NB742

CREDIT GUARANTEE AND INVESTMENT FACILITY

ARTICLES OF AGREEMENT

Dated 11 May 2010[1]

[1] As amended during the Special Meeting Contributors on 27 November 2013 in Shanghai, People's Republic of China, and during the Annual Meeting of Contributors on 31 May 2016 in Phnom Penh, Cambodia.

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ARTICLES OF AGREEMENT

OF

CREDIT GUARANTEE AND INVESTMENT FACILITY

(A) The Association of Southeast Asian Nations comprising Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Republic of the Union of Myanmar, Philippines, Singapore, Thailand, and Viet Nam, plus the People's Republic of China, Japan, and Republic of Korea established the Asian Bond Markets Initiative to develop and strengthen the local currency and regional bond markets to promote economic growth and financial development and to prevent disruptions to the international financial order so as to allow the use of Asian savings within the region.[2]

(B) In furtherance of that objective, these countries together with the Asian Development Bank desire to establish the Credit Guarantee and Investment Facility to provide credit enhancement and make investments to allow eligible issuers to access local currency bond markets and thereby avoid currency and maturity mismatches by issuing within the region.

(C) Each country, entity wholly-owned by an ASEAN+3 country, and ADB listed in Schedule 1, pursuant to the Instrument of Acceptance (substantially in the form set out in Schedule 2) deposited with the trustee of CGIF, have adopted the following Articles of Agreement, for the establishment and operation of CGIF. In the case of such wholly-owned entity, the country concerned has also provided assurances satisfactory to the trustee regarding the operation of CGIF.

1. DEFINITIONS

Unless the context otherwise requires, the several terms defined in Schedule 3 to these Articles of Agreement have the respective meanings therein set forth, and shall apply as if they were defined herein.

2. OBJECTIVES AND FUNCTIONS OF CGIF

2.1 Objectives

The objectives of CGIF are to promote economic development, to promote resilience of the financial markets, and to prevent disruptions to the international financial order, by developing deep and liquid local currency and regional bond markets. This will result in efficient allocation of Asian savings within the region by facilitating access by entities rated investment-grade to such markets while promoting the issuance of debt securities with longer-term maturities to match the gestation of investment projects.

[2] BR 2013-3E-02; MR 2013-S-3

2.2 Functions

The following development functions of CGIF are to be undertaken on commercial terms within the ASEAN+3 countries[3]:

2.2.1 guaranteeing bonds that are denominated in local currencies and issued by entities rated Investment Grade in such a manner as to reduce currency and maturity mismatches;

2.2.2 guaranteeing bonds that are not denominated in local currencies issued by entities rated Investment Grade; provided the entities concerned are naturally or financially hedged in such currency based on their underlying current business;

2.2.3 making investments for development of the bond markets; provided no such investments shall be made until after the Meeting of Contributors shall have determined that CGIF is in a position to commence such type of operations; and

2.2.4 undertaking such other activities and providing such other services consistent with its objectives (including appropriate substitute credit rating arrangements for Brunei Darussalam and the new ASEAN member countries of Cambodia, Lao People's Democratic Republic, Republic of the Union of Myanmar and Viet Nam).

2.3 No Borrowing

CGIF shall not borrow from any source to finance its operations described in Article 2.2 except for the purposes of cash management.

3. ESTABLISHMENT

3.1 Establishment

3.1.1 The Board of Directors of ADB has approved the establishment of CGIF, and its administration by ADB as the Trustee, in each case in accordance with these Articles of Agreement. The operations of CGIF shall be financed solely from funds that are contributed from time to time in accordance with the provisions of these Articles of Agreement, and any other CGIF property.

3.1.2 ADB in its capacity as the Trustee shall:

(a) hold in trust all CGIF funds and other property;

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[3] BR 2013-3E-02; MR 2013-S-3

(b) manage and use CGIF funds and other property only for the purposes of and in accordance with the provisions of these Articles of Agreement; and

(c) subject to the provisions of these Articles of Agreement, appoint and terminate all Executive Staff, professional staff and other experts of CGIF.

3.2 Trust Only

It is the intention of these Articles of Agreement to establish and define only the relationship of trustee and beneficiary between the Trustee and each Contributor.

4. CAPITAL AND SHARES

4.1 The authorized capital of CGIF shall be US$700,000,000, divided into 7000 Shares with a nominal value of US$100,000 each. All such Shares shall be subscribed and fully paid in by the Contributors.

4.2 The authorized capital of CGIF may be increased by an affirmative vote of at least two-thirds of the number of existing Contributors who hold collectively at least two-thirds of the total outstanding Shares.

4.3 The holder of each Share shall have the following rights:

(a) as to voting: the right to receive notice of, attend and vote as a Contributor at any Meeting of Contributors;

(b) as to income: the right to receive income, profit and other distributions as provided for in these Articles of Agreement; and

(c) as to capital: the right, in a winding-up of CGIF, to repayment of capital as provided for in these Articles of Agreement.

4.4 Each Share subscribed for by a Contributor shall be allocated to such Contributor only after full payment has been received by the Trustee.

4.5 None of the Shares or capital in CGIF may be pledged or encumbered in any manner whatsoever.

5. CONTRIBUTORS AND PAYMENT FOR SHARES

5.1 Contributors

Each Contributor has ratified, accepted, approved or otherwise confirmed in accordance with its internal procedures these Articles of Agreement by depositing with the Trustee, pursuant to Article 20, a duly completed Instrument of Acceptance.

5.2 Payment for Shares

5.2.1 Each Contributor shall subscribe and pay in full for the number of Shares set forth opposite its name in Schedule 1 no later than two years following the entry into force of these Articles of Agreement pursuant to Article 20.

5.2.2 Payment of Shares shall be made in US dollars to an account or accounts as the Trustee may specify to such Contributor, such account or accounts to be established by the Trustee specifically for that purpose.

5.2.3 Payment of Shares may also be made by any entity wholly-owned by a Contributor on behalf and in the name of such Contributor.

5.2.4 The failure of any Contributor to make any payment when due under this Article 5.2 shall not relieve any other Contributor of its obligation to make its respective payment.

5.3 Limitation of Liability

5.3.1 No Contributor shall be liable, by reason of its participation in CGIF, for any obligations of CGIF (including any obligations to pay under the guarantees).

5.3.2 The liability of each Contributor under these Articles of Agreement shall be limited to the unpaid portion of the Shares it has subscribed for that has become due and payable.

6. LIMITS ON OPERATIONS

6.1 Limits on Contingent Liabilities and Leverage

The level of contingent liabilities to be assumed by CGIF will be determined by the Meeting of Contributors on the recommendation of the Board of Directors based upon an affirmative vote of at least two-thirds of the number of existing Contributors who hold collectively at least two-thirds of the total outstanding Shares. However, where the leverage ratio exceeds 2.5:1, the contingent liabilities in excess of 2.5 times the sum of total paid in capital plus retained earnings less reserves and all illiquid investments made by CGIF must be reinsured and CGIF will seek reinsurance to cover such excess contingent liabilities in appropriately sized portfolios for the reinsurance market.[4]

6.2 Compliance with Policies

The operations of CGIF shall be conducted in accordance with the CGIF Operational Policies and all applicable ADB Operational Policies.

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[4] BR 2013-03-05; MR 2013-S-3

7. MEETINGS OF CONTRIBUTORS

7.1 Meeting of Contributors

7.1.1 The Meeting of Contributors is the highest decision-making organ of CGIF.

7.1.2 The specific powers of the Meeting of Contributors include, without limitation:

(a) determining the strategic objectives of CGIF;

(b) reviewing the operations and financial performance of CGIF and providing the Board of Directors and the Chief Executive Officer with general policy and strategic guidance on the overall operation and management of CGIF;

(c) electing the chairperson and other members of the Board of Directors as set out in Article 8.3;

(d) reviewing and approving the recommendations of the Board of Directors on the selection of the Chief Executive Officer, and the terms and conditions of such selection;

(e) reviewing and approving the engagement of the external auditor and the terms and conditions of engagement upon the recommendation of the Board of Directors;

(f) reviewing and approving the Annual Report for the preceding Fiscal Year prepared by the Board of Directors;

(g) reviewing and approving the recommendations of the Board of Directors on the allocation of the net income of CGIF for the preceding Fiscal Year to the reserves and/or the distribution of any surplus to the Contributors;

(h) reviewing and approving the recommendations of the Board of Directors on (i) the commencement and the extent of investment operations that CGIF may undertake for development of the bond markets; (ii) the use of leverage and any subsequent decision on the maximum leverage ratio; and (iii) any revision to the country limits in CGIF operations as set out in the CGIF Operational Policies;

(i) determining the suspension or termination of the operations of CGIF; and

(j) taking any other action that may be taken by the Contributors as specified in these Articles of Agreement.

7.2 Organizational Meeting

7.2.1 The Trustee shall convene an Organizational Meeting of Contributors by written notice within 30 days from the date when the Trustee shall have received payments for at least 80% of the Shares subscribed for and paid in under Article 4.1.

7.2.2 The date, time and place of the Organizational Meeting shall be determined by the Trustee.

7.2.3 At the Organizational Meeting, the Contributors shall (i) determine the selection process for appointment of the chairperson of the Meetings of Contributors; (ii) elect the first members of the Board of Directors, who have been nominated in accordance with the requirements set forth in Article 8.3, except the Chief Executive Officer; (iii) approve the first set of the CGIF Operational Policies; (iv) delegate specific powers to the Board of Directors pursuant to Article 10.3.2; (v) approve the initial terms of reference and the establishment of each of the Audit Committee, Internal Control and Risk Management Committee, and Nomination and Remuneration Committee; and (vi) undertake all other actions considered necessary for CGIF to commence operations. Solely for the purposes of this Article 7.2.3, and notwithstanding Articles 4.3(a) and 4.4, the Contributors will be accorded voting rights in proportion to their capital commitments under Schedule 1.

7.3 Annual Meeting of Contributors

7.3.1 Within five months after the end of each Fiscal Year, the Annual Meeting of the Contributors shall be held at such date and time and in such place as the Contributors shall determine.

7.3.2 Contributors may also participate in the Annual Meetings either:

(a) by telephone or other communications facilities which permit all Contributors participating in the Annual Meeting to hear each other; or

(b) by other electronic means,

and a Contributor participating in an Annual Meeting by such means is deemed for the purposes of these Articles of Agreement to be present at that meeting.

7.4 Special Meetings

7.4.1 The Trustee or the Board of Directors may, and at the request of Contributors holding at least 10% of the outstanding Shares shall, call Special Meetings of Contributors at any time for any purpose consistent with these Articles of Agreement.

7.4.2 Contributors may also participate in Special Meetings either:

(a) by telephone or other communications facilities which permit all Contributors participating in the Special Meeting to hear each other; or

(b) by other electronic means,

and a Contributor participating in a Special Meeting by such means is deemed for the purposes of these Articles of Agreement to be present at that meeting.

7.5 Notices of Meetings

7.5.1 Unless otherwise waived by the intended recipient, the Trustee or the Board of Directors, as the case may be, shall provide each Contributor with at least 30 days (in the case of an Annual Meeting) or 21 days (in the case of a Special Meeting) prior written notice of the forthcoming Meeting of Contributors, the agenda and all related materials. The notice shall state the place, date and time of the meeting and, in the case of a Special Meeting, the purpose or purposes for which the Special Meeting is called.

7.5.2 For the purposes of Article 7.5.1, references to written notices include electronic notices such as email, facsimile and other forms of electronic notification that are commonly in use.

7.6 Quorum

A majority of the number of existing Contributors who hold collectively a simple majority of the total outstanding Shares shall constitute a quorum for matters to be decided at any Meeting of Contributors.

7.7 Voting

Except as otherwise provided in these Articles of Agreement, every matter submitted to a Meeting of Contributors shall be decided by the Contributors present at that meeting who hold collectively a simple majority of the Shares represented at that meeting.

7.8 Action by Written Consent in Lieu of Meeting

Except for the actions required or permitted under Articles 4.2, 6.1, 15, 17.1, and 17.2, any actions required or permitted to be taken at a Meeting of Contributors may be taken without a meeting if a consent in writing, setting out the action intended to be taken, as recommended by the Board of Directors, has been signed in one or more counterparts (including those transmitted electronically or by facsimile) by at least two-thirds of the number of existing Contributors who hold collectively at least two-thirds of the total outstanding Shares.

7.9 Proxies

Any Contributor entitled to vote at a Meeting of Contributors may vote by proxy if a duly executed written proxy has been received in writing by the Trustee or the Board of Directors, as the case may be, for verification prior to the meeting. [5]

8. BOARD OF DIRECTORS

8.1 Board of Directors and its Role

8.1.1 The Board of Directors is the second highest decision-making organ of CGIF.

8.1.2 The Board of Directors is not an executive body. The primary role of the Board of Directors is to:

(a) represent and protect the interests of the Contributors;

(b) lead, guide and perform policy oversight of management to ensure that:

(i) management operates, and CGIF as a whole is operated, in full compliance with international best practices, and with a focus on minimizing the inherent risks in extending guarantees and making investments in the best interests of the Contributors in full compliance with these Articles of Agreement and other relevant requirements; and

(ii) the strategic decisions of the Meeting of Contributors are fully and efficiently implemented.

8.1.3 The Board of Directors is accountable and reports to the Meeting of Contributors on the operations and performance of management and of CGIF.

8.2 Responsibilities of the Board of Directors

8.2.1 It is the responsibility of the Board of Directors to review and ensure timely fulfilment of business plans, budgets and other operational and financial matters to be executed by management; and to set guidelines on and approve major decisions and transactions. Without prejudice to the generality of the foregoing sentence, the main responsibilities of the Board of Directors include, without limitation:

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[5] BR 2013-3E-02; MR 2013-S-3

(a) recommending to the Meeting of Contributors the selection of the Chief Executive Officer, and the terms and conditions of such selection;

(b) recommending to the Trustee the appointment and termination of other Executive Staff;

(c) recommending to the Meeting of Contributors, and appointing, and setting the terms of engagement of, the external auditor upon the approval of the Meeting of Contributors;

(d) reviewing the operations and financial performance of CGIF and, providing general advice to the Chief Executive Officer on strategic objectives and issues regarding the operation of CGIF;

(e) recommending to the Meeting of Contributors (i) the commencement and the extent of investment operations that CGIF may undertake for development of the bond markets; (ii) the use of leverage and any subsequent decision on the maximum leverage ratio; and (iii) any revision to the country limits in CGIF operations as set out in the CGIF Operational Policies;

(f) approving any other revision or amendment to the CGIF Operational Policies;

(g) reviewing and approving the Annual Business Plan and the Annual Budget for the forthcoming Fiscal Year prepared by the Chief Executive Officer;

(h) preparing the Annual Report for the preceding Fiscal Year for review and approval by the Meeting of Contributors;

(i) recommending to the Meeting of Contributors the allocation of the net income of CGIF for the preceding Fiscal Year to the reserves and/or the distribution of any surplus to the Contributors;

(j) ensuring that robust systems of accounting, financial management, internal controls, risk management and internationally competitive human resource policies (including remuneration) are in place and functioning effectively;

(k) ensuring that the operations of CGIF comply at all times with the CGIF Operational Policies and all applicable ADB Operational Policies;

(l) approving all guarantee and investment transactions;

(m) fulfilling the duties of the Trustee which have been delegated pursuant to Article 10.3.2;

(n) taking any other action as may be required in the best interests of CGIF, other than those reserved to the Meeting of Contributors and the Trustee, under these Articles of Agreement; and

(o) consulting an external advisory panel for impartial professional and specialized advice to assist in fulfilling the Board's responsibilities.

8.3 **Composition of the Board of Directors**

8.3.1 The Board of Directors shall, unless determined otherwise by the Meeting of Contributors, comprise eight members, including the Chief Executive Officer.

8.3.2 All of the members of the Board of Directors shall be professionally qualified.

8.3.3 The chairperson of the Board of Directors and the chairperson of each of the Board committees shall be elected at the relevant Meeting of Contributors in the following manner[6]:

(a) for the first Board of Directors, at the Organizational Meeting;

(b) subsequently, in respect of the Director who is the chairperson of the Board for a term of three years;

(c) subsequently, in respect of the Director who is the chairperson of the Audit Committee for a term of three years;

(d) subsequently, in respect of the Director who is the chairperson of the Internal Control and Risk Management Committee for a term of three years; and

(e) subsequently, in respect of the Director who is the chairperson of the Nomination and Remuneration Committee for a term of three years,

provided that if any of the chairperson of the Board of Directors or of the Board committees shall resign by notice to the Board of Directors, or is unable to continue office for any reason whatsoever, a replacement complying with Article 8.3.2 shall be elected by the Meeting of Contributors.

8.3.4 The person, who is the Chief Executive Officer:

(a) shall be an *ex-officio* member of the Board of Directors with voting rights equivalent to other Directors; and

(b) shall remain an *ex-officio* member of the Board of Directors as long as such person is the Chief Executive Officer.

8.3.5 Each of People's Republic of China and Japan Bank for International Cooperation shall be entitled to nominate two Directors. Each of ASEAN (as a group) and Republic of Korea shall be entitled to nominate one Director. Upon any of such nominations, all other Contributors shall be deemed to have voted in favor of the election of such Director or Directors. Any such Director may retire or be removed by the Contributor or group of Contributors for which such member is a representative at any time, and replaced with another representative of such Contributor or group of Contributors.

8.3.6 Notwithstanding any other provision of these Articles of Agreement, ADB, shall be entitled to nominate a Director, who shall always be a member of the Nomination and Remuneration Committee. Upon such nomination, each Contributor shall be deemed to have voted in favor of the election of such Director. ADB may remove its nominated Director at any time, and replace such Director with another representative.

8.4 **Meetings of the Board of Directors**

8.4.1 Meetings of the Board of Directors shall be called by the chairperson or the Trustee, or upon the request of at least two members of the Board of Directors, provided at least 14 days' written notice is given to each member of the Board of Directors stating the matters to be considered (along with all related materials) and the place, date and time of the meeting.

8.4.2 The Board of Directors shall meet, at a minimum, three (3) times every year.[7]

8.4.3 With the prior written consent of all members of the Board of Directors, one or more members of the Board of Directors may also participate in meetings either:

(a) by telephone or other communications facilities as permit all members participating in the meeting to hear each other; or

(b) by other electronic means;

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[6] BR 2013-3E-02; MR 2013-S-3

[7] BR 2013-03-06; MR 2013-S-3

and a member of the Board of Directors participating by such means is deemed for the purposes of these Articles of Agreement to be present at that meeting.

8.4.4 In exceptional cases, a Director who is unable to participate in any meeting of the Board of Directors may nominate an individual to act as his/her alternate Director for that meeting, provided that such nomination is made in writing before the Board meeting.[8]

8.5 Quorum

A simple majority of the number of existing Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

8.6 Voting

Every matter submitted to the Board of Directors shall be decided by the simple majority of the votes cast by Directors present at the meeting or, in the case of written consent in lieu of a meeting pursuant to Article 8.7, by all Directors, where each Director shall be entitled to cast one vote. In the case of a tie in the number of votes cast on any issue, the chairperson shall have an additional casting vote. Notwithstanding any other provision in these Articles of Agreement, any matter relating to the powers expressly reserved to the Trustee shall require the affirmative vote of the Director representing the Trustee.

8.7 Action by Written Consent in Lieu of Meeting

Action required or permitted to be taken by the Board of Directors may be taken without a meeting if a consent in writing, setting out the action intended to be taken, has been signed in one or more counterparts by all the members of the Board of Directors entitled to vote.

8.8 Conflict of Interest

A Board member shall disclose to the Board of Directors any potential or actual conflict of interest or related party interest that may arise from a project, transaction or any other matter being considered by the Board of Directors. The Board member shall excuse himself or herself from any meetings of the Board of Directors in which the matter is being considered and should not be entitled to vote on the matter.

8.9 Committees of the Board of Directors

The Board of Directors shall establish the following committees: the Audit Committee, the Internal Control and Risk Management Committee, and the Nomination and Remuneration Committee. The initial terms of reference of these committees shall be presented, as part of the CGIF Operational Policies, for approval at the

[8] BR 2013-3E-02; MR 2013-S-3

Organizational Meeting, and any subsequent amendment shall be approved by the Board of Directors.

9. CHIEF EXECUTIVE OFFICER; MANAGEMENT COMMITTEES

9.1 Role of the Chief Executive Officer

9.1.1 The executive decision-making powers of CGIF, and the day-to-day management of CGIF, are mandated to and vested in the Chief Executive Officer, who shall report to the Board of Directors and ultimately to the Contributors.

9.1.2 The Chief Executive Officer shall act within such parameters as the Board of Directors or the Meeting of Contributors may decide from time to time.

9.1.3 The Chief Executive Officer shall be responsible for, without limitation:

(a) managing the daily operations of CGIF in accordance with the Annual Budget and Annual Business Plan approved by the Board of Directors;

(b) preparing the Annual Budget and the Annual Business Plan and the quarterly reports with respect to the operations of CGIF for review and approval by the Board of Directors;

(c) recommending to the Trustee the appointment and termination of all professional staff and other experts of CGIF; and

(d) taking any other action as determined by the Board of Directors.

9.2 Removal of the Chief Executive Officer

9.2.1 The Board of Directors may determine to remove the Chief Executive Officer (which removal shall be effected by the Trustee) from office at any time for cause or if it considers such removal to be in the best interests of CGIF.

9.2.2 Upon the removal of the Chief Executive Officer, or if that person shall resign or if that office shall be vacant, for any reason, the Board of Directors shall recommend to the Meeting of Contributors a person with the necessary professional qualifications and substantial relevant experience to fill the vacancy. Until the approval of a replacement by the Meeting of Contributors, the Chief Risk Officer shall assume the duties and responsibilities of the Chief Executive Officer on an interim basis.

9.3 Management Committees

There shall be initially two management committees: the Executive Committee, chaired by the Chief Executive Officer; and the Guarantee and Investment Committee, chaired by the Chief Risk Officer. The Board of Directors shall determine the mandate and composition of these two committees.

10. CGIF ADMINISTRATION

10.1 Role of the Trustee

The role of the Trustee shall include:

10.1.1 accepting the Instruments of Acceptance deposited by the Contributors;

10.1.2 receiving payment for Shares subscribed by the Contributors in an account opened for CGIF and, until the Organizational Meeting is held, investing the proceeds in short-term money market instruments in accordance with ADB's investment guidelines;

10.1.3 after the Organizational Meeting is held, investing CGIF funds in accordance with the instructions of the Board of Directors;

10.1.4 distributing CGIF funds and other property pursuant to Articles 14 and 17;

10.1.5 facilitating the interaction between the Contributors, the Board of Directors and ADB;

10.1.6 providing treasury services and other back office support as requested by the Chief Executive Officer on a cost-recovery basis;

10.1.7 paying any costs or expenses, including making any payments from CGIF funds and other property to itself as Trustee, for the purpose of performing its duties as outlined in these Articles of Agreement;

10.1.8 appointing (i) the Chief Executive Officer upon selection by the Meeting of Contributors, (ii) all other Executive Staff of CGIF upon the recommendation of the Board of Directors, and (iii) all professional staff and other experts of CGIF upon the recommendation of the Chief Executive Officer;

10.1.9 terminating (i) the Chief Executive Officer and all other Executive Staff of CGIF upon the recommendation of the Board of Directors, and (ii) any professional staff and other experts of CGIF upon the recommendation of the Chief Executive Officer; and

10.1.10 terminating any Executive Staff or professional staff and other experts of CGIF, following suitable consultations with the Board of

Directors or the Chief Executive Officer, respectively, who in the Trustee's opinion has breached ADB Operational Policies applicable to CGIF or caused reputational harm to ADB.

10.2 **Duties of the Trustee**

The Trustee shall:

10.2.1 hold all CGIF funds and other property in trust in accordance with these Articles of Agreement for the benefit of the Contributors;

10.2.2 manage and use CGIF funds and other property only for the purposes of, and in accordance with the provisions of these Articles of Agreement, keeping them separate and apart from all other accounts and assets of, or administered, by the Trustee;

10.2.3 administer CGIF in accordance with the provisions of these Articles of Agreement and the instructions of the Meeting of Contributors, and the Board of Directors, and be bound in performing its functions herein by the provisions of the Agreement Establishing the Asian Development Bank, and its by-laws, rules, policies and decisions; and

10.2.4 exercise the same care in the discharge of its functions under the provisions of these Articles of Agreement as it exercises with respect to its own affairs, and shall have no further liability in respect thereof.

10.3 **Powers of the Trustee; Delegation**

10.3.1 The Trustee is authorised to perform all acts and enter into all contracts and arrangements as it shall deem necessary or desirable to accomplish the purposes of CGIF in accordance with the terms of these Articles of Agreement.

10.3.2 With the exception of the powers expressly reserved by Article 10.1, the Trustee hereby delegates all other powers under these Articles of Agreement to the Meeting of Contributors which, in turn, may delegate such powers to the Board of Directors, specifically, the powers to:

(a) conduct the business of CGIF and carry on its operations as deemed necessary, proper or desirable in order to promote the interests of CGIF;

(b) pay any costs or expenses which are necessary or desirable to carry out any of the purposes of CGIF;

(c) employ or contract with such individuals or persons as it may deem desirable to conduct the business of CGIF, and thereafter to remove them as and when considered appropriate;

(d) enter into joint ventures, partnerships and any other combinations or agreements;

(e) collect all funds and other property due to CGIF and to pay all claims against CGIF;

(f) engage in and to prosecute, defend, compromise, abandon, or adjust, by arbitration, or otherwise, any actions, suits, proceedings, disputes, claims, and demands relating to CGIF;

(g) pay or satisfy out of CGIF funds and other property any calls on guarantees, claims or expenses incurred in connection with the guarantees, including those of litigation;

(h) dismiss any action, suit, proceeding, dispute, claim or demand, derivative or otherwise, brought by any person (including a Contributor in its own name or in the name of CGIF), whether or not CGIF or the Trustee is named individually or the subject matter arises by reason of business for or on behalf of CGIF;

(i) purchase and pay for, out of CGIF funds, to the extent available on commercially reasonable terms, such insurance as deemed desirable to protect the Directors, the Trustee, ADB, the Contributors and any other individual or person entitled to indemnification by CGIF;

(j) appoint or otherwise engage one or more banks or trust companies or other financial institutions to serve as escrow agent(s) on behalf of CGIF in respect of CGIF funds that may be deposited into an escrow account; and

(k) further delegate any of the above to the Chief Executive Officer, upon such terms and conditions as may approved, with prior notice to the Trustee;

10.3.3 The Trustee shall not be liable to the Contributors or to any third party for the actions of the party to whom any of these powers have been delegated.

10.3.4 In construing the provisions of these Articles of Agreement, the presumption shall be in favor of a grant of power to the Trustee.

10.3.5 The enumeration of any specific power in these Articles of Agreement shall not be construed as limiting that power. Such powers of the Trustee may be exercised without order of or resort to any court or other authority.

10.3.6 Nothing in these Articles of Agreement shall preclude ADB from acting for its own account and from entering into or being interested in any

contract or transaction with any person, including, but not limited to, any Contributor, any issuer of bonds guaranteed by CGIF, or any sponsor or co-investor of investments made by CGIF with the same rights as it would have had if it were not acting as the Trustee; and ADB need not declare such interest nor account for any profit therefrom.

10.4 **Remedies and Waivers**

10.4.1 No delay in exercising, or failure to exercise, any right, power or remedy accruing to the Trustee or any other party under these Articles of Agreement, whether or not upon any default, shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default.

10.4.2 No action by the Trustee or any other party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of the Trustee or any such other party in respect of any other or subsequent default.

11. REPORTS

11.1 Annual Reports to Contributors

Not later than 30 days prior to each Annual Meeting, the Board of Directors shall provide the Contributors with the Annual Report in respect of the previous Fiscal Year.

11.2 Reports to Trustee and Contributors

The Board of Directors and the Chief Executive Officer, shall furnish to the Trustee and the Contributors all such reports, in such form and detail, as the Trustee and the Contributors shall reasonably request from time to time concerning the operation and management of CGIF.

12. FEES AND EXPENSES

Administration Fee; Reimbursement of Expenses

The Trustee shall be entitled to receive for its own account such administration fees and reimbursement of expenses, including those in relation to the provision of treasury services and other back office support by the Trustee, as may be agreed with the Chief Executive Officer from time to time.

13. INDEMNIFICATION

13.1 Indemnification of Trustee and ADB

The Trustee, ADB, and any person who is, or has been, an officer, employee or agent of the Trustee, ADB or CGIF shall be indemnified out of CGIF funds and other property against any loss, liability, cost, claim, action, demand or expense that any such indemnified party may reasonably and properly incur in disputing or defending any of the foregoing or which may be made against any of them arising out of or in connection with CGIF's operations (including, without limitation, any such claims arising from Contributors' actions or failure to act pursuant to these Articles of Agreement); provided that no such person shall be so indemnified if such loss, liability, cost, claim, action, demand or expense is finally determined to be attributable to its gross negligence or wilful misconduct.

13.2 Privileges and Immunities

The privileges, immunities and exemptions accorded to ADB pursuant to the Agreement Establishing the Asian Development Bank shall apply to (i) the Trustee, and (ii) the property, assets, archives, income, operations and transactions of CGIF. The privileges, immunities and exemptions accorded to experts performing missions for ADB pursuant to the Agreement Establishing the Asian Development Bank shall apply to all Executive Staff, professional staff and other experts of CGIF appointed by the Trustee. Nothing in these Articles of Agreement shall be considered to be a waiver of any of such privileges, immunities and exemptions.

13.3 No Personal Liability

13.3.1 Neither the Trustee, ADB, any Contributor nor any of their officers, employees or agents shall be subject to any personal liability whatsoever to any third party in connection with the operations of CGIF, and all such third parties shall look solely to CGIF funds and other CGIF property for satisfaction of claims of any nature arising in connection with CGIF operations. Every written obligation, contract, agreement, certificate or undertaking made or issued by the Trustee or any Executive Staff shall provide that the rights of third parties are limited to recovery against the assets of CGIF, and that no action may be brought against the Trustee, ADB, any Contributor nor any of their officers, employees or agents.

13.3.2 Every written obligation, contract, agreement, certificate or undertaking made or issued by the Trustee shall recite that the same is executed or made by it not personally or in its individual capacity, but as Trustee under these Articles of Agreement, and that the obligations of CGIF under any such agreement are not binding upon the Trustee or any of the Contributors, personally or in their respective individual capacities, but bind only CGIF, and may contain any further recital which the Trustee may deem appropriate but the omission of

such recital shall not affect the validity of such obligation, contract, agreement, certificate or undertaking and shall not operate to bind or obligate the Trustee or the Contributors personally or in their respective individual capacities.

13.4 **No Duty to Investigate**

Unless there is an apparent deficiency in relation to a transaction, no individual or person dealing with the Trustee or any officer, employee or agent of the Trustee or CGIF shall be bound to make any inquiry concerning the validity of any transaction purported to be made by the Trustee or by said officer, employee or agent or be liable for the application of money or property paid, loaned to or delivered to or on the order of the Trustee or of said officer, employee or agent. Every obligation, contract, agreement, certificate or undertaking, and every other act or thing whatsoever executed in connection with CGIF, shall be conclusively presumed to have been executed or done by the executors thereof only in their capacity as officers, employees or agents of the Trustee or CGIF.

13.5 **Reliance on Experts**

Each officer and employee of CGIF shall, in the performance of his or her duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of CGIF, upon an opinion of counsel, or upon reports made to the Chief Executive Officer by any of its officers or employees or by any accountant, auditor, appraiser or other expert selected with reasonable care by any officer, employee or agent of the Trustee or CGIF.

14. DISTRIBUTIONS TO CONTRIBUTORS

14.1 Distributions

14.1.1 The Trustee shall open one or more accounts for CGIF to receive the payment for the Shares subscribed by the Contributors, and subsequently maintain such accounts in accordance with instructions from the Board of Directors.

14.1.2 Upon determination by a Meeting of Contributors regarding the allocation of CGIF's net income for a preceding Fiscal Year, the Trustee shall implement such determination by allocating the appropriate amounts to CGIF's reserves. If directed by the Meeting of Contributors in the medium-term, the Trustee shall also distribute the appropriate amount of surplus to each Contributor in proportion to the number of Shares then held by each of them.

14.1.3 No Contributor shall have the right to receive any distributions from CGIF except as provided in these Articles of Agreement.

15. TRANSFER OF CONTRIBUTORS' INTERESTS OR SHARES

No Contributor may assign or transfer any part of any of its rights or obligations under these Articles of Agreement or any part of its Shares or otherwise withdraw from CGIF, other than, in each case, by a vote of at least two-thirds of the number of existing Contributors who hold collectively at least two-thirds of the total outstanding Shares; provided that (i) the assignment or transfer shall only be made to an ASEAN+3 country or an entity wholly-owned by an ASEAN+3 country; and (ii) such vote may be given on the condition that the outgoing Contributor shall transfer its rights and obligations under these Articles of Agreement and its Shares to the other Contributors (in such proportion as set forth in the vote).

16. REVIEW OF CGIF OPERATIONS

After each operational period of 10 years or earlier, if necessary, the Board of Directors shall review the role of CGIF, its organizational structure and operations to evaluate the suitability and effectiveness of ongoing CGIF operations. Based on the outcome of each review and the recommendations of the Board of Directors, the Meeting of Contributors shall consider and determine consequential changes to the role, organizational structure and operations of CGIF, including its termination, as appropriate.

17. TERMINATION; AMENDMENT

17.1 Termination

17.1.1 Upon determination by the Meeting of Contributors, by an affirmative vote of at least two-thirds of the number of existing Contributors who hold collectively at least two-thirds of the total outstanding Shares, to terminate the operations of CGIF,

(a) the Trustee, the Board of Directors and the Chief Executive Officer shall not carry out any business for CGIF, except for the purpose of winding up its affairs;

(b) the Board of Directors shall proceed to wind up the affairs of CGIF, in consultation with the Trustee, and all of the powers of the Board of Directors under these Articles of Agreement shall continue until the affairs of CGIF shall have been wound up; and

(c) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as it may deem necessary for its own protection by the Board of Directors, the Trustee shall distribute the remaining CGIF funds and other property in cash or in kind, or a combination of both, among the Contributors in the proportion of their respective Shares.

17.1.2 Any rights, interests or entitlements to be transferred under Article 17.1.1 may be assigned in writing by the Contributor entitled to receive them to a third party, in which case the Board of Directors will endeavor to transfer those interests, rights or entitlements to that third party at the cost of the Contributor entitled to them, but will not be liable to the Contributor if it is unable to do so.

17.2 **Amendment Procedures**

These Articles of Agreement may only be amended by an affirmative vote of at least two-thirds of the number of existing Contributors who hold collectively at least two-thirds of the total outstanding Shares, with such amendment to be effective on the date set forth in such vote. Notwithstanding any other provision in these Articles of Agreement, any amendment relating to the powers expressly reserved to the Trustee shall require the affirmative vote of ADB.

17.3 **Further Assurances**

Upon the request of the Trustee, each of the Contributors shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, agreements, assignments, transfers, conveyances, powers of attorney and assurances as may be necessary to effect the purpose of these Articles of Agreement and carry out its provisions.

18. TRUSTEE CONFLICTS OF INTEREST

18.1 In order to avoid any potential conflict of interest between ADB and the Trustee, and notwithstanding any other provision of these Articles of Agreement, the Trustee shall not have any obligation to prosecute, defend, compromise, negotiate, abandon or adjust, by arbitration or otherwise, any action, suit, proceeding, dispute, claim or demand, or any default or potential default by a party to a contract executed by the Trustee on behalf of CGIF.

18.2 If the Trustee determines that it will refrain from taking any such action, the Trustee shall so notify the Board of Directors and the Contributors; and the Trustee, the Board of Directors and the Contributors shall use their best efforts to endeavour to agree to satisfactory arrangements for dealing with such dispute including the assignment and transfer of all or part of the Trustee's rights and obligations under the relevant guarantee or investment to the Contributors, or to a third party acting on their behalf.

18.3 The Trustee shall have no liability to the Contributors as a result of the Trustee's determination to refrain from taking any such action in respect of a dispute or as a result of the failure of the Trustee and the Contributors to reach such satisfactory arrangements in a timely manner or otherwise.

19. ARBITRATION

Any dispute, controversy or claim out of or relating to these Articles of Agreement, or the breach or termination or invalidity thereof, which cannot be settled amicably between the parties, shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force from time to time. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The number of arbitrators shall be three. The place of arbitration shall be The Hague. The law to be applied by the arbitrators shall be public international law. The language to be used in the arbitral proceedings shall be English.

20. ENTRY INTO FORCE

These Articles of Agreement shall enter into force when Instruments of Acceptance signed by People's Republic of China, Japan Bank for International Cooperation, Republic of Korea, ADB, and five or more ASEAN countries have been deposited with the Trustee at the address specified below:

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

The Trustee shall promptly notify all the Contributors when such Instruments of Acceptance have been duly received.

SCHEDULE 1
CONTRIBUTORS AND PAYMENT FOR SHARES

Contributor	Shares	Amount (US$)
Asian Development Bank	1300	130,000,000
Brunei Darussalam	56	5,600,000
Cambodia	1	100,000
People's Republic of China	2000	200,000,000
Indonesia	126	12,600,000
Japan Bank for International Cooperation	2000	200,000,000
Republic of Korea	1000	100,000,000
Lao People's Democratic Republic	1	100,000
Malaysia	126	12,600,000
Republic of the Union of Myanmar [9]	1	100,000
Philippines	126	12,600,000
Singapore	126	12,600,000
Thailand	126	12,600,000
Viet Nam	11	1,100,000
TOTAL	7000	700,000,000

[9] BR 2013-3E-02; MR 2013-S-3

SCHEDULE 2
INSTRUMENT OF ACCEPTANCE OF THE ARTICLES OF AGREEMENT OF CREDIT GUARANTEE AND INVESTMENT FACILITY

Date: [ ]

[Name of ASEAN+3 country]/[ADB] hereby notifies the Trustee of CGIF that:

(1) it will participate in CGIF;

(2) it has accepted the Articles of Agreement without reservation in accordance with its laws and has taken all steps necessary to enable it to carry out all of its obligations under the Articles of Agreement;

(3) it will make the payment in the amount of US$[ ] by [ ] in accordance with the terms of the Articles of Agreement; and

(4) it consents to CGIF undertaking its activities consistent with the provisions of the Articles of Agreement in the territory of [_____].

Payments shall be made [by the name of the paying institution] to the account set out below:

Bank:	[ ]
SWIFT:	[ ]
Account Name:	[ ]
Account Number:	[ ]

For and on behalf of

[Name of ASEAN+3 country]/[ADB]

_____

Name: [ ]

Title: [ ]

Ministry/Office: [ ]

SCHEDULE 3
DEFINITIONS

"**ADB**" means the Asian Development Bank;

"**ADB Operational Policies**" means any of ADB's policies applicable from time to time in respect of ADB's operations, including Anticorruption Policy (1998), Combating Money Laundering and the Financing of Terrorism Policy (2003), and Safeguard Policy Statement (2009);

"**ASEAN**" means the Association of Southeast Asian Nations comprising Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Republic of the Union of Myanmar, Philippines, Singapore, Thailand, and Viet Nam; [10]

"**ASEAN+3**" means ASEAN plus the People's Republic of China, Japan, and Republic of Korea;

"**Annual Budget**" means, in respect of each Fiscal Year, the annual budget for that Fiscal Year prepared by the Chief Executive Officer, and approved by the Board of Directors;

"**Annual Business Plan**" means, in respect of each Fiscal Year, the annual business plan for that Fiscal Year prepared by the Chief Executive Officer, and approved by the Board of Directors;

"**Annual Meeting**" means a meeting of the Contributors held pursuant to Article 7.3;

"**Annual Report**" means, in respect of each Fiscal Year, the comprehensive report prepared by the Board of Directors on the CGIF's operations, funds and activities for that Fiscal Year for approval by the Meeting of Contributors, which shall include, without limitation:

(a) the report of the chairperson of the Board of Directors;
(b) the report of the Chief Executive Officer;
(c) the report of the Audit Committee, the Internal Control and Risk Management Committee, and the Nomination and Remuneration Committee; and
(d) the report of the external auditor (including the financial statements audited by the external auditor);

"**Audit Committee**" means the committee of the Board of Directors established pursuant to Article 8.9 whose initial terms of reference shall have been approved by the Contributors at the Organizational Meeting;

"**Board of Directors**" or "**Board**" means CGIF's Board of Directors as described in Article 8;

"**CGIF**" means the Credit Guarantee and Investment Facility;

"**CGIF Operational Policies**" means (i) the terms of reference of the Board and its committees, and (ii) all of the financial and operational policies of the CGIF, including accounting, financial management, internal controls, risk management and human resource policies;

[10] BR 2013-3E-02; MR 2013-S-3

"Chief Executive Officer" means the chief executive officer of CGIF appointed by the Trustee upon selection by the Meeting of Contributors;

"Chief Risk Officer" means the chief risk officer of CGIF appointed by the Trustee upon recommendation of the Board of Directors;

"Contributor" means any of the ASEAN+3 countries, any entity wholly-owned by such countries, or ADB, as listed in Schedule 1 to these Articles of Agreement;

"Director" means a member of the Board of Directors of CGIF;

"Executive Committee" means the management committee established pursuant to Article 9.3 that will consider and advise the Chief Executive Officer on all non-routine business matters (other than specific guarantee and investment proposals) under consideration by CGIF;

"Executive Staff" means the Chief Executive Officer, the Chief Risk Officer, and all members of the Executive Committee as determined by the Board of Directors, including the vice-president of operations, the chief finance officer and the general counsel;

"Fiscal Year" means the fiscal year of the CGIF, being the period from 1 January to 31 December of a calendar year;

"Guarantee and Investment Committee" means the management committee established pursuant to Article 9.3 that will assess all guarantee and investment proposals to ensure that such proposals are within acceptable risk parameters to enable consideration by the Board of Directors;

"Instrument of Acceptance" means an instrument of acceptance substantially in the form set out in Schedule 2 to these Articles of Agreement;

"Internal Control and Risk Management Committee" means the committee of the Board of Directors established pursuant to Article 8.9 whose initial terms of reference shall have been approved by the Contributors at the Organizational Meeting;

"Investment Grade" means, at the minimum, an investment grade assigned to an entity in ASEAN+3 countries by either (i) a local credit rating agency, or (ii) a substitute credit rating arrangement undertaken by CGIF where there is no local credit rating agency;

"Japan Bank for International Cooperation" is a policy-based financial institution wholly owned by the Japanese government[11];

"Meeting of Contributors" means any Organizational Meeting, Annual Meeting and Special Meeting;

"Nomination and Remuneration Committee" means the committee of the Board of Directors established pursuant to Article 8.9 whose initial terms of reference shall have been approved by the Contributors at the Organizational Meeting;

"**Organizational Meeting**" means the first meeting of the Contributors held pursuant to Article 7.2;

"**Share**" means a share in the capital of the CGIF with a nominal value as set out in Article 4.1 and with such rights as described in Article 4.3;

"**Special Meeting**" means a meeting of Contributors held pursuant to Article 7.4;

"**Trustee**" means ADB acting not in its individual or personal capacity but solely in its capacity as trustee of CGIF in accordance with these Articles of Agreement and for the purposes set out in these Articles of Agreement.; and

"**UNCITRAL**" means the United Nations Commission on International Trade Law.

[11] BR 2016-01-08; MR 2016-A-05

NB 742

SCHEDULE 1
INSTRUMENT OF ACCEPTANCE OF THE ARTICLES OF AGREEMENT OF CREDIT GUARANTEE AND INVESTMENT FACILITY

Date: 18 July 2010

Government of the Socialist Republic of Vietnam hereby notifies the Trustee of CGIF that:

(1) it will participate in CGIF;

(2) it has accepted the Articles of Agreement without reservation in accordance with its laws and has taken all steps necessary to enable it to carry out all of its obligations under the Articles of Agreement;

(3) it will make the payment in the amount of US$ 1,100,000 by November 2010 in accordance with the terms of the Articles of Agreement; and

(4) it consents to CGIF undertaking its activities consistent with the provisions of the Articles of Agreement in the territory of the Socialist Republic of Vietnam.

Payments shall be made by Ministry of Finance of Vietnam to the account set out below:

Bank:	Deutsche Bank Trust Company Americas, New York
SWIFT BIC:	BKTRUS33
Account Name:	ADB – Credit Guarantee and Investment Facility
Account Number:	04-446-413

For and on behalf of

Government of the Socialist Republic of Vietnam

Name: Vu Van Ninh

Title: Minister of Finance

Ministry of Finance of Vietnam