
LOAN NUMBER 3214-PAK(SF)

PROJECT AGREEMENT
(Public Sector Enterprise Reforms Project)

between

ASIAN DEVELOPMENT BANK

and

PRIVATISATION COMMISSION

DATED 27 JANUARY 2015

PAK 48031

PROJECT AGREEMENT

PROJECT AGREEMENT dated 27 January 2015 between ASIAN DEVELOPMENT BANK (“ADB”) and PRIVATISATION COMMISSION (“Privatization Commission”).

WHEREAS

(A) by a Loan Agreement of even date herewith between Islamic Republic of Pakistan (“Borrower”) and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to thirteen million four hundred fifty nine thousand Special Drawing Rights (SDR13,459,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that a portion of the proceeds of the loan be made available to the Privatisation Commission and that the Privatisation Commission agrees to undertake certain obligations towards ADB set forth herein; and

(B) the Privatisation Commission, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement:

- (i) the term “the Project” means Outputs 1 and 2(i) of the Project, as described in Schedule 1 to the Loan Agreement.

ARTICLE II

Particular Covenants

Section 2.01. (a) The Privatisation Commission shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Privatisation Commission shall perform all obligations set forth in the Loan Agreement to

the extent that they are applicable to the Privatization Commission, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. The Privatisation Commission shall make available, promptly as needed the funds, facilities, services and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project as agreed with ADB.

Section 2.03. (a) In the carrying out of the Project, the Privatisation Commission shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, the Privatisation Commission shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The Privatisation Commission shall carry out the Project in accordance with plans, work schedules and technical standards acceptable to ADB, as applicable. The Privatisation Commission shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, work schedules and technical standards, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. The Privatisation Commission shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against any risks and in such amounts as shall be consistent with sound practice for successful implementation of the Project.

Section 2.06. The Privatisation Commission shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and the Privatisation Commission shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The Privatisation Commission shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and the Privatisation Commission shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, the Privatisation Commission and the Loan.

Section 2.08. (a) The Privatisation Commission shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out

of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of the Privatisation Commission; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the Privatisation Commission shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, the Privatisation Commission shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by the Privatisation Commission of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The Privatisation Commission shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for imprest fund and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, the Privatisation Commission shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) The Privatisation Commission shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Privatisation Commission and its

financial affairs where they relate to the Project with the auditors appointed by the Privatisation Commission pursuant to subsections (a)(iii) and (c) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Privatisation Commission, unless the Privatisation Commission shall otherwise agree.

Section 2.10. The Privatisation Commission shall enable ADB's representatives to inspect the Project, the Goods and any relevant records and documents.

Section 2.11. (a) The Privatisation Commission shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) The Privatisation Commission shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) The Privatisation Commission shall at all times operate and maintain its information and communication systems, and from time to time, promptly as needed, make all necessary maintenance and upgrades thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, the Privatisation Commission shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, the Privatisation Commission shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. The Privatisation Commission shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. The Privatisation Commission shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

ARTICLE III**Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify the Privatisation Commission of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV**Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2424.

For Privatisation Commission

Privatisation Commission
5-A Constitution Avenue, EDB Building
Islamabad, Pakistan

Facsimile Number:

(92) 51 9204185.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of the Privatisation Commission may be taken or executed by its Secretary or by such other person or persons as he or she shall so designate in writing notified to ADB.

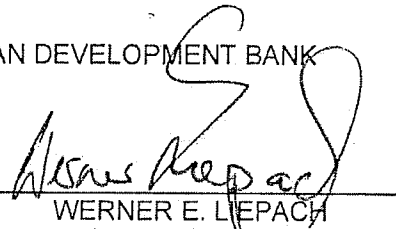
(b) The Privatisation Commission shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement 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; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK

By



WERNER E. LEPACH

Country Director

Pakistan Resident Mission

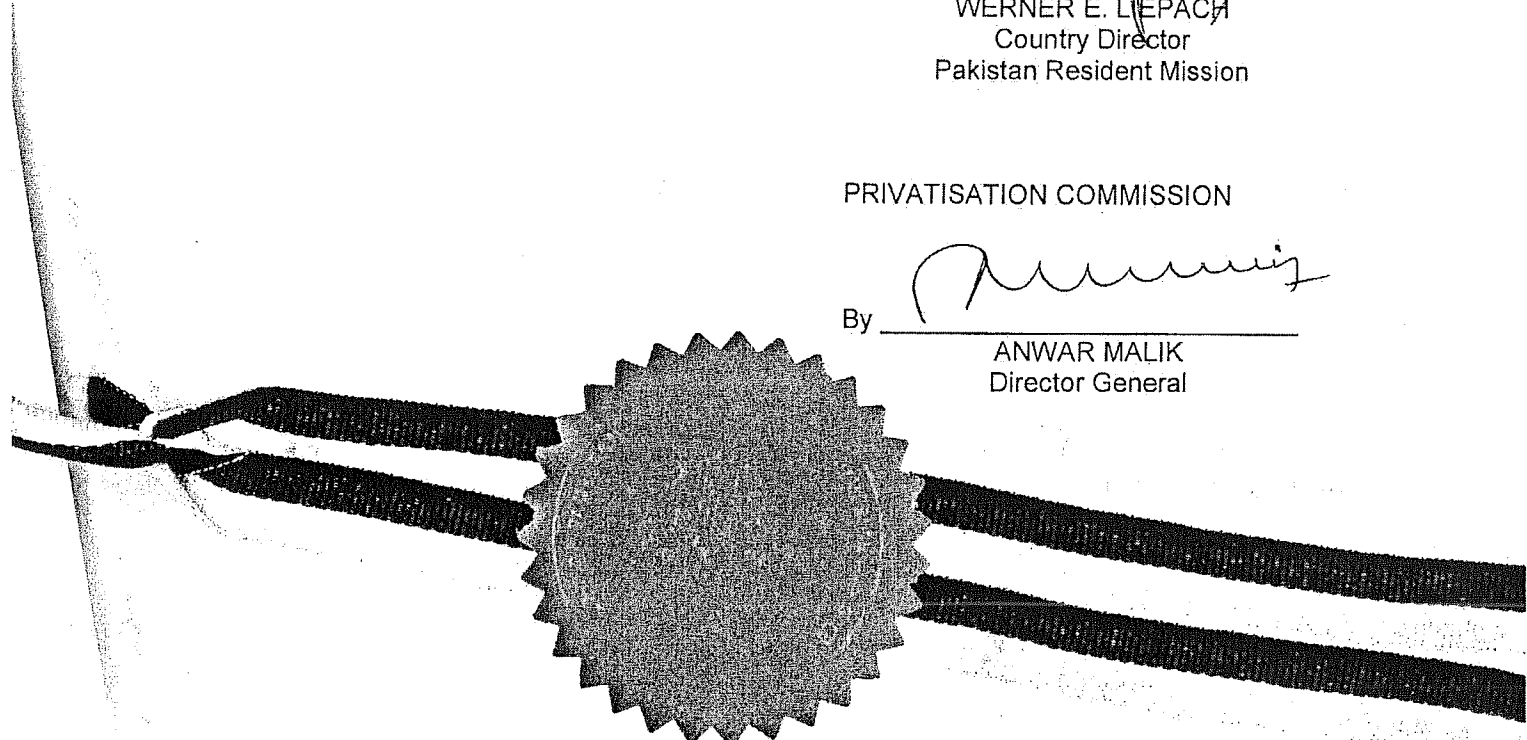
PRIVATISATION COMMISSION

By



ANWAR MALIK

Director General



SCHEDULE

Execution of Project

1. The Privatisation Commission shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and the Loan Agreement, the provisions of the Loan Agreement shall prevail.
2. The Privatisation Commission shall ensure that ADB will be promptly informed of any proposed reforms relevant to PSEs, any proposed change in its functions or organizational structure that has an impact on the implementation of the Project and any proposed change to the Privatisation Program.
3. The Privatisation Commission shall ensure adequate coordination in relation to the Privatisation Program with the Finance Division.
4. The Privatisation Commission shall promptly review the mitigation framework for labor related issues prepared under Output 1 and submit it for approval by the relevant authorities by 31 December 2015 or such later date as ADB may otherwise agree.

Counterpart Support

5. The Privatisation Commission shall ensure that counterpart personnel and office space are made available, promptly as and when needed, for the carrying out of the Project.

Financial management

6. The Privatisation Commission shall, within 30 months from the Effective Date, (a) prepare and implement a financial management manual in line with the APRs; (b) update APRs to incorporate requirements on internal financial controls; (c) establish an audit committee at the board level; and (d) implement payroll and cash management accounting modules.
7. The Privatisation Commission shall (a) ensure submission of the annual budget for approval of its Board before submission to the government; and (b) develop a roles matrix in its accounting system with definition of users' rights.

Environment, Involuntary Resettlement and Indigenous Peoples

8. The Privatisation Commission shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the SPS. In the event that the Project does have any such impact, the Privatisation Commission shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Prohibited List of Investments

9. The Privatisation Commission shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Participation

10. The Privatisation Commission shall ensure that in the preparation of the communications plan and the mitigation framework for labor-related issues under Output 1, adequate consultation with key stakeholders including civil society and the labor unions and associations representing the employees of the relevant PSEs will be conducted and recorded accordingly.

Gender

11. The Privatisation Commission shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; and (b) ensuring that the Project activities including the communication plan and the mitigation framework for labor-related issues are gender sensitive.

Governance and Corruption

12. The Privatisation Commission shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

13. The Privatisation Commission shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts for the Project, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.