

# Council of Europe Development Bank

## *Loan regulations*

(Adopted by the Administrative Council by  
Resolution 1587, on 17 November 2016)

## CHAPTER 1

### **Object of the Loan Regulations**

#### **ARTICLE 1.1**

##### ***Object of the Loan Regulations***

The present Loan Regulations lay down the general conditions governing loans granted by the Bank and guarantees thereof.

#### **ARTICLE 1.2**

##### ***Conflict between the Loan Regulations and provisions of loan and guarantee agreements***

The Bank may provide for exceptions to the conditions laid down in these regulations. In the event of conflict between the provisions of these regulations and one or more provisions of loan agreements or guarantee agreements, the latter provisions shall prevail.

## CHAPTER 2

### **Conditions governing loans granted by the Bank and guarantees thereof**

#### **ARTICLE 2.1**

##### ***Purpose of the loan***

Loans granted by the Bank shall finance projects approved by the Administrative Council, eligible under the Bank's Applicable Rules.

#### **ARTICLE 2.2**

##### ***Loans and guarantees***

Loans granted by the Bank in accordance with Article VII, 1 of the Articles of Agreement shall be covered by adequate guarantees as provided for in Article VII, 2 of the Articles of Agreement.

A guarantor shall be released from his obligations by execution thereof, but only in so far as he has fulfilled them.

Such obligations shall not be subject to any demands upon or action against the guarantor; they shall, however, be subject to a notice from the Bank to the guarantor informing the latter of the failure of the borrower to fulfil his obligations vis-à-vis the Bank.

The obligations of the guarantor shall not be affected by any extension of time, forbearance or concession granted to the borrower, nor by any assertion of, or failure to assert any right or remedy against the borrower or in respect of any security for the loan, nor by any failure of the borrower to comply with any requirements of any law, decree or regulations of the guarantor or of any political or administrative authority under the guarantor.

### **ARTICLE 2.3**

#### ***State Guarantees***

The State Guarantee may be given by special contract between the Bank and the guarantor or by the endorsement of the loan agreement by the guarantor.

### **ARTICLE 2.4**

#### ***Loan Agreement***

For each project approved by the Administrative Council the Bank shall enter into a framework loan agreement. Each disbursement shall be separately documented and requires the conditions set out in the framework loan agreement to be met.

## **CHAPTER 3**

### **Suspension and cancellation of undisbursed loans; early reimbursement of loans; voluntary early reimbursement of loans**

#### **ARTICLE 3.1**

##### ***Suspension or cancellation by the borrower of undisbursed loans following the signature of a loan agreement***

Following the entering into a loan agreement between the Bank and the borrower, were this latter to cancel or suspend all or part of a loan before it has been fully or partly disbursed, the borrower shall be required to compensate the Bank for the loss sustained as a result of such cancellation or suspension by paying a single commission at a rate to be fixed by the Bank in relation to the proportion of the loan cancelled or suspended. This provision shall also apply to the guarantor.

#### **ARTICLE 3.2**

##### ***Voluntary early reimbursement of disbursed loans at the request of the borrower***

A borrower may be authorised by decision of the Bank to reimburse a loan in advance of maturity. The conditions of such reimbursement shall be decided by the Bank.

#### **ARTICLE 3.3**

##### ***Early reimbursement of disbursed loans***

The Bank may demand early reimbursement of disbursed loans in the following cases:

- (a) where the borrower or guarantor fails to repay the principal or pay the interest or any other sum due under a loan agreement or guarantee agreement between the Bank and the borrower or under a loan agreement or guarantee agreement between the Bank and the guarantor, whether their default relates to the agreement in question or to any other agreement between the Bank and the same borrower or guarantor;
- (b) where the borrower or guarantor fails to fulfil an obligation arising out of any other stipulation or clause in these regulations or in a loan agreement or a guarantee agreement, whether the default relates to the agreement in question or to any other agreement between the Bank and the same borrower or guarantor and where the interests and objectives of the Bank are prejudiced thereby;

- (c) where an exceptional situation arises which makes the fulfilment of the borrower's or guarantor's obligations uncertain;
- (d) where the borrower or guarantor takes or authorises any measure or institutes or allows to be instituted any proceedings whereby any property belonging to him is or may be assigned, transferred, or delivered in any way whatsoever to an official receiver, assignee, liquidator or other person, whether that person be appointed by the borrower, a court, or the guarantor, or be acting in pursuance of any law, and where the said measure or proceedings result in, or provide for, the distribution of such property among the creditors of the borrower or guarantor;
- (e) where the guarantor or any competent governmental authority takes any action to dissolve or to put an end to the activities of the borrower or to suspend its operations;
- (f) in the case of loans granted to a member of the Bank, where the borrower or the guarantor ceases to be a member of the Bank;
- (g)
  - (i) in the case of misprocurement, corruption, fraud, or money laundering, where the borrower has not taken timely and appropriate actions to prevent or remedy the situation arising from such misprocurement, corruption, fraud, or money laundering;
  - (ii) where the implementation of the project financed by the Bank leads to a violation of the Bank's Environmental and Social Safeguards Policy;
  - (iii) where the implementation of the project financed by the Bank leads to a violation of the European Convention on Human Rights and the European Social Charter;
- (h) where any other event specified in the loan agreement or the guarantee agreement occurs, giving rise to the application of this article.

#### **ARTICLE 3.4**

##### ***Time Allowed***

In case of loans to one of the members of the Bank, early reimbursement pursuant to article 3.3 above is conditional upon

- (a) any of the contingencies set forth in Article 3.3 (a) having prevailed for more than thirty calendar days;
- (b) one of the contingencies set forth in Article 3.3(b) of the same article has prevailed for more than sixty calendar days.

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#### **ARTICLE 3.5**

##### ***Suspension by the Bank of undisbursed loans***

If any of the contingencies described in Article 3.3 should arise, the Bank may at any time suspend all or part of the disbursement of further tranches of the loan by giving notice to the borrower and to the guarantor.

Suspension shall end on the date on which the Bank notifies the borrower and the guarantor that the cause of suspension is no longer operative.

#### **ARTICLE 3.6**

##### ***Cancellation by the Bank of undisbursed loans***

If any of the contingencies described in Article 3.3 arises, the Bank may also, by notifying the borrower and the guarantor, cancel permanently all or part of the undisbursed loan. Such a decision to cancel a loan may also be taken after a suspension.

#### **ARTICLE 3.7**

##### ***Commission applicable to cases set out in Article 3.1***

Should the Bank sustain a loss as a result of suspension, cancellation or early reimbursement, as provided above, the single commission specified in Article 3.1 shall also be payable.

### **CHAPTER 4**

#### **Settlement of disputes in respect of loans from the Bank or guarantees pertaining thereto**

##### **ARTICLE 4.1**

##### ***Arbitration***

Any dispute between the parties to the loan agreement and, where applicable, the guarantee agreement in respect of the interpretation or execution of such agreements or in respect of a claim by one of the said parties against another arising out of the loan agreement the guarantee agreement, or these regulations, which has not been settled by agreement between the parties shall be submitted for arbitration in the manner prescribed below.

##### **ARTICLE 4.2**

##### ***Commencement of arbitration proceedings***

Arbitration proceedings may be instituted by any one of the parties specified in the preceding section by means of a request notified to all the other parties; the request shall state the nature and subject of the dispute and set forth the claims to be submitted for arbitration.

##### **ARTICLE 4.3**

##### ***Appointment of the arbitral tribunal***

In any arbitration proceedings instituted in pursuance of this article, the borrower or the guarantor (if any) may be a party alongside the guarantor or the borrower as the case may be.

For any dispute submitted for arbitration in pursuance of this article, an arbitral tribunal shall be set up. It shall consist of three arbitrators appointed as follows:

- a) one arbitrator shall be appointed by the Bank;
- (b) a second arbitrator shall be appointed by the borrower or, where applicable, by agreement between the borrower and the guarantor or, failing such agreement, by the guarantor;

- (c) a third arbitrator, called the umpire, who shall act as President of the arbitral tribunal, shall be appointed by common consent between the parties or, failing such consent, by the President of the European Court of Human Rights or, should the latter have the nationality of the guarantor or be of the same nationality as the borrower, by the Vice-President of the Court or, if the latter is in the same situation, by the senior of those Judges of the Court who neither have the nationality of the guarantor nor are of the same nationality of the borrower;
- (d) the procedure described in the preceding paragraph shall take place, at the instance of one of the parties to the dispute, if, within one month after notice has been given of the request for arbitration, no agreement has been reached regarding the appointment of an umpire;
- (e) where one of the parties appoints no arbitrator, the umpire shall appoint the said arbitrator.

#### **ARTICLE 4.4**

##### ***Place of arbitration***

The arbitral tribunal shall hold its first sitting on such date and at such place as shall be appointed by the umpire. Thereafter, the tribunal shall decide itself where and when it shall sit

#### **ARTICLE 4.5**

##### ***Law applicable to arbitration proceedings***

The arbitral tribunal shall decide all questions relating to its competence. It shall lay down its own rules of procedure and shall choose the law which shall be applicable, unless that law is specified in the contracts or in the arbitration agreement, bearing in mind the provisions of Article 1 (3) of the Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe. All decisions of the tribunal shall be by majority vote.

Domestic law may apply in a particular case provided that it does not derogate from the Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe and from the Articles of Agreement.

#### **ARTICLE 4.6**

##### ***Award of the arbitral tribunal***

All awards of the arbitral tribunal shall set out the grounds for the decision. They shall be final and binding upon all the parties referred to in Article 4.3. They may be rendered in default of submissions.

#### **ARTICLE 4.7**

##### ***Cost of arbitration***

The party against whom the award is made shall bear the costs of the arbitration proceedings unless the arbitral tribunal decides otherwise or the parties have agreed otherwise by a clause in the loan contract or the guarantee contract. The arbitral tribunal shall give a final ruling on any dispute in respect of costs.

## **ARTICLE 4.8**

### ***Enforcement of arbitral awards***

The loan agreement and the guarantee agreement shall contain whatever provisions are required to ensure, in respect of the Bank and in respect of the borrower and the guarantor, compliance with any awards made in pursuance of this chapter.

If, within one month after the originals of the award have been delivered to the parties, the award has not been complied with, any of the parties specified in Article 4.3 may institute proceedings for the enforcement of the award. The court which shall have jurisdiction for such proceedings shall be that designated by the rules of civil procedure of the State concerned.

## **CHAPTER 5**

### **Miscellaneous provisions**

#### **ARTICLE 5.1**

##### ***Entry into force***

The date of entry into force of a loan agreement or a guarantee agreement shall be specified therein. It may be specified subject to a condition, in which case the contract shall not come into force until that condition has been fulfilled and the Bank has been duly notified by the Borrower and/or the Guarantor.

Should the condition governing the entry into force of a loan agreement or a guarantee agreement not be fulfilled, the borrower or the guarantor shall, if the Bank has sustained a loss, be required to pay to the Bank a single commission at a rate to be fixed by the Bank in relation to the amount specified in the loan contract.

#### **ARTICLE 5.2**

##### ***Discharge of obligations***

The loan agreement and the guarantee agreement and the obligations of the parties thereunder, save for those regarding the ex-post evaluation of the project as provided for in the loan agreement shall cease as soon as the whole of the loan principal as well as interest and any other charges in respect of the loan or the loan guarantee have been paid.

#### **ARTICLE 5.3**

##### ***Notices***

Any notice or request which must or may be given or made under the terms of these regulations or loan agreements or guarantee agreements shall be given or made in writing.

#### **ARTICLE 5.4**

##### ***Copies***

Loan agreements and guarantee agreements may be drawn up in more than one copy, each of which shall be regarded as an original.

## ARTICLE 5.5

### *Language of Loan Regulations*

These regulations have been drawn up in English and in French, both versions being equally authentic.

## CHAPTER 6

### **Definitions**

**Applicable Rules** means the Third Protocol to the General Agreement on the Privileges and Immunities of the Council of Europe, the Articles of Agreement of the Bank, the Loan Regulations, the Loan and Project Financing Policy, the Environmental and Social Safeguards Policy, the Guidelines for Procurement of Supplies, Works and Services and the Anti-corruption Charter.

**Bank** means the Council of Europe Development Bank

**European Convention on Human Rights** means the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, CETS n° 5

**European Social Charter** means the European Social Charter, 3 May 1996, CETS n°163, as amended from time to time.

**State Guarantees** means guarantees given by a member state of the Bank to the benefit of the Bank with respect to loans granted by the Bank to any legal person in a member state.

