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Guidelines to Loan Disbursements for Non-Sovereign Operations

Operation Administration Department



European Bank
for Reconstruction and Development

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Abbreviations

The following sets out what the acronyms referred to in this publication stand for.

COI	Certificate of Incumbency and Authority
EBRD	European Bank for Reconstruction and Development
IPD	Interest Payment Date
OAD	Operation Administration Department

1. Introduction

This publication is intended for use by the EBRD's clients receiving debt financing provided by the EBRD under non-sovereign operations – that is to say, any loan or credit agreement which is not signed with a state or supported by a sovereign guarantee.

This booklet provides a concise overview of the terms, concepts and requirements applicable to disbursements that are common to most EBRD loans. The matters and topics covered in the next chapters are as follows:

- main types and structure of debt financing provided by EBRD (for example, term or revolving loans and A/B loans)
- basic terms relating to availability of EBRD's commitment (for example, commitment period and availability date)
- various elements of the cost of borrowing (such as front-end commission, commitment charge, interest and default interest)
- mechanics of drawing down the loan and servicing the debt (for example, form of disbursement application, notice period, value date, interest period, interest payment date and calculation of interest amount)
- conditions of disbursements including covenant compliance as a standard condition of any disbursement.

This booklet is intended only as a guideline to understanding the EBRD loan disbursement process and any examples used in these guidelines are provided for illustrative purposes only. Each operation is governed by its own set of financing agreements which contain specific provisions applicable to that operation. The specific provisions of the relevant loan agreement and related financing agreements should always be consulted. This booklet shall not constitute a waiver, amendment, replacement or interpretation of any such loan agreement or financing agreement. In the case of any inconsistency between the guidelines contained in this booklet and the provisions of the relevant loan agreement or financing agreement, the provisions of such loan or financing agreement shall govern.

2. Terms and calculations explained

A/B loans

The term A/B loans in the EBRD's loan agreements is used when the EBRD syndicates the financing and obtains part of the funding from sub-participations with one or more participant banks. In such cases, the A loan will represent the portion of the financing funded by the EBRD and the B loan will be the amount of the formal commitment of the participant bank(s).

Commitment period

The term "commitment period", sometimes also referred to as "availability period", is used in connection with the period during which the loan facility can be drawn down. If the loan amount is not drawn down within such period it will need to be extended by mutual agreement for further disbursements to take place, otherwise the undrawn amounts will be cancelled.

Commitment charge

This is a fee charged by the EBRD to the Borrower during the commitment period for any undisbursed portion of the loan or credit line. A commitment charge is generally specified in the Loan Agreement as a fixed percentage of the undisbursed loan amount. In order not to confuse this charge with the interest amount which is separately charged on the loan, please note the key distinction is that the commitment charge is charged on the undisbursed loan amount whereas interest is charged on the disbursed amount of the loan.

Commitment charge is calculated for each interest period according to the following formula:

$$\frac{\text{Amount} \times \text{Rate} \times \text{Number of Days}}{360^1}$$

Amount: undisbursed amount of the loan

Rate: fixed rate as specified in the Loan Agreement

Number of Days: the number of days of the interest period (excluding the last day of such interest period).

¹ Unless the loan currency is calculated on the basis of a 365-day year, as specified in the Loan Agreement.

Default

A list of events that would result in a default of the Borrower's obligations is set out in the Loan Agreement. These are defined as "events of default". The EBRD may, at its discretion, issue a notice to accelerate all or part of the principal of the loan to be either repaid on demand or to require immediate repayment.

Default interest

If the Borrower fails to pay when due any amount payable under the Loan Agreement, the overdue amount shall bear default interest at a rate specified in the Loan Agreement which shall:

- accrue from day to day from the due date to the date of actual payment
- be calculated on the basis of the actual number of days elapsed and a 360-day year²
- be compounded at the end of each default interest period
- be due and payable forthwith upon demand.

Disbursement

Disbursement is a term used to indicate any payment made by the EBRD under the Loan Agreement upon drawdown of the loan.

Fixed or variable interest rates

The majority of EBRD loan agreements provide for interest rates to be on a variable basis determined on specific periodic intervals set out in the Loan Agreement. However, from time to time the EBRD does arrange for the interest rate to be fixed for an extended period up to the entire length of the loan, the option for which would be specified in the Loan Agreement.

Front-end commission

This is a fixed percentage amount (specified in the Loan Agreement) charged by the EBRD at the beginning of the lifecycle of the loan. It is payable within a specified period from the signing of the Loan Agreement but definitely prior to the first disbursement.

² Unless the loan currency is calculated on the basis of a 365-day year, as specified in the Loan Agreement.

Interest Payment Date (IPD)

The IPD means any day(s) in any year which has (have) been agreed by the parties (such days are the last day of an interest period and usually occur on numerically corresponding days of a month generally at three or six monthly intervals, for example, every 20 February and 20 August); provided, however, that if any IPD would otherwise fall on a day which is not a business day, such IPD shall be changed to the next succeeding business day in the same calendar month or, if there is no succeeding business day in the same calendar month, the immediately preceding business day.

IPDs serve as due dates not only for payment of interest but also, if applicable, of commitment charge and principal repayments.

Interest period

The usual definition of interest period, used by the EBRD, states that the first interest period for each disbursement starts on the disbursement date and ends on the next IPD, with the following interest period starting on that same IPD and ending on the next following IPD, and so on.

If a disbursement is made less than 15 business days prior to the next IPD, the first interest period for such disbursement shall commence on the date of such disbursement and end on the IPD following the next IPD.

Note: The last day of each interest period is excluded from the calculation of the number of days for which interest is due.

Calculation of interest amount

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

$$\frac{\text{Amount} \times \text{Rate} \times \text{Number of Days}}{360^3}$$

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

Rate: total interest rate, including the margin

Number of Days: the number of days of the interest period (excluding the last day of such interest period).

³ Unless the loan currency is calculated on the basis of a 365-day year, as specified in the Loan Agreement...

Loan Agreement

A Loan Agreement is a contract entered into between the EBRD and the Borrower which regulates the terms and conditions under which the loan is to be made available to and is to be repaid by the Borrower.

Revolving loan

Revolving loan is the term used for a facility where the Borrower can draw down the facility and be able to repay the amount and then to re-borrow within the agreed overall term of the facility.

Term loan

A term loan means the facility is for a fixed period of time with a fixed schedule for repayments.

Tranches

EBRD loans could, from time to time, be sub-divided into tranches where each tranche represents a distinct feature of financing which is different in nature from the rest of the loan. For example, there could be tranches for different currencies in a multi-currency loan or tranches representing stepped interest rate arrangements.

In some loan agreements subsequent tranches might only be available entirely at the sole discretion of the EBRD. In such cases, additional approval of the EBRD will be required in order to make the tranches available for drawdown.

Value date

The term “value date” is the date on which the EBRD will transfer funds to be deposited into the account specified in the application for a disbursement made under the Loan Agreement. It is also referred to, at times, as the “settlement date”.

3. General requirements for all disbursement applications

All disbursements under EBRD loan agreements are internally processed by OAD.

Certain conditions need to be met before any disbursement can be made from a Loan Agreement. These conditions precedent to disbursement are detailed in the Loan Agreement. It is the Borrower's responsibility to satisfy all the requirements prior to sending a request for a drawdown from the loan.

The disbursement application should be submitted in a specific format, which can be found as an attachment to the Loan Agreement. This format should be used for every disbursement requested from the loan. You can also find an example of the disbursement application in Exhibit A of these guidelines (which is only a sample for guidance – please always use the form attached to the loan agreement when requesting a drawdown).

Article III of the Loan Agreement usually contains the financing terms of the loan itself – such as the amount of the loan, whether it is split into tranches and the limitations of each disbursement (such as minimum/maximum amount or notice period).

Conditions precedent to first disbursement

A number of conditions need to be met prior to all disbursements. However, the first disbursement of a loan has some specific conditions to disbursement. These will usually include, among others:

- the requirement that the front-end commission shall have been paid
- confirmation of authorised signatories, referred to as the Certificate of Incumbency and Authority (the COI), shall have been received. The COI will also include the payment instructions for the bank account into which all disbursements from the loan will be paid. The format of the COI can be found as an attachment to the Loan Agreement as an Exhibit. You can also find an example of the COI in Exhibit B of these guidelines (which is only a sample for guidance – please always use the form attached to the loan agreement)
- any required corporate/governmental authorisations shall have been received
- a letter to the auditors from the Borrower shall have been received in which the Borrower authorises the auditors to provide the EBRD with information regarding the Borrower's financial statements
- confirmation of agent for service of legal process in England appointed by the Borrower shall have been received

- any legal opinion(s) required shall have been received
- any security documents required shall have been received and the security created thereby shall have been perfected
- any other conditions which are specific to the project (such as environmental impact mitigations, insurance, etcetera) shall have been met.

Conditions precedent to all disbursements

All disbursements, including the first disbursement, also have general conditions which need to be met prior to disbursement. These conditions may include, among others:

- continuing validity of all documents received pursuant to the first disbursement shall be in full force and effect
- statements from the Borrower which confirm that all the requirements of the Loan Agreement are met and that all the representations and warranties made by the Borrower at the time of the signing of the Loan Agreement continue to be current
- no Event of Default (or potential Event of Default) shall have occurred or be continuing
- no material adverse change shall have occurred
- payment of all amounts due under the loan shall have been received
- the EBRD shall have received any other legal opinions or documents it has requested.

Please note:

- All disbursements can only be made for a value date within the commitment period as defined in the Loan Agreement.
- In their disbursement application the Borrower can request a specific value date for which the notice period has to be at least the number of business days specified in the Loan Agreement.

The standard notice period in an EBRD Loan Agreement is 10 business days for hard currency loans, 20 business days for rouble loans and might vary for loans in other currencies.

- If there is no specific requirement for disbursement to be made on a chosen date, it is recommended to put “as soon as possible” in the space for “value date”.
- Disbursement application forms and any notification to the EBRD must be duly signed by an authorised signatory for and on behalf of the Borrower, in accordance with the COI.
- The EBRD will only make a requested disbursement if it is satisfied that all relevant conditions precedent have been met.
- The interest rate, in accordance with the terms of the Loan Agreement, is usually fixed two business days prior to the value date of the disbursement (subject to variations depending on the loan currency).

4. Impact of covenant compliance on disbursements

The Loan Agreement contains covenants which are the obligations of the Borrower to adhere to in the form of financial reporting and other project related requirements.

The EBRD monitors these accordingly to ensure that the Borrower is in compliance with all such covenants as set out in the Loan Agreement.

There are various types of covenants, which are described below.

- ***Affirmative covenants:*** These are the obligations of the Borrower to perform various actions, mainly in relation to the Project, to ensure that implementation of the Project on the basis of agreed terms with the EBRD is made possible.
- ***Negative covenants:*** These are restrictions imposed on the Borrower, where certain actions are not permitted unless specifically agreed by the EBRD. Among others, these restrictions could be on paying out dividends, taking out additional financing or creating security in favour of third parties against the assets of the Borrower. Prior EBRD consent is required if any such action is proposed.
- ***Financial covenants:*** These are requirements where the Borrower has to comply with pre-agreed levels of financial ratios and other performance measurements.
- ***Furnishing of information:*** This section covers the reporting requirements the Borrower has agreed to provide to the EBRD such as quarterly or annual financial statements, environmental reports and certain financial ratio calculations.

It is a condition to each disbursement that the Borrower is in compliance with all of the covenants. Other circumstances that could hold up a disbursement include the failure to pay any principal, interest or other fees and expenses due from the Borrower. The Events of Default section of the Loan Agreement contains other events that would permit the EBRD to refuse to make a disbursement (in addition to its other remedies under the Loan Agreement).

NOTE: The forms below are provided as examples only. Please always use the form attached to the Loan Agreement when requesting a drawdown.

Exhibit A - Form of Disbursement Application

(to be typed on letterhead of the Borrower)

[Date]

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

Attention: Operation Administration Department

Subject: Operation No. [_____] ⁴
Disbursement Application No. _____

Dear Sir/Madam:

1. Please refer to the loan agreement dated [_____] (the "Loan Agreement") between [Name of Borrower](the "Borrower") and the European Bank for Reconstruction and Development ("EBRD").
2. Expressions defined in the Loan Agreement shall bear the same meanings herein.
3. We hereby request the following disbursement in accordance with the provisions of the Loan Agreement:

Currency required: [insert Loan Currency]
Amount (in figures and words): _____

Value date: [As soon as possible, on a date selected by EBRD in its discretion, but not later than]⁵
_____ ⁶

⁴ Each application must be numbered in series.

⁵ If the disbursement is required for a specific value date, this bracketed language can be deleted.

⁶ Unless otherwise stated in the Loan Agreement, this date must be not earlier than 10 business days after the disbursement application is delivered to the EBRD.

Payment Instructions (Borrower's Banking Details):

Borrower's Account Name: _____
Borrower's Account Number (IBAN number)⁷: _____
Borrower's Bank Name: _____
Borrower's Bank Address: _____

Borrower's Bank Correspondent Details:

Correspondent's Name: _____
Correspondent's Address: _____

Borrower's Bank's Account Name: _____
Borrower's Bank's Account Number (IBAN number)⁸: _____
Reference: _____

4. For the purposes of Section 4.02 of the Loan Agreement, we hereby represent and warrant that:

[This section will contain representations and warranties regarding the conditions precedent to all Disbursements under the relevant Loan Agreement].

Yours faithfully,

[NAME OF BORROWER]⁹

By: _____
Authorised Representative¹⁰

⁷ All non-US\$ payments should include the full IBAN number (International Bank Account Number).

⁸ All non-US\$ payments should include the full IBAN number (International Bank Account Number).

⁹ Insert the full legal name of the Borrower. This should be the same as the Borrower's name as it appears on the front cover, first page and signature page of Loan Agreement.

¹⁰ As named in the Certificate of Incumbency and Authority (COI).

Exhibit B - Form of Certificate of Incumbency and Authority

(to be typed on letterhead of the Borrower)

[Date]

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

Attention: Operation Administration Department

Subject: Operation No. [_____]
Certificate of Incumbency and Authority¹¹

Dear Sir/Madam:

With reference to the loan agreement dated [_____] (the "Loan Agreement") between [Name of Borrower] (the "Borrower") and the European Bank for Reconstruction and Development ("EBRD"), I, the undersigned [President] [Chairman of the Board of Directors] [Director] of the Borrower, duly authorised by its Board of Directors, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the Borrower that they or any of them no longer continue to be) authorised, on behalf of the Borrower, individually:

- (1) to sign the Loan Agreement, any disbursement applications, certifications, letters or other documents to be provided under the Loan Agreement and any other agreements to which EBRD and the Borrower may be party in connection therewith; and
- (2) to take any other action required or permitted to be taken by the Borrower under the Loan Agreement or any other agreement to which EBRD and the Borrower may be party in connection therewith:

¹¹ Designation may be changed by the Borrower at any time by providing a new Certificate of Incumbency and Authority (COI) to EBRD.

NAME	OFFICE	SPECIMEN SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I further certify that disbursements under the Loan Agreement should be made to the following account (or such other account as the Borrower may from time to time designate by notice to EBRD):

Payment Instructions (Borrower's Banking Details):

Borrower's Account Name: _____
 Borrower's Account Number (IBAN number):¹² _____
 Borrower's Bank Name: _____
 Borrower's Bank Address: _____

Borrower's Bank Correspondent Details:

Correspondent's Name: _____
 Correspondent's Address: _____

 Borrower's Bank's Account Name: _____
 Borrower's Bank's Account Number (IBAN number):¹³ _____
 Reference: _____

IN WITNESS WHEREOF, I have signed my name on the date first above written.

Yours faithfully,

[NAME OF BORROWER]

By: _____
 Name:
 Title: [President]
 [Chairman of the Board of Directors]
 [Director]

¹² All non-US\$ payments should include the full IBAN number (International Bank Account Number).

¹³ All non-US\$ payments should include the full IBAN number (International Bank Account Number).

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Information requests

For requests and enquiries, please download the form at
www.ebrd.com/inforequest

