



Tonga

ASIAN DEVELOPMENT BANK ACT

Chapter 38.02

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ASIAN DEVELOPMENT BANK ACT

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ASIAN DEVELOPMENT BANK ACT

AN ACT TO CONFIRM MEMBERSHIP OF THE KINGDOM IN THE
ASIAN DEVELOPMENT BANK AND TO PROVIDE FOR THE RAISING
OF LOANS FROM THE ASIAN DEVELOPMENT BANK AND FOR
MATTERS CONNECTED THEREWITH¹

Commencement [28th February, 1974]

1 Short title

This Act may be cited as the Asian Development Bank Act.

PRELIMINARY

2 Interpretation

In this Act —

“**Articles**” means the Articles of Agreement establishing the Bank done at the City of Manila, Philippines on 4th December, 1965;

“**Bank**” means the Asian Development Bank;

“**corporate body**” means any corporate body established directly by or under any law and carrying on business in the Kingdom;

“**Minister**” means the Minister responsible for finance;²

“**Resolution**” means Resolution No. 48 dated 23rd March, 1972 of the Board of Governors of the Bank set out in the First Schedule.

PART I - MEMBERSHIP IN THE BANK

3 Membership in Bank

The execution on behalf of the Kingdom pursuant to the Resolution of an instrument stating that the Kingdom has accepted in accordance with its law the Articles and all the terms and conditions of the Resolution is hereby confirmed and ratified.

4 Bank’s status and privileges

The provisions of Chapter VIII of the Articles (which Chapter VIII is set out in the Second Schedule) have the force of law in the Kingdom, and accordingly the Bank has in the Kingdom the status, immunities, exemptions and privileges specified in Chapter VIII.

5 Obligations of membership

- (1) There shall be paid out of the General Revenues of the Kingdom such sums as are payable, or may, from time to time, become payable, to the Bank by the Kingdom under the Articles, the Resolution or any other resolution of the Board of Governors of the Bank.
- (2) The Minister may take such steps and make such arrangements as he may consider reasonably necessary for carrying into effect any of the provisions of the Articles, the Resolution and any other resolution of the Board of Governors of the Bank and for enabling the Kingdom to meet or discharge its obligations or liabilities, whether financial or otherwise, under the Articles, the Resolution and any other resolution of the Board of Governors of the Bank and for such purposes the Minister may make such Order or Orders as he considers desirable.

PART II - RAISING OF LOANS FROM THE BANK

6 Authority of Government to borrow from Bank

- (1) Subject to this Act, the Government may in such manner and on such terms and subject to such conditions as may be agreed between the Government and the Bank borrow from the Bank from time to time such sums as may be required by the Government.

- (2) Any sums borrowed by the Government under the powers conferred by subsection (1) shall be applied and are hereby appropriated to the purposes specified in any agreement concluded with the Bank in respect of the sums so borrowed except that where any part of such sums cannot be applied to the purposes so specified such part may be applied to such other purposes as may be approved by the Minister and the Bank.
- (3) Any agreement between the Government and the Bank in respect of sums borrowed under the power conferred by subsection (1) shall be made in the name of the Kingdom and may be signed on behalf of the Government by the Minister or by any person authorised thereto in writing by the Minister.
- (4) As soon as possible after the conclusion thereof, a copy of any agreement concluded by the Government with the Bank under subsection (1) shall be laid by the Minister before the Legislative Assembly.
- (5) Nothing in this section affects or derogates from any other power of the Government to borrow money.

7 Power to issue instruments including bonds

Notwithstanding anything contained in any Act —

- (a) the Government may issue such bonds, promissory notes or other instruments on such terms and conditions as may be necessary for the purpose of giving effect to the terms of any agreement which may be entered into by it with the Bank in respect of any borrowing authorised by section 6(1); and
- (b) any such bond, promissory note or other instrument may be signed on behalf of the Government by the Minister or by any other person or persons authorised thereto in writing by the Minister.

8 Borrowing by corporate body from Bank

- (1) Subject to this Act, a corporate body may in such manner and on such terms and subject to such conditions as may be agreed between the corporate body and the Bank and with the approval in writing first obtained of the Minister borrow from the Bank from time to time such sums as may be required by the corporate body.
- (2) Any sums borrowed by a corporate body under the power conferred by subsection (1) shall be applied by that body to the purposes Specified in any agreement concluded with the Bank in respect of the sums so borrowed except that where any part of such sums cannot be applied to the purposes so specified such part may be applied by the corporate body to such other purposes as may be approved by the Minister and the Bank.
- (3) Notwithstanding anything contained in any Act, any agreement between the corporate body and the Bank in accordance with subsection (1) is valid and

enforceable against the corporate body if signed on its behalf by a person authorised thereto in writing under the seal of the corporate body.

- (4) The power to borrow conferred by subsection (1) on a corporate body shall be in addition to any power to borrow conferred on the corporate body by any other Act.
- (5) Notwithstanding anything contained in any Act, the corporate body may charge or mortgage all or any of its property (movable or immovable), undertaking or revenue to secure any sum owing to the Bank in respect of sums borrowed by it under the power conferred by subsection (1).

9 Power of corporate body to issue instruments including bonds

Notwithstanding anything contained in any Act —

- (a) a corporate body may issue such bonds, promissory notes and other instruments on such terms and conditions as may be necessary for the purpose of giving effect to any agreement which may be entered into by it with the Bank in respect of any borrowing authorised by section 8(1); and
- (b) any such bond, promissory note or other instrument may be signed on behalf of the corporate body by a person authorised thereto in writing under the seal of the corporate body.

10 Power of Government to guarantee loans by Bank to corporate body

- (1) The Government may in such manner and on such terms and subject to such conditions as may be agreed between it and the Bank —
 - (a) guarantee the discharge by a corporate body of its obligations under any agreement which may be entered into by the corporate body with the Bank in respect of any borrowing authorised by section 8(1) or under any bond, promissory note or other instrument issued pursuant to any such agreement; and
 - (b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.
- (2) Any guarantee or undertaking given under subsection (1) shall be given in writing, in the name of the Kingdom and any agreement, endorsement or other instrument effecting the guarantee or undertaking may be signed on behalf of the Government by the Minister or by any person or persons authorised thereto in writing by the Minister.
- (3) As soon as possible after being given, a copy of any guarantee or undertaking given under subsection (1) shall be laid by the Minister before the Legislative Assembly.

- (4) Nothing in this section affects or derogates from any other power of the Government to give any guarantee or undertaking in respect of the obligations of any corporate body.

11 Restriction on borrowing by corporate body while guarantee outstanding

So long as the Government continues liable under any guarantee or other undertaking given in exercise of the powers conferred by section 10(1) in respect of any borrowing by a corporate body, the corporate body shall not, except with the consent of the Minister, incur any debt, not repayable within one year.

12 Powers of Government in event of prospect of default by corporate body³

- (1) Where it is made to appear to the Cabinet that there is reasonable cause to believe —
 - (a) that a corporate body is likely to fail or be unable to discharge any of its obligations under any agreement concluded by it with the Bank or under any bond, promissory note or other instrument issued pursuant to any such agreement; and
 - (b) that the Government is or may become liable under any guarantee or other undertaking given in exercise of the power conferred by section 10(1) in respect of the obligation,

the Cabinet may by Order give or authorise any person to give such directions to the corporate body or such person as may from time to time consider necessary or desirable to ensure that satisfactory arrangements are made by the corporate body to enable it duly to discharge its obligations under the agreement, bond, promissory note or instrument or under this Act.
- (2) The corporate body shall, notwithstanding any provision contained in any Act by or under which it is established, comply with any directions given by or under any such Order.
- (3) Nothing in this section affects or derogates from any other power of the Cabinet or any Minister or public officer in respect of the corporate body.

13 Corporate body to repay to Government sums paid under guarantee

- (1) If any sum is paid out of the General Revenues of the Kingdom in respect of any liability incurred by the Government under a guarantee or undertaking given in exercise of the power conferred by section 10(1) in respect of any borrowing by a corporate body, that body shall repay the sum (together with interest and other charges thereon at the same rate or rates as are payable on the loan under the agreement by the corporate body with the Bank) to the

General Revenues of the Kingdom in such manner and at such time or by such instalments as the Minister may direct.

- (2) If any sum is so paid out of the General Revenues of the Kingdom, the Minister shall, as soon as possible after the end of each financial year beginning with that in which the sum was paid and ending with that in which all liability in respect thereof and in respect of any interest and other charges payable thereon is finally discharged by the corporate body concerned, lay before the Legislative Assembly a statement relating thereto.

14 Arbitration

If any dispute between the Bank on the one part and the Government or a corporate body or both on the other part arises under any agreement concluded or guarantee or undertaking given in the exercise of any of the powers conferred by this Act or under any bond, promissory note or undertaking, it shall be determined in the manner agreed between the parties, and if in consequence thereof, an arbitration award is made, the award is enforceable in the Kingdom in all respects as if it had been validly made in the Supreme Court.

15 Implementation of obligations under agreement

- (1) Notwithstanding anything contained in any other existing Act, any agreement concluded with the Bank in respect of any borrowing authorised by section 6(1) or section 8(1) and any bond, promissory note or other instrument issued pursuant to any such agreement and any guarantee or undertaking given in respect of any such agreement, bond, promissory note or instrument by the Government or a corporate body is valid and enforceable and has full force and effect in the Kingdom in accordance with their respective terms.
- (2) Without prejudice to the generality of the provisions of subsection (1) —
 - (a) the principal of, and interest and other charges on, any such loan, bond, or promissory note or other instrument is payable without deduction for and free from any taxes, and free from all restrictions, imposed under the laws of, or in effect in, the Kingdom except that the provisions of this paragraph do not apply to taxation of payments under any such bond, promissory note or other instrument to a holder thereof other than the Bank when the bond, promissory note or other instrument is beneficially owned by an individual or corporate resident of the Kingdom; and
 - (b) any agreement concluded with the Bank in respect of any borrowing authorised by section 6(1) and any bond, promissory note or other instrument issued pursuant to any such agreement, and any guarantee or undertaking given in respect of any agreement concluded with a corporate body in respect of any borrowing authorised by section 8(1) or any bond, promissory note or instrument issued pursuant to the last-

mentioned agreement shall be free from any taxes that may be imposed under the laws of, or in effect in, the Kingdom on or in connection with the execution, issue, delivery or registration thereof.

- (3) Neither the Government nor any agency thereof nor any public body or authority nor any Central Bank for Tonga, which may at any time be established shall, except as shall be otherwise agreed between the Minister and the Bank, create any lien on any of its assets as security for any external debt, unless it is expressly provided that the lien will *ipso facto* equally and rateably secure the payment of the principal of and interest and other charges on any loan made by or any bonds, promissory notes or instruments issued pursuant to any loan made by the Bank to the Government or to a corporate body on any loan made by the Bank to a corporate body repayment of which is guaranteed by the Government.

- (4) In subsection (3) —

“**external debt**” means any debt payable in any medium other than currency which at the time in question is legal tender for the payment of private and public debt in Tonga, whether the debt is payable absolutely or at the option of the creditor in such other medium;

“**lien**” includes mortgages, pledges, charges, privileges and priorities of any kind.

FIRST SCHEDULE*Section 2*

RESOLUTION NO. 48

ADMISSION OF THE KINGDOM OF TONGA TO MEMBERSHIP IN THE ASIAN DEVELOPMENT BANK

WHEREAS, the Kingdom of Tonga has applied for admission to membership in the Asian Development Bank in accordance with Article 3, paragraph 2, of the Articles; and

WHEREAS, the Kingdom of Tonga is a regional developing country which is eligible for membership in the Bank in accordance with the provisions of Article 3 of the Articles;

Now, THEREFORE, the Board of Governors hereby RESOLVES:

That the Kingdom of Tonga be admitted to membership in the Bank under the following terms and conditions:

1. DEFINITIONS

As used in this Resolution

- (a) “**Tonga**” means the Kingdom of Tonga.
- (b) “**Bank**” means the Asian Development Bank.
- (c) “**Article**” or “**Articles**” means respectively an Article or the Articles of the Agreement Establishing the Asian Development Bank.
- (d) “**\$**” means United States dollars of the weight and fineness in effect on 31 January, 1966.
- (e) “**Subscription**” means the capital stock of the Bank subscribed by a member.
- (f) “**Member**” means member of the Bank.

2. SUBSCRIPTION

Tonga shall subscribe to 6 shares of the capital stock of the Bank at the par value of \$10,000 per share, of which 3 shares shall be paid-in shares and 3 shares shall be callable shares.

3. PAYMENT OF PAID-IN PORTION OF SUBSCRIPTION

- (a) Payment of the amount subscribed by Tonga to the paid-in capital stock of the Bank shall be made in five equal instalments, each of twenty per cent of such amount.
- (b) Of each instalment for the payment of subscription, Tonga shall pay:
 - (i) fifty per cent in gold or any convertible currency, which payment shall be deemed payable and paid under Article 6, paragraph 2(a), of the Articles; and
 - (ii) fifty per cent in the currency of Tonga, which payment shall be deemed payable and paid under Article 6, paragraph 2(b), of the Articles.
- (c) Tonga shall pay to the Bank the first instalment of its subscription on or before a date to be agreed between Tonga and the Bank and the remaining four instalments shall become due on the first, second, third and fourth anniversaries of the date on which Tonga shall have become a member of the Bank.

4. REPRESENTATION AND INFORMATION

Before becoming a member of the Bank, Tonga shall on or before 30 September, 1972 or such later date as the Board of Directors may determine:

- (a) deposit with the Bank an instrument stating that it has accepted in accordance with its law the Articles and all the terms and conditions of this Resolution, and that it has taken all steps necessary to enable it to carry out its obligations under the Articles and this Resolution; and
- (b) furnish to the Bank evidence satisfactory to the Bank that the said instrument has been executed and deposited in accordance with all relevant authorities.

5. EFFECTIVE DATE OF MEMBERSHIP

Tonga shall become a member of the Bank upon the terms and conditions set forth in this Resolution on the date on which the Secretary of the Bank certifies in writing that:

- (a) Tonga has paid the first instalment of its subscription in accordance with paragraph 3 hereof; and
- (b) the evidence referred to in paragraph 4 hereof has been furnished in accordance with such paragraph.

6. SUBSCRIPTION TO INCREASE OF AUTHORISED CAPITAL STOCK UNDER RESOLUTION No. 46

If Tonga shall become a member of the Bank pursuant to this Resolution, Tonga shall be entitled to subscribe to 9 shares of the increase of the authorised capital stock of the Bank under Resolution No. 46 adopted by the Board of Governors on 30 November, 1971. Of such 9 shares, 2 shares shall be paid-in shares and 7 shares shall be callable shares. Any subscription by Tonga pursuant to this paragraph shall be on the terms and conditions set forth in Resolution No. 46 and shall in all events include paid-in and callable shares in a ratio as near as possible to the ratio 1 paid-in share to 4 callable shares.

(Adopted 23 March, 1972)

SECOND SCHEDULE*Section 4***CHAPTER VIII****STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES****ARTICLE 48****PURPOSE OF CHAPTER**

To enable the Bank effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

ARTICLE 49**LEGAL STATUS**

The Bank shall possess full juridical personality and, in particular, full capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and
- (iii) to institute legal proceedings.

ARTICLE 50**IMMUNITY FROM JUDICIAL PROCEEDINGS**

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in contracts entered into with the Bank.
3. Property and assets of the Bank, shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

ARTICLE 51

IMMUNITY OF ASSETS

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other forms of taking or foreclosure by executive or legislative action.

ARTICLE 52

IMMUNITY OF ARCHIVES

The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

ARTICLE 53

FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 54

PRIVILEGE FOR COMMUNICATIONS

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

ARTICLE 55

IMMUNITIES AND PRIVILEGES OF BANK PERSONNEL

All Governors, Directors, alternates, officers and employees of the Bank, including experts performing missions for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and as regards exchange regulations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and members to the representatives, officials and employees of comparable rank of other members, and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

ARTICLE 56

EXEMPTION FROM TAXATION

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance of declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomever held:
 - (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 57

IMPLEMENTATION

Each member, in accordance with its juridical system, shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in the Chapter and shall inform the Bank of the action which it has taken on the matter.

ARTICLE 58

WAIVER OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

ENDNOTES

¹ 1988 Revised Edition Cap. 111; Act 22 of 1973

Amended by Act 5 of 2012, commencement 30 July 2012

² Amended by Act 5 of 2012

³ Amended by Act 42 of 2010