

THE ASIAN DEVELOPMENT BANK ORDER, 1973

PRESIDENT'S ORDER NO. 3 OF 1973

[24th January, 1973]

WHEREAS the People's Republic of Bangladesh is admitted to membership in the Asian Development Bank;

AND WHEREAS it is expedient to make provision for the implementation of the Agreement establishing the Asian Development Bank and for carrying out the obligations of the People's Republic of Bangladesh as a member of the Bank and for matters connected therewith;

NOW, THEREFORE, in pursuance of paragraph 3 of the Fourth Schedule to the Constitution of the People's Republic of Bangladesh, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Asian Development Bank Order, 1973.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

2. In this Order, unless there is anything repugnant in the subject or context,-

- (a) "Agreement" means the Agreement Establishing the Asian Development Bank dated 4th December, 1965;
- (b) "Bank" means the Asian Development Bank established under the Agreement;
- (c) "Government" means the Government of the People's Republic of Bangladesh.

3. (1) There shall be paid out of the Consolidated Fund all such sums as may, from time to time, be required for the purpose of paying-

- (a) the subscriptions payable by the People's Republic of Bangladesh to the Bank under paragraphs 1, 2 and 3 of Article 5 of the Agreement;

- (b) any commissions, fees or other charges payable by the People's Republic of Bangladesh to the Bank under Article 16 of the Agreement; and
- (c) any sum payable by the People's Republic of Bangladesh under paragraph 1 of Article 25 of the Agreement.

(2) The Government may, if it thinks fit so to do, create and issue to the Bank, in such form as it thinks fit, any such non-interest bearing and non-negotiable notes or other obligations as are provided for by paragraph 3 of Article 6 of the Agreement.

(3) Any sums received by or on behalf of the People's Republic of Bangladesh from the Bank shall be paid into the Consolidated Fund.

4. The Bangladesh Bank shall be the depository of Bangladesh currency holdings and other assets of the Bank located in Bangladesh.

5. (1) Notwithstanding anything to the contrary contained in any other law, the provisions of the Agreement set out in the Schedule shall have the force of law in Bangladesh:

Provided that nothing in Article 56 of the Agreement shall be construed as-

- (a) entitling the Bank to import into Bangladesh goods free of any duty of customs without any restriction on their subsequent sale therein; or
- (b) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold; or
- (c) conferring on the Bank any exemption from duties or taxes which are in fact no more than charges for services rendered.

(2) The Government may, by notification in the *official Gazette*, amend the Schedule in conformity with any amendments, which may hereafter be duly made and adopted, of the provisions of the Agreement set out therein.

6. Nothing in this Order shall prejudice or derogate from the right of the People's Republic of Bangladesh to claim, receive or recover any assets from Pakistan.

7. The Government shall designate, by a notification in the *official Gazette*, the officer who shall be authorised on behalf of the People's Republic of Bangladesh to sign the Instrument of Acceptance of the Articles of Agreement and Resolution No. 54 of the Board of Governors of the Bank adopted on 11th November, 1972, and deposit it with the Bank.

8. The Government may, by notification in the *official Gazette*, make rules for carrying out the purposes of this Order.

SCHEDULE

(See Article 5)

Provisions of the Agreement which shall have the force of law.

CHAPTER VIII

Status, Immunities, Exemptions and Privileges

ARTICLE 48

Purpose of Chapter

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

ARTICLE 49

Legal Status

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

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

ARTICLE 50**Immunity from judicial proceedings**

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the bye-laws and regulations of the Bank, or in contracts entered into with the Bank.

3. Property and assets of the Bank, shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution, before the delivery of final judgment against the Bank.

ARTICLE 51**Immunity of assets**

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

ARTICLE 52**Immunity of archives**

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

ARTICLE 53

Freedom of Assets from Restrictions

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

ARTICLE 54

Privilege for Communications

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

ARTICLE 55

Immunities and Privileges of Bank Personnel

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

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

ARTICLE 56**Exemption from Taxation**

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:-

- (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:-

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

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ARTICLE 58

Waiver of Immunities, Exemptions and Privileges

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