

ASIAN DEVELOPMENT BANK ACT

[As Amended Through P.L. 113-235, Enacted December 16, 2014]

AN ACT To provide for participation of the United States in the Asian Development Bank.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [22 U.S.C. 285 note] this Act may be cited as the “Asian Development Bank Act”.

ACCEPTANCE OF MEMBERSHIP

SEC. 2. [22 U.S.C. 285] The President is hereby authorized to accept membership for the United States in the Asian Development Bank (hereinafter referred to as the “Bank”) provided for by the agreement establishing the Bank (hereinafter referred to as the “agreement”) deposited in the archives of the United Nations.

SEC. 3. [22 U.S.C. 285a] (a) The President shall appoint—

(1) a Governor of the Bank and an alternate for the Governor—

(A) by and with the advice and consent of the Senate;

or

(B) from among individuals serving as officials required by law to be appointed by and with the advice and consent of the Senate; and

(2) a Director of the Bank, by and with the advice and consent of the Senate.

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor. The Director may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received by him from the Bank, will equal those authorized for a chief of mission under the Foreign Service Act of 1980.

SEC. 4. [22 U.S.C. 285b] The policies and operations of the representatives of the United States on the Bank shall be coordinated with other United States policies in such manner as the President shall direct.

SEC. 5. [22 U.S.C. 285c] Unless the Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional shares of stock of the Bank; (b) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which would change the purpose or functions of the Bank; or (c) make a loan or provide other financing to the Bank, except that funds for technical assistance not to exceed \$1,000,000 in any one year may be provided to the Bank by a United States

agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

DEPOSITORIES

SEC. 6. [22 U.S.C. 285d] Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

SEC. 7. [22 U.S.C. 285e] (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the purchase of twenty thousand shares of capital stock of the Bank, \$200,000,000.

(b) Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

SEC. 8. [22 U.S.C. 285f] For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office or agency in the United States is located, and any such action to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in title 28, section 460, United States Code, shall have original jurisdiction of any such action. When the Bank is a defendant in any action in a State court, it may, at any time before the trial thereof, remove such action into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES, AND PRIVILEGES

SEC. 9. [22 U.S.C. 285g] The agreement, and particularly articles 49 through 56, shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Bank. The President, at the time of deposit of the instrument of acceptance of membership by the United States in the Bank, shall also deposit a declaration that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals.

SECURITIES ISSUED BY BANK AS INVESTMENT SECURITIES FOR NATIONAL BANKS

SEC. 10. [Amends the last sentence of paragraph 7 of section 5136 of the Revised Statutes.]

SECURITIES ISSUED BY BANK AS EXEMPT SECURITIES; REPORT FILED
WITH SECURITIES AND EXCHANGE COMMISSION

SEC. 11. [22 U.S.C. 285h] (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 7 of the agreement and any securities guaranteed by the Bank as to both principal and interest to which the commitment in article 6, section 5, of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of paragraph (a)(2) of section 3 of the Act of May 27, 1933, as amended (15 U.S.C. 77c), and paragraph (a) (12) of section 3 of the Act of June 6, 1934, as amended (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

SEC. 12. [22 U.S.C. 285i] (a) Subject to the provisions of this Act, the United States Governor of the Bank is authorized to enter into an agreement with the Bank providing for a United States contribution of \$100,000,000 to the Bank in two annual installments of \$60,000,000 and \$40,000,000, beginning in fiscal year 1972. This contribution is referred to hereinafter in this Act as the "United States Special Resources".

(b) The United States Special Resources shall be made available to the Bank pursuant to the provisions of this Act and article 19 of the Articles of Agreement of the Bank, and in a manner consistent with the Bank's Special Funds Rules and Regulations.

SEC. 13. [22 U.S.C. 285j] (a) The United States Special Resources shall be used to finance specific high priority development projects and programs in developing member countries of the Bank with emphasis on such projects and programs in the Southeast Asia region.

(b) The United States Special Resources shall be used by the Bank only for—

- (1) making development loans on terms which may be more flexible and bear less heavily on the balance of payments than those established by the Bank for its ordinary operations; and
- (2) providing technical assistance credits on a reimbursable basis.

(c)(1) The United States Special Resources may be expended by the Bank only for procurement in the United States of goods produced in, or services supplied from, the United States, except that the United States Governor, in consultation with the National Advisory Council on International Monetary and Financial Policies, may allow eligibility for procurement in other member countries from the United States Special Resources if he determines that such procurement eligibility would materially improve the ability of the Bank to carry out the objectives of its special funds resources and would be compatible with the international financial position of the United States.

(2) The United States Special Resources may be used to pay for administrative expenses arising from the use of the United States Special Resources, but only to the extent such expenses are not covered from the Bank's service fee or income from use of United States Special Resources.

(d) All financing of programs and projects by the Bank from the United States Special Resources shall be repayable to the Bank by the borrowers in United States dollars.

SEC. 14. [22 U.S.C. 285k] (a) The letters of credit provided for in section 15 shall be issued to the Bank only to the extent that at the time of issuance the cumulative amount of the United States Special Resources provided to the Bank (A) constitute a minority of all special funds contributions to the Bank, and (B) are no greater than the largest cumulative contribution of any other single country contributing to the special funds of the Bank.

(b) The United States Governor of the Bank shall give due regard to the principles of (A) utilizing all special funds resources on an equitable basis, and (B) significantly shared participation by other contributors in each special fund to which United States Special Resources are provided.

SEC. 15. [22 U.S.C. 285l] The United States Special Resources will be provided to the Bank in the form of a nonnegotiable, non-interest-bearing, letter of credit which shall be payable to the Bank at par value on demand to meet the cost of eligible goods and services, and administrative costs authorized pursuant to section 13(c) of this Act.

SEC. 16. [22 U.S.C. 285m] The United States shall have the right to withdraw all or part of the United States Special Resources and any accrued resources derived therefrom under the procedures provided for in section 8.03 of the Special Funds Rules and Regulations of the Bank.

SEC. 17. [22 U.S.C. 285n] For the purpose of providing United States Special Resources to the Bank there is hereby authorized to be appropriated \$100,000,000, all of which shall remain available until expended.

SEC. 18. [22 U.S.C. 285o] The President shall instruct the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50

per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

SEC. 19. [22 U.S.C. 285p] The Secretary of the Treasury shall instruct the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country, or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents, or from entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notifies the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

SEC. 20. [22 U.S.C. 285q] (a) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to thirty thousand additional shares of the capital stock of the Bank in accordance with and subject to the terms and conditions of Resolution Numbered 46 adopted by the Bank's Board of Governors on November 30, 1971.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated without fiscal year limitation \$361,904,726 for payment by the Secretary of the Treasury.

SEC. 21. [22 U.S.C. 285r] (a) The United States Governor of the Bank is hereby authorized to agree to contribute on behalf of the United States \$50,000,000 to the special funds of the Bank. This contribution shall be made available to the Bank pursuant to the provisions of article 19 of the articles of agreement of the Bank.

(b) In order to pay for the United States contribution to the special funds, there is hereby authorized to be appropriated without fiscal year limitation \$50,000,000 for payment by the Secretary of the Treasury.

SEC. 22. [22 U.S.C. 285s] (a) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to sixty-seven thousand and five hundred additional shares of the capital stock of the Bank: *Provided, however,* That any subscription to additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there are hereby authorized to be appropriated without fiscal year limitation \$814,286,250 for payment by the Secretary of the Treasury.

SEC. 23. [22 U.S.C. 285t] (a) The United States Governor of the Bank is hereby authorized to contribute on behalf of the United States \$180,000,000 to the Asian Development Fund, a special fund of the Bank: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are hereby authorized to be appropriated without fiscal year limitation \$180,000,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than \$14,116,177 may be made available for such contribution for the fiscal year 1982.

SEC. 24. [22 U.S.C. 285u] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States \$378,250,000 to the Asian Development Fund, a special fund of the Bank, except that any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are authorized to be appropriated, without fiscal year limitation, \$378,250,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than \$111,250,000 of such sum may be made available for the fiscal year 1982, and not more than \$44,500,000 of such sum may be made available for the fiscal year 1983.

(c) For the purpose of keeping to a minimum the cost to the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the Asian Development Fund authorized by this section by letter of credit in four annual installments; and

(2) shall take the steps necessary to obtain a certification from the Bank that any undisbursed balances resulting from drawdowns on such letter of credit will not exceed at any time the United States share of expected disbursement requirements for the following three-month period.

SEC. 25. [22 U.S.C. 285v] It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be permitted to retain membership in the Asian Development Bank and that the United States Executive Director of the Bank shall notify the Bank that a serious review of future United States participation, including any future payments to the Asian Development Fund, would ensue if Taiwan were expelled from the Bank.

SEC. 26. [22 U.S.C. 285w] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States \$66,750,000 to the Asian Development Fund, a special fund of the Bank: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there is authorized to be appropriated, without fiscal year limitation, \$66,750,000 for payment by the Secretary of the Treasury: *Provided, however,* That no funds may be made available for such contribution for the fiscal year 1982.

SEC. 27. [22 U.S.C. 285x] (a)(1) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to one hundred twenty-three thousand three hundred and seventy-five additional shares of the capital stock of the Bank.

(2) Any subscription to the capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$1,322,999,476 for payment by the Secretary of the Treasury.

(c)(1) The Congress hereby finds that—

(A) the Republic of China (Taiwan) is a charter member in good standing of the Asian Development Bank;

(B) the Republic of China has grown from a borrower to a lender in the Asian Development Bank; and

(C) the Republic of China provides, through its economic success, a model for other nations in Asia.

(2) It is the sense of the Congress that—

(A) Taiwan, Republic of China, should remain a full member of the Asian Development Bank, and that its status within that body should remain unaltered no matter how the issue of the People's Republic of China's application for membership is disposed of;

(B) the President and the Secretary of State should express support of Taiwan, Republic of China, making it clear that the United States will not countenance attempts to expel Taiwan, Republic of China, from the Asian Development Bank; and

(C) the Secretary of the Senate and Clerk of the House shall transmit a copy of this resolution to the President with the request that he transmit such copy to the Board of Governors of the Asian Development Bank.

SEC. 28. [22 U.S.C. 285y] (a)(1) The United States Governor of the Bank is authorized to contribute on behalf of the United States \$520,000,000 to the Asian Development Fund, a special fund of the Bank.

(2) Any commitment to make the contribution authorized in paragraph (1) shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are au-

thorized to be appropriated, without fiscal year limitation, \$520,000,000 for payment by the Secretary of the Treasury.

SEC. 29. [22 U.S.C. 285z] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States \$584,280,000 to the Asian Development Fund, a special Fund of the Bank, except that any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$584,280,000 for payment by the Secretary of the Treasury.

SEC. 30. [22 U.S.C. 285aa] CAPITAL INCREASE.

(a) **SUBSCRIPTION AUTHORIZED.**—(1) The United States Governor of the Bank may subscribe on behalf of the United States to 35,230 additional shares of the capital stock of the Bank. (2) Any subscription by the United States to the capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) **LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.**—In order to pay for the increase in the United States subscription to the Bank provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$213,000,000 for payment by the Secretary of the Treasury.

SEC. 31. [22 U.S.C. 285bb] ADDITIONAL CONTRIBUTION TO SPECIAL FUNDS.

(a) **CONTRIBUTION AUTHORITY.**—

(1) **IN GENERAL.**—The United States Governor of the Bank may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Bank entitled “Seventh Replenishment of the Asian Development Fund”.

(2) **SUBJECT TO APPROPRIATIONS.**—Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) **LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.**—For the contribution authorized by subsection (a), there are authorized to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.¹

¹The amendment provided for in section 599C(c) of Public Law 109–102 does not execute. The instruction states that “...the Asian Development Fund Act, Public Law 92–245, as amended (22 U.S.C. 285 et seq.), is further amended by adding at the end thereof the following new section:” and adds a new section 32. The amendment incorrectly cites the Act short title, which should have been made to the “Asian Development Bank Act”. Also, the reference to Public Law 92–245 should have been made to Public Law 89–369. Section 32 provides:

“SEC. 32. [22 U.S.C. 285cc] EIGHTH REPLENISHMENT.

“(a) The United States Governor of the Bank is authorized to contribute on behalf of the United States \$461,000,000 to the eighth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

“(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$461,000,000 for payment by the Secretary of the Treasury.”.

SEC. 33. [22 U.S.C. 285dd] NINTH REPLENISHMENT.

(a) The United States Governor of the Bank is authorized to contribute, on behalf of the United States, \$461,000,000 to the ninth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$461,000,000 for payment by the Secretary of the Treasury.

SEC. 34. [22 U.S.C. 285ee] FIFTH CAPITAL INCREASE.

(a) SUBSCRIPTION AUTHORIZED.—

(1) The United States Governor of the Bank may subscribe on behalf of the United States to 1,104,420 additional shares of the capital stock of the Bank.

(2) Any subscription by the United States to capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) In order to pay for the increase in the United States subscription to the Bank provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$13,323,173,083, for payment by the Secretary of the Treasury.

(2) Of the amount authorized to be appropriated under paragraph (1)—

(A) \$532,929,240 is authorized to be appropriated for paid-in shares of the Bank; and

(B) \$12,790,243,843 is authorized to be appropriated for callable shares of the Bank, for payment by the Secretary of the Treasury.

SEC. 35. [22 U.S.C. 285ff] TENTH REPLENISHMENT.

(a) The United States Governor of the Bank is authorized to contribute, on behalf of the United States, \$359,600,000 to the tenth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, \$359,600,000 for payment by the Secretary of the Treasury.