
LOAN NUMBER 3399-PAK(SF)

LOAN AGREEMENT
(Special Operations)

(Public Sector Enterprises Reform Program – Subprogram 1)

between

ISLAMIC REPUBLIC OF PAKISTAN

and

ASIAN DEVELOPMENT BANK

DATED 28 JUNE 2016

PAK 48065

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 28 JUNE 2016 between ISLAMIC REPUBLIC OF PAKISTAN ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 19 May 2016 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to support the Borrower's public sector enterprises reforms ("Program");

(B) The Program comprises the first subprogram of a programmatic approach, as described in paragraph 1 of Schedule 1 to this Loan Agreement ("Programmatic Approach"), and the Borrower has applied to ADB for (i) a loan from ADB's ordinary capital resources and (ii) a loan from ADB's Special Funds resources, in each case for the purposes of the Program;

(C) by an agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred million Dollars (\$200,000,000) for the purposes of the Program; 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;

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) "Counterpart Funds" means the local currency generated from the Loan proceeds under the Program and referred to in paragraph 8 of Schedule 4 to this Loan Agreement;

(b) "Deposit Account" means the account referred to in paragraph 3(a) of Schedule 3 to this Loan Agreement;

(c) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(d) "MOF" means Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization of the Borrower, or any successor thereto;

(e) "MOR" means Ministry of Railways of the Borrower, or any successor thereto;

(f) "Policy Matrix" means the matrix of policy actions as agreed between the Borrower and ADB and attached to the Policy Letter, which sets forth actions accomplished or to be accomplished by the Borrower under the Program;

(g) "Privatisation Commission" means the Privatisation Commission of the Borrower established in 1991 and converted to a corporate body pursuant to the Privatisation Commission Ordinance 2000;

(h) "Program Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means Finance Division of MOF, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;

(i) "PSEs" means public sector enterprises;

(j) "SBP" means the State Bank of Pakistan, established pursuant to the State Bank of Pakistan Act 1956, or any successor thereto; and

(k) "SECP" means Securities and Exchange Commission of Pakistan established pursuant to the Securities and Exchange Commission of Pakistan Act 1997 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 million eight hundred seventy three thousand Special Drawing Rights (SDR70,873,000).

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 1 June and 1 December 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.

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 may also be made on account of items of expenditures which are produced in, or are supplied from, non-member countries of ADB.

Section 3.04. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2017 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. 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.

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 Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled; and
- (b) ADB shall have confirmed that it is satisfied that all policy actions set out in the Policy Matrix in respect of Subprogram 1 have been completed.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Ordinary Operations Loan Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of, the Borrower, and is legally binding upon the Borrower in accordance with its terms.

Section 5.03. 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 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary, Economic Affairs Division, Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization 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

The Secretary
Economic Affairs Division
Ministry of Finance, Revenue, Economic Affairs, Statistics and
Privatisation
Islamabad, Pakistan

Facsimile Number:
(9251) 910-4016.

For ADB

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

Facsimile Numbers:


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

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 the ADB.

ISLAMIC REPUBLIC OF PAKISTAN

By 
TARIQ BAJWA
Secretary
Economic Affairs Division

ASIAN DEVELOPMENT BANK

By 
WERNER E. LIEPACH
Country Director
Pakistan Resident Mission

SCHEDULE 1**Description of the Program**

1. The principal objective of the Programmatic Approach is to improve performance of PSEs of the Borrower to reduce fiscal transfers to the PSEs from the federal budget. The Programmatic Approach comprises 2 subprograms and the Program is the first subprogram. The Program is described in more detail in the Policy Letter.

2. The Program is expected to be completed by 30 June 2017.

SCHEDULE 2

Amortization Schedule
(Public Sector Enterprises Reform Program – Subprogram 1)

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)*</u>
1 December 2021	1,771,825.00
1 June 2022	1,771,825.00
1 December 2022	1,771,825.00
1 June 2023	1,771,825.00
1 December 2023	1,771,825.00
1 June 2024	1,771,825.00
1 December 2024	1,771,825.00
1 June 2025	1,771,825.00
1 December 2025	1,771,825.00
1 June 2026	1,771,825.00
1 December 2026	1,771,825.00
1 June 2027	1,771,825.00
1 December 2027	1,771,825.00
1 June 2028	1,771,825.00
1 December 2028	1,771,825.00
1 June 2029	1,771,825.00
1 December 2029	1,771,825.00
1 June 2030	1,771,825.00
1 December 2030	1,771,825.00
1 June 2031	1,771,825.00
1 December 2031	1,771,825.00
1 June 2032	1,771,825.00
1 December 2032	1,771,825.00
1 June 2033	1,771,825.00
1 December 2033	1,771,825.00
1 June 2034	1,771,825.00
1 December 2034	1,771,825.00
1 June 2035	1,771,825.00
1 December 2035	1,771,825.00
1 June 2036	1,771,825.00
1 December 2036	1,771,825.00
1 June 2037	1,771,825.00
1 December 2037	1,771,825.00
1 June 2038	1,771,825.00
1 December 2038	1,771,825.00
1 June 2039	1,771,825.00
1 December 2039	1,771,825.00
1 June 2040	1,771,825.00
1 December 2040	1,771,825.00
1 June 2041	1,771,825.00
TOTAL	70,873,000.00

*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. 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.

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 SBP 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.

4. No Loan proceeds shall be withdrawn to finance any item specified in the Attachment to this Schedule.

Negative List

No withdrawals of Loan proceeds will 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; and
- (vi) 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.

SCHEDULE 4

Program Implementation and Other Matters

Implementation Arrangements

1. The Borrower shall, through the Finance Division of MOF, provide overall oversight for the Programmatic Approach and regularly monitor progress of the Programmatic Approach.
2. The MOF through its Finance Division shall be the Program Executing Agency. The Privatisation Commission, SECP, MOR and Pakistan Railways shall be the implementing agencies for their respective components under the Programmatic Approach. The Program management unit established under the Finance Division of MOF shall coordinate the implementation of the Programmatic Approach.
3. The Borrower shall ensure that Finance Division of MOF, the Privatisation Commission, SECP, MOR and Pakistan Railways are adequately staffed and provided with the necessary financial, technical and other resources to perform their respective functions as executing or implementing agencies under the Programmatic Approach.

Policy Actions and Dialogue

4. 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 Programmatic Approach and thereafter.
5. 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.
6. The Borrower shall carry out review of the Program with the participation of ADB for the design of the following subprogram of the Programmatic Approach. As part of such review, the Borrower and ADB shall work closely on achieving compliance with indicative policy actions for the subsequent subprogram of the Programmatic Approach on a regular basis from at least 9 months prior to the proposed consideration of that subprogram by ADB Board and include agreement on clear milestones and timeframes for achieving compliance with the indicative policy actions. If an indicative policy action requires revision, details of the proposed revision shall be agreed. The Borrower acknowledges that the subsequent subprogram is subject to ADB Board approval and the review described in this paragraph does not commit ADB to financing of the subsequent subprogram, which is subject to ADB Board approval.

Development financing for PSEs

7. The Borrower shall ensure that for its fiscal year ending on 30 June 2017 and each subsequent fiscal year for the duration of the Programmatic Approach, the amount of

budget allocation to PSEs for their development expenditures (including development loans) is at least 0.4% of the gross domestic product of the Borrower for the same fiscal year.

Use of Counterpart Funds

8. 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

9. The Borrower and the Program Executing Agency shall, and shall ensure that 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.