

The following information was transmitted to Congress via letter on December 2, 2011:

This letter is in reference to Section 2126 of the Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10, signed April 15, 2011), pertaining to the Asian Development Bank (AsDB) general capital increase (GCI). This legislation requires the Secretary of the Treasury to transmit a report to Congress not later than 180 days after enactment, and every six months thereafter until September 30, 2013, detailing the extent to which the AsDB has made progress toward a number of policy goals. We have carefully assessed the AsDB's record in the seven areas specified in the legislation, and I am pleased to report, on behalf of the Secretary, that the AsDB is continuing to make progress on these areas.

Below is our assessment of additional improvements since our report of June 2, 2011:

*(1) implementing procurement guidelines that maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for Borrowers;*

As reported previously, the AsDB's Procurement Guidelines provide for maximizing the use of international competitive bidding. They also support transparency, competition and cost-effective results. Key elements of the Guidelines that support these objectives include: 1) strong international advertising requirements, 2) endorsement and use of open competition in the contracting process; and 3) mandatory use of publicly available standard bidding documents for international competitive bidding. The Guidelines were amended in 2006 to adopt four harmonized definitions of fraud and corruption that have been adopted by other International Financial Institutions, and again in 2010 to provide for cross debarment with the other Multilateral Development Banks. Cross debarment substantially strengthens the sanctions process, making it far more effective than when it was primarily an administrative tool that would enable the Bank to exclude doing business with a firm or individual who did not live up to the AsDB's requirement for adherence to the highest ethical standards.

*(2) providing greater public disclosure of loan documents, with particular attention to persons affected by AsDB projects;*

As reported previously, the AsDB's current Public Communications Policy is among the most robust of the MDBs, and follows a presumption in favor of disclosing all information about AsDB-assisted operations. This presumption results in a high level of dissemination of AsDB documents, including loan documents, country partnership strategies, knowledge products, bank policies and compliance review documentation.

The AsDB recently concluded a review of its Public Communications Policy, with modifications to become effective in April 2012. Because the current policy is widely viewed as effective, we did not seek many modifications, but those that we did seek have largely been adopted. In particular, the AsDB will now release documents to the public more quickly, disclose summaries of the Board discussions on Country Partnership Strategies, and tighten the list of categories of information that will be exempt from disclosure. Under the revised policy the AsDB also will post on its website the annual audited accounts of its sovereign projects, as we have advocated for all the MDBs. These are significant improvements in the policy that, along with proposed technical changes to the AsDB website, will make core information about the Bank's operations easier to find and interpret.

Furthermore, the AsDB is also currently reviewing its 2007 Translation Framework to ensure that it adequately meets the information needs of the Bank's diverse base of clients and affected populations.

*(3) implementing best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures, and protections against retaliation for internal and lawful public disclosures by AsDB employees and others affected by AsDB operations who report illegality or other misconduct that could threaten the AsDB's mission, including best practices for legal burdens of proof; access to independent adjudicative bodies; and results that eliminate the effects of proven retaliation;*

The AsDB reformed its whistleblower policy in December, 2009, and it is consistent with best practices in anti-corruption and witness protection. Under this policy, any individual who reports a suspected integrity violation or misconduct can remain anonymous and has numerous protections against retaliation. In instances where retaliation is alleged, the AsDB's policy provides recourse for the whistleblower to transfer to another office, obtain security protection, or seek other reasonable measures.

The AsDB's policy provides for an independent adjudicative body for any whistleblower who claims to have been retaliated against. If adverse action was taken against a staff member who reported a suspected integrity violation or cooperated with an investigation, the policy also requires that the AsDB show, by clear and convincing evidence, that the action was taken for reasons other than the staff member's report or cooperation.

Moreover, the "Statute of the Administrative Tribunal of the Asian Development Bank" requires the tribunal, when it finds an application for relief by a staff member to be well-founded, to order the rescission of the contested decision or specific performance of the obligation invoked (e.g., that a staff member improperly fired or demoted be reinstated to his or her prior position). This remedy can be converted to compensation only if the President of the AsDB makes such a determination within 30 days of the decision.

*(4) ensuring that the Investigations Office, Auditor General Office, and Evaluation Office are functionally independent, free from interference when determining the scope of investigations and audits, performing work and communicating results, and regularly report to the AsDB's board of directors and, as appropriate and in a manner consistent with such functional independence of the Investigations Office and the Auditor General Office, to the AsDB President;*

In the past six months, a number of steps have been taken to strengthen the Office of the Auditor General (OAG) and buttress its independence. New Terms of Reference were approved by Management and endorsed by the Audit Committee of the Board (ACB). This document includes a new section on "Independence and Objectivity," including a requirement for the Auditor General to confirm OAG's organizational independence in its Annual Report. In addition, at the strong urging of the United States, OAG was subjected to the long overdue full external Quality Assurance Assessment performed by a team from the Institute of Internal Auditors. While the final report will not be available until early next year, initial results indicate the assessment appears positive. Finally, in July 2011, AsDB's OAG hosted the annual meeting of Chief Audit Executives from most IFIs. These annual meetings are an opportunity to share

practices and lessons learned, and sessions focused on external quality assurance reviews, work programs, approaches to advisory services, and current developments in each participating institution.

*(5) requiring that each candidate for adjustment or budget support loans provide an assessment of reforms to budgetary and procurement processes to encourage transparency, including budget publication and public scrutiny, prior to loan or grant approval;*

As previously reported, prior to seeking Board approval for budget support loans, the AsDB prepares risk assessments and risk management plans for potential borrowers. These plans analyze financial management systems, with particular emphasis on the strength of procurement processes and anti-corruption controls. These assessments are prepared by the AsDB, in consultation with the borrowing country, as well as civil society. They are designed to balance the need to maintain strong fiduciary controls while identifying key areas for improvements in borrowing members to be addressed in adjustment loans.

*(6) ensuring that the AsDB's Accountability Mechanism provides transparency and protects local residents affected by AsDB projects;*

As previously reported, the AsDB's accountability mechanism, which was established in 2003 to replace the Bank's previously established Inspection Function, acts as a forum through which individuals affected by AsDB-assisted projects can appeal if they have concerns regarding AsDB's compliance with its operational policies and procedures. The mechanism, which is an independent body, provides a formal channel for local communities and affected persons to request an independent review of alleged policy violations in the formulation, processing or implementation of AsDB-assisted projects. Results of compliance reviews are provided to the affected persons and are posted on the AsDB's website.

The Accountability Mechanism is currently under review, and we have been working closely with Bank staff and management to identify specific areas that need improvement. We expect the revisions will include measures to increase awareness of the Mechanism in developing member countries, streamline the process for receiving and reviewing complaints through the system, and strengthen its independence from management through greater Board oversight.

*(7) making publicly available external and internal performance and financial audits of AsDB projects on the AsDB's website.*

As previously reported, the AsDB makes its performance assessments available through its annual Development Effectiveness Report, which uses four broad indicators to measure the external and internal performance of the AsDB. These indicators include project design quality, measures of poverty reduction and organizational effectiveness. This information is available on the AsDB's website.

The AsDB does not develop its own stand-alone financial audits of projects, but publishes a Bank assessment of the project audits prepared by recipient countries (which they are required to conduct). This information is contained in a Project Completion Report that is done at the end of the project phase. These documents are made public and can be accessed through AsDB's website. In practice, these Project Completion Reports contain information comparable to what would be included in a stand-alone financial audit, including project costs and, if necessary,

explanations of significant overruns and underruns as part of the AsDB's financial due diligence. These Reports also provide information across major components of the project, foreign and local costs, and an assessment of the likely impact that financial costs have on the underlying project's financial rate of return. Moreover, the Project Completion Reports contain information on the project's disbursement schedules, potential delays and corrective actions taken by the borrower or AsDB.

Under the revised Public Communications Policy that will take effect in April 2012, the Bank will begin disclosing the full annual audited project accounts, not just its own summary of the audits. This additional disclosure brings the AsDB practice in line with that at the World Bank and the IDB.

Based on this assessment, we believe that the Asian Development Bank continues to meet the standard set in Section 2126 of the Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10, signed April 15, 2011). I also want to reiterate that I share your deep commitment to good governance and effectiveness at the AsDB and would be pleased to provide any additional information to you on the AsDB's implementation of these legislative requirements.

Sec. 2126. (a) Contribution to the Asian Development Bank- In addition to amounts otherwise made available by this division, \$106,586,000, to remain available until expended, is appropriated for payment to the Asian Development Bank by the Secretary of the Treasury for the United States share of the paid-in portion of the increase in capital stock.

(b) Limitation on Callable Capital Subscriptions- The United States Governor of the Asian Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed \$2,558,048,769.

(c) Reporting On Reforms.—Funds shall not be made available for a United States contribution to the Asian Development Bank (AsDB) until the Secretary of the Treasury reports to the Committees on Appropriations that the AsDB is making substantial progress toward the following policy goals—

(1) implementing procurement guidelines that maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for Borrowers;

(2) providing greater public disclosure of loan documents, with particular attention to persons affected by AsDB projects;

(3) implementing best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures, and protections against retaliation for internal and lawful public disclosures by AsDB employees and others affected by AsDB operations who report illegality or other misconduct that could threaten the AsDB's mission, including best practices for legal burdens of proof; access to independent adjudicative bodies; and results that eliminate the effects of proven retaliation;

(4) ensuring that the Investigations Office, Auditor General Office, and Evaluation Office are functionally independent, free from interference when determining the scope of investigations and audits, performing work and communicating results, and regularly report to the AsDB's board of directors and, as appropriate and in a manner consistent with such functional independence of the Investigations Office and the Auditor General Office, to the AsDB President;

(5) requiring that each candidate for adjustment or budget support loans provide an assessment of reforms to budgetary and procurement processes to encourage transparency, including budget publication and public scrutiny, prior to loan or grant approval;

(6) ensuring that the AsDB's Accountability Mechanism provides transparency and protects local residents affected by AsDB projects; and

(7) making publicly available external and internal performance and financial audits of AsDB projects on the AsDB's website.

(d) Report Dates.—Not later than 180 days after enactment of this Act, and every 6 months thereafter until September 30, 2013, the Secretary of the Treasury shall submit to the Committees on Appropriations a report detailing the extent to which the AsDB has made progress on each policy goal listed in subsection (c).