



LAWS OF MALAYSIA

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Act 410

LOANS (ASIAN DEVELOPMENT BANK) ACT 1968

As at 1 December 2011

**LOANS (ASIAN DEVELOPMENT BANK)
ACT 1968**

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First Reprint 2001

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LAWS OF MALAYSIA**Act 410****LOANS (ASIAN DEVELOPMENT BANK) ACT 1968**

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LAWS OF MALAYSIA**Act 410****LOANS (ASIAN DEVELOPMENT BANK) ACT 1968**

An Act to provide for the raising of loans from the Asian Development Bank by Malaysia or by certain statutory authorities and for matters connected therewith.

[16 September 1968]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Short title and application

1. (1) This Act may be cited as the Loans (Asian Development Bank) Act 1968.

(2) This Act shall apply throughout Malaysia.

Interpretation

2. In this Act, unless the context otherwise requires—

“Bank” means the Asian Development Bank;

“Statutory authority” means a local authority and any body incorporated directly by any written law and exercising powers vested in such body by law for a public purpose;

“Minister” means the Minister of Finance.

Power to borrow from the Asian Development Bank

3. (1) Subject to the Federal Constitution and this Act, the Government of Malaysia 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) for the requirements of the Government shall be paid into the Development Fund and shall, notwithstanding section 3 of the Development Funds Act 1966 [Act 406], be applied and are hereby appropriated to the purposes for which they were borrowed as specified in any agreement concluded with the bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid 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 powers conferred by subsection (1) shall be made in the name of the Government of Malaysia and may be signed on behalf of the Government by the Minister or by any person authorized thereto in writing by the Minister.

(4) As soon as possible after the conclusion thereof a copy of any agreement concluded with the Bank in respect of any sum borrowed under the powers conferred by subsection (1) shall be laid by the Minister before the Dewan Rakyat.

(5) Nothing in this section shall affect or derogate from any other power to borrow money possessed by the Government.

Power to issue instrument including bonds

4. (1) Notwithstanding anything contained in any law, 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 authorized by subsection 3(1).

(2) Any such bond, promissory note or other instrument may be signed on behalf of the Government by the Minister or by any other person authorized thereto in writing by the Minister.

Borrowing by statutory authority from the Bank

5. (1) Subject to the Federal Constitution and this Act, a statutory authority may in such manner and on such terms and subject to such conditions as may be agreed between the statutory authority 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 statutory authority.

(2) The power to borrow conferred by this section on a statutory authority shall be in addition to any power to borrow conferred on such statutory authority by any other written law.

(3) Notwithstanding anything contained in any written law, the statutory authority 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 powers conferred by subsection (1).

(4) Notwithstanding anything contained in any written law a statutory authority 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 authorized by subsection (1).

Application of loan moneys by statutory authority

6. Any sums borrowed by a statutory authority under the powers conferred by subsection 5(1) shall be applied by the

authority to the purposes for which the sums were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied by the statutory authority to such other purposes as may be approved by the Minister and the Bank.

Power to guarantee loans by Bank to statutory authorities

7. (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 statutory authority of its obligations under any agreement which may be entered into by the statutory authority with the Bank in respect of any borrowing authorized by subsection 5(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 this section shall be given in writing in the name of the Government of Malaysia and it and any indorsement on any bond, promissory note or other instrument of any guarantee given under this section may be signed on behalf of the Government by the Minister or by any person or persons authorized thereto in writing by the Minister.

(3) As soon as possible after a guarantee or undertaking is given under this section, the Minister shall lay before the Dewan Rakyat a statement of the guarantee or undertaking.

Restriction on borrowing powers of statutory authority so far as guarantee outstanding

8. So long as the Government shall continue liable under any guarantee or other undertaking given in exercise of the powers conferred by subsection 7(1) in respect of any borrowing by a statutory authority the statutory authority shall not except with the consent of the Minister exercise any other power to borrow possessed by it.

Powers exercisable by Government in event of prospect of default by statutory authority

9. (1) Where it is made to appear to the Yang di-Pertuan Agong that there is reasonable cause to believe—

- (a) that a statutory authority 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 powers conferred by subsection 7(1) in respect of such obligation,

the Yang di-Pertuan Agong may by order give or authorize any other person to give such direction to the statutory authority as he or such other person may from time to time think necessary or desirable to ensure that satisfactory arrangements are made by the statutory authority to enable it duly to discharge its obligations under such agreement, bond, promissory note or instrument or under this Act.

(2) The statutory authority shall notwithstanding any provision contained in the written law by which it is established comply with any directions given by or under any such order.

(3) Nothing in this section shall affect or derogate from any other power conferred by law on the Yang di-Pertuan Agong or any Minister or public officer in respect of the statutory authority.

Statutory authority to repay Government sums paid under guarantee

10. (1) If any sum is paid out of the Consolidated Fund in respect of any liability incurred by the Government under a guarantee or other undertaking given in exercise of the powers conferred by subsection 7(1) in respect of any borrowing by a statutory authority the statutory authority shall repay such sum (together with interest thereon at the same rate as that payable on the loan under the agreement by the statutory authority with the Bank) to the Consolidated Fund 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 Consolidated Fund 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 any interest payable thereon is finally discharged by the statutory authority concerned, lay before the Dewan Rakyat, a statement relating thereto.

Arbitration

11. If any dispute between the Bank on the one part and the Government or a statutory authority or both on the other part arises under any agreement concluded or guarantee or undertaking given in exercise of the powers conferred by this Act or under any bond, promissory note or such instrument issued pursuant to any such agreement it shall be determined by arbitration in the manner agreed between the parties and any award made in such arbitration shall be enforceable in Malaysia in all respects as if it had been validly made in an arbitration

under the *Arbitration Act 1952 [Act 93], or any other written law relating to arbitration for the time being in force in Malaysia and for the purposes of this section such Act or law shall be binding on the Government.

Implementation of obligations under the agreement

12. (1) Subject to the Federal Constitution but notwithstanding anything contained in any other existing law any agreement concluded with the Bank in respect of any borrowing authorized by subsection 3(1) or subsection 5(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 statutory authority shall be valid and enforceable and have full force and effect in Malaysia in accordance with their respective terms.

(2) Without prejudice to the generality of subsection (1)—

(a) the Minister may provide by order published in the *Gazette* that any tax or duty payable under the Income Tax Act 1967 [Act 53] or the Stamp Act 1949 [Act 378], respectively shall be remitted where such remission is necessary to give full and complete effect to any such agreement, bond, promissory note, instrument or guarantee;

(b) nothing in the Exchange Control Act 1953 [Act 17], shall apply to any transaction required to effect payment in any currency of any sum in accordance with the terms of any such agreement, instrument, bond or guarantee in any currency.

(3) Neither the Government nor any agency thereof nor any statutory authority nor the Central Bank of Malaysia shall except as shall be otherwise agreed between the Minister and

*NOTE— Arbitration Act [Act 93] has since been repealed by the Arbitration Act 2005 [Act 646].

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 statutory authority.

(4) In subsection (3)—

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

“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 Malaysia whether such debt is payable absolutely or at the option of the creditor in such other medium.

(5) For the purposes of subsection (3) the assets of the Government include any right, interest or share which the Government has or may have in the Currency Fund or any part of the assets thereof, established under the Malaya British Borneo Currency Agreement 1950.

LAWS OF MALAYSIA**Act 410****LOANS (ASIAN DEVELOPMENT BANK) ACT 1968****LIST OF AMENDMENTS**

Amending law	Short title	In force from
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– NIL –

LAWS OF MALAYSIA**Act 410****LOANS (ASIAN DEVELOPMENT BANK) ACT 1968****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
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– NIL –
