

Project Administration Instructions

PAI 1.04
Revised in December 2018
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SIGNING OF LOAN AND TECHNICAL ASSISTANCE LETTER/AGREEMENT

1. This Project Administration Instruction (PAI) outlines the procedures for signing of loan¹ and technical assistance (TA) letters and agreements and establishes a timeframe for such actions.

A. Signing of Loans and Grants

2. The borrower² and ADB will sign the loan or grant agreement after the Board's approval of an ADB loan to a developing member country (DMC) or its agency. The loan agreement is signed by an authorized representative of the borrower and the President (or an authorized representative of the President).³ Subsequently, the ADB loan agreement becomes effective after the borrower complies fully with the conditions of effectiveness as stipulated in the agreement and the relevant regulations. It is preferred to sign the related agreements (i.e., project agreement and guarantee agreement) at the same time.

3. Timely signing of the loan agreement and subsequent fulfillment by the borrower of the conditions necessary for loan effectiveness are essential for smooth project implementation under the implementation schedule outlined in the report and recommendation of the President (RRP) and project administration manual. Every effort should be made by the borrower and ADB to have loan agreements signed without delay.

4. The validity of ADB approval of a loan lapses automatically 12 months after the date of approval for the loan unless the loan and related agreements are signed within that period or the validity is extended. The borrower and the sector division⁴ may agree on an earlier period of validity of the approval for each loan, and such agreement should be documented appropriately. The sector division will communicate the validity period to the borrower after loan approval.

5. The sector division will regularly send formal reminders to the DMC requesting early signing.

6. Six months prior to the expiry of the specified validity period, if the loan agreement remains unsigned, the director general concerned will send a reminder advising the DMC concerned of the impending expiry of validity and a final reminder will be sent three months prior to the expiry of specified validity period.

7. One month prior to the expiry of the specified validity period, if the loan agreement remains unsigned, the director general may send a memorandum to the vice-president recommending the extension of its validity for a maximum of three months (or longer if special circumstances prevail).

¹ In this PAI, the term "loans" includes grants, unless the context requires otherwise. This PAI also applies to loans and grants from external sources that are administered by ADB, unless agreed otherwise between ADB and cofinanciers

² In this PAI, the term "borrower" also refers to recipients of grants, executing agencies, and/or implementing agencies, unless the context requires otherwise.

³ The authorized representative for signing is defined in Administrative Order 1.03 Signature of Written Documents.

⁴ The term "sector division" also refers to the regional office or resident mission administering the project.

The recommendation will include the effect of the delay in the project's benefits and costs, and the commitment of the DMC government or recipient to the project.

8. If extended, the validity of the approval of the loan will lapse on expiry of the extension. The sector division will inform the borrower of the extension, emphasizing that this is the only extension and that the loan will lapse when the extension expires (under special circumstances with strong justification, the vice-president concerned may grant additional extension). The Board is informed of this extension through the Quarterly Portfolio Update. The sector division will advise the Portfolio Management Division (PFPM) of the Procurement, Portfolio and Financial Management Department, the Controller's Department (CTL), and Office of General Council (OGC) about the extension, including the Office of Cofinancing Operations (OCO) if the loan is cofinanced.

9. When a loan approval lapses, the director general will immediately communicate this to the borrower. The sector division will circulate a brief Board information paper explaining the lapse of the validity of approval. In case of tranches under multitranches financing facility (MFF), the sector division submits a memorandum informing the President of (i) the approval lapse, (ii) the reason for the lapse, and (iii) an assessment on its impact on the delivery of MFF outputs and the achievement of the MFF's outcome. The Board will be informed of such cases through the MFF annual report prepared by the Strategy, Policy and Review Department. The sector division will advise PFPM, CTL and OGC accordingly.

10. Once the loan and any other legal agreements have been signed, OGC will prepare a loan effectiveness letter stipulating all conditions the borrower or recipient must fulfill to have the loan declared effective (PAI 1.04 Conditions and Declaration of Loan Effectiveness).

11. The sector division will deliver the original loan agreements to OGC after signing. One original copy of the signed loan agreement should be provided by OGC to the Office of the Secretary (SEC), with a copy to CTL and other relevant departments.

B. Signing and Effectiveness of Technical Assistance

12. Once a TA has been approved, different procedures shall be applied for effectiveness of a sovereign TA depending on whether the DMC government has entered into a TA framework agreement (TAFA) with ADB.⁵ Procedures for regional and small-scale TA projects differ since these become effective upon approval. Appendix 1 provides a guide on signing and effectiveness procedures.

13. The validity of ADB approval lapses automatically 12 months after the date of TA approval unless the related agreements are signed within that period or the validity is extended. The TA supervising unit (TASU) will indicate the validity period to the concerned DMC government in a routine communication after TA approval.

⁵ Refer to the Staff Instruction on Business Processes for Transaction Technical Assistance and Staff Instruction on Business Processes for Knowledge and Support Technical Assistance.

14. If the DMC government has not entered into a TAFE with ADB, a stand-alone TA agreement will need to be entered between ADB and the DMC government. OGC prepares the stand-alone TA agreement to be signed by authorized representatives of the DMC government and ADB.

15. If the DMC government has entered into a TAFE with ADB, the normal procedure is the "deemed approval" procedure described in the Staff Instruction on Business Processes for Transaction Technical Assistance and Staff Instruction on Business Processes for Knowledge and Support Technical Assistance. The "deemed approval" procedure implies that the TA letter⁶ signed by ADB and sent to the DMC government⁷ is deemed approved by the DMC government after 21 days from the TA letter date without having to be countersigned by the DMC government.⁸ After 21 days elapsed, the TA becomes effective.⁹

16. In case the "deemed approval" procedure is not applicable, the stand-alone TA letter will be signed by ADB and the DMC government.¹⁰ The TA letter is prepared by the project officer and, as necessary, may be reviewed by OGC. The TA letter is signed by an authorized representative of ADB and sent for signing to the DMC government (footnote 3). The original TA letter after signing is usually returned by the DMC government directly to TASU and forwarded directly to SEC with a copy to PFPM, CTL and OGC. The transmittal memo to the Secretary, SEC, should indicate the date the TA letter was signed and the name and title of the authorized representative. If there is any doubt whether the TA letter has been duly signed, OGC should be consulted. The TA becomes effective upon ADB's receipt of the signed letter.

17. Six months prior to the expiry of the validity period, if the stand-alone TA agreement or TA letter remains unsigned, TASU will send a reminder advising the DMC government of the impending expiry of validity. The TASU will regularly send formal reminders to the DMC government requesting early signing.

18. One month prior to the expiry of the validity period, if the stand-alone TA agreement or TA letter remains unsigned, the TASU through the head of the user department or office may send a memorandum to the vice-president concerned recommending extending its validity for a maximum of three months (or longer if special circumstances prevail). The recommendation will include the effect of the delay in the project's benefits and costs, and the commitment of the DMC government or recipient to the TA project.

19. If extended, the validity of the approval of the TA will lapse on expiry of the extension. The TASU will inform the DMC government or recipient of the extension, emphasizing that this is the

⁶ The authorized representative for signing TA letter is defined in Administrative Order 1.03 Signature of Written Documents.

⁷ Where the executing agency for the TA is a legal entity different from the government, the TA letter is also sent to the executing agency.

⁸ The number of days may be adjusted based on agreement with DMC government. The DMC government may request for an extension before the expiration of such period specified in the TA letter.

⁹ For example, if the TA letter date is 1 August, the count starts on the day after the TA letter date and TA becomes effective on 23 August.

¹⁰ The "deemed approval" procedure is not applicable in cases where TASU did not seek a confirmed aide-memoire or signed MoU, or the government requires countersigning of the TA letter.

only extension and that the TA will lapse when it expires (under special circumstances with strong justification, the vice-president concerned may grant additional extension). The TASU will advise PFPM, CTL and OGC about the extension, including OCO (or respective fund manager) if the TA is to be financed by an ADB-administered fund.

20. Termination of a TA that was approved but did not become effective needs approval from the head of the department or office unless the head requires a higher approval authority. TASU will immediately communicate the termination to the DMC government or recipient. The TASU will prepare and circulate a brief Board information paper explaining the lapse of the validity of approval and advise PFPM, OGC, and CTL accordingly, including OCO (or respective fund manager) if the TA is to be financed by an ADB-administered fund.

SIGNING OF TA AGREEMENT / TA LETTER¹¹

Knowledge and Support Technical Assistance (KSTA) and Transaction Technical Assistance (TRTA)	
At fact-finding mission	<ul style="list-style-type: none"> - The processing department (regional department in case of TRTA) will reach an agreement with the government on the stipulation that the government has no objection to ADB financing the technical assistance (TA), in the form of confirmed aide-memoire, signed memorandum of understanding (MOU) or other form of written agreement on the proposed TA through a fact-finding mission.
TA Framework Agreement and TA Letter	<ul style="list-style-type: none"> - The TA supervising unit (TASU) sends a TA Letter that refers to the TA framework agreement, with the confirmed aide-memoire or signed MOU and TA report. - Also sends the TA letter to the developing member country (DMC) government and/or executing agency if legal entity is different from the government. <p>Deemed approval procedure</p> <ul style="list-style-type: none"> - A TA letter is deemed approved by the DMC government if the government does not inform otherwise in writing within the date specified in the TA letter (generally after 21 days). - Government concurrence of the TA will be deemed given immediately upon the government's receipt of the TA letter (only when confirmed aide-memoire or signed MoU stipulates that the government has no objection to ADB financing the TA). <p>Deemed approval not applicable</p> <ul style="list-style-type: none"> - In cases where TASU did not seek a confirmed aide-memoire or signed MoU, or the government requires countersigning of the TA letter, TASU must obtain the countersigned TA letter from the government. Follow-up actions in case the TA letter remains unsigned: <ul style="list-style-type: none"> o The TASU follows up on the status of the TA letter within 7 days of the stated deadline. o Validity of the TA automatically lapses if not signed within 12 months. o Six months prior to the expiry of the validity period, if the TA letter remains unsigned, the TASU will send a reminder advising the DMC government concerned of the impending expiry of validity. o One month prior to the expiry of the validity period, if the TA letter still remains unsigned, the TASU through the head of the department or office may send a memorandum to the vice-president concerned recommending extending its validity for a maximum of three months (or longer if special circumstances prevail). o The TASU will inform the DMC government or recipients of the extension, emphasizing that this is the only extension and that the TA will lapse when it expires (if very special circumstances prevail and strong justifications are provided, another extension may be granted).

¹¹ In case of discrepancy between the signing procedure set out in this table and the Staff Instruction on Business Processes for Transaction Technical Assistance and Staff Instruction on Business Processes for Knowledge and Support Technical Assistance, the provisions set out in the Staff Instructions will apply.

TA Agreement (No TA Framework Agreement)	<ul style="list-style-type: none"> - Standalone TA agreement is prepared by OGC - Deemed approval procedure or signing procedure of the TA agreement follows the same procedure for TA framework agreement.
TA Cluster	<ul style="list-style-type: none"> - TA letter or agreement may be prepared for the TA cluster (unless the government requires a TA letter or agreement for each TA subproject) or each TA subproject. - Unless the government requires the TA letter or agreement for each TA subproject, once the TA cluster becomes effective, each subsequent TA subproject becomes effective upon its approval by ADB.
Regional TA	<ul style="list-style-type: none"> - A confirmed aide-memoire or signed MoU is necessary only when the TA requires specific government counterpart support, government undertaking or agreement. - The TA will become effective upon approval. However, an activity in the territory of a DMC may start upon receipt of a written confirmation from such DMC that the government does not object to ADB's financing of such TA.
Small-scale TA	<ul style="list-style-type: none"> - TA agreement, TA letter, aide memoire, or MOU is not required for a small-scale TA, but may be entered as an option to ensure the government's acceptance. - The TA will become effective upon approval. Prior to the fielding of consultants, TASU sends a letter notifying the government of the provision of consultants under the small-scale TA. Such letter should concurrently seek the government's no-objection to the consultant shortlist (if applicable) in accordance with PAI 2.04 (Specific Requirements for Recruiting Consultants by ADB).
Nonsovereign TA	<ul style="list-style-type: none"> - TA agreement is prepared. - ADB and the recipient generally agree in principle to the material terms of the TA agreement before ADB's approval of the TA. The effective date is upon ADB's receipt of the signed TA agreement unless otherwise stated in the TA agreement. - Before any activity in the territory of a DMC starts, the processing department obtains through the relevant regional department a confirmation from the DMC that the government does not object to ADB financing the proposed TA through a deemed no-objection approach unless DMC expressed that affirmative no-objection is required. - For small-scale TAs: <ul style="list-style-type: none"> o Involve RDs in interdepartmental review; o Obtain no-objection from the government to ADB financing of the proposed TA. o Notice to the government on fielding consultants is not required.
Transaction Advisory Services (TAS) for TRTA	<p>When ADB is retained under a TAS mandate or retainer letter, the TAS mandate or retainer letter generally serves as an aide memoire or MOU on the proposed TA and may also constitute the TA letter or agreement with the government. The government no-objection may also be obtained in accordance with TRTA Staff Instructions.</p>