the recipient is not a member of ADB, by both the recipient and the member in whose territory the project is to be carried out; and
- (iii) to the desirability of avoiding a disproportionate amount of the resources of the Fund being used for the benefit of any particular developing member of ADB.

(c) ADB shall not make a grant unless it is satisfied that the project for which such grant is intended is sound, and that financing the project would thus be consistent with the requirement that ADB shall be guided by sound development banking principles in its operations.

(d) ADB shall not finance any undertaking in the territory of a member of ADB if that member objects to such financing.

Section 3.05. Use of Grant Proceeds. (a) The proceeds of a grant financed from the Fund shall be drawn upon by the recipient only to meet expenditures in connection with the project as such expenditures are actually incurred; provided that the Board of Directors may decide, in special circumstances, that some reasonable portion of such proceeds may be drawn upon to reimburse past expenditures.

(b) ADB shall take the necessary measures to ensure that the proceeds of each grant are used only for the purposes for which the grant operation was undertaken, and with due attention to considerations of economy and efficiency.

Section 3.06. Provision of Currencies. In making grants financed from the Fund, ADB shall furnish its grant recipients with United States dollars, unless the Board of Directors may otherwise determine.

Section 3.07. Procurement Arrangements. Procurement arrangements and procedures to be followed by grant recipients shall be determined by the Board of Directors from time to time, having regard in particular to the availability of Contributions for financing such procurement.

ARTICLE IV

Administration and Use of Resources of the Fund

Section 4.01. Separation of Operations. (a) The resources of the Fund shall at all times and in all respects be held, used, committed, invested or otherwise disposed of entirely separate from the ordinary capital resources of ADB.

(b) Under no circumstances shall the ordinary capital resources of ADB be charged with, or used to discharge, losses or liabilities arising out of the operations or other activities for which resources of the Fund were originally used or committed.

(c) No action authorized by the Board of Governors or the Board of Directors in application of Article 10 of the Articles shall be deemed to contravene the provisions of paragraphs (a) or (b) of this Section 4.01.

Section 4.02. Freedom of Resources from Restrictions. Except as otherwise provided in or permitted by these Regulations,

(a) the resources of the Fund shall be freely available for use by ADB in the conduct of the operations of the Fund and to meet liabilities of the Fund; and

(b) currencies paid into the Fund may be used by ADB, without restriction, for payments in any country and to purchase other currencies as required for the conduct of the operations of the Fund and to meet liabilities of the Fund.

Section 4.03. Use of Resources for Financing Procurement. ADB may draw upon resources of the Fund to finance procurement expenditures under grants in accordance with the following principles:

(a) ADB may (i) draw down Contributions to finance expenditures in the territories of all Contributors and of all developing member countries of ADB, for goods produced in and services supplied from such territories, and (ii) use other resources of the Fund to finance expenditures in the territories of all member countries of ADB, for goods produced in and services supplied from such territories, except in any case in which the Board of Directors, by a vote of the Directors representing not less than two-thirds of the total voting power of the members of ADB, determines to permit procurement in other countries or of goods and services produced in other countries, in special circumstances making such procurement appropriate, provided, that any blanket permission for such procurement may apply only to cofinanced operations; and

(b) all resources of the Fund shall be available, without restriction, to finance transportation and insurance costs associated with the procurement of goods and services.

Section 4.04. Drawdown of Contributions. As far as practicable, ADB shall draw upon Contributions in such a manner that, over reasonable periods of time, the proportion of all Contributions drawn down, shall be uniform, regardless of whether such Contributions are made available to ADB in cash or in notes.

Section 4.05. Investment. ADB may invest any resources of the Fund which are not immediately required for the conduct of the operations of the Fund or to meet liabilities of the Fund. Except as otherwise authorized by the Board of Directors, such investment shall be made in accordance with the guidelines approved by the Board of Directors for investment of the ordinary capital resources of ADB, except that Supplementary Resources accepted in the currency of a non-member may be invested in the territories of such non-member.

Section 4.06. Charging of Administrative Expenses. The Fund shall bear all administrative expenses appertaining directly to operations financed from the resources of the Fund, and such reasonable share of the other administrative expenses of ADB as the Board of Directors shall from time to time determine. Such expenses shall be charged first to the income of the Fund.

Section 4.07. Allocation of Net Income. Net income accruing on the resources of the Fund shall be retained in the Fund; provided that, if authorized by the Board of Governors, a portion of such net income accruing in any year may be transferred from the Fund and applied towards financing the cost of technical assistance provided by ADB on a grant basis.

Section 4.08. Valuation of Currencies. Whenever it shall be necessary to determine the value of the United States dollar in terms of any currency or the value of any currency in terms of the United States dollar or another currency, the valuation shall be reasonably made by ADB, applying as far as practicable the principles applicable to valuation of currencies forming part of the ordinary capital resources of ADB.

Section 4.09. Accounts and Audit. (a) ADB shall maintain accounts of the Fund in accordance with generally accepted sound accounting principles, and shall prepare and submit to the Board of Directors financial statements of the Fund on a quarterly basis.

(b) The accounts of the Fund shall be audited at the close of each financial year by the outside auditors of ADB, and shall be subject to the same audit requirements by internal and outside auditors of ADB as apply to the accounts of ADB's ordinary capital resources.

(c) The Board of Directors shall submit to the Board of Governors, for approval at the Annual Meeting of Governors, the audited financial statements of the Fund for the previous financial year, including a balance sheet and a statement of revenue and expenses.

Section 4.10. Reports. (a) ADB shall include in its Annual Reports a separate section in respect of the Fund, containing appropriate information on the resources of the Fund and on projects financed from the Fund.

(b) ADB shall report periodically to each Contributor on the current status and anticipated use of its Contribution, and shall provide such other information regarding its administration of the Contribution as the Contributor may reasonably request.

ARTICLE V

Withdrawal and Termination

Section 5.01. Withdrawal. (a) A Contributor may at any time, after consultation with ADB, withdraw from the Fund by delivering a written withdrawal notice to ADB at its principal office. Withdrawal shall become effective at the end of the calendar quarter following the quarter in which the withdrawal notice is received by ADB, or on such later quarterly date as may be specified in such notice. As used in this Section, the term “date of withdrawal” means the date on which the withdrawal becomes effective.

(b) As from the date of withdrawal, the Contributor shall have no rights under these Regulations except those set forth in this Section 5.01 and in Section 6.02, and shall be relieved of any further liability to pay to ADB any amounts of its Contribution not paid in at the date of withdrawal except such amounts as, in the opinion of ADB, will be required to meet commitments under grants made by ADB as of that date.

(c) Upon withdrawal, ADB shall proceed to a settlement of accounts with the Contributor on the basis of the following principles:

- (i) As used in the following sub-paragraphs, the term “existing grants” means grants made by ADB from resources of the Fund as of the date of withdrawal; the term “total net assets” means total net assets of the Fund as shown in the books of ADB as of the date of withdrawal; and the term “surplus assets” means such part of the total net assets as, in the opinion of ADB, will not be required to meet commitments under existing grants. For the purpose of this Article V, and except as otherwise specified in the Regulations, the value of total net assets and surplus assets shall be determined in SDR in accordance with the exchange rates used by ADB for translation purposes in its books of account on the date of withdrawal.
- (ii) For the purposes of this Article V, the value of any paid-in Contribution shall be the equivalent in terms of SDR of the amount paid-in by a Contributor, determined in accordance with the exchange rates set forth in the relevant authorizing Resolution of the Board of Governors, except that for Contributions made pursuant to Resolutions Nos. 67, 68, 92 and 121 of the Board of Governors and the amendments thereto, the value of the Contributor’s Contribution shall be calculated based on an exchange rate of SDR1.20635 per United States dollar of the weight and fineness in effect on 31 January 1966, as used by ADB for the valuation of its capital in accordance with Article 4, paragraph 1, of the Articles.
- (iii) For the purposes of this Article V, the value of net income and surplus from ordinary capital resources transferred to the Fund shall be the equivalent in terms of SDR of the amounts transferred to the Fund, determined on the basis on the exchange rates used by ADB for translation purposes in its books of account at the time when the relevant Resolution authorizing such transfer was adopted.

- (iv) ADB shall determine the Contributor's share in the Fund, the amount of which shall be such proportion of the total net assets, after deducting accruals, as the paid-in amount of the Contributor's Contribution at the date of withdrawal bears to the aggregate amount of all paid-in Contributions and net income and surplus from ordinary capital resources transferred to the Fund; provided that if the Contributor's Contribution comprises or includes capital transferred from the Multi-Purpose Special Fund as contemplated in Section 7.03, the Contributor may, in special circumstances relating to the terms on which such capital was originally made available to the Multi-Purpose Special Fund, require that its share be increased by not more than an amount bearing the same proportion to the total of (A) all accumulated net income retained in the Fund and (B) any portions of net income transferred from the Fund pursuant to Section 4.07, as the capital so transferred bears to the aggregate amount of all paid-in Contributions.
- (v) A portion of the Contributor's share bearing the same proportion to the whole as the amount of the surplus assets bears to the total net assets shall be paid by ADB to the Contributor, within a reasonable time after withdrawal, from the surplus assets. In making such payment, ADB shall draw first upon such of the surplus assets as have been paid into the Fund (in cash or in notes) by the Contributor.
- (vi) The balance of the Contributor's share shall be paid by ADB to the Contributor, in installments not more frequent than every six months, from amounts allocated by ADB for the purpose from cancellations occurring under existing grants after the date of withdrawal.
- (vii) In no event shall total payments made to the Contributor hereunder exceed the equivalent in terms of SDR of the total amount paid into the Fund by the Contributor, calculated in accordance with the exchange rates used by ADB for translation purposes in its books of account on the date of withdrawal, except to the extent and in the circumstances contemplated in the proviso in sub-paragraph (iv) above.

(d) All calculations, determinations and allocations required for purposes of paragraph (c) of this Section 5.01 shall be made on such basis, consistent with the principles set out in that paragraph, as ADB shall reasonably determine.

Section 5.02. Termination. (a) The Board of Governors may, after consultation between ADB and the Contributors, decide to terminate the Fund.

(b) The Fund shall terminate automatically upon termination by ADB of its operations pursuant to Article 45 of the Articles.

Section 5.03. Disposal of Resources on Termination. Upon termination of the Fund, the following provisions shall apply with respect to the resources of the Fund:

(a) ADB shall forthwith cease all activities relating to such resources, except those incident to the orderly realization, conservation and preservation of such resources and the settlement of the direct or contingent obligations to which they may be subject.

(b) Subject to paragraph (c) of this Section 5.03, ADB shall distribute the net assets of the Fund among Contributors and ADB in proportion to the amounts respectively made available by them to the Fund as Contributions, and as net income and surplus from ordinary capital resources transferred to the Fund. Such distribution shall be effected at such times, in such currencies and in such types of assets as ADB shall deem fair and equitable. Distribution need not be uniform as to type of asset or as to currency.

(c) No distribution shall be made until all liabilities to creditors (including liabilities to ADB in respect of administrative expenses) shall have been discharged or provided for, and until the Board of Directors shall have decided that such distribution should be made; provided that a Contributor whose Contribution comprises or includes capital transferred from the Multi-Purpose Special Fund may, in special circumstances relating to the terms on which such capital was originally made available to the Multi-Purpose Special Fund, require that the amount to be distributed to it in respect of that part of its Contribution be determined as if the net assets of the Fund included net income transferred from the Fund pursuant to Section 4.07, and the amounts of all other distributions shall be adjusted accordingly. Any distribution to a Contributor shall be subject to prior settlement of all outstanding claims by ADB against such Contributor in respect of its Contribution.

(d) Until final distribution of the assets of the Fund, all rights and obligations of ADB and of Contributors under these Regulations shall continue unimpaired, except that no Contributor may withdraw after the date of termination.

ARTICLE VI

Amendments; Arbitration

Section 6.01. Amendments. These Regulations may be amended, after consultation between ADB and the Contributors, by Special Resolution of the Board of Directors; provided that the prior consent in writing of every Contributor shall be required before the coming into effect of any amendment modifying

- (a) the provisions of Section 3.01(a), which specify the manner in which ADB may use the resources of the Fund in its operations;
- (b) the provisions on use and drawdown of Contributions contained in Section 4.03 and Section 4.04;
- (c) the provisions on charging of administrative expenses contained in Section 4.06;
- (d) the rights of a Contributor upon withdrawal from the Fund under Section 5.01, and upon termination of the Fund under Section 5.03; and
- (d) the arbitration procedure provided in Section 6.02.

Section 6.02. Arbitration. If a dispute outside the scope of Article 60 of the Articles should arise between ADB and a Contributor concerning any matter arising out of or in connection with the Contribution of that Contributor, and such dispute cannot be settled by

consultation between the parties, the dispute shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by ADB, another by the Contributor, and the third, unless the parties otherwise agree, by the President of the International Court of Justice, or such other authority as may have been prescribed by regulations adopted by the Board of Governors for the purposes of Article 61 of the Articles. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

ARTICLE VII

Effectiveness; Transitional Provisions

Section 7.01. Effectiveness of Regulations. These Regulations shall become effective forthwith upon the establishment of the Fund.

Section 7.02. Application of Preceding Governors' Resolutions. (a) For purposes of these Regulations, Resolution No. 67 and Resolution No. 68 of the Board of Governors shall be deemed to be Resolutions contemplated by Section 2.02 and Section 2.04, respectively.

(b) Notwithstanding the provisions of Section 4.03, the Board of Directors, acting under the authority of Resolution No. 67, may accept a procurement restriction upon the initial use of part or all of a Contribution made as contemplated in such Resolution. If the whole of a Contribution, or the balance thereof remaining unused at any time, is subject to such restriction, the concerned Contributor shall not be deemed to be a Contributor for the purposes of paragraph (a) of Section 4.03. Any such restriction shall be subject to periodic review by, and consultation with, ADB.

Section 7.03. Transfers from Multi-Purpose Fund. (a) ADB shall transfer to the Fund, pursuant to the provisions of paragraph 8 of Resolution No. 67 of the Board of Governors, amounts initially contributed to the Multi-Purpose Special Fund of ADB which have been the subject of a crediting declaration as provided in such paragraph.

(b) ADB may arrange for other amounts contributed to the Multi-Purpose Special Fund to be reallocated and transferred to the Fund as soon as possible after its establishment. Amounts so reallocated shall be consolidated with and accounted for as part of the Contribution (if any) made by the same Contributor to the Fund, and otherwise shall be deemed to be Supplementary Resources until such time as the Contributor makes its initial Contribution to the Fund.

(c) As from the date of transfer, all amounts transferred as contemplated in this Section shall constitute or form part of Contributions or Supplementary Resources under these Regulations as the case may be, and the use, administration and disposition of such amounts shall be governed by these Regulations accordingly. Liabilities to which such amounts were subject at the date of transfer shall become liabilities of the Fund.