
LOAN NUMBER 3319-BAN(SF)

LOAN AGREEMENT
(Special Operations)

(Third Capital Market Development Program)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 22 NOVEMBER 2015

BAN 45253

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 22 November 2015 between PEOPLE'S REPUBLIC OF BANGLADESH ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 7 August 2015 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's capital market sector ("Program");

(B) the Borrower has applied to ADB for a loan for the purposes of the Program;

(C) by an agreement of even date herewith entered between ADB and the Borrower ("Ordinary Operations Loan Agreement"), ADB has agreed to provide to the Borrower a loan from ADB's ordinary capital resources for an amount of one hundred fifty million Dollars (\$150,000,000); and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Program Agreement of even date herewith between ADB on the one part and Bangladesh Securities and Exchange Commission ("BSEC"), Bangladesh Bank ("BB") and Insurance Development and Regulatory Authority ("IDRA") on the other part;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(24) is deleted and the following is substituted therefor:

24. The term "Program" means the program for which ADB has agreed to make the Loan, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Borrower.

(b) The term “Project” wherever it appears in the Loan Regulations shall be substituted by the term “Program”.

(c) Section 2.01(26) is deleted and the following is substituted therefor:

26. The term “Program Executing Agency” means the entity or entities responsible for the carrying out of the Program as specified in the Loan Agreement.

(d) The term “Project Executing Agency” wherever it appears in the Loan Regulations shall be substituted by the term “Program Executing Agency”.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) “Bangladesh Bank” or “BB” means the central bank and apex financial regulatory authority of the Borrower, established under the Bangladesh Bank Order, 1972;

(b) “Bank Company Act” means the Bank Company Act, 1991 of the Borrower;

(c) “BFID” means the Bank and Financial Institutions Division of the Ministry of Finance of the Borrower

(d) “BSEC” means the Bangladesh Securities and Exchange Commission;

(e) “BSEC Act” means the Bangladesh Securities and Exchange Commission Act, 1993 of the Borrower;

(f) “BSEC Fund” means a fund created under the BSEC Act which receives all revenues of BSEC and from which all operations of BSEC are financed;

(g) “Counterpart Funds” means the local currency generated from the Loan proceeds under the Program and referred to in paragraph 7 of Schedule 4 to this Loan Agreement;

(h) “Deposit Account” means the account referred to in paragraph 3 of Schedule 3 to this Loan Agreement;

(i) “Eligible Imports” means the total imports of the Borrower during the relevant period minus the following imports during the same period:

(i) imports from countries which are not members of ADB;

(ii) imports of ineligible items specified in Attachment 1 to Schedule 3 to this Loan Agreement; and

- (iii) imports financed by official international or bilateral aid agencies or any other loans or grants made by ADB;
- (j) “Eligible Items” means the Eligible Imports and services in connection with the delivery and installation of such imports and consulting services;
- (k) “First Tranche” means the portion of the proceeds of the OCR Loan in an amount of \$80,000,000 to be withdrawn pursuant to the provisions of the Ordinary Operations Loan Agreement;
- (l) “IDRA” means the Insurance Development and Regulatory Authority of the Borrower, established under the IDRA Act, 2010 of the Borrower;
- (m) “Income Tax Ordinance” means the Income Tax Ordinance, 1984 of the Borrower;
- (n) “Insurance Act” means the Insurance Act, 2010 of the Borrower;
- (o) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);
- (p) “OCR Loan” means the loan referred to in Recital C of this Loan Agreement;
- (q) “Policy Actions” means the actions to be met by the Borrower and the Program Executing Agency for the release of the First Tranche and the Second Tranche, as applicable;
- (r) “PPMS” means program performance monitoring system;
- (s) “Program Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means the BFID or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;
- (t) “Program Steering Committee” or “PSC” means the program steering committee referred to in paragraph 2 of Schedule 4 to this Loan Agreement;
- (u) “Second Tranche” means the balance of the proceeds of the OCR Loan after the utilization of the First Tranche and the Loan, to be withdrawn pursuant to this Loan Agreement and the Ordinary Operations Loan Agreement;
- (v) “Stamp Act” means the Stamp Act, 1899 of the Borrower;
- (w) “TA” means the technical assistance provided by ADB to the Borrower for supporting the Program; and
- (x) “Taka” or “Tk” means the currency of the Borrower.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to seventy one million six hundred eighty three thousand Special Drawing Rights (SDR71,683,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 April and 15 October in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Program in accordance with the provisions of this Loan Agreement and the Program Agreement.

Section 3.02. The proceeds of the Loan shall be withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Withdrawals from the Loan Account shall be made only on account of expenditures relating to Eligible Items which:

- (a) are produced in, and are supplied from, such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

- (b) meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2018 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

Section 4.02. (a) The Borrower shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Loan and to record the progress of the Program.

(b) The Borrower shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. (a) As part of the reports and information referred to in Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning (i) the Counterpart Funds and the use thereof; and (ii) the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

(b) Without limiting the generality of the foregoing or Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB quarterly reports on the carrying out of the Program and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

ARTICLE V

Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

- (a) the Deposit Account shall have been opened as provided in paragraph 3 of Schedule 3 to this Loan Agreement;

- (b) the Ordinary Operations Loan Agreement shall have been duly authorized, executed and delivered on behalf of, the Borrower, and all conditions precedent to its effectiveness, other than a condition requiring effectiveness of this Loan Agreement, shall have been fulfilled; and
- (c) all conditions for the release of the First Tranche of the Program as specified in the Policy Matrix and as set out in Attachment 2 to Schedule 3 to this Loan Agreement shall have been completed in a manner satisfactory to ADB.

Section 5.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Senior Secretary or Secretary, or any Additional Secretary, Joint Secretary or Joint Chief, Deputy Secretary or Deputy Chief, Senior Assistant Secretary or Senior Assistant Chief, Assistant Secretary or Assistant Chief of the Economic Relations Division of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Economic Relations Division
 Ministry of Finance
 Government of the People's Republic of Bangladesh
 Sher-e-Bangla Nagar
 Dhaka-1207, Bangladesh

Facsimile Number:

+880 2 918-0788

For ADB

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

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2337.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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.

PEOPLE'S REPUBLIC OF BANGLADESH

By 
SAIFUDDIN AHMED
Joint Secretary
Economic Relations Division
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
KAZUHIKO HIGUCHI
Country Director
Bangladesh Resident Mission

SCHEDULE 1

Description of the Program

1. The principal objective of the Program is to enhance capacity and size of the capital market in a strong legal and regulatory framework and the scope includes (a) strengthened market stability, (b) enhanced market facilitation, (c) enhanced supply measures and (d) enhanced demand measures. The Program is described in more detail in the Policy Letter.

2. The Program is expected to be completed by 31 December 2017.

SCHEDULE 2

Amortization Schedule

(Third Capital Market Development Program)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 April 2021	1,792,075
15 October 2021	1,792,075
15 April 2022	1,792,075
15 October 2022	1,792,075
15 April 2023	1,792,075
15 October 2023	1,792,075
15 April 2024	1,792,075
15 October 2024	1,792,075
15 April 2025	1,792,075
15 October 2025	1,792,075
15 April 2026	1,792,075
15 October 2026	1,792,075
15 April 2027	1,792,075
15 October 2027	1,792,075
15 April 2028	1,792,075
15 October 2028	1,792,075
15 April 2029	1,792,075
15 October 2029	1,792,075
15 April 2030	1,792,075
15 October 2030	1,792,075
15 April 2031	1,792,075
15 October 2031	1,792,075
15 April 2032	1,792,075
15 October 2032	1,792,075
15 April 2033	1,792,075
15 October 2033	1,792,075
15 April 2034	1,792,075
15 October 2034	1,792,075
15 April 2035	1,792,075
15 October 2035	1,792,075
15 April 2036	1,792,075
15 October 2036	1,792,075
15 April 2037	1,792,075
15 October 2037	1,792,075
15 April 2038	1,792,075
15 October 2038	1,792,075
15 April 2039	1,792,075
15 October 2039	1,792,075
15 April 2040	1,792,075

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 October 2040	<u>1,792,075</u>
TOTAL	71,683,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3**Withdrawal of Loan Proceeds**

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Loan proceeds from the Loan Account.
2. (a) An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.

(b) Such withdrawal applications shall be accompanied by a certificate of the Borrower confirming that with respect to each year during which the proceeds of the Loan are expected to be disbursed, the value of the Eligible Imports is expected to be greater than the amount of the Loan expected to be disbursed during such year.

(c) The Borrower shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Borrower has certified the value of Eligible Imports in its withdrawal application.
3. (a) Prior to submitting the first application to ADB for withdrawal from the Loan Account, the Borrower shall nominate an account (the Deposit Account) at the Bangladesh Bank into which all withdrawals from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with accounting principles acceptable to ADB. Upon ADB's request, the Borrower shall have the financial statements for the Deposit Account audited 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. Promptly after their preparation but in any event not later than 6 months after the date of ADB's request, copies of such audited financial statements and the opinion of the auditors on the financial statements, in the English language, shall be furnished to ADB.

(c) Throughout the Program implementation period, the Borrower shall submit trade statistics and any other information as ADB may require from time to time to assess the Borrower's compliance with the formula for determining Eligible Imports.
4. The First Tranche shall be disbursed upon effectiveness of this Loan Agreement.
5. Notwithstanding any other provisions of this Loan Agreement and except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account for the Second Tranche unless ADB is satisfied, after consultation with the Borrower, that (a) sufficient progress has been achieved by the Borrower in the carrying out of the Program; (b) the Policy Actions that were met for the release of the First Tranche continue to be complied with by the Borrower; and (c) the Borrower has met the Policy Actions for the release of the tranche specified in Attachment 3 to this Schedule.

Negative List

No withdrawals shall be made for the following:

- (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Borrower:

Table: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, nonmonetary (excluding gold ore and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or for goods supplied from the territory of the Borrower;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and
- (vii) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

Policy Actions for Release of the First Tranche**Market Stability**

1. The Borrower shall cause BSEC to determine (a) capital structure, (b) ownership composition, (c) governance structure, and (d) risk management structure of the proposed clearing and settlement company.

Market Facilitation

2. The Borrower shall cause BSEC to operationalize the special tribunal for capital market related cases.

Supply Measures

3. The Borrower shall cause BSEC to amend the following corporate bond issuance rules: (a) removal of the 60/40 debt equity ratio ceiling; (b) removal of shareholder approval requirement and replacement with board of director approval requirement, and (c) replacement of the finalized term sheet for application with a range of term sheet variables.

4. The Borrower shall cause BSEC to issue private equity and venture capital rules.

Demand Measures

5. The Borrower shall cause BB to publish on a daily basis 91-day compounded overnight Bangladesh rate.

6. The Borrower shall cause BSEC to institute a system to ensure that it does not allow Investment Corporation of Bangladesh (ICB) or any of its subsidiaries to act as a trustee of the new funds where ICB itself or its asset management company is a sponsor.

7. The Borrower shall cause the National Board Revenue (NBR) to allow investors in fixed income mutual funds the same tax treatment as equity mutual funds as conferred by 22A of the 6th Schedule (Part A) of the Income Tax Ordinance.

8. The Borrower shall cause IDRA to (a) issue regulations on mechanism for insurance companies and others for review of decisions by IDRA officials and (b) operationalize IDRA's dispute resolution committee dealing with insurance claim-related issues.

Policy Actions for Release of the Second Tranche**Market Stability**

1. The Borrower shall approve the revised BSEC organogram in the form acceptable to ADB.
2. The Borrower shall cause BSEC to operationalize the office of internal control and compliance.
3. The Borrower shall cause BSEC to amend the Securities and Exchange Commission (Public Issue) Rules, 2006 including (a) IPO book-building procedures to make the price discovery method more effective and (b) reducing the IPO lock-in period from 3 years to 1 year for BSEC licensed private equity investors.
4. The Borrower shall cause BSEC to (a) issue risk-based capital rules for intermediaries, and (b) adopt and initiate implementation of capital restructuring plan for intermediaries.
5. The Borrower shall cause BSEC to issue merger and takeover rules.
6. The Borrower shall cause BSEC to initiate installation of its ICT system that includes the following elements: (a) electronic reporting by listed companies and intermediaries, (b) electronic internal communication system (filing, retrieval and analysis of documents), and (c) case tracking system for investigations and enforcement cases.
7. The Borrower shall, or cause BSEC to finalize legal framework to grant license for establishing a clearing and settlement company by way of approval by BSEC or by submission of a draft bill to parliament, as necessary.

Market Facilitation

8. The Borrower shall establish an independent financial reporting council with the purpose of initiating the adoption of international accounting standards and international standards of auditing for public interest entities.
9. The Borrower shall cause the transfer of capital market related cases from the regular courts to the special tribunal for capital market.
10. The Borrower shall, as part of the stock exchanges demutualization plan of action, cause BSEC to issue directives for inclusion of strategic investors for Dhaka Stock Exchange and Chittagong Stock Exchange.

Supply Measures

11. The Borrower shall cause BSEC to issue Sukuk rules.
12. The Borrower shall cause BSEC to issue rules for derivatives.

13. The Borrower shall cause the cash and debt management committee to approve the manual for introduction of floating rate notes.

14. The Borrower shall (a) cause the cash and debt management committee to approve guidelines for floating rate notes and (b) cause BB to issue floating rate notes in the government bond auction system on a pilot basis.

15. The Borrower shall cause the cash and debt management committee to approve introduction of short-selling of primary dealer owned government securities on a pilot basis.

16. The Borrower shall cause BSEC to issue rules for operation of exchange traded funds.

17. The Borrower shall approve the IDRA organogram.

18. The Borrower shall and cause IDRA to issue rules or regulations to cover the following subjects: (a) paid-up capital and shareholdings of an insurance company; (b) asset investment rules (including government securities, real estate, and equities) for life and non-life insurance companies, (c) life insurance policy and claim register, and (d) life insurance policy holders' security fund.

SCHEDULE 4

Program Implementation and Other Matters

Implementation Arrangements

1. BFID, as the Program Executing Agency, shall be responsible for (a) overseeing all Policy Actions to be taken in connection with the Program; and (b) ensuring that all Policy Actions set out in the Policy Letter and Policy Matrix are duly carried out in a timely manner. BSEC, BB and IDRA shall be the implementing agencies and shall be responsible for undertaking the policy, legal and regulatory measures falling under their respective ambits.
2. A Program Steering Committee, chaired by the Secretary of BFID and comprising of representatives from Finance Division, Economic Relations Division and Internal Resources Division of the Ministry of Finance; BB; BSEC; NBR and IDRA shall be responsible for coordinating the implementation of the Program.
3. In addition, the BFID shall be responsible for:
 - (a) overall coordination and monitoring of the Program, including the Policy Actions and the TA;
 - (b) preparing and submitting all required reports to the PSC and ADB; and
 - (c) submitting the audited financial statements to ADB.
4. The Borrower and Program Executing Agency shall ensure that:
 - (a) the Program and the TA as applicable shall conform to all applicable ADB policies including those concerning safeguards, gender, anticorruption measures, procurement, consulting services and disbursement; and
 - (b) the recommendations of the TA as also other necessary actions shall be undertaken in a timely manner to ensure completion of the required Policy Actions and the Program on time.

Policy Actions and Dialogue

5. The Borrower shall ensure that all Policy Actions adopted under the Program, as set forth in the Policy Letter and the Policy Matrix, continue to be in effect for the duration of the Program.
6. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take into account ADB's views before finalizing and implementing any such proposal.

Use of Counterpart Funds

7. The Borrower shall ensure that the Counterpart Funds are used to finance the implementation of certain programs and activities consistent with the objectives of the Program.

Governance and Anticorruption

8. The Borrower, the Program Executing Agency, and the implementing agencies 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 Program; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

Monitoring and Review

9. Without limiting the generality of Section 2.06 of the Program Agreement, the Borrower, BSEC, BB, IDRA and ADB shall closely monitor the completion of the Program and its impact. The Borrower shall ensure that BFID is responsible for: (a) establishing and maintaining a PPMS in a form and with a composition acceptable to ADB within 3 months after the Effective Date; (b) carrying out monitoring and evaluation of the Program for at least 1 year after completion of the Program; and (c) maintaining all relevant monitoring data to evaluate the benefits of the Program.

10. The Borrower shall ensure that reporting on the progress of the Program through periodic meetings at least every 6 months is made by BFID to ADB in accordance with the performance indicators described in the preceding paragraph.

11. The Borrower and ADB shall jointly conduct periodic reviews of the macroeconomic and fiscal conditions of the Borrower's economy and assess the impact and evaluate the benefits of the Program, in accordance with the PPMS. The BFID shall prepare and submit to ADB at least every 6 months a progress report on policy and institutional reforms implementation. In addition to the periodic reviews, a Program review shall take place prior to the Second Tranche release. BFID shall submit a Program completion report to ADB not later than 3 months after Program completion that assesses compliance with, and impact of, the agreed actions under the Program on each sector and describes lessons identified during the Program implementation period.