

# **DISBURSEMENT HANDBOOK FOR PUBLIC SECTOR LOANS**

**December 2011**

**Office of the General Counsel**



**European Bank**  
for Reconstruction and Development

*Disbursement Handbook*  
*for public sector loans*

**December 2011**



**European Bank**  
for Reconstruction and Development

# DISBURSEMENT HANDBOOK

## TABLE OF CONTENTS

		Page
<b>1. INTRODUCTION</b>		<b>4</b>
1.1	SOME TERMS EXPLAINED .....	6
	Loan agreement .....	6
	Disbursement .....	6
	Drawdown .....	6
	Terms used by other development banks.....	6
1.2.	SOME CALCULATIONS AND PROCEDURES EXPLAINED.....	7
	Definition of interest period and number of days .....	7
	Calculation of interest amount .....	7
	Calculation of commitment charge.....	8
	Calculation of other charges .....	9
	Drawdown of Front End Commission from the Loan .....	9
	Drawdowns made within 15 days of next Interest Payment Date .....	10
<b>2. GENERAL REQUIREMENTS FOR ALL DRAWDOWN APPLICATIONS</b>		<b>11</b>
2.1	FIRST STEPS .....	11
	Effectiveness of Loans .....	11
	Evidence of Authorised Signature.....	11
	Correspondence .....	12
	Notice Period .....	12
	Communications .....	12
	Note regarding photocopies and facsimiles.....	13
2.2	ANY OTHER CONDITIONS .....	14
	Amount .....	14
	Dates of Drawdowns .....	14
	Procurement Procedures .....	14
	Eligible Expenditures .....	14
	Limits of Loan Category or Contract.....	15
2.3	CANCELLATION AND SUSPENSION OF THE AVAILABLE AMOUNT.....	16
<b>3. SPECIFIC REQUIREMENTS FOR EACH TYPE OF DRAWDOWN APPLICATION</b>		<b>17</b>
3.1	INTRODUCTION .....	17
	Direct drawdown .....	17
	Drawdown payments to a Special Account .....	17
	Drawdowns under reimbursement commitment issued by EBRD .....	17
	Note about terms .....	17
3.2	DIRECT PAYMENT DRAWDOWNS.....	18
3.2.1	The payee .....	18
3.2.2	Amounts and currencies .....	18
	1. The amount of financing .....	18
	2. Payment amount .....	19
	3. Drawdown amount .....	19

3.2.3	Application forms and supporting documentation.....	19
1.	The forms .....	19
2.	The original documents.....	20
	The contract .....	20
	The Supplier's payment request (bill/invoice) .....	20
	The receipt .....	21
	Language of the supporting documents .....	21
3.	The Statement of Expenditures .....	22
3.3	DRAWDOWN PAYMENTS TO A SPECIAL ACCOUNT .....	23
3.3.1	Choice of Special Account bank.....	23
	Note on credit interest and bank charges .....	24
3.3.2	Access to Special Account funds.....	25
3.3.3	How drawdown payment to the Special Account works .....	25
1.	The maximum balance and Special Account minimum drawdown amount .....	25
2.	Latest date for deposits into or payments out of the Special Account .....	26
3.	Refund of payments made out of the Special Account .....	26
4.	Repayment of funds on deposit.....	27
5.	Cancellation in case of misuse .....	27
3.3.4	Drawdown application and Special Account reconciliation .....	28
3.3.5	Currencies .....	29
1.	Currency of expenditure.....	29
2.	Loan payment currency .....	29
3.	Drawdown payments.....	29
3.3.6	Use of Special Account funds as collateral .....	30
3.4.	DISBURSEMENT UNDER A LETTER OF CREDIT .....	31
3.4.1	Introduction .....	31
3.4.2	Loan disbursement only .....	31
3.4.3	Conditional or unconditional reimbursement commitment .....	32
1.	Unconditional reimbursement commitment .....	32
	Definition .....	32
	Limitation amount.....	33
	LC financed amount.....	33
	Variations to the original LC requirements.....	33
2.	Conditional reimbursement commitment .....	34
3.	How to apply for the issue of an RC and payments thereunder .....	34
	Application for issuance of a conditional or unconditional RC.....	34
	Claim for payment under the conditional or unconditional RC.....	34
3.4.4	Use of Special Account funds as collateral .....	35
<b>4.</b>	<b>APPLICATION FORMS AND STANDARD TEXTS .....</b>	<b>36</b>
	List of all forms and texts .....	36
	Forms required for a drawdown application with direct payment .....	37
	Forms related to the use of a Special Account.....	46
	Forms related to reimbursement commitments.....	59
	Example of a letter designating authorised signatories.....	80

# 1. INTRODUCTION

The purpose of this handbook is to provide practical information regarding the procedures and methods for disbursement of the European Bank for Reconstruction and Development (EBRD), applicable to all loans that are required to follow EBRD's Procurement Policies and Rules for public sector operations.

Clear knowledge of these requirements should enable the Borrower to obtain efficient and timely processing of a loan drawdown application.

In all cases, the legal documents (such as the loan agreement and guarantee agreement) provide the basic framework for any transaction. This handbook provides general advice and guidelines and informs the Borrower or other beneficiaries of the loan of EBRD's latest standard practices. However, in the event of any inconsistencies between the Disbursement Handbook and the legal documents for a specific operation, the provisions of the legal documents will prevail.

Unless specifically stated otherwise, the meaning of all terms used in this handbook is as defined in the loan agreements (herein after referred to as "Loan Agreements").

The chapters in this handbook cover:

- introduction and some general information about terms and calculations,
- general requirements for the various types of drawdowns,
- specific information and requirements for each type of drawdown,
- detailed information regarding the completion of standard forms; and
- examples of letters providing required information.

A copy of the handbook will be provided prior to or during negotiations.

Additional copies can be obtained on request by writing to:

Operation Administration Unit  
European Bank for Reconstruction and Development,  
One Exchange Square,  
London EC2A 2JN,  
United Kingdom.

## **Updates**

The handbook will be updated as and when required, taking into account any relevant changes or amendments to EBRD's operational procedures for disbursements.

## **Help and contact**

The Operation Administration Unit (also commonly referred to as OAU) within EBRD is responsible for the disbursement procedures and is the first point of contact for any questions.

## **Some other useful publications**

The following EBRD publications are available upon request:

*Procurement Policies and Rules*, obtainable from the Procurement Department,

## **1.1 SOME TERMS EXPLAINED**

### **Loan Agreement**

Where applicable, any reference to a loan agreement or guarantee agreement or project agreement (each herein referred to as “Loan Agreement”, “Guarantee Agreement” and “Project Agreement”), will include reference to the Standard Terms and Conditions (STC) as they may have been incorporated into those agreements.

### **Disbursement**

The term “disbursement” in this handbook is loosely used to indicate any payment under a loan facility. When the term "disbursement" is intended to have a more narrow meaning as explained below, the term "drawdown" is used.

### **Drawdown**

A drawdown occurs when a part of the available amount of the loan is utilised, i.e. debited from the loan account. This is always in the loan currency. From the date of the drawdown, the amount drawn down accrues loan interest, and will be due for repayment in accordance with the repayment terms of the Loan Agreement.

The actual amount paid out by EBRD can be in another currency (as explained in section 3.2.2), but the drawdown would still be the equivalent amount in the loan currency, therefore interest and principal repayments are always due in the loan currency.

### **Terms used by other development banks**

A word of caution about the meaning of identical terms used by EBRD and the World Bank or other development banks.

Although several banks use terms, such as "Special Account", that indicate a common origin, the related rules and procedures can be very different. Knowledge of World Bank procedures, for example, can be useful as a starting point, but it should never be relied upon. If in doubt, please consult this handbook or contact Operation Administration Unit at the EBRD.

## 1.2 SOME CALCULATIONS AND PROCEDURES EXPLAINED

### Definition of interest period and calculation of number of days

(a) The standard definition of interest period, used by EBRD, states that the first interest period for each drawdown starts on the drawdown date and ends on the next interest payment date, with the following interest period starting on that same interest payment date and ending on the next interest payment date, and so on.

#### *Example:*

a loan with interest payment dates falling on 12 April and 12 October of each year, and an amount drawn down on 5 July 2009.

For that drawdown amount, the first interest period is 5 July 2009 to 12 October 2009; the next interest period is 12 October 2009 to 12 April 2010; and the following interest period is 12 April 2010 to 12 October 2010, etc.

EBRD will confirm the interest periods as such to the Borrower.

(Note: if any of these days were not a business day, the following business day would be used, but the principle remains the same.)

(b) The last day of each interest period is not counted when it comes to calculating the number of days for which interest is due, so, using the same example, the days are counted as follows:

first, all the days from 5 July 2009 to and including 11 October 2009 (total 99 days); then all the days from 12 October 2009 to and including 11 April 2010 (182 days); then all the days from 12 April 2010 to and including 11 October 2010 (183 days), etc.

### Calculation of interest amount

The interest amount is calculated for each interest period according to the following formula:

$$\frac{\text{Amount} \times \text{Rate} \times \text{Number of Days}}{360 \times 100}$$

Amount = amount of the loan that has been drawn down and is not yet repaid (called the "outstanding principal").

Rate = total interest rate including the margin. (For instance, if the interest rate is Relevant Market Interest Rate 4% plus Margin 1%, totalling 5% per annum, then 5 is the number of the rate.)

Number of days: see section (b) above for the calculation of this number.

The amount is divided by 360 (or 365, as defined in the Loan Agreement - this is normally done in the case of loans in British Pounds, or fixed interest rate tranches or

loans) because the rate is a yearly rate (per annum), and also by 100 because the rate is a percentage rate.

The resulting amount of interest is due on the last day of the interest period (the interest payment date).

As each drawdown is made, it initially has its own interest period (in other words starting at its own drawdown date). If more than one drawdown is made before the same interest payment date, then the amount of interest due on that interest payment date is the sum of each interest amount calculated for each drawdown.

On each interest payment date, all existing drawdowns will be added up into one amount (this is known as the “rollover” amount), which will be the new outstanding principal amount for the next interest period and any further drawdowns will be added on in the same way on further interest payment dates.

### **Calculation of commitment charge**

The formula is the same as for interest, but in this case:

the rate is the commitment charge rate as specified in the Loan Agreement;

the amount is the available amount of the loan: in other words the undrawn portion of the loan that has not been cancelled (or, as will be explained later, reserved for an unconditional reimbursement commitment).

As the available amount decreases with each drawdown, the amount of the commitment charge due for a relevant interest period is calculated by repeating the formula for each part of the period during which the available amount remains unchanged, with all the partial periods adding up to the total relevant period.

The commitment charge is payable on each interest payment date after the date when EBRD declares the loan effective (see section 2.1), even if on that due date no interest is payable.

The available amount will be reduced to zero - and consequently no more commitment charge will be due - when the loan has been fully drawn down (or reserved under unconditional reimbursement commitments) or the remaining available amount has been fully cancelled.

## Calculation of other charges

(a) The amount of the **unconditional reimbursement commitment charge** is calculated according to the interest formula given above, with:

the rate is the unconditional reimbursement commitment charge rate as specified in the Loan Agreement,

the amount is the issued amount of the unconditional reimbursement commitment (either the Financed Amount of the Letter of Credit, where the RC is issued in the Loan currency, or the Limitation Amount, where the RC is issued in a currency other than the Loan currency), reduced by actual drawdowns under the reimbursement commitment or until the termination date (see further explanation in section 3.4.3, which deals with this type of loan utilisation).

(b) Flat rate charges such as the **front end commission**, the **administrative fee** or the **cancellation fee** are simply calculated as a percentage (as specified in the Loan Agreement) of the amount that each fee relates to. For instance, the front end commission is calculated as a percentage of the total loan amount (the original available amount), and is normally due within seven days after the date when the loan is declared effective.

## Drawdown of Front End Commission from the Loan

The Loan Agreements may state that the front end commission can be "drawn down by EBRD and paid to itself", or contain other words to that effect. This means that the front end commission would be drawn down from the loan.

The following example explains how this will work in practical terms:

If a 1% front end commission is due on a EUR 10 million loan on a certain date, and EBRD has agreed to drawdown the front end commission from the loan, on the due date the following two transactions take place:

- EBRD draws down EUR 100,000 from the loan;
- This amount is applied by EBRD as payment by the Borrower of the front end commission of EUR 100,000 under the Loan Agreement.

The result is that, from the date that the amount has been debited from the loan account, interest will accrue on that amount as for any normal loan drawdown, and EBRD will send the Borrower a drawdown confirmation containing the relevant interest details.

### **Drawdowns made within 15 Days of next Interest Payment Date**

If a drawdown is made less than 15 business days before the next interest payment date, the interest period for such disbursement will end on the interest payment date following the next interest payment date.

The reason is that EBRD realises it is important for the Borrower to know well in advance the exact amount of the payment the Borrower has to make, for various reasons. Therefore, EBRD agrees to claim only this amount of interest at the interest payment date following the next interest payment date. The drawdown advice which is sent to the Borrower will confirm this.

Similarly, if the commitment charge had already been calculated and claimed by EBRD before the drawdown was made, any adjustment to the commitment charge will be reflected on the interest payment date following the next interest payment date.

## **2. GENERAL REQUIREMENTS FOR ALL DRAWDOWN APPLICATIONS**

### **2.1 FIRST STEPS**

Before EBRD can consider any request for drawdown, the following conditions must have been met:

#### **Effectiveness of Loan**

EBRD must have declared the loan effective when the Borrower has complied with specific conditions as set forth in the Loan Agreement, to EBRD's satisfaction. These conditions normally relate, amongst other specific conditions, to evidence that the Borrower has duly executed and delivered the Loan Agreement, the Guarantee Agreement and related documents; in addition a legal opinion is required to confirm that these agreements are legally valid and enforceable.

#### **Evidence of Authorised Signatory**

EBRD must have received the specimen signatures of the Borrower's authorised signatories who can sign the drawdown applications.

An example of a "letter designating authorised signatories" (also called "certificate of incumbency"), to be issued by the Borrower, is given at the end of this handbook (section 4). It should be signed by the Borrower's authorised representative. By this letter, EBRD can be informed of the persons within the Borrower's organisation who will be authorised to sign disbursement applications.

It is also by this certificate or letter that the Borrower can indicate another entity or organisation that may act on behalf of the Borrower to send notices and applications under the loan. This normally happens in the case where the Borrower is the state, but the true "beneficiary" of the loan is another state-owned organisation (usually the project entity). Here again, certain individuals must be identified as the authorised signatories to sign applications or notices.

It is important that this information is kept up to date. For instance, as some of the authorised signatories originally indicated in the letter designating authorised signatories leave their jobs and are replaced by others, inform EBRD immediately, and not to wait until the time of a drawdown application. Only those people, who have been legally authorised to do so within the organisation, have the authority themselves to sign the letter designating authorised signatories to inform EBRD of new authorised signatories.

## **Correspondence**

All correspondence received by EBRD from the Borrower must be properly authorised.

Disbursement Application forms and letters must be duly signed for and on behalf of the Borrower in accordance with the information provided to EBRD contained in the letter designating authorised signatories.

## **Notice period**

All applications for drawdown must be received by EBRD in good time: i.e. the notice period specified in the Loan Agreement must be adhered to. This allows sufficient time for EBRD to check all the documents submitted, to go through the various approval stages and to effect payment with "good value" on the date that funds are required.

Unless the Loan Agreement explicitly states a different number of days, it is EBRD's current practice to require a minimum notice period of 15 business days from the date of receipt of the drawdown application form to the value date of the payment.

An alternative approach for the Borrower is not to specify any value date for drawdown on the application form, but simply to state "as soon as possible". This means that EBRD would still be bound to make the drawdown and effect payment within 15 business days from receipt of the application as the latest date of payment, but the advantage is that **if** EBRD can make the payment earlier this will be done.

It should, of course, be clearly noted that EBRD can only meet the 15 business days deadline to effect the drawdown if the drawdown application is complete and correct. EBRD will always try to resolve any problems with incomplete or inaccurate drawdown applications by contacting the Borrower and explaining what is required. In such a case the drawdown would be made as soon as possible, but the 15 business days deadline would only be applicable from the moment that all the problems have been resolved.

## **Communications**

As stated in the Loan Agreement, all notices and documents are to be delivered in English, or should be accompanied by an approved English translation.

All communications for drawdown must be addressed to:

Operation Administration Unit,  
European Bank for Reconstruction and Development,  
One Exchange Square,  
London EC2A 2JN,  
United Kingdom.

### *Note regarding photocopies and facsimiles*

The following chapters give details of the various application forms and documents required. Whereas the blank application forms can equally be photocopied from this handbook or reproduced on the Borrower's own paper, it is essential for EBRD to receive these forms with the original signature, i.e. "signed in ink" on behalf of the Borrower. In the same way, EBRD must receive the original accompanying documents (invoices, etc.). In other words, photocopies and facsimiles/scanned copies of the documents are not acceptable to EBRD. [The payment terms of the contract may require that the bill or invoice be certified by or on behalf of the Borrower (often by the engineer employed by the Borrower to work on the project), indicating the Borrower's confirmation that the goods, services or works have been satisfactorily delivered or carried out in compliance with the requirements of the Loan Agreement and the contract.] In case there are exceptional circumstances, which prevent the Borrower from providing original invoices, photocopies of the invoices, duly certified on behalf of the Borrower in order to authenticate them, would be accepted if explicitly agreed by EBRD beforehand.

Facsimile transmissions, or scanned images sent electronically, to Operation Administration Unit can be used to give EBRD the earliest possible chance to see the application and start work on it. The original (mailed or sent by courier) has to be received by EBRD in due course.

Please note the following contact numbers:

Tel: +44 20 7338 7533 (Operation Administration Unit)  
or +44 20 7338 6555 (Operation Administration Unit)  
+44 20 7338 6000 or +44 20 7496 6000 (EBRD Switchboard)

Fax: +44 20 7338 7017 (Operation Administration Unit)  
+44 20 7338 6100 or +44 20 7496 6100 (Central EBRD Fax)

## **2.2 ANY OTHER CONDITIONS**

Any other conditions as set out in the Loan Agreement regarding drawdowns must be met, such as the following:

### **Amount**

The amount of each individual drawdown must be within any minimum or maximum limits that the agreement may specify. If no minimum amount is set in the Loan Agreement, then EBRD's current practice is to require drawdown applications for a minimum of EUR 50,000 (if payment for any eligible expenditure under an approved contract is for less than this amount, it is preferable to include this invoice for payment with another invoice and accordingly to list them together on the Summary Sheet (DH2-02) for payment ensuring that the minimum amount requirement is adhered to) or equivalent in the currency requested. The exception to any requirement for a minimum amount of drawdown is if the outstanding unutilised balance of the loan (the available amount) is less than this limit, in which case the total unutilised balance can be drawn down.

### **Dates of Drawdowns**

The dates of drawdowns must be on or before the specified last availability date as mentioned in the Loan Agreement.

### **Procurement Procedures**

The procurement procedures as laid down in the Loan Agreement must have been followed. See EBRD's publication *Procurement Policies and Rules*, section 3, Procurement Rules for Public Sector Operations. The review requirements outlined in Appendix 1 of this publication must have been complied with.

### **Eligible Expenditures**

The requested drawdowns must be for eligible expenditures as detailed in the Loan Agreement, and EBRD must have received satisfactory documentary evidence of these expenditures.

More information regarding this documentation is given below in section 3.2.3, which deals with the drawdown application and Summary Sheet.

## **Limits of Loan Category or Contract Amount**

The requested amount, together with previously drawn down amounts, must not exceed the limits of the loan category or the contract amount.

The Loan Agreement includes a table entitled "Disbursement/Drawdown of the Proceeds of the Loan" (normally attachment to Schedule 2 of the Loan Agreement), which sets out the categories of expenditure to be financed from the proceeds of the loan, the allocation of the amount of the loan to each category and the percentage of total expenditure to be financed by EBRD for each category.

A portion of the loan may be set aside under the category "unallocated" to cover physical and price contingencies. EBRD may reallocate a part or all of the "unallocated" category to meet an estimated shortfall in another category or may reallocate funds from one "allocated" category to another.

Note, however, that no drawdown can be made direct from the "unallocated" category. In other words EBRD would first have to agree to a reallocation of (a part of) the "unallocated" category.

## **2.3 CANCELLATION AND SUSPENSION OF THE AVAILABLE AMOUNT**

If a Borrower has failed to comply with the terms and conditions specified in the Loan Agreement, EBRD may suspend or cancel the right of the Borrower to receive further drawdowns. If such an event takes place EBRD will notify the Borrower in writing, giving details of the suspension or cancellation.

If EBRD determines that the procurement or administration of a contract has not been carried out in accordance with the agreed procedures, it will not finance the contract and may cancel that portion of the loan allocated to the contract. EBRD may also cancel the equivalent of any previously drawn down amount for which it has been established that the funds were used for purposes other than those specified in the Loan Agreement. This includes cases where funds disbursed to the Special Account have been used for ineligible expenditures. This principle also applies to disbursements made against statements of expenditures (see section 3.2.3(3)), where EBRD discovers that supporting documentation held by the Borrower is unsatisfactory. Section 3.3.3(4) provides further details.

Also, if EBRD determines that an amount is no longer needed for the project, it may cancel that amount. If such an event takes place EBRD will notify the Borrower in writing of such cancellation.

The Borrower may, by written notice to EBRD, in accordance with Section 3.08(a) of the Standard Terms and Conditions, cancel any amount of a loan that has not been drawn down and is not subject to any unconditional reimbursement commitment issued by EBRD.

Cancellation by the Borrower will normally be subject to a cancellation fee payable under Section 3.08(b)(i) of the Standard Terms and Conditions which will be confirmed to the Borrower at the time of cancellation.

If a fixed rate loan or part thereof is cancelled and EBRD incurs a cost or gain in unwinding the financial position that provides this fixed rate, then the charge or gain will be passed on to the Borrower.

After acceptance by EBRD of cancellation by the Borrower, commitment fees will no longer accrue on the amount cancelled.

## **3. SPECIFIC REQUIREMENTS FOR EACH TYPE OF DRAWDOWN APPLICATION**

### **3.1 INTRODUCTION**

The various types of drawdown that EBRD may offer in the Loan Agreement are set out in the following sections.

In summary, these drawdown types are:

#### **Direct drawdown**

In this case, the loan is drawn down and the corresponding payment amount is disbursed direct to the Borrower or to the Supplier.

#### **Drawdown payment to a Special Account**

In this case, the loan is drawn down and the corresponding payment amount is disbursed to a previously approved Special Account. There are separate requirements for the initial disbursement to the Special Account, and subsequent replenishments.

#### **Drawdowns under reimbursement commitments issued by EBRD**

EBRD can issue conditional and unconditional reimbursement commitments under which loan amounts can be drawn down and paid out. This is further explained in section 3.4 dealing with drawdowns for payments related to letters of credit (issued by other banks).

This chapter explains how and why each drawdown type is used. It also explains the basic requirements for that type of drawdown application, and the supporting documentation that should accompany each application form.

Even more detailed requirements are provided in chapter 4, which explains each item of information as it is to be provided by the Borrower in the disbursement application form.

#### ***Note about terms***

Throughout this handbook and in chapter 4, which gives information regarding the completion of various forms, certain terms are used in a broader sense to make this handbook easier to read:

**"Borrower"** also includes other possible beneficiaries of the loan, who have been authorised to act on behalf of the borrower with respect to drawdown applications;

**"Supplier"**, which normally implies "supplier of goods", also includes "contractor" or "consultant"; and hence

**"Goods"** can also refer to "works" or "services".

## 3.2 DIRECT PAYMENT DRAWDOWNS

### 3.2.1 The payee

---

The Borrower may request EBRD to make direct loan payments either to the account of the Borrower itself, or to the account of a Supplier.

The party to whose account the payment is made is called the "**payee**".

The principle that the Borrower should follow to determine the correct payee is simple:

- if the **Borrower has already paid** the Supplier (or contractor or consultant) for the eligible goods (or works or services), then the application should request from EBRD payment to the **account of the Borrower** for reimbursement of the applicable percentage of the sum(s) paid;
- if the bills or invoices from the Supplier have **not yet been paid**, then the Borrower should request EBRD to pay the amount to the **account of the Supplier**.

In other words, EBRD would not make a payment to the Borrower to enable it to pay outstanding invoices. EBRD pays direct where the money is due.

Full details of the payee's bank account are essential to ensure timely payment. For any payment in a currency which is not the currency of the country in which the payee's bank account is held (called the "payee bank's correspondent bank"), correspondent bank account details are required. A correspondent bank is the bank through which the payee's bank receives a particular currency and will vary according to the currency being paid. Such bank is usually located in the country whose currency is required for payment.

### 3.2.2 Amounts and currencies

---

#### 1. The amount of financing

This should be calculated from the eligible expenditures (i.e. from the original invoices in the currency of the contract) at the percentage detailed in the attachment to Schedule 2 of the Loan Agreement for the relevant category of the project.

In practical terms, this means that if, for instance, certain Goods are supplied under a contract that falls into a drawdown category which is only financed by the Bank at 80% of the contract, then:

- (i) the amount of financing is calculated by taking 80% of each invoice; or
- (ii) the Bank may, in its own discretion, pay 100% of invoices until 80% of the contract has been financed.

## **2. Payment amount**

This is the amount of financing, as indicated above, but converted into the currency in which EBRD has been requested to make the payment. Normally, payment will be made in the currency or currencies of the expenditures as they have been incurred.

The loan currency will always be accepted as payment currency. Payment in a third currency - in other words, not the currency of the expenditures or of the loan - may be allowed if EBRD understands there is a good reason for this request. Currency speculation, i.e. attempts to make a gain from expected changes in exchange rates, is not a valid reason. Payments in a third currency can only be made if provided for in the payment terms of the contract.

## **3. Drawdown amount**

Each drawdown will be debited from the loan account in the **loan currency** as defined in the Loan Agreement. The drawdown amount is calculated by EBRD as the equivalent in loan currency of the payment amount.

If there is more than one loan currency given in the Loan Agreement, the Borrower must indicate on the drawdown application which loan currency should be debited from the loan account (unless the Loan Agreement sets out a different method to ascertain the drawdown currency).

The Loan Agreement may also give the Borrower the option to change the loan currency on certain conditions.

### **3.2.3 Application forms and supporting documentation**

---

#### **1. The forms**

A **Summary Sheet** (DH2-02) should be attached to all **drawdown application forms** (DH2-01), and should be used to identify and provide brief details of all the attached items of documentation.

Each item, such as an invoice or receipt, should be numbered sequentially, by referring to the item number shown on the Summary Sheet, and numbers should be marked clearly on each of the documents.

All documents should be listed on the Summary Sheet and grouped: First by drawdown category, and then, within each category, by contract or invoice number.

Please note that separate applications would be required for invoices payable in different currencies. However, where there are multiple invoices due for payment around the same time to the same Supplier, it is advisable to list these together on the Summary Sheet for payment of the aggregate amount of the invoices.

## 2. The original documents

EBRD requires Borrowers to prove that funds requested for drawdown are (or will be) disbursed for eligible expenditures only, within the limits laid down by the Loan Agreement, and therefore EBRD requires full supporting documentation to accompany each disbursement application form.

### *i) The contract*

This is the contractual agreement between the Borrower and the contractor, supplier or consultant for the supply or delivery of goods, works or services required to complete the project as detailed in the Loan Agreement.

EBRD requires a signed or conformed copy of the contract before it can process any drawdown application. The contract will be checked to ensure that it has been awarded in accordance with EBRD's procurement rules for public sector operations, as detailed in EBRD's publication *Procurement Policies and Rules*.

If EBRD has already reviewed and approved the contract at an earlier date, and in the case of second or subsequent drawdown applications under the same contract, the Borrower need only **refer to the contract number**, rather than enclosing a copy of the contract.

### *ii) The Supplier's payment request (bill/invoice)*

The bill or invoice is the Supplier's declaration that it has complied with the terms of the contract, and that therefore payment is due.

EBRD will require that the bill or invoice should preferably be received in original (or specific prior arrangements be made with EBRD if this is not to be the case) for it to be eligible for payment under the Loan Agreement.

The payment terms of the contract may require that the bill or invoice be certified by or on behalf of the Borrower (often by the engineer employed by the Borrower to work on the project), indicating the Borrower's confirmation that the goods, services or works have been satisfactorily delivered or carried out in compliance with the requirements of the Loan Agreement and the contract.

Certification can be made by the Borrower on the actual invoice, or can be in the form of a separate certificate, in which case the certificate would constitute a separate document item to be listed on the Summary Sheet.

### ***iii)The receipt***

This is a confirmation from the Supplier that the payment requested in the invoice has been made by the Borrower.

In some cases EBRD may accept other evidence that the Borrower has paid the bill or invoice, such as payment confirmation from the bank that has made the payment on behalf of the Borrower.

This part of the supporting documentation is obviously only required if EBRD is to reimburse the Borrower for expenses already paid, not if disbursement is requested to be paid to the Supplier.

The above three documents can sometimes be condensed in one or two documents, for instance:

The contract can originally be oral, and only evidenced in writing by the bill or invoice. In the case of "shopping", the receipt may be the only written evidence of a contract and payment request.

These condensed documents would only be acceptable for small expenditures, the procurement method for which must be agreed in the procurement schedule of the Loan Agreement.

### **Language of the supporting documents**

All documents must be submitted in English, or be accompanied by a certified English translation.

A separate translation would again constitute a new item, to be listed on the Summary Sheet.

### **3. The Statement of Expenditures**

In certain exceptional cases, the physical submission to EBRD of all the supporting documents, as detailed in point 2 above, may not be feasible. These cases typically involve a very high number of documents for relatively small individual amounts. In those cases, the Borrower may be allowed to submit statements of expenditure ("SoE"s) instead.

a) When is the use of the SoE allowed?

It must be stressed that the actual submission of original documents remains the norm in all public sector loans. As a general rule the use of SoEs is not allowed, unless the Loan Agreement specifically permits their use. The need to use SoEs must be justified and agreed in advance by EBRD during the project preparation and negotiation stage. In addition the Borrower must have demonstrated its capability to keep the documents safe, available and accounted for. If EBRD agrees that the use of SoEs is justified and that appropriate procedures are in place for monitoring their use, then provisions reflecting this will be incorporated into the Loan Agreement. The drawdown schedule of the Loan Agreement will normally impose limitations by only allowing the SoE to be used for certain drawdown categories, and with respect to contracts below a certain size.

b) What are the conditions for the use of the SoE?

In cases where the SoE is permitted, the Borrower provides EBRD with form DH2-02-SoE (Statement of Expenditures Summary Sheet) instead of the standard Summary Sheet DH2-02. This SoE Summary Sheet, like the standard Summary Sheet, details the document items (invoices etc.) which are supporting the drawdown application, but in addition it gives information of where the documents are being held. The Borrower is responsible for keeping the documents readily available for inspection by EBRD. EBRD is entitled to perform spot checks at any time, and in addition the Borrower must agree to have a regular independent investigation carried out, normally by its independent auditors, to ensure that the drawdowns are based on exactly the same documentation, even though kept by the Borrower, as would be required if the documents were being sent to EBRD.

The the use of SoEs has an impact only on the presentation of evidence for disbursement purposes, and does not alter any other condition or requirement, including the requirement for contract review under EBRD's Procurement Rules.

### 3.3 DRAWDOWN PAYMENTS TO A SPECIAL ACCOUNT

In a case where the Borrower is expected to pay for a large number of small invoices, the Loan Agreement may provide, with regard to certain categories of expenditures as set out therein, that the Borrower has the option of requesting disbursements to a Special Account, which is a deposit account opened in the Borrower's name with a commercial bank, acceptable to EBRD.

The amount of the loan drawn down would be paid by EBRD into this Special Account, and the use of the funds by the Borrower, which would have to comply with all the same rules and requirements as direct payment drawdowns, would be checked by EBRD at a later date, usually when the subsequent request is received for further deposit to the Special Account.

The first draw down into a Special Account is the initial deposit, for which evidence of payments is not required, subsequent payments into the Special Account are made following submission of evidence of payments (including invoices/receipts), i.e. reconciliations.

This option is always in combination with, and never at the exclusion of, the option for direct payment drawdowns as detailed above. EBRD may, at its discretion, decide at any time to cancel the Borrower's right to use a Special Account. In that case all further disbursements would have to be made via direct payment drawdowns.

#### 3.3.1 Choice of Special Account bank

---

EBRD must give its specific no-objection confirmation of the commercial bank chosen by the Borrower to operate the Special Account. An application form (DH2-03) for the Borrower to request this no-objection confirmation is given in chapter 4.

EBRD will check to make sure that it can make payment in the Special Account currency to this bank, and that the proposed account is a deposit account.

Once EBRD has confirmed to the Borrower that it has no objection in principle to the commercial bank as a Special Account bank, EBRD will require a number of documents before any disbursement can be made, namely:

a **letter of authority** (DH2-04) (see chapter 4), to be sent by the Borrower to the Special Account bank, giving the Special Account bank authorisation to accept any instructions from EBRD regarding the account and the funds. The Special Account bank must agree to this authorisation by signing two copies of this letter, and returning one copy to the Borrower and the other copy to EBRD.

a **comfort letter** (DH2-05), the text of which is given in chapter 4, to be sent by the Special Account bank to EBRD, providing appropriate protection of the deposited funds against set-off, seizure or attachment by the Special Account bank;

**The Special Account is subject to independent audit at any time, as required by EBRD.**

EBRD can at any time withdraw its no-objection confirmation of the Special Account bank.

In that case, an alternative commercial bank should be proposed by the Borrower for EBRD's approval, and funds on deposit should be transferred.

It should be clearly noted, however, that EBRD does not recommend any particular commercial banks. No-objection confirmation by EBRD of a certain commercial bank does not imply that EBRD endorses that bank, or in any way vouches for the soundness and safety of the Special Account bank. It is entirely up to the Borrower to choose a bank that gives the best conditions, such as:

- reasonable charges for transactions such as payments and statements;
- credit interest on the account balance;
- fast and efficient payment services in the various currencies of the expenditures;
- other banking services that the Borrower may require, such as the issuance of letters of credit.

Most of all, the Borrower should be satisfied with, and continuously monitor, the credit standing and general set-up of the commercial bank, to provide a safe place for its funds.

**Note:** the Borrower continues to pay loan interest on the deposited drawdown amount, and will have to repay the amount on its repayment due date.

#### ***Note on credit interest and bank charges***

Credit interest earned on the amount on deposit is not to be deposited into the Special Account, as such account is set up only for transactions related to the proceeds of the loan. The Special Account bank should preferably credit the interest to another account, possibly a sub-account, at the Borrower's disposal.

Equally, if any additional bank charge is incurred in connection with the operation of the Special Account, such as an annual fee, then this charge should not be debited from the amount on deposit in the Special Account, but be dealt with separately, in the same way as the credit interest earned on the Special Account.

The above provision does not apply to any normal built-in foreign exchange margin which the Special Account bank may include in the exchange rate when converting the Special Account currency into the currencies of the various payments that are made to Suppliers. However, for those payments above EUR 10,000 or the equivalent thereof, evidence of the foreign exchange transaction concluded by the special account bank must be provided to the EBRD by the Borrower when it submits supporting documentation - see section 3.3.3.

### **3.3.2 Access to Special Account funds**

---

Only those persons whom the Borrower has confirmed to EBRD on the letter designating authorised signatories (see chapter 4), are allowed to request withdrawals or instruct the Special Account bank to disburse funds from the Special Account. EBRD will confirm those persons to the Special Account bank. By agreeing to the letter of authority (DH2-04), the Special Account bank has agreed to accept instructions to release funds from the Special Account only from those persons confirmed by EBRD.

Please note that EBRD is entitled to question why the Borrower has designated an authorised signature to a particular individual, and if not satisfied with the reason given, may refuse to accept that individual signatory.

### **3.3.3 How drawdown payment to the Special Account works**

---

Before any payments to the Special Account can be requested, the **general requirements** for any drawdown (including the declaration of effectiveness of the Loan Agreement), as detailed in previous sections in this handbook, must be complied with. Please be reminded that this also means that no payments can be made out of the Special Account for contracts that have not yet been sent to EBRD (as these are always subject to EBRD review) and that, where contracts are subject to *prior* review, EBRD's no-objection confirmation must have been obtained.

The Loan Agreement, usually in Schedule 3, sets out the specific details for each particular loan, such as:

#### **1. The maximum balance and the Special Account minimum drawdown amount**

The maximum balance amount is the maximum amount that EBRD will permit the Borrower to hold in the Special Account at any one time. Usually this amount is calculated as a maximum of 10 per cent of the loan amount, and represents an estimated equivalent of three months' expenditure for the project.

The special account minimum drawdown amount is usually higher than the minimum drawdown amount for direct payment drawdowns. This is mainly to avoid making a high number of small disbursements to the Special Account, which would be contrary to the objective of establishing the Special Account in the first place.

The maximum balance and the minimum drawdown amount together represent the upper and lower limits within which the balance of the special account deposit amount can vary **immediately after a loan amount has been drawn down and deposited** into the special account, whether it is the first payment into the special account (also called the "initial deposit") or a subsequent deposit (also called a "replenishment"). The balance can, of course, fall below the minimum amount after the Borrower has made payments to Suppliers out of the special account.

At any time, the Borrower can apply for a payment to the Special Account, provided it is for an amount not below the Special Account minimum drawdown amount, and as long as it will not bring the new balance of the Special Account above the maximum balance.

EBRD will only approve this request for a new payment if it receives satisfactory evidence of the correct use by the Borrower of all special account funds paid out of the special account since the time of the previous disbursement to the special account. In other words, the difference between the balance after the previous special account disbursement has been credited to the Special Account, and the current reduced balance as shown on a recent account statement, issued by the Special Account bank, covering all entries on the account for the period in question, must be justified before a new amount can be deposited by the EBRD.

## **2. Latest date for deposits into or payments out of the Special Account**

The Loan Agreement specifies at which point no further deposits to the Special Account are allowed, unless EBRD agrees otherwise. This is normally when the undisbursed loan amount available for eligible expenditures that can be financed out of the Special Account, has been reduced to twice the amount of the maximum balance allowed under the Special Account. From that point, any further drawdowns to the Special Account will be governed by any instructions sent by notice from EBRD to the Borrower. Normally the use of the Special Account will be further restricted at that time to categories or contracts identified by EBRD for which the continued use of the Special Account is still deemed justified.

EBRD will also establish when the Borrower's use of Special Account funds must cease, i.e. when all amounts deposited into the Special Account must be either accounted for (see section 3.3.4 on reconciliations) or returned to EBRD. This date would be not later than the last availability date as specified in the Loan Agreement.

## **3. Refund of payments made out of the Special Account**

If at the time of account reconciliation EBRD detects that funds on deposit have been used for anything other than eligible expenditures - for instance if EBRD cannot approve the contract for which a payment has been made, or the Special Account has been used to pay for expenditures under categories that were not identified in the Loan Agreement as "eligible" for the use of the Special Account - then the Borrower will be requested to **return an equivalent amount to the Special Account**. Without prejudice to any other legal right or remedy EBRD may have, no further drawdowns will be allowed until the Borrower has done so. See also point 5 below regarding cancellation in the case of misuse.

#### **4. Repayment of funds on deposit**

There are also various circumstances under which EBRD **may require the amount on deposit to be repaid** to EBRD.

The main reasons would be the following:

- as mentioned in point 2 above, that the funds on deposit have not been used by the last availability date;
- EBRD determines that funds on deposit are no longer needed for their original purpose;
- EBRD is not satisfied with the way the Special Account is being managed.

**The Borrower may also decide to repay or prepay, as the case may be, funds** from the Special Account, if these funds are no longer needed, or if the Borrower decides not to use the Special Account any longer.

In such a case EBRD reserves the right to decide whether to make these repaid funds available again for a new (direct payment) drawdown, in which case the available amount would be increased correspondingly, or whether they would be considered as final repayment or prepayment, as the case may be, of the original drawn down amount.

#### **5. Cancellation in case of misuse.**

As explained in Section 2.3, if drawn down funds have been misused, EBRD may cancel an equivalent amount of the available amount. So, in the event of use of funds deposited into the Special Account for purposes other than those specified and intended in the Loan Agreement, EBRD reserves the right to cancel an equivalent amount of the available amount of the loan.

### 3.3.4 Drawdown application for payment to the Special Account, and Special Account reconciliation

---

After the initial deposit payment which EBRD makes to the Special Account upon request from the Borrower (see chapter 4 for **drawdown application form (DH2-06)**), without any supporting documentation, each replenishment to the Special Account will only be made by EBRD if it receives, together with the drawdown application form, satisfactory documentation to reconcile the Special Account, i.e. to account for all payments made out of the Special Account by the Borrower (or by the Special Account bank on behalf of the Borrower) since the previous deposit was made.

Reconciliations will also be required by EBRD in the final phase, when no more drawdown proceeds are permitted to be deposited into the Special Account.

EBRD may reasonably require a reconciliation at any time it feels the need to establish that the Special Account is being operated strictly in line with the terms of the Loan Agreement. In any case, if there has been no activity in the Special Account for a period longer than six months then a reconciliation would automatically need to be submitted.

For any Special Account reconciliation, EBRD needs to see:

**(i) an account statement** issued by the Special Account bank, showing all entries on the account since the first deposit by EBRD, or in the case of subsequent replenishments, since the previous statement which EBRD has received. Normally EBRD will accept statements at the time of each drawdown application, but it may ask for statements at any time in between drawdowns, for instance if the last deposit has been made several months earlier, or if EBRD decides that monthly statements are required, or when EBRD wants to make a spot check.

**(ii) documentary evidence** of all payments made since the last deposit or since the last time when documentary evidence was provided by the Borrower. This evidence must show that the amounts withdrawn by the Borrower from the Special Account have been properly used for eligible expenditures in eligible categories as detailed in the Loan Agreement.

Note that the Borrower should already have sent any contract to EBRD, before any payment can be made from the Special Account in respect of that contract. Any other supporting documentation that has not already been submitted to EBRD at an earlier date, must be added at the time of application for subsequent replenishment.

It is important to be aware that the use of Special Account funds should follow exactly the same rules as direct payment drawdowns, even though some of the evidence is only shown to EBRD at a later stage. In other words, contracts still have to be awarded in accordance with EBRD's procurement rules, and disbursements will be made taking into account the drawdown schedule (Attachment to Schedule 2) of the Loan Agreement with respect to category limits, financing percentages, etc.

***Please note:***

For all expenditures made from the Special Account, EBRD needs evidence that the payment has been made to the Supplier. Therefore, EBRD normally needs a receipt from the Supplier. However, EBRD may, in exceptional cases, accept the account statement issued by the Special Account bank, if it clearly confirms details of each payment out of the account to a recognisable account of the Supplier.

The above documents are to be listed on a **Summary Sheet** (DH2-02 SA) in the same way as for direct payments drawdown to the Borrower, as detailed in section 3.2.3(1).

### **3.3.5 Currencies**

---

#### **1. Currency of Expenditure**

The **currency of the expenditures** will be the currency of the actual payment made to the Supplier from the Special Account. The Borrower will have to calculate the **amount of financing**, which is the amount of the invoices calculated at the appropriate percentage, giving the Borrower the amount allowed to be paid from the Special Account.

If this amount of financing is in a currency different from the Special Account currency, then the Special Account bank will convert an amount of the Special Account deposit into the amount to be paid out. For payments over EUR 10,000 equivalent, evidence of this foreign exchange transaction must be provided to EBRD at the time of account reconciliation.

#### **2. Loan Payment Currency**

The **loan payment currency**, i.e. the currency that EBRD places on deposit in the Special Account, will always be the **currency of the Special Account**. The Loan Agreement usually specifies in which currency the Special Account should be denominated. This is often, but not necessarily, the same as the loan currency. If the Loan Agreement allows more than one currency for the Special Account, then a separate sub-account would have to be opened for each currency.

#### **3. Drawdown Payments**

As mentioned in the section dealing with direct payment drawdowns, the drawdown is always booked in the **loan currency**. So the payment amount, if not in the loan currency, is converted into the loan currency to obtain the **drawdown amount**. If the loan is denominated in more than one currency, and if the Borrower requires the option that payments to the Special Account be drawn down and booked against each currency, then sub-accounts have to be opened for each loan currency, even if the payments from these accounts are all denominated in the same (payment) currency. In such a case, the Borrower has to indicate on each application for drawdown payment to the Special Account which currency is to be the drawdown currency, in other words against which loan tranche this disbursement is to be drawn down.

### **3.3.6 Use of Special Account funds as collateral**

---

The amount on deposit in the Special Account may also be utilised as collateral for issuance of letters of credit or various other guarantees or commitments by the Borrower. This practice is explained in section 3.4.4.

## 3.4 DISBURSEMENT UNDER A LETTER OF CREDIT

### 3.4.1 Introduction

---

In accordance with Section 2.2 (Eligible Expenditures), a drawdown application is to be supported by documentation which proves that the expenses relating to the application have been incurred for eligible categories, and that the underlying contracts are in accordance with EBRD's procurement rules.

The Borrower may have decided to cover these contracts with a letter of credit, i.e. it may have asked its bank (the issuing bank) to issue a letter of credit to the Supplier, which guarantees payment to the Supplier upon production of certain documents as specified by the Borrower.

Provided EBRD has approved the contract, which should clearly stipulate the payments that are to be covered by a letter of credit and the documents required thereunder, there are various ways in which EBRD can help to facilitate such payments.

### 3.4.2 Loan disbursement only

---

When the issuing bank makes its due payment to the Supplier under its letter of credit, it will expect reimbursement from the Borrower.

At this point, the Borrower, who will have received the Supplier's documents from the issuing bank, can present some of those documents (namely those required as for any other disbursement application) to EBRD for payment along with the disbursement application (DH-2-01), EBRD can then reimburse the Borrower (or the issuing bank).

However, international standard practice for letters of credit requires payment within a very tight time schedule following receipt of satisfactory documents. As EBRD is not directly involved in the letter of credit, it cannot guarantee that payment will be made within that time frame. The Borrower may therefore still have to make additional credit arrangements (for instance an overdraft facility) with the issuing bank.

This payment will be treated **according to the same principles as any direct payment drawdown:**

The documents have to conform to the same requirements as for a direct payment drawdown. However, in this case, if the Borrower has not yet received physical delivery of the Goods, the certification of the invoice on behalf of the Borrower will confirm that the Goods have been shipped in accordance with the letter of credit requirements, rather than confirming that the Goods have been duly received. The Borrower should also submit a copy of the letter of credit and the transport document together with the invoice.

Provided there is sufficient availability under the loan and the relevant category, etc. the payment will be made.

The Borrower may request for payment to be made to the issuing bank, provided that EBRD receives evidence that payment has been made to the Supplier by the issuing bank.

So the fact that the documents accompanying the drawdown application were previously used for a claim under a letter of credit does not alter this type of direct loan drawdown, and the usual drawdown application form has to be used.

### **3.4.3 Conditional or unconditional reimbursement commitment**

---

In some cases, banks may be reluctant to issue a letter of credit without some additional formal security that the Borrower will be able to reimburse the payments that are due under the Letter of Credit.

In other cases, the Supplier may be reluctant to accept a letter of credit from the Borrower's local bank as sole assurance that payment will be made, and similarly, the advising bank may be unwilling to add its confirmation to the letter of credit on the strength of the issuing bank's name, if this is the Borrower's local bank.

In either case, EBRD can provide further support by issuing a **conditional or unconditional reimbursement commitment (RC)** in accordance with Section 3.01 of the Standard Terms and Conditions.

#### **1. Unconditional reimbursement commitment**

##### *i) Definition*

The unconditional reimbursement commitment is an undertaking by EBRD to the issuing bank or to the confirming/advising bank that amounts due under the issuing bank's letter of credit, up to an agreed limit in the loan currency, will be paid by EBRD as a drawdown under the Loan Agreement, provided the documentation presented under the letters of credit complies with the requirements of the Loan Agreement.

The issuing bank or the confirming/advising bank to which EBRD's reimbursement commitment has been issued is called the reimbursement commitment bank (the "RC bank").

This undertaking is irrevocable, i.e. EBRD is committed to make the payment - provided it receives a valid claim from the RC bank - even if all other disbursements under the Loan Agreement have been cancelled or suspended, in the case where EBRD has exercised its option to do so.

For this additional commitment, a charge is due which replaces the commitment charge. This unconditional reimbursement charge accrues from the date of issuance of the unconditional RC until the date of payment by EBRD of the amount(s) claimed under the RC. The equivalent drawdown amount of the paid amount(s) will be treated as any other loan drawdown under the agreement.

It must be stressed that, unlike in the case of a direct payment drawdown application, EBRD has no automatic obligation under the Loan Agreement to issue an RC upon receipt of an application. The Standard Terms and Conditions, under Section 3.02, provides for the RC option. However, the section states that EBRD "may issue" these commitments, not that it "shall issue" them. The reason for this qualification is that EBRD must consider the consequences of a long-term commitment. For instance, EBRD may decide not to issue an unconditional RC for a letter of credit covering a contract that would take up too large a part of the total loan.

*ii) Limitation amount*

If the letter of credit amount is denominated in a currency different from the loan currency, EBRD will impose a maximum limit ("limitation amount") in the loan currency upon its reimbursement commitment, in order to ensure that exchange rate fluctuations will not create a commitment larger than the amount available and reserved for this purpose under the relevant category. If, at the time of drawdown, the amount of financing of the letter of credit in original currency exceeds the given limitation amount, EBRD will in any case pay up to the guaranteed limit, but it will only pay the excess if there is still further room under the available loan amount. The Borrower will be liable to make up any remaining deficiency.

*iii) Letter of credit financed amount*

In most cases, EBRD should be able to finance the whole letter of credit amount, subject to the limitation amount. However, it is possible that the underlying contract falls within a category that is less than 100 per cent financed, and hence the financed amount under the reimbursement commitment would be a corresponding proportionate amount of the total letter of credit amount.

*iv) Variations to the original letter of credit requirements*

Once the reimbursement commitment has been issued, all **amendments to the letter of credit** are subject to prior approval by EBRD, as such amendments could substantially alter or increase EBRD's commitment under its reimbursement commitment.

If **discrepant documents** are submitted under the letter of credit, then the Borrower must obtain EBRD's approval first, before agreeing to accept the discrepancies. EBRD will then check and only confirm that payment against those discrepant documents is still covered by the reimbursement commitment if the discrepancies are within the terms of the contract and the Loan Agreement.

## **2. Conditional reimbursement commitment**

The conditional reimbursement commitment only differs from the unconditional reimbursement commitment in that payments under the conditional reimbursement commitment will only be made if EBRD has not exercised the option to suspend or cancel disbursements in accordance with the terms of the Loan Agreement.

Payments under the unconditional reimbursement commitment are made regardless of whether the Loan has been cancelled or suspended, hence a fee is payable by the Borrower on the undrawn amount of the unconditional reimbursement commitment for the duration of the availability of the unconditional reimbursement commitment.

For a conditional reimbursement commitment, EBRD does not make any charge; the original commitment charge continues to apply until drawdown.

EBRD reserves the right, however, to request a fee to cover the considerable amount of work that is involved in issuing and monitoring conditional as well as unconditional reimbursement commitments.

## **3. How to apply for the issuance of a reimbursement commitment and payment thereunder**

### ***i) Application for issuance of a conditional or unconditional reimbursement commitment***

This application is in fact a deferred drawdown application (it authorises EBRD to pay when further conditions are fulfilled) and so, as with all other drawdown applications, EBRD needs to review the contract before it can approve the Borrower's application.

In addition, the Borrower must provide EBRD with a copy of the issuing bank's proposed letter of credit.

See chapter 4 (Form DH2-07 or DH2-10) for details of the application forms.

### ***ii) Claim for payment under the conditional or unconditional reimbursement commitment***

This text of the reimbursement claim (Form DH2-09 or DH2-12) is to be submitted by the beneficiary bank in favour of which the RC has been issued (the "RC bank").

EBRD will relay the pro forma text of this application direct to the RC bank at the time of issuance of its reimbursement commitment. (See also chapter 4 for the text of EBRD's reimbursement commitment (Form DH2-08 or DH2-11)).

Valid RC Claims are paid within 5 working days of receipt by EBRD.

#### **3.4.4 Use of Special Account funds as collateral**

---

The Special Account bank may be prepared to issue letters of credit, guarantees or any other similar instruments for the purposes of the project, using funds deposited to the Special Account as collateral. This is acceptable, as long as this usage is strictly in accordance with the criteria used by EBRD for drawdowns, such as: prior review of the contract by EBRD, availability of the amount in the relevant category, and any other condition that the Loan Agreement may contain. Any financial instruments issued against the collateral should not have validity extending beyond the last availability date of the Loan. Also, should these collateralised funds be used for purposes other than those covered in the Loan Agreement, or otherwise violate the Loan Agreement, they will be subject to demand by EBRD for repayment. It is the Borrower's responsibility to ensure that the Special Account bank is aware of these restrictions and that all relevant conditions are met. Also please note that the funds should remain on the Special Account until actual payment under the letter of credit or guarantee is required

When the Borrower sends the account statement and supporting documentation to EBRD for reconciliation, details should be included of any commitment entered into by the Special Account bank for which the funds on deposit are being used as collateral. Copies of the actual guarantee or letters of credit documents must be provided.

When the Borrower applies for a new drawdown payment to the Special Account, EBRD will treat amounts identified as approved collateral as if they have already been paid out of the account by the Borrower, in other words these amounts will be deducted in order to calculate whether the new requested balance is not exceeding the maximum balance allowed for the Special Account.

Under no circumstances is the Special Account bank allowed, when issuing these commitments, to use the name of EBRD to give the impression that EBRD is backing its commitment. EBRD still can, in the same way as for any other funds on deposit on the Special Account, ask for repayment of the amount used as collateral in the event that the amount requested to be used as collateral is used for purposes other than those covered by the Loan Agreement or otherwise violates the Loan Agreement.

## **4. APPLICATION FORMS AND STANDARD TEXTS**

The following forms or standard texts are attached, with instructions for their completion:

### **1. Forms required for a drawdown application with direct payment:**

DH2-01: Application for direct payment drawdown,

DH2-02: Summary Sheet,

DH2-02-SoE: Statement of Expenditures Summary Sheet.

### **2. Forms related to the use of a Special Account:**

DH2-03: Request for confirmation of commercial bank operating the Special Account,

DH2-04: Letter of authority (to commercial bank where Borrower proposes to open a Special Account),

DH2-05: Comfort letter (from commercial bank where Borrower proposes to open a Special Account),

DH2-06: Application for disbursement to a Special Account.

Except for applications for the initial deposit, form DH2-06 must be accompanied by a Summary Sheet form DH2-02-SA (or DH2-02-SoE if applicable).

### **3. Forms related to reimbursement commitments:**

#### ***a) for unconditional RCs:***

DH2-07: Application for an unconditional reimbursement commitment (to be accompanied by a Summary Sheet form DH2-02),

DH2-08: Text of unconditional reimbursement commitment (issued by EBRD),

DH2-09: Text of reimbursement claim under unconditional reimbursement commitment.

#### ***b) for conditional RCs:***

DH2-10: Application for a conditional reimbursement commitment (to be accompanied by a Summary Sheet form DH2-02),

DH2-11: Text of conditional reimbursement commitment (issued by EBRD),

DH2-12: Text of reimbursement claim under conditional reimbursement commitment.

### **4. Example of a letter designating authorised signatories**

(Certificate of incumbency)

**APPLICATION FOR DIRECT PAYMENT DRAWDOWN**

**[Form DH2-01]**

To: European Bank for Reconstruction and Development,  
One Exchange Square,  
London EC2A 2JN  
United Kingdom.  
Attention: Operation Administration Unit.  
Fax No: +44 20 7338 7017

Date [...1..]

**Re: Loan Agreement dated [...2....] between the European Bank for Reconstruction and Development and [...3....] (the Borrower).**

**Loan Currency and Amount: [.4.]**

**Operation number: [.5.]**

**Application number.: [.6. ]**

We hereby request the following drawdown in accordance with the provisions of the above mentioned Loan Agreement:

Loan Currency/ Tranche number: [.7.]

Currency of payment required: [.8. ]

Financed Amount(s) / currency [.9. ]

Value date: [.10.]

Payable to (Payee): [.11. ]

**Payment Instructions (Payee's banking details):**

Payee's Account Name: [12]

Payee's Account No.: [13]

Payee's Bank Name: [14]

Payee's Bank Address: [15]

SWIFT CODE:

**Payee's Bank's Correspondent details:**

Correspondent Bank Name: [16]

Address: [17]

Account Name: [18]

Account Number: [19]

SWIFT CODE:

Payment Reference: [20]

We hereby certify that we have not previously requested disbursement from the above mentioned facility to meet these expenditures.

We have not obtained and do not intend to obtain funds for this purpose out of proceeds of any other loan, credit or grant.

The goods and services covered by this application have been or are being purchased in accordance with the terms of the Loan Agreement, or in the case of a loan to a financial intermediary, the subloans have been granted in accordance with the terms of the Loan Agreement.

We hereby confirm to EBRD that (i) we are in compliance with our obligations as set out in the Loan Agreement and (ii) that no event has occurred which is liable to affect materially and adversely our operations or financial condition or our ability to carry out the Project or to perform any of our obligations under the Loan Agreement.

Yours faithfully,

[Signature(s)]for and on behalf of [21]

Enclosures: - Total number of Summary Sheets: [ 22]

- Total number of document items: [23]

**NOTES FOR COMPLETION OF FORM DH2-01**

[1] **Date** that the request form is completed by the Borrower.

[2] **The Loan Agreement's date** is the date of signing, and is clearly marked on the first page of the Loan Agreement.

[3] **The Borrower** is the party named in the Loan Agreement as the Borrower (i.e. the party to whom EBRD is granting the loan), and who is now applying for drawdown.

[4] **The loan currency and amount:** this is the total loan amount, designated in the original loan currency, as determined in the Loan Agreement. It should not be confused with the currency and amount of the actual payment under this particular drawdown request.

[5] **The operation number** is marked on the cover page of the Loan Agreement. In the case of some earlier agreements, it may be called loan number or project number.

[6] The Borrower should **number** each application form in numerical order starting with 1. It is up to the Borrower to keep track of the number of all loan drawdown applications that it has made under the given Loan Agreement. The application forms should follow the same sequential numbering system, whether they are for a direct payment drawdown, disbursement to a Special Account or for the issue of a reimbursement commitment. The use of this numbering system avoids confusion in case forms are held up in the post, are faxed more than once, etc.

[7] **The loan currency** is defined in the Loan Agreement. If there are several loan currencies, they will have a separate loan "tranche number", which the Borrower must indicate here. In the same way, the loan may have separate tranches for fixed and variable interest rates, and again the Borrower must indicate against which tranche this drawdown should be booked. Regardless of the currency in which this drawdown is actually paid out, it is the equivalent amount in loan currency that will accrue interest (fixed or variable) and be repayable as per the repayment schedule.

[8] Please state **currency of actual payment** required. This will be either the loan currency (see [7] above), or the currency of the expenditures (see [9] below). Alternatively, in some circumstances EBRD may agree to pay in a third currency, in which case it would act as the Borrower's agent in order to obtain this currency.

If payment is required in more than one currency, then a different application form should be used per currency.

[9] **The financed amount(s)** are the expenditures, in their currency as detailed on the Summary Sheet, calculated at the appropriate percentage specified in the Loan Agreement for the applicable eligible category. The amount(s) given here should correspond with the total amount(s) in section [15] of the Summary Sheet.

[10] **The value date** is the date that EBRD's account is debited with the payment amount of the drawdown. EBRD cannot guarantee that the payee's account will be credited on the same date, as this depends on the procedures adopted by the clearing system or the recipient bank in the country of the payee. There should be 15 business days minimum between the date that EBRD receives the application and the requested value date. If in fact the payment is needed as soon as possible, instead of on a specific value date, it may be better not to give a specific date, but to put "as soon as possible" in this field [10]. In this case EBRD will make the payment in any case within 15 business days, but earlier if possible. (Please note payment can only be guaranteed within 15 business days if the drawdown application is correct and complete.)

[11] The drawdown is paid out to **the payee**. Normally the payee will be the Supplier, but if the enclosed documentation (see the Summary Sheet) provides evidence that the Borrower has already paid the Supplier, then payment can be made to the Borrower.

[12] **The payee's account name** in most cases will simply be the name of the payee.

[13] **The payee's account number** is mandatory required to avoid delays. It is possible that banks will refuse to make payment if the payee's account number is not given in the payment instructions.

[14] **The payee's bank** is the bank where the payee's account is held. Please indicate bank name and town.

[15] Instead of the **address**, the sort code or SWIFT code can be given.

[16] **The correspondent bank** of the payee's bank is only required if payment is **not** to be made in the currency of the country where the payee's bank is located. In that case, the correspondent bank is the bank, located in the country of the payment currency, with which the payee's bank holds an account.

[17] Instead of an **address**, the sort code or SWIFT code of the correspondent bank can be given.

[18] **The payee's bank's account name** in most cases will simply be the name of the payee's bank.

[19] **The payee's bank's account number** is essential if the payee bank holds more than one account with the correspondent bank, or if it is not a member of SWIFT (the international electronic payment settlement system). Otherwise this number is useful but not mandatory. Where applicable the IBAN No. (International Bank Account Number) should be quoted.

[20] **The payment reference** which EBRD will send with the payment helps the payee to identify the payment. If no specific reference is requested, EBRD will mention the Borrower's name and the contract number.

[21] **Signature.** The application should be signed off by or on behalf of the Borrower by an authorised signatory. For information on the signature requirements, please see section 2.1, points 2 and 3.

[22] **The Summary Sheets** list all the items of documentation enclosed to support the drawdown application. If there is more than one invoice, it is advisable to use a separate Summary Sheet per category.

[23] **The documentation items** (contracts, invoices, receipts, etc.) are to be numbered and presented in the same order as they appear on the Summary Sheets. Their total number should be indicated here to facilitate EBRD's review.

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**DISBURSEMENT APPLICATION SUMMARY SHEET [FORM DH2-02]**

**Borrower Name**  
:[1] .....

**Operation No**  
:.....  
[3]

**Application No:** [4] .....

**Date:** [2] .....

**Summary Sheet**  
**No :** [5] .....

**Disbursement** (ref.no./ name/ %)

**Category:** [6] ...../...../.....

Item No	Description of Item	Contract/Purchase Order No. and Date	Name and Address of Contractor/Supplier	Brief Description of Goods , Works or Services	Currency and Total Amount of Contract	Currency&Amount of Eligible Expenditure	Amount of Financing in currency of expenditure
[7]	[8]	[9]	[10]	[11]	[12]	[13]	[14]

**Signature**

[16].....

TOTAL (per currency)

[15] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## NOTES FOR COMPLETION OF DH2-02

[1] **Name.** Borrower's name.

[2] **Date.** Date of application.

[3] **Operation number.** From the cover page of the Loan Agreement.

[4] **Application number.** This is the drawdown application number.

[5] **Summary Sheet number.** For each drawdown application, the Summary Sheets should be numbered starting from 1, and their total number noted on the drawdown application.

[6] **Disbursement category.** This is the category of expenditures of the project, to be financed out of the proceeds of the requested drawdown. Please consult the Loan Agreement to find the name and reference number of the category, and the percentage of expenditures to be financed (for example, "category no. (3b), equipment, 60%").

If one drawdown application covers expenditures from more than one category, then a separate Summary Sheet is to be used for each category.

[7] **Item number.** All document items (invoices, contracts, receipts, etc.) should be presented in the same order as they appear on the Summary Sheet(s). To facilitate identification, the documents should be numbered, starting with 1, 2, 3, etc., for each new drawdown application, and this number should be clearly marked on the document itself. The total number of items for the total of all Summary Sheets is noted on the drawdown application form.

[8] **Description of item.** Please describe each item, e.g. "invoice", "receipt", "engineer's certificate", "translation of [...]", etc.

[9] **Contract/purchase order number and date.** It is recommended that the contract is given a number when it is drawn up between the Borrower and the contractor. EBRD will adopt this number for its own record keeping. If the contract has not been given an original number, EBRD will allocate it a number and advise the Borrower at the time of approval. If the Borrower does not know the number at the time of completing the Summary Sheet, this part can be left for EBRD to complete.

The date of the contract/purchase order should also be given in this column.

**Note:** the same contract may appear in more than one drawdown application, if delivery of the Goods, works or services (see [11]), and therefore payment for these Goods, etc., is made in stages.

**[10] Name and address of contractor/Supplier.** Name and address of Borrower's counterparty (contractor, Supplier or consultant) in the contract/purchase order as described in [9].

**[11] Brief description of goods, works or services.** These goods, works or services should correspond to the details provided in the contract or other documents presented, and should fall within the category indicated in [6].

**[12] Currency and total amount of contract.** Total amount, in original currency, of the contract listed in [9].

**[13] Currency and amount of eligible expenditure.** For each expenditure: total amount due or paid, in original currency, as covered by the invoices or other documents listed in [7] and [8]. When there is more than one "item" for each expenditure, (e.g. an invoice, certificate and receipt, all for the same expenditure), those items should be bracketed and only one amount should be shown in this column.

**[14] Amount of financing.** For each amount listed in column [13], there should be a corresponding amount in this column [14], calculated at the percentage stated in [6], corresponding to the category of this Summary Sheet. The amount of financing should be in the original currency of the contract and expenditure (columns 12 and 13). This may or may not be the same as the loan currency or the payment currency.

**[15] Total.** The amounts of financing, as listed in [14], should be added up into one total amount per currency. For direct drawdown applications, amount(s) given here should correspond with the amount(s) given in [9] of the direct drawdown application form.

**[16] Signature.** The application Summary Sheet should be signed off by or on behalf of the Borrower by an authorised signatory.

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**STATEMENT OF EXPENDITURE SUMMARY SHEET [FORM DH2-02-SoE]**

**Borrower Name:** ..... **Operation No :** ..... **Application No [4]** .....

[1] [3]

**Date:**.....

[2] **SoE Summary Sheet No :** [5] .....

**Disbursement** (ref.no./ name/ %)

**Category:** [6] ...../...../.....

Item No	Description of Item and Location where held	Contract/Purchase Order No. and Date	Name and Address of Contractor/Supplier	Brief Description of Goods, Works or Services	Currency and Total Amount of Contract	Currency&Amount of Eligible Expenditure	Amount of Financing in currency of expenditure	Amount Paid in Spec A/C Currency
[7]	[8]	[9]	[10]	[11]	[12]	[13]	[14]	[16]

**Signature**

[18].....

**Total** (per currency)

[15]

**Total**

[17]

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## **NOTES FOR COMPLETION OF DH2-02-SoE**

Please note that all instructions given for the completion of the standard Summary Sheet DH2-02, and any other reference or information regarding the standard Summary Sheet, also apply to the SoE Summary Sheet, with the following exception:

**[8] Description of Item and Location where held.** Each document which EBRD requires as evidence to support a drawdown application or Special Account reconciliation, as described in section 3.2.3, must be listed here, even though the Borrower is in this case not sending those documents to EBRD. Every document listed in this section is considered certified by the Borrower as being in the Borrower's possession at the time of submission of the SoE Summary Sheet, and as being kept and accounted for by the Borrower in a safe place, ready for inspection at any time by EBRD or independent auditors. The place where the document item is kept by the Borrower (i.e. the address) is to be noted on the form in this column [8].

Please remember that this form DH2-02-SoE can only be used if the Loan Agreement explicitly allows the use of the statement of expenditures. Otherwise the standard Summary Sheet DH2-02 is to be used.

**REQUEST FOR CONFIRMATION OF COMMERCIAL BANK  
OPERATING THE SPECIAL ACCOUNT**

[To be typed on Borrower's letterhead]

European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom

Attention: Operation Administration Unit  
Fax No: +44 20 7338 7017

Date[1]

Dear Sir or Madam,

**Re: Loan Agreement dated [2] between the European Bank for Reconstruction  
and Development and [3]  
Operation number: [4]**

With reference to the above mentioned Loan Agreement, we propose to establish the  
Special Account

with [5]

at [6]

The details of the Special Account are as follows:

- (a) Type of account:
- (b) Account number:
- (c) Account name:
- (d) Account currency:
- (e) Payment instructions:

We hereby request confirmation that the above arrangement is satisfactory to EBRD.

Yours faithfully,

*[Signature(s) for and on behalf of Borrower]*

### **NOTES FOR COMPLETION OF DH2-03**

[1] Date on which the request form is completed by the Borrower.

[2] The signing date of the Loan Agreement.

[3] The Borrower is the party named in the Loan Agreement as the Borrower (i.e. the party to whom EBRD is extending the loan).

[4] The operation number is marked on the cover page of the Loan Agreement. In the case of some earlier agreements, it may be called loan number or project number.

[5] Enter the full name and [6] address of the commercial bank where the Special Account will be opened.

a) The account type should be a deposit account.

b) Please give account number if known. If the Special Account is denominated in more than one currency (the payment currency), or if the disbursement can be drawn against tranches relating to different currencies, then appropriate sub-accounts must be set up and listed here (see section 3.3.5 for more details).

c) Please give name of account, which should be the name of the Borrower, possibly with the addition of the project name.

d) The Special Account should be opened in the currency or currencies indicated in the Loan Agreement. See also b) above.

e) Please give full details of the way payments to the Special Account in the account currency will have to be made by EBRD. If the currency of the Special Account is not the currency of the country where the commercial bank is located, then full details have to be given of the commercial bank's account with a "correspondent bank" in the country of the Special Account currency.

[Form DH2-04]

**LETTER OF AUTHORITY [Form DH2-04]**

[To be typed on Borrower's letterhead]

**Date:** [1]

**To:** [Commercial bank where the Special Account will be opened]

Dear Sirs,

**Re: Deposit Account in the name of [2] ("the Special Account")**

Pursuant to the Loan Agreement dated [3] between [4] and the European Bank for Reconstruction and Development (EBRD), we have requested you to open the Special Account. In consideration of your opening the Special Account, and in addition to and notwithstanding any other instructions which we may have given to you or may in future give to you in relation to the Special Account, we irrevocably authorise and instruct you:

- a) To honour all instructions of the European Bank for Reconstruction and Development or any person whom it has notified to you as authorised on its behalf (together the "EBRD") in relation to the Special Account.
- b) To provide such information to EBRD in relation to the Special Account as it may request.
- c) To accept such instructions and requests from EBRD whether in writing or transmitted by Swift or by electronic means (in accordance with any standard electronic procedures or any electronic procedures agreed between yourselves and EBRD).
- d) To permit only those individuals whom we will designate and inform to EBRD, and whom EBRD will subsequently confirm to you, to request withdrawals or instruct you to disburse funds from the Special Account.

We shall indemnify you against any loss, damage or other liability suffered or incurred by you in connection with any instruction or communication given or made (or believed by you in good faith to have been given or made) in accordance with this letter.

Please confirm your agreement to the above by countersigning two copies of this letter and returning one countersigned copy to ourselves and the other countersigned copy to the European Bank for Reconstruction and Development, attention Operation Administration Unit, at One Exchange Square, London EC2A 2JN, United Kingdom.

Yours faithfully,

[Signature(s)] for and on behalf of [4]  
-----

CONFIRMED: Date:

[Commercial bank]

#### **NOTES FOR COMPLETION OF FORM DH2-04**

[1] Date on which the letter is completed by the Borrower.

[2] The Special Account should be in the name of the Borrower. In addition, the account may also contain a reference to the project name to facilitate identification.

[3] The signing date of the Loan Agreement as marked on the first page of the agreement.

[4] The Borrower is the party named in the Loan Agreement as the Borrower (i.e. the party to whom EBRD is extending the loan).

**COMFORT LETTER FROM COMMERCIAL BANK  
HOLDING A SPECIAL ACCOUNT**

*[To be typed on letterhead of Commercial Bank]*

European Bank for Reconstruction and Development,  
Operation Administration Department,  
One Exchange Square,  
London EC2A 2JN,  
United Kingdom.

*[Insert Date]*

Ladies and Gentlemen,

**Re: Loan Agreement dated *[Insert here the date of the Loan Agreement]* (the "Loan Agreement") between *[Insert here the name of the Borrower under the Loan Agreement]* (the "Borrower") and the European Bank for Reconstruction and Development (the "EBRD")**

**Special Account No: *[Insert here the account number for the Special Account]***

We refer to the procedure of EBRD for disbursement of loans for projects and investment programmes through advances to special deposit accounts opened by EBRD Borrowers or other beneficiaries of such loans.

It is our understanding that, in furtherance of the provision in the Agreement Establishing the European Bank for Reconstruction and Development designed to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, EBRD provides in its Loan Agreements and supplementary disbursement documents that EBRD must approve of the placement of funds in special deposit accounts and of the terms and conditions thereof ("Special Account"). It is further our understanding that the Borrower and EBRD have agreed that only the proceeds of the afore-mentioned loan will be deposited in the Special Account.

*[Insert full, legal name of the commercial bank that will hold the Special Account]* has been requested by *[Insert full, legal name of the above mentioned Borrower or the beneficiary which is opening the Special Account]* to open a Special Account of the nature described above. Recognising that EBRD has an interest in safeguarding the use of such funds for the special purposes of its projects and investment programmes, we are pleased to confirm that: (1) we will promptly notify you in the event funds are deposited in the Special Account by any party other than the Borrower or EBRD; and (2) the funds deposited into this Special Account will be segregated and held separate from all other funds that *[Insert full, legal name of the commercial bank that will hold the Special Account]* holds or may in the future hold on behalf of the Borrower. In addition, any interest that accrues from time to time with respect to funds deposited into the Special Account will not be deposited into this Special Account, but shall be subject to such other arrangements as *[Insert full, legal name of the Borrower or the beneficiary which is*

*opening the Special Account]* and we shall agree. Likewise, any fees, expenses or other charges assessed by *[Insert full, legal name of the commercial bank that will hold the Special Account]* for the administration of the Special Account will not be deducted from amounts on deposit in the Special Account.

Furthermore, *[Insert full, legal name of the commercial bank that will hold the Special Account]* will not assert any claim to set off, seize, or attach amounts on deposit in such Special Account to satisfy amounts due to *[Insert full, legal name of the commercial bank that will hold the Special Account]*, except only to the extent necessary to protect its position in such instances where a third party takes steps to attach such funds. In the event that a third party has attached funds in any such account, *[Insert full, legal name of the commercial bank that will hold the Special Account]* will inform EBRD immediately of such attachment and will co-operate, as appropriate, with EBRD in its efforts to seek the removal of any such attachment.

We understand that this representation will be relied upon by EBRD in approving this Special Account arrangement and the placement of funds advanced thereto.

Yours sincerely,

***Authorised Officer***

***[Insert name and title of Authorised Officer]***

***[Insert full legal name of the commercial bank that will hold the Special Account]***

**APPLICATION FOR DISBURSEMENT TO SPECIAL ACCOUNT [Form DH2-06]**

To: European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom

Date: [1]

Attention: Operation Administration Unit.  
Fax No: +44 20 7338 7017

**Re: Loan Agreement dated [2] between the European Bank for Reconstruction and Development and [3] (the Borrower).**

**Loan Currency and Amount: [4]**

Operation Number: [5]

Application No.: [6]

We hereby request the following disbursement to our Special Account in accordance with the provisions of the above mentioned Loan Agreement:

(A) initial drawdown payment as defined in Schedule/Section [7] of the above mentioned Loan Agreement.

or

(B) further replenishment of the Special Account.

Loan Currency/Tranche number: [8]

Payment Currency and Amount required: [9]

Value date: [10]

**Special Account Details:**

Special Account : name: [11]  
number: [12]

Special Account bank: name: [13]  
address: [14]

SWIFT Code:

**Special Account Bank's Correspondent Details:**

Correspondent Bank name: [15]

Address: [16]

Account name: [17]

Account number: [18]

SWIFT Code:

Payment Reference: [19]

We hereby certify that we have not previously requested disbursement from the above mentioned facility to meet these expenditures.

We have not obtained and do not intend to obtain funds for this purpose out of proceeds of any other loan, credit or grant.

The goods and services covered by this application have been or are being purchased in accordance with the terms of the Loan Agreement, or in the case of a loan to a financial intermediary, the subloans have been granted in accordance with the terms of the Loan Agreement.

We hereby confirm to EBRD that (i) we are in compliance with our obligations as set out in the Loan Agreement and (ii) that no event has occurred which is liable to affect materially and adversely our operations or financial condition or our ability to carry out the Project or to perform any of our obligations under the Loan Agreement.

[signature]

for and on behalf of [20]

**Enclosures:** [not required for initial disbursement to the Special Account]..... - total number of Summary Sheets: [21]

- total number of items: [22]

- bank statement of account [23]

- total number of copies of foreign exchange transactions for individual payments out of the special

- account made in a currency other than the Special Account currency: [24]

## NOTES FOR COMPLETION OF FORM DH2-06

[1] **Date** that the request form is completed by the Borrower.

[2] **The Loan Agreement's date** is the date of signing, and is clearly marked on the first page of the agreement.

[3] **The Borrower** is the party named in the Loan Agreement as the Borrower (i.e. the party to which EBRD is granting the loan), which is now applying for drawdown payment.

[4] **The loan currency and amount** is the total loan amount, designated in the original loan currency, as determined in the Loan Agreement. It should not be confused with the currency and amount of the actual payment under this particular drawdown application.

[5] **The operation number** is marked on the cover page of the Loan Agreement. In the case of some older agreements, it may be called loan number or project number.

[6] The application form for a disbursement to Special Account should follow the same sequential numbering system as for a direct payment drawdown or for the issue of a reimbursement commitment. It is up to the Borrower to keep track of the number of all loan drawdown applications which it has made under the given Loan Agreement.

[7] Number of the **section in the Loan Agreement** which defines the authorised allocation or maximum balance (the term depends on the date of the Loan Agreement).

[8] **The loan currency** is defined in the Loan Agreement. If there are several loan currencies, they will have a separate "tranche number", which the Borrower must indicate here. In the same way, the loan may have separate tranches for fixed and variable interest rates, and again the Borrower must indicate against which tranche this drawdown should be booked. Regardless of the currency in which this drawdown is actually paid out, it is the equivalent amount in loan currency that will accrue interest (fixed or variable) and be repayable as per the repayment schedule.

[9] State **currency and amount** (in figures and words) **of the actual payment** required. The currency has to be the currency of the Special Account itself, which in most cases is the same as the loan currency. (See Loan Agreement whether the Special Account can be denominated in other than loan currency.) With regard to the amount:

In the case of the initial disbursement to the Special Account, the amount must fall within the upper and lower limits of the authorised allocation which will be defined in the section of the Loan Agreement mentioned above (or the equivalent in another currency). For more recent Loan Agreements, the amount must fall between the minimum drawdown amount for Special Accounts and the maximum balance.

In the case of further replenishments of the Special Account, the payment amount is the difference between (a) the new balance required (which again has to fall between the upper and lower limits set out in the Loan Agreement) and (b) the current balance of the Special Account.

[10] **The value date** is the date that EBRD's account is debited with the payment amount of the drawdown. EBRD cannot guarantee that the payee's account will be credited on the same date, as this depends on the procedures adopted by the clearing system or the recipient bank in the country of the payee.

There should be minimum 15 business days between the date that EBRD receives the application, and the requested value date. If in fact the payment is needed as soon as possible, instead of on that specific value date, it may be better not to give a specific date, but to put "as soon as possible" in this field (10). In that case EBRD will make the payment in any case within 15 business days, but earlier if possible.

[11] **The account name** will most likely be the Borrower's name, possibly with some additional title.

[12] **The Special Account number** will have been allocated by the Special Account bank. Please indicate the sub-account number if appropriate (see section 3.3.5).

[13] **The Special Account bank** is the commercial bank with which the Borrower has opened his Special Account, as previously advised to EBRD.

[14] Instead of an **address**, the sort code or SWIFT code of the Special Account bank can be given.

[15] **The correspondent bank** of the Special Account bank is only required if payment is **not** to be made in the currency of the country where the Special Account Bank is located. In that case, the correspondent bank is the bank, located in the country of the payment currency, with which the Special Account bank holds an account.

[16] Instead of an **address**, the sort code or SWIFT code of the correspondent bank can be given.

[17] **The Special Account bank's account name** in most cases will simply be the name of the Special Account bank.

[18] **The Special Account bank's account number** is essential if the Special Account bank holds more than one account with its correspondent bank, or if it is not a member of SWIFT (the international electronic payment settlement system). Otherwise the number is useful but not mandatory.

[19] **The payment reference** which EBRD will send with the payment helps the Special Account bank to identify the payment. If no specific reference is requested, EBRD will mention the Borrower's name.

[20]: **Signature.** The application Summary Sheet should be signed off by or on behalf of the Borrower. For information on the signature requirements, please see section 2.1, points 2 and 3.

[21] **The Summary Sheets** list all the items of documentation (see [22]) enclosed to support the application for replenishment of the Special Account. A separate Summary Sheet should be used per category. The total amount of financing as detailed on the Summary Sheets should correspond to the amount which has been withdrawn by the Borrower from the Special Account since the previous drawdown payment to the Special Account.

[22] **The items of documentation (invoices, receipts etc.)** are to be numbered and presented in the same order as they appear on the Summary Sheets.

[23] The application for replenishment should be accompanied by an **account statement** issued by the Special Account bank, clearly demonstrating how the funds have been used (which is to agree with the invoices and receipts submitted - see [22]) since the previous disbursement to the Special Account.

[24] For payments made out of the Special Account in a currency other than the currency of the Special Account, the Borrower should obtain from the Special Account bank copies of the **foreign exchange transactions** made by the Special Account bank, selling amounts in Special Account currency to buy the currencies and amounts required to pay the original expenditures. This evidence is required for payments of an equivalent of at least EUR 10,000.

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**DISBURSEMENT APPLICATION SUMMARY SHEET [FORM DH2-02-SA]**

**Borrower Name**  
: [1] .....

**Operation No**  
: .....  
[3]

**Application No:** [4] .....

**Date:** [2] .....

**Summary Sheet**  
**No :** [5] .....

**Disbursement** (ref.no./ name/ %)

**Category:** [6] ...../...../.....

Item No	Description of Item	Contract/Purchase Order No. and Date	Name and Address of Contractor/Supplier	Brief Description of Goods , Works or Services	Currency and Total Amount of Contract	Currency&Amount of Eligible Expenditure	Amount of Financing in currency of expenditure	Amount Paid in Special A/C Currency
[7]	[8]	[9]	[10]	[11]	[12]	[13]	[14]	[16]

**Signature**

[18].....

TOTAL (per currency)

[15]

Total

[17]

## NOTES FOR COMPLETION OF DH2-02-SA

[1] **Name.** Borrower's name.

[2] **Date.** Date of application.

[3] **Operation number.** From the cover page of the Loan Agreement.

[4] **Application number.** This is the drawdown application number.

[5] **Summary Sheet number.** For each drawdown application, the Summary Sheets should be numbered starting from 1, and their total number noted on the drawdown application.

[6] **Disbursement category.** This is the category of expenditures of the project, to be financed out of the proceeds of the requested drawdown. Please consult the Loan Agreement to find the name and reference number of the category, and the percentage of expenditures to be financed (for example, "category no. (3b), equipment, 60%").

If one drawdown application covers expenditures from more than one category, then a separate Summary Sheet is to be used for each category.

[7] **Item number.** All document items (invoices, contracts, receipts, etc.) should be presented in the same order as they appear on the Summary Sheet(s). To facilitate identification, the documents should be numbered, starting with 1, 2, 3, etc., for each new drawdown application, and this number should be clearly marked on the document itself. The total number of items for the total of all Summary Sheets is noted on the drawdown application form.

[8] **Description of item.** Please describe each item, e.g. "invoice", "receipt", "engineer's certificate", "translation of [...]", etc.

[9] **Contract/purchase order number and date.** It is recommended that the contract is given a number when it is drawn up between the Borrower and the contractor. EBRD will adopt this number for its own record keeping. If the contract has not been given an original number, EBRD will allocate it a number and advise the Borrower at the time of approval. If the Borrower does not know the number at the time of completing the Summary Sheet, this part can be left for EBRD to complete.

The date of the contract/purchase order should also be given in this column.

**Note:** the same contract may appear in more than one drawdown application, if delivery of the goods, works or services (see [11]), and therefore payment for these goods, etc., is made in stages.

**[10] Name and address of contractor/Supplier.** Name and address of Borrower's counterparty (contractor, Supplier or consultant) in the contract/purchase order as described in [9].

**[11] Brief description of goods, works or services.** These goods, works or services should correspond to the details provided in the contract or other documents presented, and should fall within the category indicated in [6].

**[12] Currency and total amount of contract.** Total amount, in original currency, of the contract listed in [9].

**[13] Currency and amount of eligible expenditure.** For each expenditure: total amount due or paid, in original currency, as covered by the invoices or other documents listed in [7] and [8]. When there is more than one "item" for each expenditure, (e.g. an invoice, certificate and receipt, all for the same expenditure), those items should be bracketed and only one amount should be shown in this column.

**[14] Amount of financing.** For each amount listed in column [13], there should be a corresponding amount in this column [14], calculated at the percentage stated in [6], corresponding to the category of this Summary Sheet. The amount of financing should be in the original currency of the contract and expenditure (columns 12 and 13). This may or may not be the same as the loan currency or the payment currency.

**[15] Total.** The amounts of financing, as listed in [14], should be added up into one total amount per currency. For direct drawdown applications, amount(s) given here should correspond with the amount(s) given in [9] of the direct drawdown application form.

**Columns [16] and [17] are only required for applications for replenishment to the Special Account or any other Special Account reconciliation:**

**[16] Amount paid in special account currency.** This is the amount, as shown on the bank account statement, which has been debited from the special account to pay the appropriate percentage of the eligible expenditure. If the eligible expenditure is in a currency different from the special account currency (in other words, if the amount and currency in column 14 is different from that in column 16) then a copy of the foreign exchange transaction concluded by the special account bank should be included for any amounts over an equivalent of EUR 10,000. (Their total number is stated in point 23 of the replenishment application.)

**[17] Total.** All amounts paid from the special account, as listed above, should be added up into one total.

**[18] Signature.** The application Summary Sheet should be signed off by or on behalf of the Borrower by an authorised signatory.

**APPLICATION FOR UNCONDITIONAL REIMBURSEMENT COMMITMENT**

To: European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom  
Attn: Operation Administration Unit.  
Fax No: +44 20 7338 7017

[Date]

Ladies and Gentlemen,

**Re: Loan Agreement dated [ 1 ] (the "Loan Agreement") between [ 2 ] (the "Borrower") and the European Bank for Reconstruction and Development (the "EBRD")**

**Operation No / Tranche No: [ 3 ]**

**Application No: [ 4 ]**

This application is submitted to EBRD pursuant to the terms of the Loan Agreement. Unless otherwise defined, capitalised terms used herein shall have the meanings ascribed to such terms in the Loan Agreement.

We request that an Unconditional Reimbursement Commitment (the "RC") be issued by EBRD to [ 5 ] (the "RC Bank"), in support of the proposed Letter of Credit attached to this application (the "Letter of Credit"). We hereby irrevocably authorise you to honour authenticated reimbursement claims received from the RC Bank for payments made, or to be made, by them under the Letter of Credit up to an aggregate maximum of [ 6 ] (the "Financed Amount of the Letter of Credit"). Such reimbursement claims may be paid so long as they comply with the terms of the RC.

1. In consideration of the issuance by you of the RC, we represent and warrant as follows:-

- (a) the [ 7 ] covered by this application have been purchased in accordance with the terms of the Loan Agreement.
- (b) the Borrower is in compliance with its obligations as set forth in the Loan Agreement; and
- (c) funds obtained from sources other than the Loan Agreement or funds previously disbursed under the Loan Agreement have not been and will not be applied to make payments due under the Letter of Credit or under reimbursement claims payable under the RC.

2. We shall submit to you for prior approval all proposed amendments to the Letter of Credit and we shall not instruct or authorise the Letter of Credit issuing bank to amend the Letter of Credit, except with your prior written approval. As to any amendments agreed to by you in writing, we shall instruct the Letter of Credit issuing bank to transmit to you a copy of each such amendment to the Letter of Credit contemporaneous with the making of such amendment.

3. Except with your prior written consent, we shall not consent to, or authorise any payment under the Letter of Credit against presentation of documents which do not conform to the terms of the Letter of Credit. In the event that we are notified of any documents presented under the Letter of Credit which do not conform to the terms of the Letter of Credit, we shall immediately provide you with a copy of such notice and the details of the discrepancies.

4. When an RC is requested in any currency other than the loan currency, you may, to cover yourselves against exchange rate fluctuations between the currency of the Loan and the Letter of Credit, limit your total obligation to make payments under the RC by inserting a limitation clause establishing a limitation amount (the "Limitation Amount") denominated in the loan currency deemed sufficient to cover exchange rate fluctuations. For this purpose you may add a margin of 10% [..8..] to the Financed Amount of the Letter of Credit, and allocate the equivalent in loan currency using a foreign exchange rate to be determined by you at the time of issuance of the RC.

We agree that if, because of exchange rate fluctuations between the currency of the Loan and the Letter of Credit, you cannot disburse the full amount needed to pay the RC Bank in the currency of the Letter of Credit, any available amount of the Loan may be disbursed to cover the deficiency. In the event that the available amount of the Loan is insufficient to cover the deficiency, we request that you notify us and we shall arrange to effect immediate payment to the RC Bank of amount equal to the amount of such deficiency.

5. We acknowledge that your obligation under the RC shall be reduced *pro tanto* with each and every part payment made by you to the RC Bank in accordance with the terms and conditions of the RC.

6. Your obligation under the RC shall terminate on the earlier to occur of:

- (a) i) the thirty-fifth (35th) calendar day following the stated expiry date of the Letter of Credit, or
- ii) the fifth (5th) business day following the latest possible maturity date of any deferred payments or acceptances under the Letter of Credit, whichever is the later;

(b)[ 9 ]; or

(c) upon payment by you to the RC Bank of the Financed Amount of the Letter of Credit, (or of any Limitation Amount, if applicable), in accordance with the terms and conditions of the RC.

7. In the event that all or part of the funds paid under the RC issued pursuant to this application are returned to EBRD, we hereby authorise you to allocate and apply the current value of such funds in any way or manner and for such purpose or purposes under the Loan Agreement as you in your sole discretion shall determine, notwithstanding any instruction that you may receive to the contrary.

8. We acknowledge that the RC is a separate agreement from the Letter of Credit and is not to be construed as forming a part thereof.

### **DETAILS OF LETTER OF CREDIT**

Name and Address of the Letter of Credit issuing bank [10]:

Name and Address of the Letter of Credit applicant [11]:

Name and Address of the Letter of Credit beneficiary [12]:

Letter of Credit number of the issuing bank [13]:

Currency and amount of the Letter of Credit [14]:

Expiry date of the Letter of Credit [15]:

### **DETAILS OF RC BANK**

Name and address of RC Bank [16]:

Role of RC Bank in the Letter of Credit [17]:

### **Enclosures:**

- A. Copy of proposed Letter of Credit.
- B. Summary Sheet, giving details of the loan category and the contract.
- C. Conformed copy of contract financed under the Letter of Credit, if not already submitted to EBRD.

Signed for and on behalf of [18]

By:

---

Name: [19]

Title: [20]

## **NOTES FOR COMPLETION OF FORM DH2-07**

[1] Insert here the date of the Loan Agreement.

[2] Insert here the name of the Borrower under the Loan Agreement.

[3] Insert here EBRD's operation number from the cover page of the Loan Agreement. If there are several loan currencies, they will have a separate loan "tranche number", which the Borrower must indicate here. In the same way, the loan may have separate tranches for fixed and variable interest rates, and again the Borrower must indicate against which tranche this RC and any future payments under this RC should be booked. Regardless of the currency in which these payments will actually be made, it is the equivalent amount in loan currency that will accrue interest (fixed or variable) and be repayable as per the amortisation schedule.

[4] The Borrower should number each application form. The first application for a loan drawdown will be no. 1, the following applications will be no. 2, 3 etc. It is up to the Borrower to keep track of the number of all loan drawdown applications which he has made under the given Loan Agreement. The application forms should follow the same sequential numbering system, whether they are for a direct payment drawdown, disbursement to Special Account or for the issue of a reimbursement commitment. The use of this numbering system avoids confusion in case forms are held up in the post, are faxed more than once, etc.

[5] Insert here the name of the issuing, advising or confirming bank which wishes to receive the RC.

[6] Insert here the letter of credit amount in the currency of the letter of credit for which the RC application is made.

[7] Choose between goods/works/services.

[8] Indicate if a margin higher than the standard 10% for foreign exchange fluctuations is requested. Please note that EBRD will decide whether it approves this proposed percentage.

[9] Insert here the last availability date under the Loan Agreement.

[10] Insert here the name and address of the letter of credit issuing bank.

[11] Insert here the name and address of the letter of credit applicant. i.e. the Borrower or its agent.

[12] Insert here the name and address of the letter of credit beneficiary. i.e. the Supplier.

[13] Insert here the letter of credit number of the issuing bank.

[14] Insert here the currency and amount of the letter of credit.

[15] Insert here the expiry date of the letter of credit.

[16] Insert here the name and address of the RC Bank. See [5] above.

[17] Indicate here the role the RC Bank is fulfilling in the letter of credit. It may be the issuing bank, the advising bank or the confirming bank.

[18] Insert here the name of the Borrower or the beneficiary of the loan.

**[19]** Insert here the name of the authorised signatory.

**[20]** Insert here the title of the authorised signatory.

**TEXT OF UNCONDITIONAL REIMBURSEMENT COMMITMENT**

To: [Name and address of the RC Bank] ("RC Bank")

[Date]

Ladies and Gentlemen,

**Re: Loan Agreement dated ..... (the "Loan Agreement") between ..... (the "Borrower") and the European Bank for Reconstruction and Development (the "EBRD")**

**UNCONDITIONAL REIMBURSEMENT COMMITMENT ("RC") NUMBER:**

[Option 1: Applicable where the RC Bank is the Letter of Credit issuing bank:

We attach a copy of your draft form Irrevocable Letter of Credit No. .... (the "Letter of Credit") dated ..... which the Borrower has requested you to issue on their behalf.

In consideration of the issuance by you of the Letter of Credit on behalf of the Borrower and your acceptance of the terms set out within this RC, we hereby irrevocably agree to:

[Option 2: Applicable where the RC Bank is the confirming or advising bank:

We attach a copy of the Irrevocable Letter of Credit (the "Letter of Credit") No. .... issued by ..... which you have been requested to [Option 1: advise to the Letter of Credit beneficiary without adding your confirmation] [Option 2: advise to the Letter of Credit beneficiary adding your confirmation]

In consideration of your advising the beneficiary of the Letter of Credit, [without] adding your confirmation and acting as the [negotiating bank / accepting bank / paying bank], we hereby irrevocably agree to:

reimburse you for your payment(s) up to an aggregate maximum of ..... (the "Financed Amount of the Letter of Credit" made to, or to the order of, the beneficiary under and in accordance with the terms of the Letter of Credit. (\* This amount is subject to the limitation clause as detailed in the RC Terms and Conditions below - see clause 5.)

OR

remit to you any amount(s), up to an aggregate maximum of ..... (the "Financed Amount of the Letter of Credit" \* ) that have become due to the beneficiary under and in accordance with the terms of the Letter of Credit. It is an integral part of this agreement that you shall effect payment to, or to the order of, the beneficiary promptly upon receipt of funds from us. (\* This amount is subject to the limitation clause as detailed in the RC Terms and Conditions below - see clause 5.)

Reimbursement claims must be transmitted to us in writing, bearing the signature of an authorised signatory, or in authenticated Swift form, and must be received by us within

thirty (30) calendar days after your negotiation of documents and no later than the earliest to occur of:

(a) i) thirty (30) calendar days after the stated expiration date of the Letter Credit,

or,

ii) the latest possible maturity date of any deferred payments or acceptances under the Letter of Credit, whichever of these is the later;

(b)....., being the 5th business day prior to the latest disbursement date under the Loan Agreement; and

(c) the 5th business day prior to the termination date of this RC, as detailed in point 7.

Payment shall be made by us for value no later than the 5th business day after receipt by us of your authenticated reimbursement claim. For the purposes of this RC the term 'business day' means a day on which commercial banks and foreign exchange markets settle payments in the Loan currency and the currency of the Letter of Credit, and are open for the transaction of business in London, United Kingdom.

We shall only honour reimbursement claims made in accordance with the terms contained herein, and submitted as per the pro-forma "Text of Reimbursement Claim under Unconditional Reimbursement Commitment", attached.

Our obligations under this RC are subject to the following terms and conditions:

1. You will [*Option 1: issue*] [*Option 2: advise*] the Letter of Credit strictly in the form of the attached copy [*Option 2a: without*] adding your confirmation upon receipt of this RC.

2. Amendments to the Letter of Credit must have the prior written approval of EBRD. We shall not be obligated to honour reimbursement claims in respect of documents negotiated on the basis of an amended Letter of Credit the terms of which have not previously been agreed by us in writing. We shall notify you by Swift, or in writing of approved amendments and shall amend the terms of the RC accordingly.

3. You will deliver to us complete payment instructions for reimbursement payments due under this RC.

4. We shall have no obligation whatsoever under this RC:

(a) to reimburse interest, commission, or other charges, penalties and expenses payable in connection with the Letter of Credit, or

(b) to reimburse the amount of any interest or charges accruing from any disparity between the value date of a payment made by you under the Letter of Credit and the value date of a subsequent reimbursement payment made by us under this RC.

5. We have allocated from the available amount of the Loan an amount of ..... (the "Limitation Amount" - i.e. the amount of the Letter of Credit expressed in the Loan currency), to cover payments due in ..... (the Letter of Credit currency) under the Letter of Credit. We shall honour reimbursement claims under this RC up to the value of the Limitation Amount in the currency of the Letter of Credit at exchange rates determined by ourselves when payments are made under the RC.

The Borrower has agreed that if, because of the Limitation Amount committed under this RC, we cannot reimburse in full your claims for the Financed Amount of the Letter of Credit, any other available amount of the Loan may be disbursed to cover the deficiency, and in the event that the available amount of the Loan is insufficient to cover the deficiency, our Borrower will arrange to make such payment promptly to you after receipt of our notification.

6. Our obligation to you under this RC shall be reduced *pro tanto* with each and every part payment made in settlement of your reimbursement applications.

7. Our obligations under this RC shall be terminated, unless otherwise confirmed by us in writing, at the earliest of:

(a) upon reimbursement of ..... (the Financed Amount of the Letter of Credit) in accordance with the terms and conditions of this RC, or on the date when reimbursements have been made under this RC equal in value to ..... (the Limitation Amount );

(b)..... , being the latest disbursement date under the Loan Agreement;

(c) i) the thirty-fifth (35th) calendar day after the stated expiry date of the Letter of Credit, or,

ii) the fifth (5th) business day after the latest possible maturity date of any deferred payments or acceptances under the Letter of Credit, whichever is the later.

8. EBRD shall have no obligation to honour reimbursement claims in respect of payments made under the Letter of Credit against presentation of documents which do not conform to the terms of the Letter of Credit. In the event that documents are presented under the Letter of Credit which do not conform to the terms of the Letter of Credit, you shall promptly notify us of all discrepancies by Swift. We shall advise you by Swift whether or not such discrepancies are acceptable to us. We shall honour reimbursement claims only after you have been so notified.

9. This RC shall not be construed as forming an integral part of the Letter of Credit to which it refers. For the avoidance of doubt, this RC is not subject to the Uniform

Customs and Practice for Documentary Credits issued by the International Chamber of Commerce.

10. This RC shall be construed in accordance with the laws of England and Wales.

European Bank for Reconstruction and Development  
By:

.....

Authorised Signature

**TEXT OF REIMBURSEMENT CLAIM UNDER UNCONDITIONAL REIMBURSEMENT COMMITMENT**

To: European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom  
Attn: Operation Administration Unit  
Fax No: +44 20 7338 7017

[Date]

Ladies and Gentlemen,

**Re: Unconditional Reimbursement Commitment ("RC") Number .....  
Loan Agreement dated ..... between ..... (the "Borrower") and the  
European Bank for Reconstruction and Development (the "EBRD")**

As the beneficiary bank (the "RC Bank") under the above RC, we request payment of  
[insert currency/amount] under the RC. We certify as follows:

1. [delete as appropriate]

- We have effected
- Upon receipt of funds from you, we will promptly effect

payment to, or to the order of, the beneficiary under Letter of Credit No. ....  
issued by ..... as follows:

- (a) Negotiation date of documents:
- (b) Amount:
- (c) Date paid:
- (d) Beneficiary of the Letter of Credit:

2. [Option 1: We confirm that all terms and conditions of the Letter of Credit have been  
complied with.]

[Option 2: We confirm that we have negotiated documents in accordance with the  
authority of the issuing bank, the only discrepancies being those already approved by  
them and you. We certify that all other terms and conditions of the Letter of Credit have  
been complied with.]

3. We have not received reimbursement from any other source in respect of this drawing  
under the Letter of Credit. In the event we receive a reimbursement from any other  
source we undertake to promptly return the funds received under this RC reimbursement  
to you.

4. Please remit funds to our account no. ....  
held with ..... Bank,  
.....Branch

For and on behalf of ..... Bank,  
..... Branch.

By:

Authorised Signature(s)

-----

Alternatively the above claim may be transmitted by authenticated Swift.

Note: If this application is sent by Swift, please ensure that test key arrangements with EBRD have been set up.

**APPLICATION FOR CONDITIONAL REIMBURSEMENT COMMITMENT**

To: European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom  
Attn: Operation Administration Unit  
Fax No: +44 20 7338 7017

[Date]

Ladies and Gentlemen,

**Re: Loan Agreement dated [ 1 ] (the "Loan Agreement") between [ 2 ] (the "Borrower") and the European Bank for Reconstruction and Development (the "EBRD")**

**Operation No / Tranche No: [ 3 ]**

**Application No: [ 4 ]**

This application is submitted to EBRD pursuant to the terms of the Loan Agreement. Unless otherwise defined, capitalised terms used herein shall have the meanings ascribed to such terms in the Loan Agreement.

We request that a Conditional Reimbursement Commitment (the "RC") be issued by EBRD to [ 5 ] (the "RC Bank"), in support of the proposed Letter of Credit attached to this application (the "Letter of Credit"). We hereby irrevocably authorise you to honour authenticated reimbursement claims received from the RC Bank for payments made, or to be made, by them under the Letter of Credit up to an aggregate maximum of [ 6 ] (the "Financed Amount of the Letter of Credit"). Such reimbursement claims may be paid so long as they comply with the terms of the RC.

1. In consideration of the issuance by you of the RC, we represent and warrant as follows:-

- (a) the [ 7 ] covered by this application have been purchased in accordance with the terms of the Loan Agreement.
- (b) the Borrower is in compliance with its obligations as set forth in the Loan Agreement; and
- (c) funds obtained from sources other than the Loan Agreement or funds previously disbursed under the Loan Agreement have not been and will not be applied to make payments due under the Letter of Credit or under reimbursement claims payable under the RC.

2. We shall submit to you for prior approval all proposed amendments to the Letter of Credit and we shall not instruct or authorise the Letter of Credit issuing bank to amend the Letter of Credit, except with your prior written approval. As to any amendments agreed to by you in writing, we shall instruct the Letter of Credit issuing bank to transmit to you a copy of each such amendment to the Letter of Credit contemporaneous with the making of such amendment.

3. Except with your prior written consent, we shall not consent to, or authorise any payment under the Letter of Credit against presentation of documents which do not conform to the terms of the Letter of Credit. In the event that we are notified of any documents presented under the Letter of Credit which do not conform to the terms of the Letter of Credit, we shall immediately provide you with a copy of such notice and the details of the discrepancies.

4. When an RC is requested in any currency other than the loan currency, you may, to cover yourselves against exchange rate fluctuations between the currency of the Loan and the Letter of Credit, limit your total obligation to make payments under the RC by inserting a limitation clause establishing a limitation amount (the "Limitation Amount") denominated in the loan currency deemed sufficient to cover exchange rate fluctuations. For this purpose you may add a margin of 10% [..8..] to the Financed Amount of the Letter of Credit, and allocate the equivalent in loan currency using a foreign exchange rate to be determined by you at the time of issuance of the RC.

We agree that if, because of exchange rate fluctuations between the currency of the Loan and the Letter of Credit, you cannot disburse the full amount needed to pay the RC Bank in the currency of the Letter of Credit, any available amount of the Loan may be disbursed to cover the deficiency. In the event that the available amount of the Loan is insufficient to cover the deficiency, we request that you notify us and we shall arrange to effect immediate payment to the RC Bank of amount equal to the amount of such deficiency.

5. We acknowledge that your obligation under the RC shall be reduced *pro tanto* with each and every part payment made by you to the RC Bank in accordance with the terms and conditions of the RC.

6. Your obligation under the RC shall terminate on the earlier to occur of:

- (a) i) the thirty-fifth (35th) calendar day following the stated expiry date of the Letter of Credit, or
- ii) the fifth (5th) business day following the latest possible maturity date of any deferred payments or acceptances under the Letter of Credit, whichever is the later;

(b)[ 9 ]; or

(c) upon payment by you to the RC Bank of the Financed Amount of the Letter of Credit (or of any Limitation Amount, if applicable) in accordance with the terms and conditions of the RC.

7. In any event, your obligation to pay under the Conditional RC shall cease immediately upon any subsequent suspension or cancellation of the available amount of the Loan.

8. In the event that all or part of the funds paid under the RC issued pursuant to this application are returned to EBRD, we hereby authorise you to allocate and apply the current value of such funds in any way or manner and for such purpose or purposes under the Loan Agreement as you in your sole discretion shall determine, notwithstanding any instruction that you may receive to the contrary.

9. We acknowledge that the RC is a separate agreement from the Letter of Credit and is not to be construed as forming a part thereof.

### **DETAILS OF LETTER OF CREDIT**

Name and Address of the Letter of Credit issuing bank [10]:

Name and Address of the Letter of Credit applicant [11]:

Name and Address of the Letter of Credit beneficiary [12]:

Letter of Credit number of the issuing bank [13]:

Currency and amount of the Letter of Credit [14]:

Expiry date of the Letter of Credit [15]:

### **DETAILS OF RC BANK**

Name and address of RC Bank [16]:

Role of RC Bank in the Letter of Credit [17]:

### **Enclosures:**

- A. Copy of proposed Letter of Credit.
- B. Summary Sheet, giving details of the loan category and the contract.
- C. Conformed copy of contract financed under the Letter of Credit, if not already submitted to EBRD.

Signed for and on behalf of [18]

By:

---

Name: [19]

Title: [20]

## NOTES FOR COMPLETION OF FORM DH2-10

[1] Insert here the date of the Loan Agreement.

[2] Insert here the name of the Borrower under the Loan Agreement.

[3] Insert here EBRD's operation number from the cover page of the Loan Agreement. If there are several loan currencies, they will have a separate loan "tranche number", which the Borrower must indicate here. In the same way, the loan may have separate tranches for fixed and variable interest rates, and again the Borrower must indicate against which tranche this RC and any future payments under this RC should be booked. Regardless of the currency in which these payments will actually be made, it is the equivalent amount in loan currency that will accrue interest (fixed or variable) and be repayable as per the amortisation schedule.

[4] The application form for the issuance of a reimbursement commitment follows the same sequential numbering system as for a direct payment drawdown or a disbursement to a Special Account. It is up to the Borrower to keep track of the number of all loan drawdown applications which he has made under the given Loan Agreement.

[5] Insert here the name of the issuing, advising or confirming bank who wishes to receive the RC.

[6] Insert here the letter of credit amount in the currency of the letter of credit for which the RC application is made.

[7] Choose between goods/works/services.

[8] Indicate if a margin other than the standard 10% for foreign exchange fluctuations is requested. Please note that EBRD will decide whether it approves this proposed percentage.

[9] Insert here the latest disbursement date under the Loan Agreement.

[10] Insert here the name and address of the letter of credit issuing bank.

[11] Insert here the name and address of the letter of credit applicant. i.e. the Borrower or its agent.

[12] Insert here the name and address of the letter of credit beneficiary. i.e. the Supplier.

[13] Insert here the letter of credit number of the issuing bank.

[14] Insert here the currency and amount of the letter of credit.

[15] Insert here the expiry date of the letter of credit.

[16] Insert here the name and address of the RC bank. See [5] above.

[17] Indicate here the role the RC bank is fulfilling in the letter of credit. It may be the issuing bank, the advising bank or the confirming bank.

[18] Insert here the name of the Borrower or the beneficiary of the loan.

[19] Insert here the name of the authorised signatory.

[20] Insert here the title of the authorised signatory.

**TEXT OF CONDITIONAL REIMBURSEMENT COMMITMENT**

To: [Name and address of the RC Bank] ("RC Bank")

[Date]

Ladies and Gentlemen,

**Re: Loan Agreement dated ..... (the "Loan Agreement") between ..... (the "Borrower") and the European Bank for Reconstruction and Development (the "EBRD")**

**CONDITIONAL REIMBURSEMENT COMMITMENT ("RC") NUMBER:**

*[Option 1: Applicable where the RC Bank is the Letter of Credit issuing bank:*

We attach a copy of your draft form Irrevocable Letter of Credit No. .... (the "Letter of Credit") dated ..... which the Borrower has requested you to issue on their behalf.

In consideration of the issuance by you of the Letter of Credit on behalf of the Borrower and your acceptance of the terms set out within this RC, we hereby agree to:

*[Option 2: Applicable where the RC Bank is the confirming or advising bank:*

We attach a copy of the Irrevocable Letter of Credit (the "Letter of Credit") No. .... issued by ..... which you have been requested to  
*[Option 1: advise to the Letter of Credit beneficiary without adding your confirmation]*  
*[Option 2: advise to the Letter of Credit beneficiary adding your confirmation]*

In consideration of your advising the beneficiary of the Letter of Credit, [without] adding your confirmation and acting as the [negotiating bank / accepting bank / paying bank], we hereby agree to:

reimburse you for your payment(s) up to an aggregate maximum of ..... (the "Financed Amount of the Letter of Credit" \*), made to, or to the order of, the beneficiary under and in accordance with the terms of the Letter of Credit. (\* This amount is subject to the limitation clause as detailed in the RC Terms and Conditions below - see clause 5.)

*OR*

remit to you any amount(s), up to an aggregate maximum of ..... (the "Financed Amount of the Letter of Credit" \* ) that have become due to the beneficiary under and in accordance with the terms of the Letter of Credit. It is an integral part of this agreement that you shall effect payment to, or to the order of, the beneficiary promptly upon receipt of funds from us. (\* This amount is subject to the limitation clause as detailed in the RC Terms and Conditions below - see clause 5.)

Reimbursement claims must be transmitted to us in writing, bearing the signature of an authorised signatory, or in authenticated Swift form, and must be received by us within thirty (30) calendar days after your negotiation of documents and no later than the earliest to occur of:

- (a) i) thirty (30) calendar days after the stated expiration date of the Letter of Credit,  
or,  
ii) the latest possible maturity date of any deferred payments or acceptances under the Letter of Credit, whichever of these is the later;
- (b)..... , being the 5th business day prior to the latest disbursement date under the Loan Agreement; and
- (c) the 5th business day prior to the termination date of this RC, as detailed in point 7.

Payment shall be made by us for value no later than the 5th business day after receipt by us of your authenticated reimbursement claim. For the purposes of this RC the term 'business day' means a day on which commercial banks and foreign exchange markets settle payments in the Loan currency and the currency of the Letter of Credit, and are open for the transaction of business in London, United Kingdom.

We shall only honour reimbursement claims made in accordance with the terms contained herein, and submitted as per the pro-forma "Text of Reimbursement Claim under Conditional Reimbursement Commitment", attached.

Our obligations under this RC are subject to the following terms and conditions:

1. You will [*Option 1*: issue] [*Option 2*: advise] the Letter of Credit strictly in the form of the attached copy [*Option 2a*: without] adding your confirmation upon receipt of this RC.
2. Amendments to the Letter of Credit must have the prior written approval of EBRD. We shall not be obligated to honour reimbursement claims in respect of documents negotiated on the basis of an amended Letter of Credit the terms of which have not previously been agreed by us in writing. We shall notify you by Swift, or in writing of approved amendments and shall amend the terms of the RC accordingly.
3. You will deliver to us complete payment instructions for reimbursement payments due under this RC.

4. We shall have no obligation whatsoever under this RC:

(a) to reimburse interest, commission, or other charges, penalties and expenses payable in connection with the Letter of Credit, or

(b) to reimburse the amount of any interest or charges accruing from any disparity between the value date of a payment made by you under the Letter of Credit and the value date of a subsequent reimbursement payment made by us under this RC.

5. We have allocated from the available amount of the Loan an amount of ..... (the "Limitation Amount" - i.e. the amount of the Letter of Credit expressed in the Loan currency) to cover payments due in ..... (the Letter of Credit currency) under the Letter of Credit. We shall honour reimbursement claims under this RC up to the value of this Limitation Amount in the currency of the Letter of Credit at exchange rates determined by ourselves when payments are made under the RC.

The Borrower has agreed that if, because of the Limitation Amount committed under this RC, we cannot reimburse in full your claims for the Financed Amount of the Letter of Credit, any other available amount of the Loan may be disbursed to cover the deficiency, and in the event that the available amount of the Loan is insufficient to cover the deficiency, our Borrower will arrange to make such payment promptly to you after receipt of our notification.

6. Our obligation to you under this RC shall be reduced *pro tanto* with each and every part payment made in settlement of your reimbursement applications.

7. Our obligations under this RC shall be terminated, unless otherwise confirmed by us in writing, at the earliest of:

(a) upon reimbursement of ..... (the Financed Amount of the Letter of Credit) in accordance with the terms and conditions of this RC, or on the date when reimbursements have been made under this RC equal in value to ..... (the Limitation Amount);

(b)....., being the latest disbursement date under the Loan Agreement;

(c) i) the thirty-fifth (35th) calendar day after the stated expiry date of the Letter of Credit, or,

ii) the fifth (5th) business day after the latest possible maturity date of any deferred payments or acceptances under the Letter of Credit, whichever is the later.

8. Our obligations under this RC shall be terminated upon the occurrence of an event of suspension or cancellation under the Loan Agreement. In this respect, our RC shall be considered conditional.

9. EBRD shall have no obligation to honour reimbursement claims in respect of payments made under the Letter of Credit against presentation of documents which do not conform to the terms of the Letter of Credit. In the event that documents are presented under the Letter of Credit which do not conform to the terms of the Letter of Credit, you shall promptly notify us of all discrepancies by Swift. We shall advise you by Swift whether or not such discrepancies are acceptable to us. We shall honour reimbursement claims only after you have been so notified.

10. This RC shall not to be construed as forming an integral part of the Letter of Credit to which it refers. For the avoidance of doubt, this RC is not subject to the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce.

11. This RC shall be construed in accordance with the laws of England and Wales.

European Bank for Reconstruction and Development  
By:

.....  
Authorised Signature

**TEXT OF REIMBURSEMENT CLAIM UNDER CONDITIONAL REIMBURSEMENT COMMITMENT**

[Date]

To: European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom  
Attn: Operation Administration Unit  
Fax No: +44 20 7338 7017

[Date]

Ladies and Gentlemen,

**Re: Conditional Reimbursement Commitment ("RC") Number .....  
Loan Agreement dated ..... between ..... (the "Borrower") and the  
European Bank for Reconstruction and Development (the "EBRD")**

As the beneficiary bank (the "RC Bank") under the above RC, we request payment of  
[insert currency/amount] under the RC. We certify as follows:

1. [delete as appropriate]

- We have effected
- Upon receipt of funds from you, we will promptly effect

payment to, or to the order of, the beneficiary under Letter of Credit  
No. .... issued by .....  
as follows:

- (a) Negotiation date of documents:
- (b) Amount:
- (c) Date paid:
- (d) Beneficiary of the Letter of Credit:

2. [Option 1: We confirm that all terms and conditions of the Letter of Credit have been  
complied with.]

[Option 2: We confirm that we have negotiated documents in accordance with the  
authority of the issuing bank, the only discrepancies being those already approved by  
them and you. We certify that all other terms and conditions of the Letter of Credit have  
been complied with.]

3. We have not received reimbursement from any other source in respect of this drawing under the Letter of Credit. In the event we receive a reimbursement from any other source we undertake to promptly return the funds received under this RC reimbursement to you.

4. Please remit funds to our account no. ....  
held with ..... Bank,  
.....Branch

For and on behalf of ..... Bank,  
..... Branch.

By:

Authorised Signature(s)  
-----

Alternatively the above claim may be transmitted by authenticated Swift.

Note: If this application is sent by Swift, please ensure that test key arrangements with EBRD have been set up.

**EXAMPLE OF A LETTER DESIGNATING AUTHORISED SIGNATORIES**

[Borrower's Letterhead]

To: European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN

Date:[ ]

Attention: Operation Administration Unit  
Fax No: +44 20 7338 7017

Dear Sirs,

Re: Loan Agreement dated [.....] between the European Bank for Reconstruction and Development and [.....] (the Borrower).

Please be advised that any one of the persons whose authenticated specimen signatures appear below, is authorised on behalf of the Borrower to sign Drawdown Applications and any other notices or documents required or permitted to be executed under the above mentioned Loan Agreement.[1] [The right to request withdrawals or instruct disbursements of funds from the Special Account as provided in the Loan Agreement is also restricted to the persons listed below.][2]

Name .....

Position .....

Specimen Signature .....

Name .....

Position .....

Specimen Signature .....

Name .....

Position .....

Specimen Signature .....

Name .....

Position .....

Specimen Signature .....

All previous notices providing signatures of officials authorised to sign on behalf of the Borrower under the above Loan Agreement are hereby revoked.

Yours faithfully,

[signature]

for and on behalf of [name of Borrower][3]

## **NOTES FOR COMPLETION OF THE LETTER DESIGNATING AUTHORISED SIGNATORIES**

[1] In the event that each document is to be signed by more than one official, the authorisation letter must state this clearly, and the first sentence must be adjusted accordingly.

If authorised signatories are divided into two groups, and the signature of an official from each group is required, this must also be clearly stated.

[2] The second sentence, referring to the Special Account, may be deleted if the Loan Agreement does not specifically provide for the setting up of a special account.

[3] The above authorisation letter is to be signed on behalf of the Borrower by the official specified in the Loan Agreement (see Section "Notices and Authorised Representatives" or equivalent).