SOME ASPECTS OF THE GENERAL CONDITIONS OF THE WORLD BANK LOANS

By

MONA ELTAYEB MOHAMED ELTAYEB

SUPERVISOR

DR. MOHAMED IBRAHIM ELTAHIR

A thesis Submitted in Partial Fulfillment of the Requirements of LL.M. Degree of the University of Khartoum

January 2006

TABLE OF CONTENTS

CHAPTER TWO

PROJECTS OF WORLD BANK LOANS AND SIGNING OF THE LOAN AGREEMENT

CHAPTER THREE

EFFECTIVENESS OF THE LOAN AGREEMENT

AND WITHDRAWAL FROM PROCEEDS OF THE LOAN

CHAPTER FOUR

SUSPENSION AND CANCELLATION

OF THE LOAN AGREEMENT

DEDICATION

To my beloved parents

ABBREVIATIONS

IBRD : The International Bank for Reconstruction and Development

IDA : International Development Association

IFC : The International Financial Corporation

MIGA : The Multilateral Investment Guarantee Agency

ICSID : The International Center for Settlement of Investment disputes

GNP : Gross National Product

GDP : Gross Domestic Product

WDR : World Development Report

PAD : Project Appraisal Document

PGD : Project Program Document

OED : Operations Evaluation Department

I.C.B : International Competitive Bidding

GPN : General Procurement Notice

SPN : Specific Procurement Notice

QCBS : Quality and Cost-Based Selection

L/C : Letter of Credit

TM : Task Manager

MD : Managing Director

CD : Country Department

PPF : Project Preparation Facility

IDF : Institutional Development Fund

RVP : Regional Vice President

UN : United Nations

GBHP : Ghazi Barotha Hydropower Project.

SAPs : Structural Adjustment Programs

GoS : Government of Sudan

SPLM : Sudan People's Liberation Movement

JPM : Joint Planning Mechanism

ACKNOWLEDGEMENT

I would like to send my deep thanks to my supervisor Dr. Mohamed Ibrahim Eltahir for his great efforts, good advices, sincere guidance, patience and kindness. Really I’m indebted to him for his continuous readiness to review the chapters at any time in spite of his huge responsibilities as a dean of the Faculty of Law.

I’m thankful and grateful to: Dr. Salman M. Salman, Legal Advisor in the World Bank, Dr. Ali Suliman Fadlalla, Head Department of Public Law and to Dr. Abuzar El Gifari Bashir for their great help and valuable advice.

My appreciation is due to my dear colleague Mrs. Tahani Yahia for her sincere advice and guidance.

I would like also to send my warm thanks to my family who encouraged me to finish this research.

PREFACE

The World Bank is an international organization established at the Bretton Woods Conference in 1944. The main goals of the World Bank are to promote sustainable economic development and to reduce the poverty in the world. It pursues these goals primarily by providing loans to different countries.

World Bank Group is comprised of five agencies that make loans or guarantee credit to 177 member countries. It aims to help countries reduce poverty by making long-term loans to governments for projects such as dams or bridges, or to back economic reform programmes.

World Bank gives loans to the countries and the entities according to the provisions of the Loan Agreement and the General Conditions.

The General Conditions set forth certain terms and conditions generally applicable to loans made by the Bank

ABSTRACT

World Bank Loans, which are provided to different countries, contain some of the General Conditions. These General Conditions are aiming to arrange the procedure of providing of the loans and protecting the rights of Borrowers Countries and the World Bank. This research covers some aspects of the General Conditions of the World Bank Loans. It contains four chapters and the conclusion.

Chapter one talks briefly about the establishment of the World Bank and discusses its management, structure and its policies especially which are concerning poverty. Chapter one also gives brief information about the relation of Sudan with the World Bank.

Chapter two focuses on the steps of the World Bank projects, which should be prepared and provided by the Borrower's Countries to the World Bank to have loans. Chapter two also discusses the financing of the projects by the World Bank and the procedure of signing the loan agreements.

Chapter three explains the effectiveness of the loan agreement after the conditions of effectiveness are satisfied. The Chapter also talks about the authorization of the delegated person to sign on behalf of the Borrower Countries, and the legal opinion of the Loan Agreement. Chapter three also clarifies the withdrawal of proceeds of the loan, its arrangements, procedure and means of withdrawal (disbursement, reimbursement and letter of credit), requirements of disbursement and avoiding delays of disbursement.

Chapter four talks about the failure to fulfill the financial obligations and covenants which result in the suspension of disbursements and sometimes

the cancellation of the loan. It also discusses the obligations and conditions during suspension and cancellation, procedures for suspension and cancellation and the procedures for lifting the suspension and cancellation.

Finally, the thesis concludes with the important issues considered in the previous chapters.

المستخلص

تتضمن عقود البنك الدولي الخاصة بالقروض التي يقدمها للدول المختلفة عدداً من الشروط العامة، التي تهدف إلى تنظيم عمليات القروض نفسها، وفي ذات الوقت ضمان حقوق البنك وحقوق المدينين. وهذا البحث يتناول بعض أوجـه هذه الشروط ويناقش جوانبها المختلفة.

يتكون البحث من أربعة فصول وخاتمة على النحو التالي:

يقدم الفصل الأول مقدمة عامة تعطي تصوراً عن نشأة البنك الدولي ويناقش بنيته وطرق إدارته وسياساته خاصة التي تتعلق بمشكلة الفقر.كما يتناول عرضاً لتقديم القروض التي يمول بها الدول المستفيدة.

أما الفصل الثاني فيناقش خطوات المشروع المقدم من قبل الدولة إلى البنك الدولي للحصول على القرض ويتناول أيضاً تجهيزات وخطوات التوقيع على اتفاقية القرض.

ويتحدث الفصل الثالث عن فعالية الاتفاقية ودخولها إلى حيز التنفيذ بعد اكتمال الشروط التي يوجبها البنك ليصبح العقد فاعلاً. كما يتناول أيضاً سلطة الشخص المفوض نيابة عن الدولة المدينة لتوقيع اتفاقية القرض والفتوى القانونية للاتفاقية، و يتحدث عن طرق وإجراءات وشروط وأنواع السحب من القرض وإجراءات تفادى تأخير السحب من القرض.

يتناول الفصل الرابع فشل القيام بالالتزامات المالية والمعاهدات والتي ينتج عنها إيقاف الدفع وفي بعض الأحيان إلغاء القرض. ويناقش أيضاً الالتزامات والشروط أثناء توقف السحب من القرض وإجراءات إلغاء القرض. و يناقش كذلك إجراءات وقف السحب من القرض أو وقف الإلغاء.

ينتهي البحث بخاتمة تعرض أهم النتائج التي توصل إليها البحث.

CHAPTER ONE

INTRODUCTION TO WORLD BANK

The World Bank was created at the Bretton Woods Conference in 1944, it was comprised of five agencies that make loans or guarantee credit to 177 member countries. It aims to help countries reduce poverty by making long-term loans to governments for projects such as dams or bridges, or to back economic reform programmes. It also produces many influential research reports and has affiliates which back private companies investing in poor countries.

1- World Bank institutions:

The World Bank is composed of five main group institutions as follows:

(i) The international Bank for Reconstruction and Development (IBRD):

The largest institution is currently owned by the governments of 176 countries, including all 15 of the Republics which formed the Eastern European block. This is a four-fold increase of membership over the 44 countries which conceived of the institution in 1944. In 1946 the Bank had an authorized capital of $10 bi11ion, worth about 20 times as less as today. In 1993 the Bank's total callable capital was almost $166 billion, though of that only $10.53 was paid in. From mid

1946 to mid 1986 the World Bank lent a total of $160 billion for 4,000 projects in 100 countries, its 1ending more than doubling in the last ten years of that time. By any reckoning the Bank's resources are huge. The IBRD makes loans only to credit worthy Borrowers and has suffered no losses on the loans it has made. Throughout that whole time it has made a profit. A substantial part of that income goes to strengthen its reserves, and to fund the International Development Association (IDA).

The IBRD remains the largest agency within the World Bank, but it has been joined over time by others, which have given the Bank a far greater flexibility and increased its influence at several different levels[1].

(ii) International Development Association (IDA)

The International Development Association (IDA) came into being in 1960 as a result of the pressure from developing countries for a more accessible lending agency, lending without interest or at very low interest to the poorest nations. The 1993 publication IDA states that the purpose of this organization is "to market human vision, experience, energy and capital to build the wealth of nations. Loans are given for 30-40 years, with, currently, a 10-year grace for repayment, with no interest but with a service charge. The repayment of these loans is carefully monitored. Since 1960, the IDA has spent $75 billions "to promote development in 90 countries", with almost half the money going to Africa.

[1] A guide to the World Bank/ Washington, D.C.2003

The IDA and IBRD staff is interchangeable, follow the same policy guidelines and share the same supervision. They work in offices opposite each other in Washington.

(iii) The International Financial Corporation (IFC):

This institution was set up in 1956, lends to the private sector, lend directly to the private sector in developing countries, unlike the IBRD and the IDA which deal with governments.

(iv) The Multilateral Investment Guarantee Agency (MIGA)

In 1988 the Multilateral Investment Guarantee Agency (MIGA) was established. It guarantees to investors in developing countries against losses caused by noncommercial risks. MIGA aims to encourage equity investment and other direct investment flows to developing countries through the mitigation of non-commercial investment barriers. This organization works for the flow of private capital, works against protectionist and other related po1icies, and offers guarantees to private capital against non-commercial risks. Its aim is to sponsor dialogue between governments and business. It had 85 member countries in 1992.

(v) The International Center for Settlement of Investment disputes (ICSID):

ICSID provides international facilities for conciliation and arbitration of investment disputes.

Although the World Bank group consists of five institutions, IBRD and IDA are considered as the largest and important institutions in the World Bank.

2- Management and Structure of the World Bank

The Board of Governors holds the powers of the Bank. Each member country is represented by a Governor, usually the Finance Minister or President of the Central bank, e.g. United. Kingdom is represented currently by the Governor of the Bank of England. Of particular importance is the President, who is elected by the Governors: his views and policies can powerfully affect the work and the way it is done. The Board of Governors meets annually, in late September.

Most of the detailed decision-making is done by the Board of (currently 24) executive directors. Voting powers on the Executive are related to capital invested. America has always held the largest number of shares (at the beginning it was 36% but it is now equal to 17.5%). The five biggest shareholders currently are the United States, Japan, Germany, France and United Kingdom each has one Executive Director. The rest of the member countries are divided into areas each area provides one Director.

Some 6,800 staff members are currently based in Washington, with 314 field staff assigned to some 69-field offices. There is a concentration of economists and engineers among the staff.[2]

3- World Bank policies

The World Bank policies are concentrated in the following issues:

(i) The Free Trade Model

The policy of the World Bank has increasingly followed the Free Trade model in the last 15 years. Its view is that maximum profits can be made if the private sector is as large as possible, and can operate freely, without protectionist measures. Internationally, goods should pass freely, without tariff barriers or restrictions, between all countries. Emphasis is put upon the national indicators of wealth, the Gross National Product (GNP) or the Gross Domestic product (GDP), as a measure of a country's economic health. Exports are encouraged as a vital source of wealth for a nation, and nations are encouraged to develop their own industries and agricultural products to sel1 on the world market. Government machinery should be as small as possible and large civil service and local government sectors should be cut down, fine-tuned, to produce maximum efficiency. Foreign capital should move round the world with maximum ease, and should be free to invest in countries which are on their way to industrial development.

[2] World Wide Web: http://Wbln0018.worldbank.org

The emphasis on world-wide free trade has meant that the Bank has increasingly been prepared only to lend to countries wishing to open up to world trade. In the 1970s it was commented that a good project in a bad economy was likely to be a bad project. It followed that loan conditions had to look beyond the project to the economy as a whole.[3]

(ii) Protection of the Environment

The most recent factor that the bank has taken on board has been concern about the destruction of the environment worldwide. When Liberal theory was developed in the eighteenth and nineteenth centuries, land was regarded as a possession, a 'good', and still largely is. But global concerns about the indiscriminate use of land, culminating in the Earth Summit of 1992, which has been held in Rio de Janeiro, have driven environmental factors on to the economic agenda and have begun to affect the economic policies of the Bank in the way that loans are negotiated.

(iii) The Building of Infrastructure of the Countries

In the first 20 or so years, loans were given to "developing" countries mainly for the building of infrastructure of the country like electricity, gas, roads, water with stress on the growth of the Gross National Product. In some ways, as one early president commented,

- [3] http://www.worldbank.org/pk

these loans were connected to the decolonization process, as countries around the world became independent of former European empires. The fourth president, George Woods (1963-1968) was more innovative, and initiated loans directly for education and primary health services.

(iii) Reduction of the Poverty

The po1icies of growth and economic progress were maintained, but there was a new awareness of world poverty, and a growing pressure to eliminate it. The 1iberal economic theory within which the Bank operates indicates that poverty will be reduced as the society becomes richer overall, and that national incomes must therefore rise. However it has become increasingly recognized that poverty must also be tackled with directly.

These initiatives were influenced by the United Nations declarations of the period. The General Assembly stated on 17.12.74 that every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. Society today already possesses sufficient resources, organizational ability, technology and the competence to achieve this objective. This is a direct challenge to the World Bank.[4]

This change and shift from all active work being with the macroeconomics and infrastructure of a country and the indicator of the Gross National Product (GNP), to include concern for education, poverty and other social matters, is clearly of the utmost significance.

[4] The World Bank Annual Repot 2003

It took the World Bank directly into areas well beyond the usual concerns of the banking system. It became both a Bank and a Development Agency.

The change of policy during the 1970s and into the 1980s has meant that the World Bank has become far more pro-active. The Bank must no longer stand on the sidelines giving a running commentary designed to encourage the players. It must plunge in itself to strength role of the World Bank.

So, already, by 1980, it was accepted that the World Bank was involved with policy-based lending. It had never made totally unconditional loans. By the 1970s "it had already devised a way of linking (partially) project aid allocations to more general indicators of economic performance. The linking of loans to economic conditions, which is such a feature of the Bank's work in the 1990s, had started to become a potent force. The growth of conditioned lending in the 1970s, 1980s and 1990s[5]

It is reckoned at the present time that, out of the world's 5 bi1lion population, over 1 bi11ion are in primary (absolute) poverty, often close to or at starvation level. In the poorest countries, the average income per head per day can be less than £1. In the 1960s and 1970s, there were indications that poverty was lessening but in the last 15 years or so, indicators have worsened in many countries, particularly in sub-Saharan Africa.

At the same time however there has been within the World Bank an increasing direct concern with poverty and starvation world-wide.

---

[5] A guide to the World Bank/ Washington, D.C.

In Liberal economic theory, poverty is relieved when a whole society becomes better off, and the general increased wealth comes to affect the economic condition of all, even the poorest. But recurrent crises involving starvation of large numbers of people, particularly in African countries, have forced a more direct concern within the Bank itself.

The term ‘poverty’ subsumes the interest in health and disease which has become part of the World Bank’s major involvements, because good health increases the economic productivity of individuals and the economic growth of countries, investing in health is one means of accelerating development.

Poverty has become a major theme within the Bank’s programmes. Lewis Preston, for instance, on his address to the African Governors of the World Bank in 1992 said: -"development occurs when poverty is reduced and the quality of peoples’ lives is improved. The challenge of development then, is to achieve better education, higher standards of health and nutrition, a sustainable natural environment, equality of opportunity and a greater economic freedom. "

In 1990 the World Development Report (WDR) was devoted to the issue of poverty. It stated that the World Bank seeks to tackle poverty in two main ways. One is to promote broad-based economic growth, within which poor people can again find employment and pull themselves out of the poverty trap. The second way is the direct provision of social services, including particularly primary education, health services, nutrition, family planning, and better 1iving conditions. The position of women has been acknowledged and programmes particularly aimed at supporting women are promoted.

The Annual Report of 1992 confirms that these concerns are tied up with the success of conditiona1 ending and the free market system. "The Bank's efforts to reduce poverty cut across sectoral 1ines and include investments to improve education, ensure environmental sustainabi1ity, expand economic opportunities for women, strengthen population-planning, health and nutrition services, and develop the private sector. The bank's support of economic restructuring in many of its borrowing member countries is based on the knowledge that the precondition for restoring economic growth the cornerstone of successful development and poverty reduction - is structural adjustment.[6]

In April 1992 the World Bank published the Poverty Reduction Handbook an Operational Directive to implement further the 1990 Poverty Report. It advises that in future, the volume of lending wil1 be linked to the country's efforts to reduce poverty. It calls for participation and decentralization of decision-making around its loans. It advocates a 'Poverty Profile' for each country as part of the preliminary assessment before the loan is made, which will attempt to delineate the characteristics of' the poor in that country. It calls for an assessment of the effectiveness and reach of poverty programmes, and of safety nets for poor people. Statistical systems should be accurate and effective.

[6] The World Bank Annual Report 1992

By 1993, 20 poverty assessments had been completed for 19 countries, with 68 being scheduled by 1996. These programmes cover a large proportion of the world's poorest people. 51 projects valued at $3 billion in 1992 are already being implemented under the programme of Targeted Interventions. Lending towards social education and health services has increased from 5% of the total in 1981-3 to 14% in 1990-2. Also a Women In Development division was created in 1987, arid loans featuring the position of women have increased to around 30% in agriculture and education in recent years, remaining at 75% for population, health and nutrition[24]. Many of these projects were planned for urban areas. However the Bank has accepted that in some areas poverty is getting worse, particularly for women.[7]

The World Bank is aiming to relieve poverty by different ways, which include:

(a) Assuming the duties and responsibilities of facilitating the training of the unemployed poor and skilled under poor who will empower them to create their own jobs and meet their own food needs.

(b) Training the unemployed poor and the under skilled poor to create their own jobs through self-help projects such as cottage industries, large scale agriculture and small scale community farm projects producer and consumer cooperatives and by assisting the poor with immediate food needs through food banking (i.e., through food production and gathering surplus foods from the food industry and farmers) at the local, provincial, national and international levels.

[7] The World Bank Annual Repot 2003

(c) Advancing education and by encouraging self-help groups to communicate, cooperate and educate other self-help projects (for the unemployed poor and under skilled poor), and to provide health care and health care education

The World Bank is realizing its achievements by lending loans to the member's countries; these loans are subject to general conditions.

Each year the World Bank lends between US$15-$20 billion for projects in the more than 100 countries it works with. Projects range across the economic and social spectrum in these countries from infrastructure to education, to health, to government financial management. The Bank finances are conceived and supervised according to a well-documented project cycle. Documents produced, as part of the project cycle can be valuable sources of information for interested stakeholders wanting to keep abreast of the work the Bank is financing and for businesses wishing to participate in Bank-financed projects. Below is a step-by-step guide to the project cycle, the documents that are produced as part of the process, and how to access them.

4- <u>The World Bank Loans</u>

The World Bank gives loans to the countries and the entities according to the provisions of the Loan Agreement and the General Conditions.

The General Conditions set forth certain terms and conditions generally applicable to loans made by the Bank. They are applied to any loan agreement providing for any such loan and to any guarantee agreement with a member of the Bank providing for the guarantee of any such loan to the extent and subject to any modifications set forth in such agreements. In the case of a loan agreement between the Bank and a member of the Bank, references in these General Conditions to the Guarantor and the Guarantee Agreement shall be disregarded[8]. If any provision of a loan agreement or guarantee agreement is inconsistent with a provision of these General Conditions, the provision of the loan agreement or guarantee agreement, as the case may be, shall prevail.[9]

5- World Bank and Sudan:

Sudan joined the World Bank in 1957. The World Bank has provided assistance on 60 projects totaling about US$1.52 billion. Prior to February 2005, there were no active World Bank projects because of significant arrears on past debt-servicing obligations.

After more than a decade of war, Sudan infrastructure needs major rehabilitation and development, agricultural reforms need to be pursued, improved social services are a high priority, and war-affected areas face special difficulties like food insecurity. To start the process for setting priorities and coordinating activities, the World Bank hosted a meeting of the Government of Sudan (GoS) and the Sudan People's Liberation Movement (SPLM) to discuss the Joint Planning Mechanism (JPM). The JPM will assist both parties in assessing needs, developing priorities, and drawing up action plans

[8] 8 General Conditions Applicable to Loan and Guarantee Agreements
Dated January 1, 1985 Section 1.01

9 Section 1.01and 1.02 IBRD general conditions January 1, 1985

for implementation during the pre-interim period. Please see the press release for more information.

The World Bank has announced its plans to reopen its country office in Sudan, after the Government of Sudan (GoS) and the Sudan's People Liberation Movement (SPLM) signed on 9th of January 2005 a historic Comprehensive Peace Agreement (CPA) in Nairobi (Kenya), ending Sudan's 21-year civil war, the Bank therefore, plans to reopen its offices, which were closed in 1993, in Khartoum for the north, and a second office for South Sudan, to be based initially in Nairobi.

The World Bank will provide technical assistance and support to capacity building efforts in a way that reflects the political structure in the peace agreement – a national Government and a Government for South Sudan.

As of February 2005, the Bank had approved 8 IBRD loans and 52 IDA credits for Sudan totaling approximately US$1.52 billion. The lending program in Sudan is inactive at this time. [10]

CHAPTER TWO

PROJECTS OF THE WORLD BANK LOANS AND SIGNING OF THE LOAN AGREEMENT

[10] Guide to World Bank / Washington, D.C. January 19, 2005

1- Projects

The World Bank gives loans to countries and to entities according to the provisions of the Loan Agreement and the General Conditions, which are applicable to the Loan Agreement.

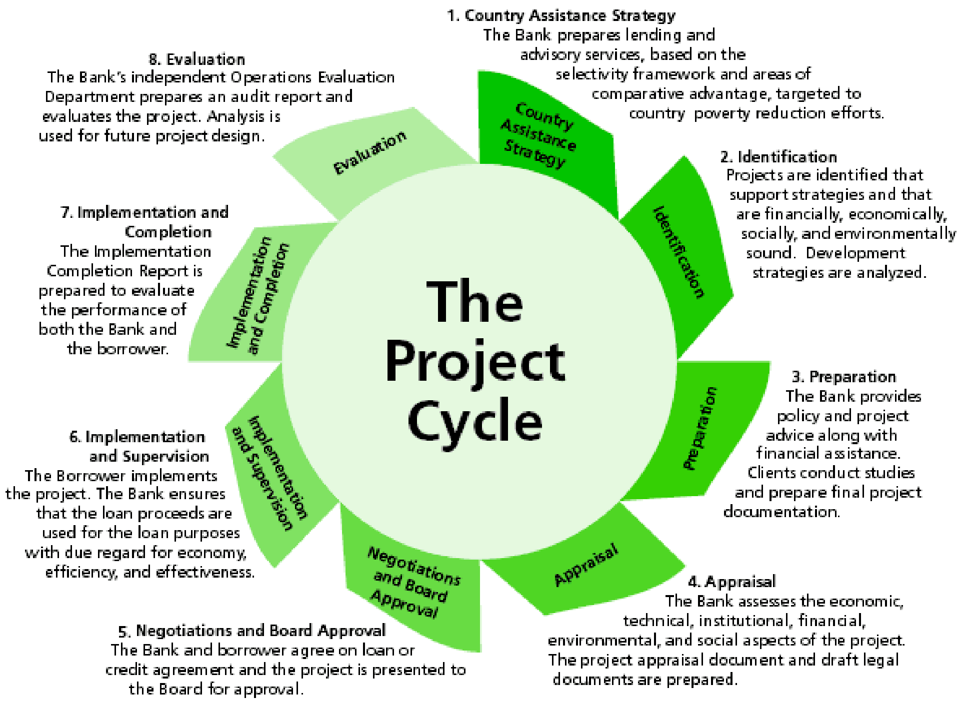
The borrower is responsible for preparing a project to have a loan, and also is responsible for implementing the project and therefore for selecting the consultant, and awarding and subsequently administering the contract.

World Bank projects are far-ranging operations in client countries and regions. They are managed through sector or regional departments. They range from the administration and management of loans to the implementation of projects within country or region development strategies. Bank activities also support clients through financing and advice that is targeted toward general reform not connected with specific outputs or investments.

When the World Bank lends funds to a country for a project, the executing agency of the project is usually the borrowing country's government or a branch thereof. While both share aspects of project preparation, it is the executing agency, and not the World Bank, that is responsible for virtually every element of project execution, particularly the hiring of consultants and the procurement of goods and works. Accordingly, companies must focus their sales and marketing approach directly on the executing agency for the project in the borrowing country as well as on the lending institution with approval of the World Bank.

The Project Cycle

Before a World Bank project loan is approved, it evolves through the following stages called the project cycle and it goes through specific stages in their life cycle these stages are as follows: (see the following figure)



(i) Country Assistance Strategy

The Bank prepares lending and advisory services, based on the selectivity framework and areas of comparative advantage, targeted to country poverty reduction efforts.

The Bank in cooperation with borrowing countries writes country Assistance Strategies and Country Papers. They provide a description of the economic, social and industrial state of the borrowing country along with each bank's 4-5 year development strategy for the country. Country Assistance Strategies and Country Papers provide the first indication of each bank's future activities. The World Bank allows public disclosure of Country Assistance Strategies reports, with the government's agreement and the majority of governments now allow disclosure[11]:

(ii) Project Identification

This second phase of the cycle concerns identifying projects that appear appropriate for the country's priorities and development strategy, as well as suitable for Bank support. Both the Bank and the borrowing country are involved in this process, which normally takes about 12 to 18 months. Pre-feasibility studies are often required at this stage.

During project identification, both the borrower and the Bank are involved in analyzing development strategies for the country and in identifying projects that support those strategies. Ideas for projects often emerge from the strategies as well as from the Bank's economic and sector research, the Borrowers' feasibility studies, and prior projects. Projects should be financially, economically, socially and environmentally sound. At this, the project undergoes an environmental assessment screening to determine whether an environmental assessment is required.

-The project documentation is required at this stage:

-Initial Project Information Document.

-Integrated Safeguards Data Sheets.

(iii) Project Preparation

After a proposed project has entered the "pipeline" it is further studied and defined by both the borrowing country and Bank technical staff. Feasibility studies and detailed project design usually occur at this stage. Preparation, which lasts from 1 to 2 years, is still the borrowing country's responsibility, but consultants are frequently hired by the Bank and/or the borrower to assist i.e. the borrower is responsible for project preparation and the Bank often provides technical and financial

[11] http://www.worldbank.org/html/pic/cas/index.htm.

assistance. During preparation, a country's project team has to determine all the technical, industrial, economic, environmental and financial conditions required for the project to succeed. The team must also compare possible alternative methods for achieving the project's objectives.

(iv) Project Appraisal

Bank staff conducts an in-depth assessment of the technical, environmental, financial and economic elements of the project. The appraisal phase is the Bank's sole responsibility, takes 3 to 6 months to complete. The Bank is solely responsible for project appraisal, which is usually conducted by the Bank staff. The appraisal team reviews all the work conducted during identification and preparation and prepares a Project Appraisal Document (PAD) for investment projects and a Project Program Document (PGD) for structural operations. Those documents are carefully reviewed and redrafted as necessary for submission to Bank management.

Other project documentation is as follow:

- Revised Project Information Document
- Development Business
- Monthly Operational Summary

(v) Project Negotiations:

The Bank and the borrower negotiate the loan agreement and project implementation plans. The negotiations last one or two months, after which the Appraisal Report and loan documents go to the World Bank Board of Directors for approval. The loan becomes effective only after being signed by the country and upon other formalities, usually two to four months subsequent to Board approval.[12]

(vi) Project Approval

Project Appraisal Document (PAD) or Projects Program Document (PGD), along with the Memorandum of the President and loan documents, are submitted to the Bank's Broad of Executive Directors for approval, the Bank and the borrower sign the loan.

(vii) Project Effectiveness

Following approval, the loan or credit agreement is submitted to whatever final process is required by the borrowing government. For example, agreements may need to be ratified by a country's legislature. The process may last for several months. If the outcome is positive, the loan or credit is declared effective after the conditions of the effectiveness are satisfied and it becomes ready for disbursement, and the agreement is made available to the public.

(viii) Implementation and Supervision

The implementation of the project is the responsibility of the borrowing country, while the Bank is responsible for supervision, i.e. the implementation is the responsibility of the borrower, with technical assistance from the Bank as agreed on. Supervision of project is the responsibility of the Bank. Once the loan is approved, the borrowing government, with technical assistance from the Bank the borrower prepares the specification and evaluates bids for the procurement of goods and services related to the project.

(ix) Evaluation

Following completion of a project, the Bank's Operations Evaluation Department (OED) conducts an audit of the project, in which its outcome is measured against its original objectives. The audit entails a review of the project completion report and preparation of a separate report. Both reports are then submitted to the Board of Executive Directors and to the borrower. These reports are not available to the public; however,

[12] A guide to the World Bank/ Washington, D.C.

Operations Evaluation Department periodically prepares impact evaluation on sets of projects on the basis of these reports.

Operations Evaluation Department Impact Evaluation Reports are necessary at this stage.[13]

2- Financing of the projects By the World Bank:

The World Bank gives loans to the countries and the entities according to their approved projects. IBRD generally prefers to lend directly to the entity responsible for the implementation and operation of the project for which the loan is made. The IBRD Articles of Agreement require the Bank to make arrangements to ensure that the proceeds of the loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency by lending directly to the entity responsible for project implementation, the Bank is better able to monitor the project's implementation efficiently and suggest corrective steps when there are shortcomings in project implementation. When such an entity is not the member country and direct lending to it is not feasible or practical, IBRD may lend to the member country or another entity if the project can nevertheless be efficiently implemented and operated.

If the member in whose territories the project is located is not itself the borrower, the member must guarantee the payment of the principal and interest and other charges on the loan When a member guarantees a loan, it does so as a principal debtor and not merely a surety. Thus, IBRD may call directly on the guarantor for payment, and is not required first to exhaust its remedies against the borrower. When the member effectively controls the entity in charge of implementing and operating the project, IBRD requires the member to guarantee performance as well as repayment.

IBRD may finance a project to be carried out by an enterprise owned jointly by two or more members or by public or private entities of such members. In this type of lending, IBRD requires either joint and several guarantees or several guarantees from the members in whose

[13] A guide to the World Bank/ Washington, D.C.

territories the project is located (the amount of each such guarantee being related, for instance, to be expected or actual benefits flowing from the loan), as long as these guarantees together cover the total amount of the principal and interest and other charges on the loan.

When making a loan the Bank uses a variety of documents to define its contractual relationships with the borrower, guarantor, and other entities that are responsible for the project or that have a direct interest in the project or in the achievement of its objectives. For each loan, the Bank and borrower enter into a Loan Agreement that sets forth the amount of the loan or credit and the terms and conditions on which it is made. If IBRD makes a loan to an entity other than the member country concerned, it enters into a Guarantee Agreement with the member, which sets forth the member's contractual obligations as guarantor. Additional undertakings made by the guarantor to facilitate the achievement of the loan's purposes are set forth in the Guarantee Agreement.[14]

If the Bank lends to an entity other than the entity that is responsible for the implementation and operation of the project, it normally enters into a Project Agreement with such entity. The Project Agreement contains the normal covenants of a Loan Agreement concerning the implementation and operation of the project. Whether or not the Bank enters into a Project Agreement, it may require the Borrower to enter into subsidiary agreements with the project implementing entity or other project beneficiary, setting forth the respective obligations of the borrower and such entities with respect to the project. The Bank may also enter into agreements with other entities that have a direct interest in the

[14] A guide to the World Bank/ Washington, D.C.

project or in the achievement of its objectives. These agreements set forth the obligations of such parties with respect to the project.

The undertakings, or covenants, those are included in the contractual documents set out the parties' obligations with clarity and specificity. The covenants are tailored to the specific responsibilities of the contracting party (i.e., borrower, guarantor, or implementing entity). In particular, covenants must not require the party to cause certain actions to be taken by an entity over which it cannot exercise the necessary control. Covenants should cover aspects that are essential for the operation. Covenants must be (a) reasonable in number; (b) realistic and reasonable in substance and in their time horizon and monitorable; and (c) consistent with other covenants with the same parties. The Bank does not stipulate covenants that require the member to enact legislation, and tries to work within existing law to the extent possible. If enactment of particular legislation is necessary to achieve the project's objectives, the appropriate steps to be taken for such enactment should be clearly defined; and such enactment is made a condition of negotiations, Board presentation, effectiveness, or disbursement, rather than a covenant.

A supplemental letter may be used to (a) elaborate on a particular covenant or provisions of the General Conditions; or (b) contain representations made by the borrower, the guarantor, or the implementing entity at the time the loan is made. A supplemental letter specifying the member's obligation to provide information about its financial and economic condition is signed for each loan. A supplemental letter including representations regarding the financial condition of the borrower (other than a member) or party to the Project Agreement is normally signed for each loan. A supplemental letter should not be used to create obligations additional to those reflected in the Loan Agreement.

The Legal Department is responsible for the contractual arrangements of each loan. It also ensures that the contractual documents to which the Bank is a party, or which are entered into for the benefit of the Bank, duly reflect the agreements reached between the parties to the documents.

After the Bank conducts the appraisal and the assessment of the technical, environmental, financial and economic elements of the project, the Bank goes towards the procedure of the signing:[15]

3- <u>Signing</u>

After the project is approved and all the stages are completed, and once the legal agreements are ready for signing, the World Bank invites the borrower and other parties to the legal agreements to the signing, World Bank with the country and lawyer and the representatives of other signing parties to arrange for signing to take place as soon as the requirements for signing are met. The lawyer clears; notice of signing that indicates the time and place of signing to all parties concerned within the Bank.

In preparation for signing, the lawyer finalizes the legal agreements for signing by the representatives of the borrowing/guaranteeing member country, borrower other than a member country, or project implementing entities. Supplemental letters prepared for signing include the following:

(i) For all loans, a Letter on Financial and Economic Data to be signed by the representative of the borrowing/guaranteeing member country

[15] Internet http://www.worldbank.org /htm

(ii) For loans for which the financial condition of a borrower (other than a member country) or party to Project Agreement or other agreement with the Bank is a material factor in the Bank's decision to make the loan, a Letter of Representations, to be signed by a representative of such borrower or other party

(iii) Any special supplemental letters that are specific to the particular loan, to be signed by the borrower, guarantor, or project implementing entities, as appropriate.

If signing is to be held in the country office and the lawyer is unable to attend, the country director, in consultation with the lawyer and World Bank arranges for a Regional staff member to attend and obtain the required signatures. The lawyer arranges for the legal agreements to be sent to the designated staff with instructions on the procedures to be followed for signing. At the signing, the lawyer or designated Regional staff member delivers the signed legal agreements and the appropriate number of copies to the representatives of the borrower, the guarantor, and any other parties to the legal agreements. After the signing, the lawyer sends the originals of the Bank's legal agreements to the Official Documents Files, conformed copies to the country director and the World Bank The country director sends written notification to officials in the country where signing has taken place. The lawyer sends conformed copies of the legal agreements for printing, and the World Bank sends the printed copies to all the parties concerned. [16]

- [16] The World Bank Operational Manual- Bank Procedures (BP. 13.00 February 2002)

The signed loan agreement has no legal significance until it becomes effective and it shall not become effective until the conditions of the effectiveness are satisfied.

CHAPTER THREE

EFFECTIVENESS OF THE LOAN AGREEMENT AND WITHDRAWAL FROM PROCEEDS OF THE LOAN

1- Effectiveness

The signed Loan Agreement and the signed Guarantee Agreement have no legal significance until they becomes effective. They shall not become effective until evidence satisfactory to the Bank that the conditions of effectiveness are satisfied and the Borrower notifies the Bank and evidence shall have been furnished to the Bank. In general, the Borrower shall comply with the conditions of the Loan effectiveness and covenants of the Loan Agreement. Early in project preparation, Bank staff addresses any special country requirements pertaining to effectiveness. Proposed conditions of effectiveness are discussed during project appraisal and described in the Project Appraisal Document or Program Document. The additional conditions are agreed upon during negotiations.

The Conditions Precedent to Effectiveness of Loan Agreement and Guarantee Agreement are stated in Section 12.01 of the General Conditions Applicable to the Loan and Guarantee Agreement 1985

If the conditions of effectiveness are not likely to be met by the original date specified in the legal agreement, the Bank reminds the borrower that the legal agreements will terminate on the date specified unless the borrower requests an extension of the deadline. If the borrower makes such a request, the Bank considers the reasons for the delay and may establish a later effectiveness deadline within the overall 9 months deadline. In exceptional circumstances, the country director may, without a formal request from the borrower, authorize an extension within the overall 9 months deadline.

The Bank prepares, clears with the lawyer and submits to the country director for signature a notice of extension of the deadline for effectiveness, together with a memorandum describing the status of compliance and the reasons for the extension. These documents are cleared by the lawyer and copied to the disbursement officer. When the effectiveness deadline is extended, the Bank requires the borrower, guarantor, and other project implementation entities to fulfill dated covenants whose dates fall before the new effectiveness deadline. These covenants thus become conditions of effectiveness, and the Bank may delay the issuance of the notice of effectiveness until these covenants are complied with.

. In exceptional circumstances, a country department may wish to extend the deadline for signing or effectiveness beyond the 9 month deadline. Before the end of the overall 9 months period, the country director submits to the Bank for approval a memorandum, cleared with the lawyer, proposing a final deadline for signing and/or effectiveness. 17

The memorandum (a) indicates that the borrower is still interested in proceeding with the project; (b) reviews whether the underlying assumptions under which the loan was approved have changed materially; and (c) details any changes that will be required to ensure the project's viability and states when these changes will be made. If an extension of time for signing or effectiveness involves a substantial departure from the conditions under which the loan was originally approved, the Loan Agreement not declared effective until Bank approval of the new conditions is obtained. Following approval, the Loan Agreement is amended, as necessary, to reflect the new agreement with the borrower, guarantor, and other parties involved.[18]

(x) Authorization of the Borrower

Authorization of the Borrower is one of the Conditions Precedent to the effectiveness of Loan and Guarantee Agreement stated in Section 12.01 of the General Conditions Applicable to the Loan and Guarantee

[17] http://www.worldbank.org/html/pic/cas/index.htm
[18] External Debt Reporting and Financial Statements (A guide to the World Bank) WB publication 2003

Agreement 1985, (The Loan Agreement and the Guarantee Agreement shall not become effective until evidence satisfactory to the Bank shall have been furnished to the Bank: that the execution and delivery of the Loan Agreement and the Guarantee Agreement on behalf of the Borrower and the Guarantor have been duly authorized or ratified by all necessary governmental and corporate action)

The Borrower shall furnish to the Bank sufficient evidence of the authority of the person or persons, who will, on behalf of the Borrower, take any action or execute any documents required or permitted to be taken or executed by the Borrower under the Loan Agreement, and the authenticated specimen signature of each such person. IBRD under its Articles of Agreement may lend to: (a) a member country; (b) a political subdivision of a member; and (c) any business, industrial, and agricultural enterprise in the territories of a member.

(ii) Legal Opinions

As part of the evidence to be furnished pursuant to conditions Precedent to Effectiveness of Loan Agreement and Guarantee Agreement, there shall be furnished to the Bank an opinion or opinions satisfactory to the Bank of counsel acceptable to the Bank or, if the Bank shall so request, a certificate satisfactory to the Bank of a competent official of the member of the Bank which is the Borrower or the Guarantor showing:

(a) On behalf of the Borrower, that the Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of the Borrower and is legally binding upon the Borrower in accordance with its terms;

(b) On behalf of the Guarantor, that the Guarantee Agreement has been duly authorized or ratified by, and executed and delivered on behalf of the Guarantor and is legally binding upon the Guarantor in accordance with its terms; and

(c) Such other matters as shall be specified in the Loan Agreement or as shall be reasonably requested by the Bank in connection therewith[19] e.g. establishment of a unity

The Borrower and the Bank reach agreement on the nature and content of the necessary legal opinions in advance of the date set for effectiveness, and preferably during negotiations. The Bank monitors the borrower's progress toward compliance with the conditions of effectiveness to ensure that the Loan Agreement becomes effective as early as possible, not later than the specified date, usually 90 days after it signed.

When the country director is satisfied that the conditions have been met, the lawyer verifies the legal aspects of compliance with the conditions of effectiveness, including the legal opinions confirming that all the legal agreements have been duly authorized or ratified. In a note prepared by the Bank, the country director informs the borrower

[19] the General Conditions Applicable to the Loan and Guarantee Agreement 1985 Section 12.02

and all the other parties to the Loan Agreement that the Bank (a) accepts the required evidence of compliance with the conditions of effectiveness, and (b) declares the legal agreements effective. The notice is copied to the disbursement officer[20].

In Sudan the legal opinion is issued by the Ministry of Justice contains that, this agreement is consistent with the Sudanese laws and accordingly it is binding on Sudan Government.

(2) Withdrawal of the Proceeds of the Loan

When the Loan Agreement becomes effective, the Borrower is entitled to withdraw from the loan according to the provisions of the agreement and the General Conditions.

(i) General Considerations

The Borrower is responsible for preparing and implementing the project, and therefore for selecting the consultant, awarding and subsequently administering the contract for the procurement of the goods While the specific rules and procedures to be followed for employing consultants and the contractors depend on the circumstances of the particular case, five main considerations guide the Bank's policy on the selection process are as follow:

(a) The need for high-quality services

[20] A guide to the World Bank/ Washington, D.C

(b) The need for economy and efficiency

(c) The need to give qualified consultants and the contractors from all eligible countries an opportunity to compete in providing the services financed by the Bank

(d) The Bank's interest in encouraging the development and use of national consultants in its developing member countries

(e) The importance of transparency in the selection process. The Bank considers that, in the majority of cases, these considerations can best be addressed through International Competitive Bidding (I.C.B) [21]

In addition, the World Bank has five basic concerns that govern its procurement policies to ensure that the goods and services needed to carry out the project are procured with due attention to economy and efficiency; to ensure that the loan is used to buy only those goods and services needed to carry out the project; to give all qualified bidders from the Bank's member countries an equal opportunity to compete for Bank-financed contracts; to encourage development of local contractors and manufacturers in borrowing countries; and to ensure that the procurement process is transparent.

Borrowing countries are required to follow the Bank's rules and procedures for the procurement of goods, works, and consultants under Bank-financed loans. Executing agencies in the borrowing country are responsible for all aspects of the procurement process, including preparation of bid documents, public advertisement, pre-qualification of

[21] Internet www.worldbank.org

firms, short listing, bid evaluation, contract negotiations and award, contract supervision and payment.

For the procurement of goods, equipment, and works, the borrower will issue a General Procurement Notice (GPN) in at least one national newspaper of the borrowing country. Interested companies should express interest directly to the executing agency. The executing agency will notify those companies that expressed interest when the invitations to bid for specific contracts (Specific Procurement Notice or SPN) are published in major local newspaper. Contracts are awarded to the lowest evaluated bidder, regardless of nationality, based on the evaluation criteria set forth in the bid documents. The lowest evaluated bid may not necessarily be the lowest priced bid. Other factors such as performance, availability of after-sale services and spare parts, training, maintenance and operating costs are often taken into account. A margin of preference can be granted to bidders from the borrowing country, and for manufactured goods with a minimum of 30% domestic content. The bidding documents will indicate any preference to be granted and the bid evaluation criteria.

For consulting assignments, the borrower issues a General Procurement Notice. All contracts above US$200,000 are advertised in a national newspaper of the borrowing country. Interested consultants should express interest directly to the executing agency. The normal procedure for selection of consulting services is through a short list prepared by the executing agency. Consultant proposals are evaluated, in the majority of cases, on the quality of the proposal and to a much lesser degree on the cost of the services to be provided (Quality and Cost-Based Selection) (QCBS)).

Technical and financial proposals must be submitted in separate sealed envelopes and are evaluated in two stages according to a predefined point system. The firm obtaining the highest total score shall be invited for negotiations.

(ii) General Withdrawal Arrangements

The Bank's Articles of Agreement require ensuring that loan proceeds are used only for the purposes set out in the loan documents and that the financed goods and services are procured with due regard to economy and efficiency and are suitable and satisfactory for the project. The Articles further stipulate that funds may be withdrawn only to meet project expenses as they fall due. The disbursement procedures described below have been designed to ensure compliance with the Articles.[22]

(iii) Application for Withdrawal

The Application for Withdrawal-Form is used for the following:

(a) Reimbursement of payment(s) already made by the borrower from its own resources

(b) Advance to a Special Account

(c) Replenishment to a Special Account

(d) Direct payment to a third party for amounts due

[22] Negotiation of Specific Clauses of Loan Agreements, Vinod K. Agarwal (Article Reference: Document No.10, May 2000).

If a withdrawal is required for payments already made, reimbursement goes to the borrower or the project entity (or to the Special Account) depending on the source from which the payment was made. Supporting documentation provides evidence of payment. For direct payment, the payment goes to a third party, and supporting documentation shows evidence of amounts due. When only one or two items are covered by an application-typically the case for direct payments to suppliers-the Application for Withdrawal and supporting documents are submitted to the Bank without summary sheets. Usually, however, requests for reimbursement involve several items from one or more categories. In these cases, summary sheets are used.

Applications for Withdrawal should be submitted to the Bank in duplicate for instructions on completing the form. Payment instructions must show the complete name and address of the payee's bank, to ensure proper identification of the payment. In addition, if the payee's bank is not located in the country of the currency of payment, the name and address of the bank's correspondent in that country should be provided. Separate applications are required for each currency requested. Normally electronic transfer makes disbursements to banks.

(iv) Withdrawal of Loan

The borrower shall be entitled to withdraw from the loan Account amounts expended or, if the Bank shall so agree, amount to be expended for the project in accordance with the provisions of the Loan Agreement and of the General Conditions. Except as the bank and the Borrower shall otherwise agree, no withdrawals shall be made on account of expenditures in the territories of any country which is not a member of the Bank or for goods produced in, or service supplied from such territories

Upon the borrower's request and upon such terms and conditions as shall be agreed upon between the bank and the borrower/the bank may enter into special commitments in writing to pay amounts to the borrower or other in respect of expenditures to be financed out of the proceeds of the loan notwithstanding any subsequent suspension or cancellation by the bank or the borrower. When the borrower shall desire to withdraw any amount from the loan account or to request the bank to enter into a special commitment pursuant to section 5 (2) of The Bank's Article of Agreement: the borrower shall deliver to the bank a written application in such form and containing such statement and agreement as the bank shall reasonably request application for withdrawal including the documentation required pursuant to this article shall be made promptly in relation to expenditures for the project.

If, before the Effective Date, any event shall have occurred which would have entitled the Bank to suspend the right of the Borrower to make withdrawals from the Loan Account if the Loan Agreement had been effective, or the Bank shall have determined that an extraordinary situation exists, the Bank may postpone the dispatch of the notice until such event or events or situation shall have ceased to exist.[23]

(v) Withdrawal Procedures

Three procedures are available to apply for project aid disbursement from the development partner: reimbursement/replenishment into special account; direct payment;

[23] World Wide Web: http://Wbln0018.worldbank.org

payment to commercial bank under special commitment. Furthermore, several conditions are to be fulfilled before submitting withdrawal application weather the expenditure eligible or not; 1-signed by authorized signature: 2-complete and accurate; 3-for a single payee; 4-in a single currency. Appropriate supporting documents need to accompany with the withdrawal application supplier's consultant's invoices, or summary statement of works performed; evidence of payment documents of shipment i.e. bill of lading commercial invoice.

(vi) Means of withdrawal:

Regarding the ways of withdrawal, there are three means for withdrawal from the loan these are:

(a) Disbursement:

Disbursement is one of the important means of withdrawal of the loan; we will discuss the relevant issue of the disbursement as follows:

Firstly: Requirements of Disbursement

To be eligible for payment, all applications for disbursement require the following:

- Compliance with the loan conditions
- Submission of the specimen signature of the person(s) the borrower authorized to sign the application

- Submission of an original application (photocopy or facsimile not accepted) plus one copy signed by an authorized representative, which indicates the amount to be paid along with full instructions for payment

- Documentation (including evidence of procurement) showing the eligibility of the goods, works, or services

- Sufficient funds in the specific disbursement category of the loan account to cover the payment or commitment

- Alterations on application forms should be kept to a minimum, and authorized officials should initial any material alterations.

- After the Bank approves each withdrawal application, based on the borrower's request it will either:

- Disburse to the borrower or a specified third party, or issue a Special Commitment to a commercial bank.

- If for any reason an application or part of it is not approved, the Bank promptly notifies the borrower and gives the reason for rejection

For each loan, the Bank stipulates a minimum application value in the disbursement letter. This value varies among loans depending on the size of the loan and the nature of the project. Borrowers should aggregate eligible expenditures until they reach the minimum value for application. The absolute minimum for any loan is normally US$20,000 equivalent. [24]

---

[24] World Bank Annual Report 2003

Secondly: Disbursement Procedures

Two disbursement procedures may be used for withdrawing funds from a loan account: (i) withdrawal, and (ii) special commitment procedure. Payment may be made to the borrower or directly to a third party (usually to a supplier or consultant) for goods, works, and services, using an Application for Withdrawal). Alternatively, payment may be made to a commercial bank for expenditures against a World Bank Special Commitment covering a commercial bank's letter of credit, using an application for a Special Commitment Both procedures require supporting evidence that the funds are used properly according to the loan agreement. Borrowers frequently use a combination of both procedures for disbursements from a loan account.

Thirdly: Avoidance Delays of Disbursement

Borrowers and the Bank both want applications to be processed as quickly as possible. The Bank has been able to minimize its processing time, but incomplete or inaccurate withdrawal applications cause many delays. The detailed instructions should be followed carefully. To further expedite the disbursement of funds, borrowers should design internal procedures, which provide prompt access to loan funds. To avoid the most common delays in disbursement:

- Forward copies of contracts to the Bank's task manager promptly after they are signed.

- Cite the date of the Bank's "no objection" notice for contracts above the procurement prior review limits specified in the loan agreement

- Make sure that applications are signed by authorized officials. Be sure to advise the Bank of changes in authorized signatories.

- Be sure to identify completely the currency of payment. (More than 25 countries use the dollar sign.) include complete payment instructions.

- Ensure consistency between information on the application and supporting documents.

- Include all necessary supporting documents

- Include adequately reconciled bank statements to support requests for replenishment of Special Accounts

- Initiate timely action to reallocate funds between categories, or to extend loan closing dates where necessary [25]

(b) Letter of Credit (L/C)

To finance the purchase of goods under a project, the borrower frequently needs to open a letter of credit. If a commercial bank is unwilling to open, advice, or confirm the letter of credit without some guarantee or security, the Bank, at the request of the borrower, can provide the commercial bank with the guarantee it requires in the form

[25] Simplifying Disbursements under Structural and Sectoral Adjustment Loans and Credits, R95-225, December 7, 1995.

of a Special Commitment. This procedure normally covers major contracts for imported goods. Under this procedure the borrower asks the Bank to issue to the commercial bank, normally in the supplier's country, its Special Commitment agreeing to reimburse that bank for payments made or to be made under the letter of credit. Such commitments by the Bank are irrevocable.

A letter of credit may be revocable or irrevocable - a document, consisting of specific instructions by a buyer of goods, that is issued by a bank to the seller who is authorized to draw a specified sum of money under certain conditions, i.e., the receipt by the bank of certain documents within a given time. An irrevocable L/C provides guarantee by the issuing bank in the event that all terms and conditions are met by the buyer (or drawee). A revocable L/C can be cancelled or altered by the drawee after it has been issued by drawee's bank. A confirmed L/C is one issued by a foreign bank which is validated or guaranteed by another Bank in the case of default by the foreign buyer or bank.

Though the Bank loan may later be suspended or cancelled. The Bank charges no fee for this commitments.The Bank does not issue Special Commitments for letters of credit with validity beyond the loan closing date, or for letters of credit whose validity has already lapsed. Similarly, the Bank will not approve an amendment to a letter of credit covered by a Special Commitment if the expiry date is later than the loan closing date. Even where letters of credit are expected to be covered by Special Commitments, it is prudent for suppliers to obtain export credit insurance coverage.

(c) Reimbursement

Retrospective payment, in contrast to prospective payments, a payment scheme whose level is determined only after services have been provided. Remuneration of providers on the basis of activities or costs e.g. Retrospective payments was made to hospitals for their services on a per diem basis. [26]

(vii) Advance Contracting and Retroactive Financing

In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's agreement, wish to proceed with the selection of consultants before the related Bank loan is signed. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Guidelines, and the Bank's normal review process shall be followed. A Borrower undertakes such advance contracting at its own risk, and any "no objection" issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

---

[26] . *Guidelines: Procurement under IBRD Loans and IDA Credits* (Washington, D.C.: World Bank, 1995 [revised January and August, 1996]),

(viii) Action on Behalf of the Borrower or Guarantor

Any action required or permitted to be taken, and any documents required or permitted to be executed, pursuant to the Loan Agreement or the Guarantee Agreement, on behalf of the Borrower or the Guarantor, may be taken or executed by the representative of the Borrower or the Guarantor designated in the Loan Agreement or the Guarantee Agreement for the purposes of this Section or any person thereunto authorized in writing by such representative. Any modification or amplification of the provisions of the Loan Agreement or the Guarantee Agreement may be agreed to on behalf of the Borrower or the Guarantor by written instrument executed on behalf of the Borrower or the Guarantor by the representative so designated or any person thereunto authorized in writing by such representative; provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Loan Agreement or of the Guarantor under the Guarantee Agreement.

The Bank may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of the Loan Agreement or the Guarantee Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower or of the Guarantor.[27]

CHAPTER FOUR

[27] The World Bank Operational Manual- Bank Procedures (BP. 13.00 February 2002)

SUSPENSION AND CANCELLATION

OF THE LOAN AGREEMENT

The Borrower is entitled to withdraw from the loan according to the term of the Loan Agreement and the Bank is authorized to suspend the withdrawal from the loan in some cases, regarding this issue we will discuss the main factors of the suspension:

1- Suspension:

The General Conditions authorize the Bank to suspend, in whole or in part, the right of the borrower to make withdrawals from the loan account when the events set out or referred to in Sections 6.02 and 7.01(f) and (g) from the General Conditions Applicable to Loan And Guarantee Agreement 1985, occur and are continuing. These events pertain either to the failure of the borrower or other contracting parties to fulfill obligations unrelated to payment under a Loan Agreement or to the borrower's failure to make payments as required i.e. failure of the borrower to fulfill the financial obligations or covenants:

(i) Covenants

Every loan agreement contains certain covenants. They concern both the Borrower and the Lender. It is necessary that every Borrower must examine thoroughly these covenants to ensure that it can comply with them according to their terms and these covenants do not unduly restrict its commercial, financial and operational activities. If any covenant or its language is not acceptable to the Borrower, it may be amended through negotiations or deleted.

The Covenants are generally in the nature of undertakings given by a borrower for its future conduct till the repayment of loan is over in accordance with the conditions of the loan agreement. The Borrower undertakes, through the covenants, that it will not act in a manner prejudicial to the interest of the Lender during the subsistence of the loan agreement. In other words, they are the restrictions imposed on certain activities of the Borrower during the subsistence of the loan agreement.

The Borrower is required to periodically submit to the Lender various details like information of major transactions likely to have impact on the financial capacity of the Borrower, debt equity ratio, encumbrances created by him on his assets, etc in order to satisfy the Lender about the safety of his loan. The covenants have to remain valid and in force from the date of the loan agreement for so long as any amount is or may be outstanding under it. Through these covenants, the lending institutions also monitor the business activities of the Borrower and the progress made by him in the implementation of the project for which the loan was taken from the beginning to the end till the loan is repaid.

They impose an obligation on the Borrower to regularly and punctually submit progress report of the Project to the Lender. The covenants also help the lender in assessing the financial health of the Borrower and his capacity for the repayment of loan instalments as and when they fall due. There is no fixed list of the covenants that may be included in a loan agreement. Similarly, the language and contents of the covenants also vary from agreement to agreement.

The restrictive nature of the covenants also varies depending on the status of the Borrower. The selection of covenants in a loan agreement depends upon the business or nature of the borrower, the purpose of the loan, and the Borrower's financial condition, etc. In the case of a sovereign Borrower, the covenants are much less restrictive. The covenants can be divided into two categories, namely Positive covenants and Negative covenants. Under the Positive covenants the Borrower is required to furnish such information to the Lender as may be specified in the covenant. Negative covenants prohibit the Borrower from doing certain acts, such as transferring properties and assets, granting or issuing security and incurring indebtedness, etc. which are considered prejudicial to the interest of the Lenders.

(ii) Financial Obligations

When we talk of financial obligations in the context of a loan agreement, we talk of financial obligations of Borrowers. Generally, we do not talk of financial obligations of lenders. The reason being that where the loan agreement provides or the payment of the loan amount in lump sum or in one installment, and once the loan amount is paid by the lender to the Borrower, has fully performed his financial obligation under that loan agreement and no financial obligation of the lender remains to be performed.

On the other hand, if the loan agreement provides for the payment of loan amount to the Borrower in instalments, some obligations of the lender remains to be performed on subsequent dates. But it is presumed that a lender would be in a position to discharge his obligations under the loan agreement. Therefore, no provision is ever added in a loan agreement covering the situation of non-payment of loan installment by a lender. [28]

Thus, in a loan agreement, we only talk of financial obligations of the Borrowers and not of the lenders. These financial obligations can be discussed in two stages. The first stage is the taking of loan from the lender and the second stage is repayment of loan amount and the payment of interest and other dues under the loan agreement. So far as the first stage is concerned, a loan agreement normally provides the disbursement date or dates and last date for the draw down. Therefore, it is a financial obligation of the Borrower to ensure that he complies with all the conditions precedent within the time prescribed in the loan agreement, if any, and draws the money before the expiry of the last date fixed for its withdrawal.

Normally, in a loan agreement a Borrower assumes three kinds of financial obligations. The first financial obligation is the repayment of the loan amount in accordance with the terms and conditions of the loan agreement. The second obligation is the payment of interest amount as and when the same falls due and payable to the Lender. The third obligation is the payment of other sums due to the Lenders under the loan agreement.

So far as the first obligation is concerned, the loan agreements clearly specify the terms for the repayment of the principal amount by the Borrower to the Lender. The principal amount may be repayable in one installment on specified date after the expiry of the loan period or it may be repayable in a number of

---

[28]General Conditions Applicable To Loan And Guarantee Agreement (Washington, D.C. IBRD, 1985).

installments. If the Borrower has a choice or the terms of repayment of the principal are negotiable, the repayment of the principal amount in installments should always be preferred, for in certain cases; the repayment of the entire loan amount in one installment may be difficult for a Borrower. If the principal amount is repayable in instalments, it may be ensured that the date for the repayment of each installment and the amount to be repaid is specified in an Article in the loan agreement or in a schedule attached to the loan agreement. The instalments should be spread over a period of time.

The second financial obligation of the Borrower is the payment of interest amount to the Lender. The first aspect of this obligation is the determination of the rate of interest on the loan amount. There is no fixed or definite rule regarding determination of the rate of interest in a loan agreement. The rate of interest depends on many factors, such as the purpose of loan, the duration of repayment period, the nature of borrower, etc…

(iii) Obligations and Conditions during Suspension

When the Bank suspends disbursements, the borrower and any other entities with which the Bank may have agreements under the project continues to be bound by their other obligations. Accordingly, the Bank continues to review procurement and other documents submitted by the borrower and approve particular contracts as if no suspension had taken place. [29]

(iv) Suspension Unrelated to Payment

When an event unrelated to payment constitutes a basis for suspension, the Bank determines case by case whether to suspend disbursements on a loan. The Bank may decide to suspend disbursements as of a specified date, or to warn the borrower that suspension will occur unless the borrower takes certain remedial actions by a specified date. Most, but not all, suspensions that are unrelated to payment occur because a borrower or other

[29] **http://www.worldbank.org/fps**

contracting party fails to carry out covenants under a Loan, Project, or other relevant Agreement.

(v) Payment Related to Suspension:

When a borrower fails to make payment on any loan due to the Bank, the Bank has an option to suspend disbursements immediately on all loans. The Bank's current policy, however, is to exercise this option through a graduated approach with warning at every step:

(a) When a payment becomes 30 days overdue, no new loans to or to be guaranteed by the borrower in default are presented to the Board for approval, no agreements with the borrower related to previously approved loans are signed, and the borrower loses its eligibility for any waiver of interest charges in effect at the time. To avoid the Bank's proceeding further on the notification process leading to suspension, the borrower must pay all payments overdue or have been due for less than 30 days; however, nonpayment of amounts that Bank to continue proceeding towards suspension.

(b) When a loan payment becomes 45 days overdue, the provisions cited in (a) above regarding Board presentation, loan signing, and interest waiver eligibility apply to all borrowers in the country. In addition, to avoid the Bank's proceeding further on the notification process leading to suspension, the country as borrower or guarantor and all borrowers in the country must pay not only all payments overdue by 30 days or more, but also all payments due as of the date the Bank receives payment, regardless of the number of days since they fell due.

(c) When a loan payment becomes 60 days overdue, the Bank suspends disbursements on all loans to or guaranteed by the country. In addition, the restrictions cited in (b) above apply until the suspension is lifted. [30]

(vi) Use of Special Accounts

When loans for which disbursements are suspended involve special accounts with available balances, the borrower may continue to use these funds to meet eligible expenditures under the project. However, the Bank does not make initial deposits or replenish these special accounts after a threat or notice of suspension has been issued or during suspension; rather, it applies amounts claimed under applications for special account replenishment to the recovery of the special account advance. Under a partial suspension, all special account replenishment applications are used to recover the advance until the share of the advance attributable to the suspended portion of the loan has been recovered.

- [30] A guide to the World Bank/ Washington, D.C.

(vii) Procedures for Suspension

(a) Task Manager (TM) consults with the appropriate Sector/ Country Operations Division chief, lawyer, and disbursement officer; assesses the situation; recommends action to the Country Department (CD) director.

(b) Country Department director decides--for an entire loan, part of a loan, or several loans, Project Preparation Facility (PPF) advances, and Institutional Development Fund (IDF) grants--whether to recommend (a) threaten suspension, or (b) suspend.

(c) In a memorandum cleared by the Assistant General Counsel, Operations, the Country Department director recommends to the Regional Vice President (RVP) whether to threaten suspension or suspend. The Regional Vice President takes the decision and notifies Senior Vice President and General Counsel Vice President and Controller), and the Managing Director (MD), operations, concerned of action to be taken.

(d) If the Regional Vice President decides to threaten suspension: Country Department director consults Regional vice president if any cofinanciers are involved, clears the notice of threatened suspension with the lawyer and the disbursement officer, and advises the executive director concerned, Vice President, Resource Mobilization and Cofinancing and any cofinanciers. The notice, signed by the Country Department director, specifies the loan covenants with which the borrower has failed to comply and outlines the actions necessary to avoid suspension and their timing. It also states that as of the date of the notice, the Bank will not make initial deposits into or replenish the special account.

(e) If the Regional Vice President decides, without prior threat, to suspend, or if a threat of suspension is carried out: The Country

Department director clears the draft notice of suspension with the lawyer and disbursement officer and advises the Managing Director, Vice President, Resource Mobilization and Cofinancing, and cofinanciers of the Bank's decision to suspend. The notice, signed by the Regional Vice President, is sent to the borrower and copied to any executing agencies and guarantor, [31]

(viii) Items Exempted from Suspension

The Bank exempts from suspension amounts involved in special commitments the Bank enters into under Section 5.02 of the General Conditions. In addition, these amounts are not subject to Bank or borrower cancellation. The Bank also exempts from suspension payments for eligible expenditures with respect to:

(a) Technical and consultant services (including payment to seconded Bank and UN agency staff) and training/ fellowships whose interruption would disrupt critical technical work or cause personal hardship

(b) Contracts signed prior to suspension for goods supplied, services provided, and works carried out within 60 days after the suspension date, provided that the Bank receives withdrawal applications within 90 days after the suspension date

(c) Interest and other charges payable to the Bank out of the loan proceeds; and

[31] World Wide Web: http://Wbln0018.worldbank.org

(d) Other items whose exemption is, in the Bank's judgment, in the interest of the project, including items whose exemption will (i) minimize delays and cost in the event that the suspension is lifted, or (ii) permit an orderly termination of the project

Except amounts involved in special commitments, expenditures that are exempted from suspension are paid by the borrower out of the balance outstanding in the special account applicable to those expenditures until the account is exhausted. Only then are expenditures submitted for Bank payment out of the loan account.

(ix) Procedures for Items Exempt from Suspension

(a) Task Manager consults with the appropriate Country Operations Division chief, lawyer, and disbursement officer; assesses the situation; recommends action to the Country Department director. For exemptions under technical and consultant services (including payment to seconded Bank and UN agency staff) and training/ fellowships whose interruption would disrupt critical technical work or cause personal hardship, the Country Department director takes the necessary decision.

(b) For exemptions requested under contracts signed prior to suspension for goods supplied, services provided, and works carried out within 60 days after the suspension date, provided that the Bank receives withdrawal applications within 90 days after the suspension date , the Country Department director sends the request to the Director and copies to the Regional Vice President.

(c) For exemptions requested under other items whose exemption is, in the Bank's judgment, in the interest of the project, including items whose exemption will (i) minimize delays and cost in the event that the suspension is lifted, or (ii) permit an orderly termination of the project , the Country Department director sends the request to the Managing Director and copies the Regional Vice President.

(d) After Country Department director or Managing Director takes decision, the Country Department director makes notification of action.

(x) Notice of Impending Suspension

For notifications to be issued to the borrower and the Board when payments are overdue, or when default occurs that is not payment-related. Notification of impending suspension sent when payment is 45 days overdue

Notification of impending suspension may be temporarily delayed when

(a) The amount overdue by 45 days or more totals less than $50,000, no single loan or borrower in the country has a cumulative overdue total of $20,000 or more, and the amount overdue is not the entire amount billed

(b) The Bank has received substantial payments on the overdue amount and clear evidence is provided that the balance will be paid shortly.

(c) The borrower has raised billing queries that, in the Vice President and Controller's judgment, require investigation (but such queries must be received before and remain unresolved by the due date). Only the amount being queried is exempted; the remainder must be paid on time.

Payment delay due to the unavailability of currency on the international financial markets is not a valid reason for delay in sending the notice of impending suspension; borrowers are sent bills more than six weeks before the due date, and before the notice is sent they have an additional 45 days after the due date to purchase the required currencies. Under the currency purchase agreement, the Bank allows borrowers to make payment in one of six major currencies. Borrowers are encouraged to use this service. [32]

(xi) Lifting of Suspension

By notice to the borrower, suspension is lifted

(a) For a payment-related suspension, when the Bank has received all the overdue payments specified in the suspension notice and those falling due since the suspension date, and

(b) For all other suspensions, when the events that give rise to the suspension cease to exist.

(xii) Procedure for Lifting of Suspension

(a) Country Department director consults the lawyer and disbursement officer and notifies the Regional Vice President, who decides whether to lift suspension.

- [32] The World Bank Operational Manual- Bank Procedures (BP. 13.00 February 2002)

(b) Country Department director clears with the lawyer and disbursement officer a draft notice lifting suspension. The notice signed by the Regional Vice President, is sent to the borrower and copied to the guarantor, cofinanciers, Managing Director, executive director, and Vice President, Resource Mobilization and Cofinancing.

(c) Country Department director prepares a notice to the Board, which is cleared by the Regional Vice President.

2- <u>Cancellations</u>

The Bank has the right of cancellation of the loan as well as the right of suspension, according to the legal agreement and the general conditions.

Cancellation Following Suspension Section 6.03(a) of the General Conditions provides that if a borrower's right to make withdrawals has been suspended for 30 days continuously, the Bank may cancel the part of the loan that was subject to the suspension.

(i) Cancellation following Suspension

(a) After at least 30 days of continuous suspension, the task manager prepares a memorandum recommending cancellation and obtains Regional Vice President and notifies Senior Vice President and General Counsel approval. The recommendations include a draft cancellation notice cleared with the lawyer and disbursement officer, and a notice informing the Board of the cancellation. Subject to Regional Vice President and notifies Senior Vice President and General Counsel approval, the Country Department director signs the notice of cancellation, which is copied to the loan accounting officer, Resource Mobilization and Cofinancing.

(b) Regional Vice President informs the Managing Director and executive director. SEC issues the notice informing the Board of the cancellation.

(ii) Cancellations by the Borrower

The borrower cancels by giving notice (signed by the borrower representative authorized under the Loan Agreement in the form of a telex or letter. Though Bank approvals are not required, the Bank acknowledges the cancellation request and dates the cancellation as effective on the day the request was received., the task manager prepares the acknowledgment, which is cleared by the disbursement officer and lawyer and signed by the sector/country operations division chief (the appropriate Sector/ Country Operations Division chief) or the country department director. The task manager also prepares a revised withdrawal schedule, which is cleared by the disbursement officer and the lawyer and signed by the appropriate Sector/ Country Operations Division chief. For IBRD loans (not IDA credits), the loan accounting officer prepares a revised amortization schedule. [33]

- [33] Guidelines: Procurement under IBRD Loans and IDA Credits (Washington, D.C.: World Bank, 1995 revised January and August, 1996)

(iii) Cancellations By the Bank

The Task Manager prepares a memorandum recommending cancellation and attaches a cancellation notice to the borrower, both documents cleared by the lawyer and disbursement officer. The Country Department director signs the cancellation notice. If amendments to the Loan Agreement require only changing amounts allocated to the various loan categories, the Task Manager prepares a revised withdrawal schedule reflecting the cancellation. The lawyer and the disbursement officer clear the revised withdrawal schedule. The appropriate Sector/ Country Operations Division chief signs it and transmits it to the borrower. A cancellation by the Bank normally takes effect on the date of the notice. An exception occurs when the remaining balance in the loan account is canceled after the closing date.

Cancellations of the remaining loan balance are normally backdated to the latest of (a) the closing date; (b) the final date for receipt of withdrawal applications by the Bank; (c) the final date the loan account was charged for a disbursement or credited for a refund. Exceptions to this procedure are approved by the RVP in consultation with the Loan Department Director. The Country Department notifies the Secretary's Department of the cancellation for the Monthly Report to the Executive Directors on Bank and IDA Operations.

Once the decision to cancel has been communicated to the borrower, it is reflected for IBRD loans in a revised amortization schedule. The loan accounting officer prepares the necessary revisions to the schedule, and the appropriate Sector/ Country Operations Division chief transmits it to the borrower, with a cover letter prepared by the task manager and cleared by the loan accounting officer and lawyer. For this purpose the canceled loan amount is as a rule prorated to the remaining loan principal maturities (Section 6.05 of the General Conditions applicable to Loan and Guarantee Agreements Dated May 30, 1995), except as the Bank and the Borrower shall otherwise agree, any cancellation shall be applied *pro rata* to the several maturities of the principal amount of the Loan which shall mature after the date of such cancellation and shall not have been therefore sold or agreed to be sold by the Bank; provided that the provisions of this Section shall not apply in cases where the Loan Agreement provides for the determination of a separate amortization schedule for specified disbursed amounts of the principal of the Loan as such disbursed amounts are withdrawn from the Loan Account.

The amortization of IDA credits pertaining to the repayment of the amount withdrawn and outstanding is specified as a percentage of the principal amount of the credit, so that no revision is required. For projects cofinanced by other lenders, the Vice President, cofinancing and Financial Advisory Services, is consulted at an early stage of processing about any proposed cancellation and also any communications to cofinanciers regarding such cancellation. Before the Bank communicates its decision to the borrower, the Task Manager contacts project cofinanciers having formal arrangements with the Bank (e.g., through a cofinancing agreement, a memorandum of understanding, or a letter of administration concerning the project) to notify them of the cancellation and/or consult with them in accordance with the cofinancing agreement.

(ix) Case Study:

The World Bank Lifts Cancellation Warning Of Loan Over Ghazi Barotha Project

ISLAMABAD, 7th May 2003 (NNI): The World Bank has lifted the cancellation warning of loan due to the progress on resettlement and environment issues pertaining to Ghazi Barotha Hydropower Project. (GBHP). The warning was issued in December last in which the Bank had said that failure to comply with the project agreements could result in the suspension of disbursement and possible cancellation of the loan. In a letter delivered Tuesday to the Secretary of the Economic Affairs Division here, the World Bank Country Director, John Wall noted that the Bank was lifting the loan cancellation warning in view of the satisfactory progress made in areas such as the implementation of the Resettlement Action Plan, environmental aspects of the GBHP, including development of environment management capacity and outstanding resettlement question related to the Tarbela Dam. Ministry of Water and Power and the GBHP authorities have made encouraging progress in mitigating the concerns raised by the World Bank with regard to the implementation of outstanding issues, especially those pertaining to Resettlement Action Plan and compensation issues. The World Bank has expressed the hope that the project will soon start playing an important role in Pakistan's development. It further said that in addition to action already taken, the government of Pakistan has provided a dated timetable for fully resolving all the issues, and that adherence to this timetable would be critical for continued Bank support.[34]

CONCLUSION

The World Bank is one of the largest sources of development assistance; it aims to help countries to reduce poverty by making long-term loans to governments. It works in more than 100 countries with the primary focus on helping the poorest people and the poorest countries. The central purpose of the World Bank is to facilitate investment of capital for productive purposes.

The function of the World Bank has always been helping the underprivileged and people in hardship. It was not created with the needs of the third World in mind however. At its inception the most immediate goal of the World Bank was to help rebuild Europe after the Second World War. It was committed to growth through investment of infrastructure. Much investment was made in an effort to stimulate

[34] WB lifts cancellation warning of loan over Ghazi Barotha project. http://www.worldbank.org/pk.

manufacturing, transportation, and energy. As Europe gained strength however, the World Bank began to turn its interests elsewhere. It had become evident that many of the poorer countries of the world were unable to profit from the policies exercised by the World Bank. They had great difficulties in creating economic growth through strict single project loans. The World Bank began to attempt to encourage better economic planning and by the middle of the 1950's its focus had become the industrial growth of still developing nations. It was not until the early 1970's, however, that the bank began to try its hand at poverty alleviation. The World Bank began to make even more concerted efforts to reach those portions of the population that were not benefiting from the loans their country received. Their new target became the rural poor, and the new catch phrases that the World Bank began to use were redistribution of growth and meeting basic human needs. They tried to implement policies that would directly reach the people that most needed aid with programs in nutrition, education, and health care[35]

The World Bank is a multilateral institution that lends money to governments and government agencies for development projects according to specific General Conditions, which are binding on both the World Bank and the Borrower. These General Conditions set forth certain terms and conditions generally applicable to loans made by the Bank. These Conditions are applied to any loan agreement provided for any such loan and to any guarantee agreement.

The loan agreements provided that the General Conditions applicable to them and these General Conditions also provided that they are applied to every loan and guarantee agreement.

---

[35] Burkett, Paul. Poverty Crisis in the Third World: The Contradicitons of World Bank Poverty. International Journal of Health Services, vol.21, no.3, pp.471-479. 1991

The borrower is responsible for preparing a project to have a loan. The responsibility for preparing a project to have a loan, the implementation of the project, and therefore for the award and administration of contracts under the project, rests with the Borrower.[36] The Bank, for its part, is required by its Articles of Agreement to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

The main purpose of the General Conditions is to inform those carrying out a project, that it is financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD) or a credit from the International Development Association (IDA), of the arrangements to be made for procuring the goods and works (including related services) required for the project.

The Loan Agreement governs the legal relationships between the Borrower and the Bank, and also governs the general rights and obligations of the Borrower. No party other than the parties to the Loan Agreement shall derive any rights there from or have any claim to loan proceeds.

The General Conditions are applicable to cover the general relations between the Borrower and the Bank, and it explains the general procedure of the singing of the loan agreement and its effectiveness, withdrawal from proceeds of the loan, suspension and cancellation of the Loan Agreement and other different aspects. The General Conditions also clarify the different stages of executing the loan Agreements.

The provisions of the General Conditions are stated so clearly and in details to keep the relation between the World Bank and the Borrower

[36] In some cases, the Borrower acts only as an intermediary, and the project is carried out by another agency or entity. References in these Guidelines to the Borrower include such agencies and entities, as well as Sub-Borrowers under on-lending arrangements.

countries very clear and in a manner that would facilitate the executing of the Loan Agreement.

The General Conditions generally are non-negotiable, in the sense that the Borrowers countries has no right to negotiate or to propose and suggest new conditions different from the ones already stated by the World Bank.

This situation may create many difficulties in front of the Borrower countries to satisfy their obligations in the best manner, because the internal, economical, political, social and legal situations of each country are not the same as the othercountries. The diversity in the internal conditions of the Borrower countries may require the variety in the General Conditions.

With regard to this issue (the General Conditions are non-negotiable) However, the Borrower can manage some relief in this respect from section 1 (2)[37] of Article, which provides: (If any provision of a loan agreement or guarantee agreement is inconsistent with a provision of these General Conditions, the provision of the loan agreement or guarantee agreement, as the case may be, shall govern.) According to this provision, if there is any inconsistency between the provisions of these General Conditions and the provisions of the Loan agreement, the provisions of the loan agreement shall prevail. Therefore, the Borrower should make an effort to ensure what changes or amendments that should be incorporated in the loan agreement[38].

---

[37] General Conditions Applicable to Loan and Guarantee Agreements
Dated January 1, 1985

[38] by Vinod K. Agarwal (Article Reference: Document No.10, May 2000)

The General Conditions are to a great extent fixed and not subject to easy amendment, in spite of the great change in the international trade relations, which are affecting the developments in the Borrowers countries, e.g. General Conditions Applicable to Loan and Guarantee Agreements dated January 1985 were amended in year 1995 and remained the same[39] from that date till now and the Borrower countries did not participate in drafting the General Conditions through out the history of the World Bank, this situation gives the World Bank the chance to observe their interests more than the interests of the Borrowers countries.

Generally the General Conditions applicable to the Loan Agreement are consideed as a unilateral system, which create equity between the Borrowing Countries in obtaining World Bank Loans. Each country is subjected to the General Conditions, without any discrimination.

•

[39] http://www.globalpolicy.org/ngos/analysis/wrldbank.htm

BIBLIOGRAPHY

World Bank Publications:

- A guide to the World Bank/ Washington, D.C.
- General Conditions Applicable to Loan and Guarantee Agreements Dated January 1, 1985 Section 1.01
- Section 1.01and 1.02 IBRD general conditions January 1, 1985
- External Debt Reporting and Financial Statements (A guide to the World Bank) WB publication 2003
- The General Conditions Applicable to the Loan and Guarantee Agreement 1985 Section 12.02
- Negotiation of Specific Clauses of Loan Agreements, Vinod K. Agarwal (Article Reference: Document No.10, May 2000).

- Simplifying Disbursements under Structural and Sectoral Adjustment Loans and Credits, R95-225, December 7, 1995.
- Guidelines: Procurement under IBRD Loans and IDA Credits (Washington, D.C.: World Bank, 1995 revised January and August, 1996)
- The World Bank Operational Manual- Bank Procedures (BP. 13.00 February 2002)
- General Conditions Applicable To Loan And Guarantee Agreement (Washington, D.C. IBRD, 1985).

Articles:

- Paul J. Nelson, The World Bank and NGOs: the limits of apolitical development (New York: St. Martins, 1995)
- The World Bank Annual Repot 2003
- Vinod K. Agarwal (Article Reference: Document No.10, May 2000)

Web-sites:

- http://www.worldbank.org/pk
- A guide to the World Bank/ Washington, D.C.

- World Wide Web: http://Wbln0018.worldbank.org

- http://www.worldbank.org/html/pic/cas/index.htm

- Internet www.worldbank.org

- http://www.globalpolicy.org/ngos/analysis/wrldbank.htm

- http://www.worldbank.org/fps

- http://wwwqrldbank,org/htm/opr/consults,html