



**OPERATIONAL GUIDELINES  
FOR  
SYNDICATION  
OF  
NON-SOVEREIGN GUARANTEED LOANS**

(November 2008)

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>2</b>
<b>II.</b>	<b>ADB LOAN SYNDICATION .....</b>	<b>2</b>
2.1	DEFINITIONS.....	2
2.2	RATIONALE FOR A B-LOAN PROGRAM.....	4
2.3	BENEFITS AND RISKS OF B-LOAN SYNDICATION.....	5
<b>III.</b>	<b>OPERATIONAL ASPECTS .....</b>	<b>6</b>
3.1	COUNTRY, PROJECT AND SECTOR ELIGIBILITY.....	6
3.2	ELIGIBLE PARTICIPANTS FOR AN ADB B-LOAN SYNDICATION .....	6
3.3	PROPORTION OF A-LOAN TO B-LOAN.....	6
3.4	IMPLEMENTATION OF AN A- AND B-LOAN SYNDICATION .....	6
<b>IV.</b>	<b>FINANCIAL ASPECTS OF A SYNDICATED LOAN.....</b>	<b>11</b>
4.1	PAYMENTS RECEIVED UNDER THE LOAN AGREEMENT.....	11
4.2	PAYMENTS DUE UNDER THE LOAN AND PARTICIPATION AGREEMENTS .....	11
4.3	PRICING STRUCTURE OF A B-LOAN SYNDICATION .....	11
4.4	FEES STRUCTURE OF AN ADB LOAN SYNDICATION .....	11
4.5	CURRENCIES, INTEREST RATES, MATURITIES AND GRACE PERIODS .....	12
4.6	LOAN PREPAYMENT.....	12
4.7	CANCELLATION OF UN-DISBURSED LOAN AMOUNT BY THE BORROWER.....	13
4.8	GUARANTEES AND OTHER SECURITY.....	13
4.9	TAXES.....	13
<b>V.</b>	<b>THE B-LOAN .....</b>	<b>14</b>
5.1	DISBURSEMENTS .....	14
5.2	EXTENSION OF COMMITMENT PERIOD FOR B-LOAN.....	14
5.3	NOTIFICATION OF INTEREST RATE AND PAYMENT OF INTEREST TO PARTICIPANTS .....	14
5.4	REPAYMENT OF PRINCIPAL TO PARTICIPANTS .....	15
5.5	PREPAYMENT OF PRINCIPAL TO PARTICIPANTS .....	15
5.6	PAYMENT OF FEES TO PARTICIPANTS.....	15
5.7	INCREASED COSTS .....	15
5.8	DEFAULT INTEREST .....	15
5.9	ALLOCATION OF PAYMENTS RECEIVED FROM THE BORROWER.....	15
5.10	AMENDMENTS AFFECTING THE PARTICIPATIONS .....	15
5.11	TREATMENT OF EVENT OF DEFAULT BY THE BORROWER .....	16
5.12	TREATMENT OF PAYMENTS OTHER THAN DEBT SERVICE .....	16
5.13	REDUCTION OF COMMITMENT ON THE B-LOAN.....	17
5.14	TREATMENT OF INFORMATION AND FINANCIAL DOCUMENTATION .....	18
5.15	REPRESENTATIONS OF THE ADB TO THE PARTICIPANTS .....	18
5.16	DISPOSAL OF PARTICIPATIONS .....	18
<b>VI.</b>	<b>ENTRY INTO FORCE AND AMENDMENTS .....</b>	<b>19</b>

## **I. Introduction**

- 1.1 One of the Bank's key objectives is to mobilize additional resources from investors to fund long term private sector projects. The Bank has several financial instruments which play a catalytic and confidence provider role. The addition of a loan syndication instrument would further broaden the scope of Bank lending, and provide another risk mitigation instrument to catalyze and attract private financial resources.
- 1.2 The proposed operational guidelines for the syndication of non-sovereign guaranteed loans (the "Guidelines") are issued pursuant to the General Authority on the Bank's Financial Products and Services adopted by the Board of Directors of the Bank on 12 January 2000<sup>1</sup> (the "General Authority").
- 1.3 The General Authority empowers Management to formulate specific operational guidelines for the development, administration, and pricing of the Bank's financial products and services within the parameters that have been set out therein. In accordance with the General Authority, the Guidelines shall be prepared under the oversight of the Asset-Liability Management Committee (ALCO) and shall be approved by the President and circulated to the Board. The President shall inform the Board of Directors of the Bank of any revisions to the Guidelines.
- 1.4 The Guidelines are complementary to the "Revised Private Sector Operations Policies" (ADB/BD/WP/94/127/Rev.2), the "Policies for Lines of Credit, Agency Lines and Guarantees to Private Sector Financial Institutions" (ADB/BD/WP/98/37/Rev.3), "Revised Financial Guidelines For Non-Sovereign Guaranteed Loans" (ADB/BD/IF/2006/53) and the "Operational Guidelines For Non-Sovereign Guaranteed Loans to Public Sector Enterprises" (ADB/BD/WP/2003/29/Rev.2/Approved). In the event of a conflict between the General Authority and the Guidelines, the General Authority shall prevail.
- 1.5 Following the introduction, Chapter II reviews the rationale for introducing a loan syndication product and describes the loan syndication products offered by the Bank. Chapter III presents the operational aspects of loan syndication, and Chapter IV the financial aspects. Chapter V provides details on participations in loans syndicated by the Bank. The final chapter concerns the entry into force.

## **II. ADB Loan Syndication**

### **2.1 Definitions**

2.1.1 Loan syndication forms part of the broader concept of co-financing in which more than one lender provides funds to a Borrower. Loan syndication can be done in a number of different ways, depending on the overall objective to be achieved by the chosen structure.

---

<sup>1</sup> Enhancing the Bank's Financial Products and Services (ADB/BD/WP/99/164), Resolution (B/BD/2000/01)

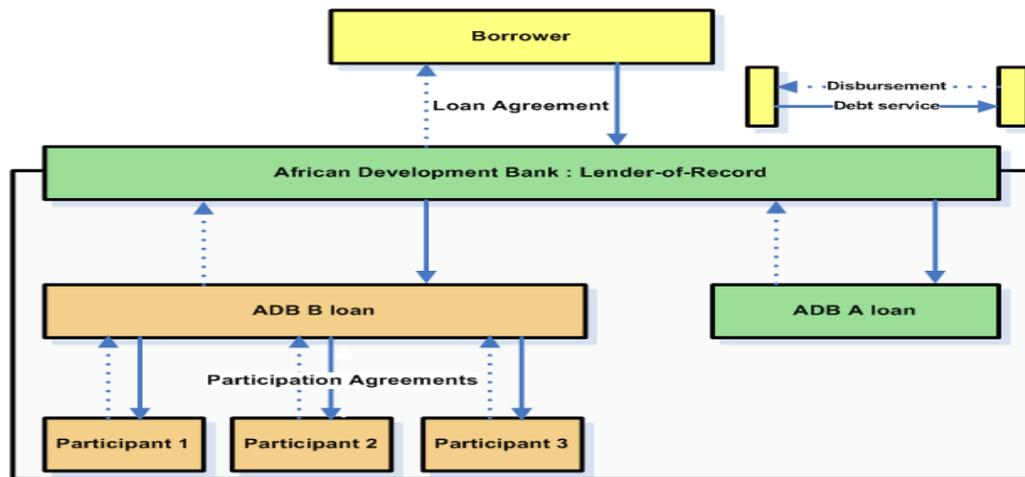
2.1.2 The Bank proposes to offer two structures of loan syndication, the more common parallel co-financing loan structure and the A- and B-loan structure.

2.1.3 A **syndicated loan** is typically a large loan in which a group of financial institutions (the Syndicate) work together to provide funds for a Borrower. Usually, one or more lead banks (the Arranger) take a percentage of the loan and syndicate the rest to other financial institutions. To ensure that the Borrower does not have to deal with all syndicate members individually, an Agent (the Agent) acts as a focal point for and on behalf of all syndicate members.

2.1.4 The **Arranger** originates, structures and syndicates the transaction. The duties of the Arranger include the preparation of the information memorandum and all the necessary steps to syndicate the loan in return for a fee. The Arranger may also be the **Bookrunner** whose responsibilities are to issue invitations to participate in the syndication, disseminate information to prospective participants, and inform the Borrower about the progress of the syndication.

2.1.5 The **Agent** administers the loan in return for a fee. The duties and responsibilities of the Agent are described in an agency agreement.

2.1.6 Under an **A- and B-loan Structure** (the B-loan structure), the Bank acts as the “lender-of-record” (the Lender) of the “loan-on-record” (the Loan), keeps part of the loan, which is the A-loan, and sells Participations to B-loan Participants who take full exposure to the underlying project credit risk in the proportion of their Participations. Under this structure, where the Bank is the Lender, the B-loan Participants benefit from the ADB’s status as a Multilateral Development Institution. The diagram below shows the relation between the Borrower, the B-loan Participants and the ADB, who holds the A-loan.



2.1.7 The **A-loan** is the amount of the Loan that the ADB has agreed to keep for its own credit.

2.1.8 The **B-loan** is the portion of the Loan that is syndicated to commercial financial institutions.

2.1.9 The **Loan** is the sum of the A- and B-loan. The Loan Agreement shall state the amount of the A-loan and B-loan. The amount of the A-loan may vary during the life of the underlying project within limits defined in paragraph 2.5 and 3.3.1.

2.1.10 The **Lender of Record (the Bank or ADB)** signs the Loan Agreement.

2.1.11 **Majority Participants** means Participants with B-loan Shares, in the aggregate, equal to 66-2/3% or more.

2.1.12 A **Participant** is the holder of a Participation as defined in 2.3.11.

2.1.13 A **Participation**, in the B-loan, is the amount that each Participant has agreed to provide. The aggregate sum of the Participations represents the entire B-loan.

2.1.14 The **ADB or Participant pro-rata share (PRS)** of the Loan on a particular date is the percentage equal to the amount of the A-loan or Participation respectively divided by the amount of the Loan on that date.

2.1.15 In the current guidelines, it is assumed that the Bank plays the role of Arranger and Agent. At its discretion, however, the Bank may, totally or partially, outsource these functions to one or more reputable financial institutions having the relevant expertise. The selected institutions shall perform all the duties that the Bank as an Arranger and/or Agent would have performed according to the Arranger/Agency agreement.

2.1.16 As the Arranger, **the ADB, under a written mandate from the Borrower, undertakes on a “best efforts basis” to find eligible financial institutions** (see definition in Section 3.2) **to participate in a syndicate to fund, with the Bank, a portion of the Loan.** The ADB only assumes credit risk on the A-loan, while the Participants assume credit risk on the B-loan in line with their Participations. During the life of the Loan, **the credit exposure of the Bank shall not breach operational and risk management limits for projects financed by the Bank.**

## 2.2 Rationale for a B-loan Program

2.2.1 In introducing a B-loan program, the ADB's prime objective is to attract private capital to the continent with its involvement in the transaction as lender-of-record and co-financier. The ADB is uniquely positioned to play this role given its international financial standing, credit experience and special relationships with governments in Regional Member Countries (RMC). The leverage of this special status allows the ADB to assist eligible Borrowers in obtaining financing from private sector financial institutions, which shall result in an increase of foreign direct investment (FDI).

2.2.2 The proposed B-loan program broadens the Bank's mandate by mobilizing loans from financial institutions that are interested in lending to projects in Africa under the umbrella of ADB's unique status on the continent. Consequently, this program shall play an important role in enhancing the Bank's

private sector activities without necessarily increasing exposure since Participants share in the commercial credit risk of underlying projects.

2.2.3 The Bank's private sector department is unable, with existing financial instruments, to absorb or manage certain types of risks associated with substantial investment in infrastructure projects with long gestation periods. As a result, new financial instruments are necessary to distribute and limit these risks among investors, financiers, governments, both locally and internationally. In addition to guarantee products, the use of B-loan syndication instrument shall improve and promote protected access to private capital by the Bank private sector clients and allow for the mobilization of additional resources.

## **2.3 Benefits and Risks of B-loan Syndication**

2.3.1 The basic principle of B-loan syndication is to optimize the allocation of risks between parties. By providing comfort for risks that the market is not able or willing to bear, the ADB through its loan syndication program may attract new sources of financing, reduce financing costs and extend maturities on debt instruments to suit project requirements.

2.3.2 As a supranational with shareholding from major industrialized countries, the ADB's "Preferred Creditor Status"<sup>2</sup> (PCS) is generally accepted by regulators as an important factor in mitigating country risk for a given project. In several industrialized countries, MDB B-loans are generally exempted by monetary regulatory authorities from mandatory provisioning for country risk exposure and reduced likelihood of rescheduling in the event of a foreign debt crisis in the borrowing country.

2.3.3 Additional benefits that may accrue to Participants in a transaction are those that the ADB has in relation to exemptions from restrictions on currency conversion on the remittance of interest and repatriation of principal and exemption from withholding tax.

2.3.4 The main risk of introducing a B-loan program is the potential loss of reputation that the Bank could suffer in the capital market, if the implementation of this powerful instrument ends up exposing to third parties the Bank's weaknesses in credit risk underwriting and loan administration. In order to mitigate such risk, Management could decide to outsource critical phases of the syndication process while building the Bank expertise to international loan markets standards.

---

<sup>2</sup> The term "*preferred creditor status*" refers to external creditors of sovereign States who are legally entitled to be given priority among individual creditors or classes of creditors in relation to the settlement of external debt. In the context of the Bank, its *de facto* preferred creditor status is premised on a well-established practice and accepted custom based on hitherto uncontested construction of specific provisions of the Bank Agreement.

### **III. Operational Aspects**

#### **3.1 Country, Project and Sector Eligibility**

The ADB may, through syndication of B-loan, fund all projects and sectors eligible for an ADB non-sovereign guaranteed loan in a regional member country, provided that the country signs a comfort letter explicitly recognizing the preferred creditor status of the Bank.

#### **3.2 Eligible Participants for an ADB B-loan Syndication**

3.2.1 Viable, strong and commercially operated financial institutions are eligible Participants. However, financial institutions that are incorporated or have their head office in the country where the Borrower is incorporated or carrying out the project are excluded. Export credit agencies or governmental, quasi-governmental or multilateral agencies, the project's sponsors and off-takers are also not eligible to participate in the B-loan.

3.2.2 An eligible Participant must have a minimum investment grade rating from a major and reputable rating agency. In exceptional cases and subject to suitable justification, the Bank may accept a lower rated or unrated participant.

3.2.3 Depending on the nature of the underlying project to be financed, the ADB may include additional and relevant eligibility criteria to maximize the overall success of the transaction.

3.2.4 An eligible Participant must be acceptable to the Borrower; however, the Borrower needs to strongly justify the rejection of a proposed Participant to the ADB.

#### **3.3 Proportion of A-loan to B-loan**

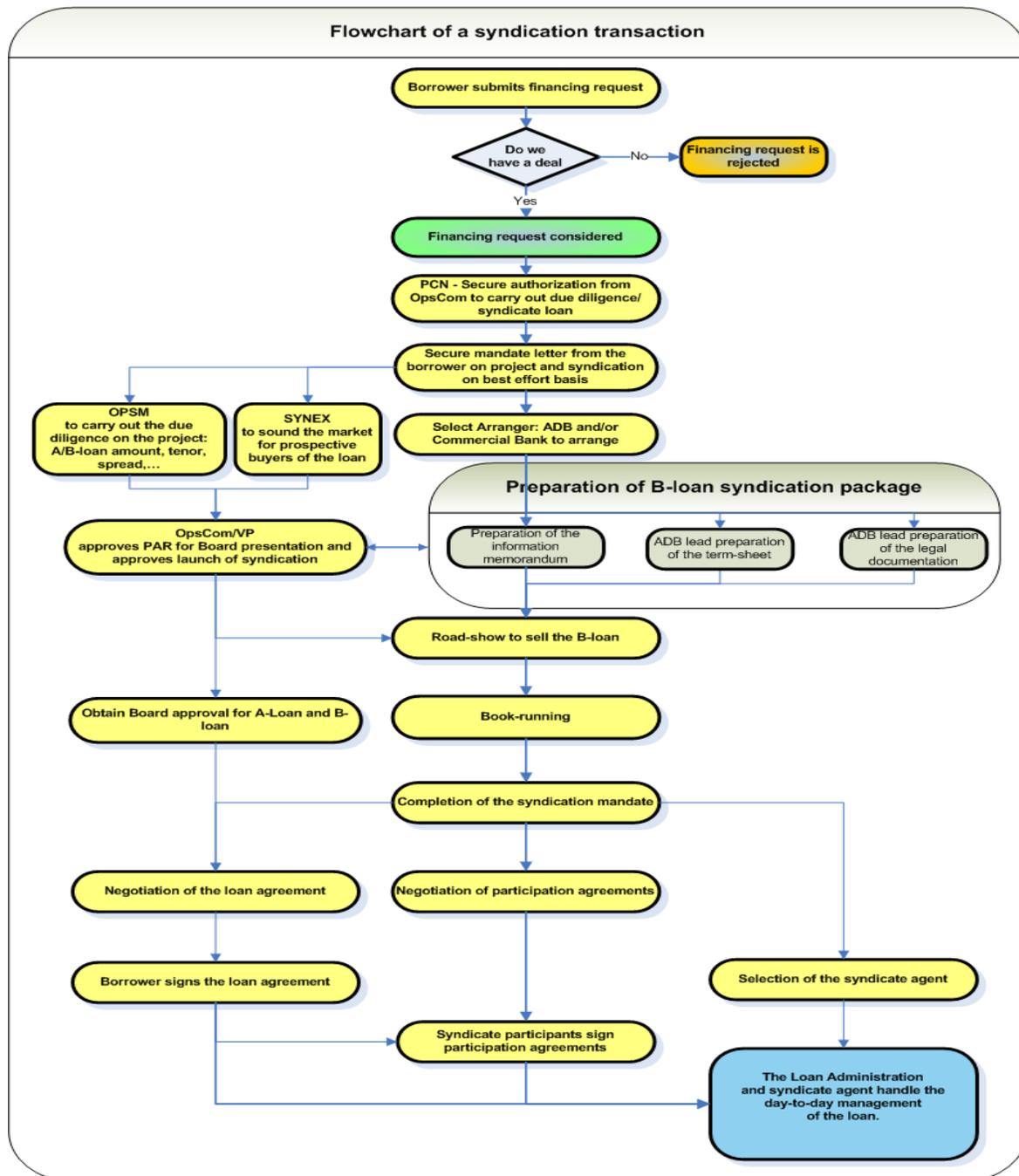
3.3.1 As a general rule, in deciding on the size of the A-loan in relation to the B-loan, the Bank needs to balance the authority and benefits derived from holding a significant amount of A-loan with the desire to attract a bigger number of Participants in the syndication and crowd in a larger volume of private financial capital through the B-loan.

3.3.2 Over the life of the B-loan syndication, the A-loan should not be less than 25% of the Loan.

#### **3.4 Implementation of an A- and B-loan Syndication**

3.4.1 Syndication flowchart: A flowchart on the process of syndicating a loan is available on page 8.

3.4.2 Identification and appraisal of the underlying projects: Projects supported by the ADB through syndication would be identified, prepared and appraised according to normal Bank standards.



3.4.3 Mandate letter from the Borrower: Once the project is included in the Bank's pipeline and OPSM has received the authorization from OpsCom to proceed with the project, OPSM must secure a mandate from the Borrower to evaluate the project, and lead, arrange and syndicate funding for the project. The Mandate Letter shall indicate that the Borrower undertakes not to engage in financial resource mobilization activities that would undermine the Bank's effort in syndicating the loan. **The mandate awarded by the Borrower to the Bank to syndicate the B-loan shall expire on the earlier of the date when the B-loan is fully syndicated and concluded or on the 180<sup>th</sup> calendar day following the date of Board's approval.** However, the Bank and the Borrower may mutually agree to extend or terminate the mandate at any time.

3.4.4 Selection of an Arranger: Once the mandate to syndicate the Loan is secured from the Borrower, if the ADB decides not to perform the role of the Arranger, it must select one or more suitable financial institutions to carry out the role of Arranger for the syndication. For a certain period to be specified in its Participation agreement, the Arranger must hold a Participation in the B-loan.

3.4.5 Syndication Project Team (SPT): Once a project is identified as suitable for ADB private sector financing by way of A- and B-loan syndication, OPSM Management shall setup a Syndication Project Team (SPT) to process the transaction, as well as facilitate and manage the syndication process. As soon as enough information is available on the transaction, the syndication expert (SYNEX) shall start sounding the market to gauge the appetite for the loan.

3.4.6 The Operations Committee (OpsCom): OpsCom shall approve the Project Appraisal Report (PAR) and the launch of the syndication of the B-loan on a best effort basis or on a case-by-case basis under full or partial underwriting by the Bank. The SPT shall also prepare, for OPSCOM review, the initial draft of the credit proposal to the market consisting of an information memorandum and a term-sheet.

3.4.7 Board approval: Management shall request the Board to approve the A-loan and the syndication of the B-loan on a best effort basis or on a case-by-case basis under full or partial underwriting by the Bank. Based on the market's sounding, the PAR submitted for Board's approval shall have an indicative distribution between the A-loan and B-loan. Once the mandate to syndicate is closed, Management shall inform the Board on the result of the syndication.

3.4.8 Bringing the deal to the market: In parallel to and in tandem with the preparation of the PAR by the SPT, the Arranger shall finalize the B-loan credit proposal and design a marketing strategy to road-show and book-run the transaction. If the Bank is the Arranger, the SYNEX shall take the lead in preparing all the documentation and taking all the necessary steps to bring the transaction to the market.

3.4.9 Potential conflict of interest: If the ADB decides to play the Arranger's role, the SYNEX shall assume the responsibility of taking the deal to the market. Management should take all the necessary measures to preserve the independence of the SYNEX from the A-loan interests.

**3.4.10 Identification and selection of syndication Participants:** The ADB/Arranger shall take all the necessary and appropriate actions to market the Loan. Each prospective Participant is provided with the syndication package including the term-sheet and the information memorandum. Given that the Participants bear the full credit risk associated with their Participation, the ADB encourages prospective Participants to carry out their own due diligence of the proposed investment before making any commitment. A disclaimer shall be written in the Participation Agreement to fully transfer the Participation's credit risk to the Participant.

**3.4.11 Closing and reporting on the mandate to syndicate:** Once the mandate expires, Management should promptly report back to the Borrower and the Board on the execution of the mandate and the list of Participants that have been secured. The ADB and the Borrower must consult on the list of Participants.

**3.4.12 Identification of the Agent:** At the conclusion of the syndication mandate, if the ADB decides not to perform the role of the Agent, it shall in consultation with the Borrower select a suitable financial institution to carry out the role of Agent for the syndication. If eligible, the Agent may buy a Participation in the B-loan. The Bank shall sign an agency agreement with the Agent.

**3.4.13 Negotiation and signature of the Participation Agreement:** The Bank shall negotiate and sign a Participation Agreement with the B-loan Participants. The Participants party to such agreement shall be accepted by the Borrower. The Bank's Legal Department (GECL) shall take the lead in preparing all the legal documents required for the Participation Agreement.

**3.4.14 Negotiation and signature of the Loan Agreement:** As the Lender, the ADB is the sole entity responsible for negotiations on the Loan Agreement. This responsibility cannot be delegated. During the negotiation, the ADB shall protect both its interests and those of the Participants. The Bank shall sign the Loan Agreement with the Borrower, and may not delegate this responsibility. The Bank's Legal Department (GECL) shall take the lead in preparing all the legal documents required for the Loan Agreement.

**3.4.15 Day-to-day management of the transaction:** The Bank/Agent shall handle the day-to-day administration of the Loan. The main responsibilities of the Bank/Agent include the following:

- (i) Ensure smooth and efficient disbursement from A-loan and B-loan under the Loan and Participations Agreements;
- (ii) Process payment of all amounts due to both the ADB and the Participants under the Loan and Participation Agreements;
- (iii) Inform Participants of important project developments and ensure that the Participants' views are fully taken into account in the management of the Loan;
- (iv) Manage the contractual relationship between the ADB, the Borrower and the Participants;
- (v) Act on requests of sale of Participations to an eligible financial institution;
- (vi) Monitor and distribute all financial and project progress reports to Participants;

- (vii) Monitor the provision of collateral, update valuations, obtain additional collateral (if necessary) and ensure that the interests of the Participants are protected according to all the underlying agreements and contracts;
- (viii) If the Bank is the Agent, FFCO and OPSM shall be responsible for (i), FFCO shall be responsible for (ii), and OPSM shall be responsible for (iii) to (vii). On a need basis, FTRY and GECL shall be prompted to provide support.

3.4.16 Disbursement: The ADB/Agent shall request disbursements from the Participants solely to meet a disbursement request from the Borrower under the Loan Agreement. A disbursement request by the Borrower is divided on a pro-rata basis between the A-loan and the B-loan. For example, if the A-loan represents 40% and the B-loan 60%, a disbursement request of 10 units of loan shall be divided into 4 to be disbursed by the A-loan and 6 by the B-loan. The Participants in the B-loan shall disburse their proportion of the disbursement request into an account specified by the Bank for a specific value date, and the ADB shall then aggregate the disbursements from both the A- and B-loan and make a global disbursement to the Borrower. **The ADB is not responsible for any Participant's disbursement obligations under the B-loan Participations agreement.** This disclaimer shall be clearly stated in the Participation Agreement and the Loan Agreement. In addition, the ADB has the right not to disburse the A-loan portion of a disbursement request if the B-loan portion of that disbursement request is not fully disbursed by the Participants. However, in this particular situation, the ADB may decide to make a partial disbursement, including the A-loan portion, to the Borrower.

3.4.17 Disbursement request: The Borrower may request disbursements on the Loan by delivering to ADB/Agent, at least fifteen (15) business days prior to the disbursement value date, a disbursement notice that specifies all the necessary information for the ADB and the Participants to process the disbursement request. If correctly filed, the disbursement request shall be satisfied in a timely manner by the ADB for the A-loan and the Participants for the B-loan.

3.4.18 Disbursement Processing: In order to reduce operational and financial risk during disbursements and make the funds available to the Borrower on the requested value date, disbursement requests shall be processed as follows:

- (i) Unless the ADB/Agent is notified by a Participant of its refusal to disburse on a given disbursement request three (3) business days before the value date of the disbursement, the Participant is considered to have accepted the terms of the disbursement request and required to fulfill the disbursement request by the value date;
- (ii) On the value date, the Bank shall disburse its portion and the amounts requested from Participants that have not notified the Agent of their refusal to disburse according to (i);
- (iii) Late payments from Participants that have not issued a refusal to disburse must be received with good value date or shall be subject to an interest compensation applicable to the late amount;
- (iv) Late payments from Participants that have not issued a refusal to disburse notice shall be accounted as a receivable on the defaulting Participant, hence the Bank shall take the credit exposure on the Participant. This exposure shall be reported to ALCO;

- (v) For Participants that have notified the ADB/Agent of their refusal to disburse, paragraph 3.4.16, section 5.1 and paragraph 5.13.3 provide guidelines to deal with such a situation. In addition, the Bank shall engage the defaulting Participant to resolve the refusal to disburse.

3.4.19 Procurement: Even though some Participants may not be from a Bank member country, the procurement of goods, works or services for projects financed by an ADB loan syndication shall be undertaken by the beneficiary of the Loan in accordance with established commercial practices acceptable to the ADB. In general, the ADB requires procurement processes that are competitive and transparent, and that observe the highest standards of ethics and give proper consideration to the eligible nationality of contractors or consultants and/or origin of goods in accordance with the provisions of the “ADB’s Rules of Procedure for Procurement of Goods and Works and Rules of Procedure for the Use of Consultants”.

3.4.20 Supervision: The supervision of the underlying project shall be consistent with ADB’s general supervision procedures. The Bank shall not outsource the supervision function, and Participants shall be encouraged to carry out their own supervision missions.

#### **IV. Financial Aspects of a Syndicated Loan**

##### **4.1 Payments received under the Loan Agreement**

In general, payments received under the Loan Agreement by the ADB/Agent are allocated on a pro-rata basis between the A-loan and the B-loan. Exceptions to this general principle shall be explicitly stated in the Participation Agreement.

##### **4.2 Payments due under the Loan and Participation Agreements**

Payments due under the Loan and Participation Agreements are made by the ADB/Agent on a pay-in pay-out basis. In other words, the ADB/Agent shall pay to the ADB and each Participant all amounts payable to the ADB and each Participant in respect of its PRS of the Loan after it receives the corresponding amount itself, whether from the Borrower or otherwise.

##### **4.3 Pricing structure of a B-loan syndication**

Loans syndicated by the ADB shall be priced according to prevailing international loan market terms and practices, in line with the assessment of the credit risk assumed by Participants in the syndication. Hence the credit exposure supported by the Participant could be priced differently from the A-loan.

##### **4.4 Fees Structure of an ADB Loan Syndication**

In addition to the normal fees charged on non-sovereign guaranteed loans including, but not restricted to, commitment fee, front-end fee, appraisal fee, late

payment fee, cancellation fee and prepayment fee, the ADB shall apply the following fees:

- (i) **Arrangement or syndication fee:** The arrangement fee, also known as *praecipium*, is levied to pay for the work and expenses of the Arranger of the syndication. This flat fee, applicable to the B-loan amount, shall be paid by the Borrower to the ADB and, in case the ADB is not the Arranger, for onward transfer to the Arranger. The level of this fee shall depend on the complexity of the transaction and in line with prevailing market practices. The syndication fee shall be paid to the ADB on or before the date of signature of the Loan Agreement.
- (ii) **Loan administration fee:** The loan administration fee is levied to pay for the work of the Agent of the syndication. This flat fee shall be paid by the Borrower to the ADB and, in case ADB is not the Agent, for onward transfer to the Agent. The level and payment frequency of this fee shall be in line with prevailing market practices. The loan administration fee shall be paid to the ADB as scheduled in the Loan Agreement.
- (iii) **Underwriting fee:** Where the ADB underwrites a portion of the B-loan, the borrower shall pay an underwriting fee to the ADB. The calculation details and payment date of this flat fee shall be stated in the Loan agreement.
- (iv) **Other fees:** Legal and other expenses incurred by the ADB during the processing of an A- and B-loan syndication, other than the ADB's normal operational expenses, shall be charged to the Borrower and are payable upon request by the ADB.

## 4.5 Currencies, interest rates, maturities and grace periods

4.5.1 The financial terms and conditions applicable to syndicated loans shall be the same as those applicable to non-sovereign guaranteed loans. However, the Bank will need to be mindful of the necessity for maximum flexibility in order to ensure adequate participation by private lenders.

4.5.2 The A-loan and the B-loan shall carry the same currency and type of interest rate. Under the Participation Agreements, the ADB shall not carry any hedges on behalf of B-loan Participants.

4.5.3 A- and B-loan maturities: Depending on the structure of the underlying project and the respective risk appetite of the Participants, the ADB may accept Participations having a different maturity profile from the A-loan. As a result, the grace period, as well as the final maturity on the Participations in the B-loan, may be shorter than the grace period and the final maturity on the A-loan.

## 4.6 Loan Prepayment

4.6.1 **Optional prepayment by the Borrower:** Subject to payment of all amounts due and payable under the Loan Agreement, the Borrower may prepay all

or part of the Loan<sup>3</sup>. The terms of the prepayment shall be governed by the Loan Agreement. The outstanding amount of the A-loan and B-loan shall be reduced by the amount prepaid on a pro-rata basis.

**4.6.2 Mandatory prepayment by Borrower and illegality to hold B-loan:** If it becomes illegal for a Participant to hold a Participation, the Bank, the Borrower and the Participant shall endeavor to find a buyer for this portion. During this time, the affected Participant cannot recall its outstanding Participation. After a reasonable period (specified in the Participation and/or Loan Agreement) if no buyer is found, the Borrower must immediately prepay such part of the B-loan, together with all accrued payments and unwinding costs (if any). The terms of such payment shall be further specified in the Loan and/or Participation Agreement. The outstanding amount of the B-loan shall be reduced by the amount prepaid.

#### **4.7 Cancellation of un-disbursed Loan amount by the Borrower**

The Borrower may, by written notice, request the ADB to cancel the un-disbursed portion of the Loan with an effective date for such cancellation not earlier than a reasonable period after the date of the notice. The ADB shall, by written notice to the Borrower, cancel the un-disbursed portion of the Loan on the effective date provided that: (i) the ADB has received all fees and other amounts accrued in relation to the cancelled portion, and (ii) the ADB is reasonably satisfied that this cancellation shall not jeopardize the physical completion and the financial performance of the underlying project. Once the cancellation is effective, the ADB shall inform the Participants. Any portion of the Loan that is cancelled may not be re-borrowed. The un-disbursed A-loan and the un-disbursed B-loan shall be cancelled on a pro-rata basis.

#### **4.8 Guarantees and other security**

The ADB may require the Borrower to provide additional guarantees and/or security in addition to the usual project security that would have been taken to secure the Loan. The additional guarantees and the security offered by the Borrower shall be shared between the Participants and the ADB on a pro-rata basis.

#### **4.9 Taxes**

All payments of principal, interest, fees and other amounts due under the Loan Agreement shall be made without deduction of any taxes. If the Borrower is prevented by law from making those payments without deduction, the payments due shall be increased so that ADB receives the full amount it would have received had those payments been made without deduction.

---

<sup>3</sup> In the case of a partial payment the amount prepaid shall not be less than one repayment installment.

## **V. The B-loan**

### **5.1 Disbursements**

The ADB/Agent shall request disbursements from the Participants solely to meet a disbursement request from the Borrower under the Loan Agreement.

5.1.1 Once a request for disbursement from the Borrower has been processed and approved by the ADB/Agent, the ADB/Agent shall request each Participant to disburse to the ADB, for a specified value date, its PRS of the disbursement request. This value date is selected in order to allow the disbursement to the Borrower on the value date of the request. The written notifications, sent to Participants requesting disbursement of the B-loan to the ADB, shall state the value date for transferring the funds to the Bank account and the value date that the Bank shall use to transfer the total disbursement to the Borrower. Disbursement funds received by the Bank from Participants earlier than the relevant value date shall not bear interest. Disbursements received by the value date stated in the disbursement notice shall start earning interest from the value date of the disbursement to the Borrower by the ADB. Participants' disbursements that are received after the requested value date shall start earning interest from the date they are transferred to the Borrower.

5.1.2 Upon receipt of the funds remitted by the Participants by the value date specified in the disbursement notice, the ADB shall disburse the total of the funds received to the Borrower on the value date stated in the disbursement request. If by the value date required by the Bank, all the Participants have not remitted their share of the disbursement request, the Bank reserves the right to make partial or full disbursement to the Borrower.

5.1.3 If a Participant defaults on its obligation to disburse under the Participation Agreement, it must explain, in writing, within three (3) business days following the value date of the request for disbursement, the reasons for the failure to disburse. The Bank may suspend all the Participant's rights under the Participation Agreement until such default is cured. Such default shall not result in the ADB or any other Participant incurring any liability, including the liability to disburse on behalf of such defaulting Participant.

5.1.4 If Majority Participants agree and notify the ADB of a suspension of disbursements, the ADB shall immediately advise the Borrower, in writing, of the suspension of disbursement in respect of the Loan.

### **5.2 Extension of commitment period for B-loan**

ADB shall not, without the consent of all the Participants, make any disbursement of the B-loan after the availability period/closing date specified in the Loan Agreement.

### **5.3 Notification of interest rate and payment of interest to Participants:**

The ADB/Agent shall promptly notify the Participants of the applicable interest rate on the B-loan each time it is determined. Subject to having received same, ADB shall pay to each Participant its PRS of each interest payment made by the

Borrower and according to the schedule of interest payments stated in the Loan Agreement.

#### **5.4 Repayment of principal to Participants**

Subject to having received same, ADB shall pay to each Participant its PRS of each principal repayment made by the Borrower and according to the schedule of principal repayments stated in the Loan Agreement.

#### **5.5 Prepayment of principal to Participants**

The Borrower may opt to prepay<sup>4</sup> a portion of the A- and/or B-loan. The terms and conditions of such prepayment are specified in the Loan Agreement. For a prepayment that affects both the A- and B-loan, the Participants shall be paid their PRS of the total amount prepaid and due to them. For a prepayment that only affects a Participant, the relevant Participant shall be paid the amount prepaid.

#### **5.6 Payment of fees to Participants**

The Participation Agreement between the ADB and the Participants shall specify the amount and the applicable fees to be paid to the Participants. The ADB/Agent shall pay to each entitled Participant its PRS of fees received by the ADB/Agent from the Borrower under the Loan Agreement.

#### **5.7 Increased costs**

The Borrower shall pay to the ADB/Agent any amounts certified by any Participant from time to time as being its increased costs in relation to the B-loan. The Participant shall provide the ADB/Agent with all necessary information to enable the ADB/Agent to justify the increased cost to the Borrower. The ADB/Agent shall pay to the Participants only the amounts received as increased costs from the Borrower.

#### **5.8 Default interest**

The ADB/Agent shall pay to each Participant its PRS of any default interest payment received from the Borrower under the Loan Agreement. The rate of default interest shall be specified in the Loan Agreement.

#### **5.9 Allocation of payments received from the Borrower**

Hierarchy of payment: Payments received by the ADB/Agent under the Loan Agreement shall be allocated to the A- and B-loan according to their PRS in the following order: costs (if any); fees (if any); interest; and principal.

#### **5.10 Amendments affecting the Participations**

##### **5.10.1 Amendments of disbursement conditions:**

- (i) For the first disbursement of the B-loan, the ADB shall not, without the consent of all of the Participants, waive any condition precedent

---

<sup>4</sup> The conditions for prepayment are stated in paragraph 4.7

contained in the Loan Agreement which is relevant to such Disbursement.

- (ii) For any Disbursement of the B-loan other than the first such disbursement, the ADB shall not, without the consent of the Majority Participants, waive any condition precedent contained in the Loan Agreement which is relevant to such Disbursement.

5.10.2 Amendments of payment conditions: The ADB shall not, without the consent of all of the Participants:

- (i) Vary the obligation of the Borrower to pay in the specified currency and on the relevant due dates, any principal, interest or other amounts due in respect of the B-loan; or
- (ii) Extend the commitment period for the B-loan.

5.10.3 Change in the amount of the B-loan: The ADB shall have the right to sell a portion of the A-loan into the B-loan or buy-back a portion of the B-loan into the A-loan, if it is on sale. The ADB shall consult the Participants and the Borrower before selling a portion of the A-loan out of the B-loan coverage.

5.10.4 Amendments of covenants: The ADB shall consult with each Participant before amending or waiving any of the covenants contained in the Loan Agreement if, in the opinion of the ADB, such amendment or waiver would materially and adversely affect the interests of such Participant. However, the ADB shall need only the consent of the Majority Participants to amend a covenant contained in the Loan Agreement.

## **5.11 Treatment of event of default by the Borrower**

5.11.1 Notification of events of default: The ADB/Agent shall, within three (3) business days after becoming aware of an event of default<sup>5</sup>, advise the Participants of that event of default. The ADB shall consult with all the Participants on the course of action to take with respect to the event of default.

5.11.2 Acceleration of payments: After the occurrence of an event of default, the ADB may, at its discretion, accelerate the B-loan and demand immediate payment of all the amounts payable under the B-loan. However, at its discretion, the ADB may, within fifteen (15) business days of notification to the Participants of an event of default, propose to the Participants a course of action. If after a maximum of thirty (30) business days of consultation, the ADB and the Majority Participants cannot agree on the proposed course of action, upon the demand in writing of the Majority Participants, the ADB shall call the B-loan portion of the Loan.

## **5.12 Treatment of payments other than debt service**

5.12.1 **Payments with regard to the security package:** If the security package under the Loan Agreement is enforced in whole or part, the ADB/Agent shall account to the Participants for the proceeds that the ADB receives. The proceeds received by the ADB shall be paid to the Participants according to their PRS of the Loan.

---

<sup>5</sup> Events of default are specified in the Loan Agreement

5.12.2 **Payments with regard to insurance:** If under the Loan Agreement, the ADB receives the proceeds of any insurance coverage, the ADB/Agent shall account to the Participants for all the insurance proceeds received. The proceeds received shall be allocated in the following order: first to the Borrower for replacement of the relevant loss if the underlying project benefits from such replacement, subject to the consent of at least fifty (50) percent of Participations, and second to prepay a part of the Loan and accordingly reduce the outstanding B-loan as well as the A-loan.

5.12.3 **Payment of costs and expenses:** If the ADB/Agent incurs extraordinary costs, outside of traditional Loan and/or Participation Agreement administration, in relation to the implementation of the Loan Agreement and/or B-loan Participation Agreement, it shall first seek reimbursement of any such costs from the Borrower. Any money received from the Borrower shall be allocated toward costs and expenses attributable to the A-loan and/or the B-loan. For the costs attributable to the B-loan, if the Borrower does not reimburse the full amount of the costs, the ADB shall seek reimbursement of the balance from the Participants in the B-loan. Each Participant shall, upon demand, pay to the ADB its proportion of any costs and expenses attributable to the B-loan but not reimbursed by the Borrower.

5.12.4 **Refund of payment already paid to Participants:** If for any reason the ADB is required to refund any payment received under the Loan but has already made the corresponding payment to the Participants, it shall immediately inform all the Participants in writing that they must return the payments and any additional cost in relation to the payment recalled, within three (3) business days. Such refund shall not bear any interest.

## 5.13 **Reduction of commitment on the B-loan**

5.13.1 **Reduction of commitment following a loan cancellation by the Borrower:** When the Borrower cancels an un-disbursed portion of the Loan as described in section 4.7, the A-loan and the B-loan shall be cancelled proportionately. The ADB shall inform the Participants in writing, of the cancellation within five (5) business days of receiving a written notification of cancellation from the Borrower.

5.13.2 **Reduction of commitment following a request from a Participant:** Participants may reduce commitment through disposal of Participations as described in section 5.16. Notwithstanding the provision of a methodology in section 5.16 to reduce commitment, the ADB may, by notice to a Participant, reduce the undisbursed portion of its Participation if such Participant requests a reduction of its committed Participation and the underlying project is not adversely impacted by the reduction.

5.13.3 **Reduction of commitment following a refusal to disburse:** Notwithstanding the contractual obligations of the Participant under the Participation Agreement, the ADB may, at its discretion and by notice to such Participant, reduce the undisbursed portion of the concerned Participation.

## **5.14 Treatment of information and financial documentation**

**5.14.1 Financial statements and reports:** The ADB/Agent shall deliver or make available to the Participants as promptly as practicable, copies of all financial statements and project related documents received from the Borrower in accordance with the Loan Agreement.

**5.14.2 Confidential information:** The Participants shall treat information received from the ADB/Agent under the Participation Agreement as confidential and not disclose it to third parties without the consent of the ADB. However, a Participant may disclose the information given to it by the ADB/Agent to a third party in connection with a proposed disposal of its Participation, provided that such third party signs the same confidentiality agreement signed by all the Participants.

## **5.15 Representations of the ADB to the Participants**

The ADB does not make any representation or warranty as to the merits of the underlying project, the financial condition of the Borrower and the enforceability of the Loan Agreement. Each Participant must confirm that:

- (i) It is acquiring its Participation for its own account.
- (ii) It is not entering into and/or maintaining its Participation in reliance on any statement, analysis, representation or warranty by the ADB.
- (iii) It has the knowledge and experience needed to evaluate and accept the merits and risks of purchasing the Participation.

## **5.16 Disposal of Participations**

**5.16.1 Sale of a Participation:** Each Participant has the right to sell its Participation at any time during the life of the Loan. On a best effort basis, the ADB/Agent shall assist existing Participants looking to sell their Participations. On an exceptional basis, if the stability of the funding structure is a critical factor for the success of the underlying project, the ADB may insist that original Participants keep their Participation for a certain time after the last disbursement on the Loan.

**5.16.2** If any Participant wishes to dispose of its Participation, it needs to inform, in writing, the ADB/Agent at least fifteen (15) business days before the proposed date of sale. The notice should provide the name of the buyer and the terms of the sale transaction.

**5.16.3** A Participant needs the written consent of the ADB to dispose of its Participation to an eligible financial institution. The Bank must respond to the Participant within five (5) business days of receiving the notification of sale. The ADB, in consultation with the Borrower, has to agree on the financial institution buying the Participation. In case of an objection, the ADB shall justify the rejection of the potential buyer.

**5.16.4** A Participant may also, without the ADB's consent but with prior notice to the ADB, make a disposal of its Participation to one of its branches or subsidiaries, provided that such transferee is an eligible Participant. Similarly, any disposal to an existing Participant shall not require the consent of the ADB.

5.16.5 The disposal of Participations is subject to the payment to the ADB/Agent of a disposal fee by the seller. The level of this flat fee shall be stated in the Participation Agreement.

**VI. Entry into force and Amendments**

- 6.1 These Guidelines shall enter into force after their signature by the President.
- 6.2 These Guidelines may be amended or supplemented by the Asset-Liability Management Committee (ALCo) upon approval by the President.

**Donald KABERUKA  
President**