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LOAN NUMBER 3640-SRI

LOAN AGREEMENT  
(Ordinary Operations)

(Small and Medium-Sized Enterprises Line of Credit Project – Additional Financing)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 16 FEBRUARY 2018

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SRI 49273

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 16 February 2018 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

**WHEREAS**

(A) by a loan agreement dated 23 February 2016 between the Borrower and ADB ("Initial Loan Agreement"), ADB provided the Borrower a loan from ADB's ordinary capital resources in an amount of one hundred million Dollars (\$100,000,000) for the purposes of the project described in Section 3.01 of the Initial Loan Agreement;

(B) the Borrower has applied to ADB for an additional loan for the purposes of the Project described in Section 3.01 of this Loan Agreement;

(C) the Project will be carried out by participating financial institutions ("PFIs") and for this purpose the Borrower will make available to PFIs the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreements between ADB and the PFIs;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations, dated 1 January 2017 ("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(uu) is deleted and the following is substituted therefor:  

"Project Agreement" means each Project Agreement between ADB and a PFI.
- (b) The term "Project Executing Agency" appearing in Sections 7.04(b), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term "PFI".
- (c) Section 7.10(c) is deleted.

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) "CBSL" means the Central Bank of Sri Lanka or any successor thereto;
- (b) "EMP" means each environmental management plan for a Qualified Subproject, including any update thereto, incorporated in the IEE;
- (c) "Environmental Management System Framework" means the environmental management system arrangement agreed for the Project;
- (d) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (e) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;
- (f) "IEE" means each initial environmental examination for a Qualified Subproject, including any update thereto, prepared and submitted by a PFI pursuant to the requirements set forth in its environmental management system and, where requested, cleared by ADB;
- (g) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (h) "PAM" means the project administration manual for the Project dated 10 December 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;
- (i) "PFIs" means participating financial institutions under the Project;
- (j) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (k) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the Ministry of Finance and Mass Media of the Borrower or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (l) "Project Implementing Agency" means the Department of Development Finance of the Ministry of Finance and Mass Media of the Borrower or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

- (m) "Qualified Enterprise" means an enterprise, which satisfies the eligibility criteria set out in paragraph 6 of Schedule 2 to this Loan Agreement;
- (n) "Qualified Subproject" means a specific subproject, which satisfies the eligibility criteria set out in paragraph 7 of Schedule 2 to this Loan Agreement, to be carried out by a Qualified Enterprise;
- (o) "SLR" means Sri Lanka rupee, the currency of the Borrower;
- (p) "SME" means small- and medium-sized enterprise;
- (q) "SPS" means ADB's Safeguard Policy Statement (2009);
- (r) "Steering Committee" means the steering committee established by the Borrower for the purposes of the Project, which is chaired by the Secretary to the Treasury or his designate and initially comprises the Department of Development Finance of the Ministry of Finance and Mass Media of the Borrower, Department of External Resources and Department of Project Management and Monitoring of the Ministry of National Policies and Economic Affairs of the Borrower, CBSL, the Export Development Board of the Borrower, the Federation of Chambers of Commerce and Industry and ADB;
- (s) "Subloan" means a loan made, or proposed to be made, by a PFI out of the proceeds of the Loan to a Qualified Enterprise for a Qualified Subproject;
- (t) "Subsidiary Loan Agreement" means each agreement between the Borrower and a PFI as referred to in Section 3.02 of this Loan Agreement; and
- (u) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## ARTICLE II

### The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of seventy-five million Dollars (\$75,000,000); as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.04 of this Loan Agreement.

Section 2.02. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.03. (a) The Loan comprises 3 tranches of approximately \$25 million each.

(b) For each tranche, the Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (i) LIBOR; and
- (ii) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations.

(c) Interest and other charges on each tranche of the Loan shall be payable semiannually on 1 June and 1 December in each year.

(d) For each tranche, the Borrower shall repay in full the principal amount of the Loan withdrawn from the Loan Account on the 20<sup>th</sup> Interest Payment Date for that tranche (i.e., on or around 10 years pursuant to the withdrawal of that tranche). For the avoidance of doubt, the final repayment date shall be on or before 1 June 2029.

Section 2.04. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### ARTICLE III

#### Description of Project; Use of Proceeds of the Loan

Section 3.01. The Project for which the Loan is made is the financing by the PFIs of subprojects by making Subloans to Qualified Enterprises for Qualified Subprojects in accordance with this Loan Agreement and the Project Agreements.

Section 3.02. The Borrower shall relend the SLR equivalent of the Loan proceeds to PFIs under a Subsidiary Loan Agreement with each PFI on terms and conditions satisfactory to ADB. Such Subsidiary Loan Agreement shall be without prejudice to, and without limitation on, the obligations of the Borrower under this Loan Agreement.

Section 3.03. (a) Except as ADB may otherwise agree, the proceeds of the Loan shall be used only for making Subloans to Qualified Enterprises for Qualified Subprojects and shall be applied exclusively to the cost of Goods, Works and other items of expenditure required to carry out such Qualified Subprojects.

(b) Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, all Goods and Works in accordance with the provisions of Schedule 1 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 September 2020 or such other date as may from time to time be agreed between the Borrower and ADB.

### ARTICLE IV

#### Particular Covenants

Section 4.01. (a) The Borrower shall cause the PFIs to 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, the Borrower shall perform, or cause to be performed, all the obligations set forth in Schedule 2 to this Loan Agreement and the Project Agreements.

Section 4.02. In addition to the reports and information set forth in Section 7.04 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 (a) the Qualified Enterprises, the Qualified Subprojects and the Subloans; and (b) the administration, operations and financial condition of the PFIs.

Section 4.03. The Borrower shall enable ADB's representatives to inspect any Qualified Enterprise, any Qualified Subproject, the Goods and Works, and any relevant records and documents maintained by the PFIs.

Section 4.04. The Borrower shall promptly take all action, including the provision of funds, facilities, services and other resources, which shall be necessary on its part to enable the PFIs to perform their obligations under the Project Agreements, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under any Subsidiary Loan Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. 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. Each of the Secretary of the Ministry of Finance and Mass Media, the Deputy Secretary to the Treasury and the Director General of the Department of External Resources, of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Secretary  
Ministry of Finance and Mass Media  
Colombo 1  
Sri Lanka

cc: Deputy Secretary to the Treasury  
Director General, Department of External Resources

Facsimile Numbers:

(94 11) 248-4563  
(94 11) 244-7633

For ADB

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


Facsimile Numbers:

(632) 636-2444  
(632) 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.

DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA

By   
\_\_\_\_\_  
R.H.S. SAMARATHUNGA  
Secretary  
Ministry of Finance and  
Mass Media

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
SRI WIDOWATI  
Country Director  
Sri Lanka Resident Mission

**SCHEDULE 1****Procurement of Goods and Works**General

1. The procurement of Goods and Works shall be subject to and governed by the Procurement Guidelines.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines.

Procurement

3. The Borrower shall cause the PFIs to ensure that each Qualified Enterprise undertakes procurement of Goods and Works with due attention to economy and efficiency and in accordance with established private sector or commercial practices, acceptable to ADB.

Industrial or Intellectual Property Rights

4. (a) The Borrower shall cause the PFIs to ensure that all Goods and Works procured by the Qualified Enterprise (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall cause the PFIs to ensure that all contracts entered into by the Qualified Enterprise for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) hereinabove.

**SCHEDULE 2****Execution of Project; Financial Matters**Implementation Arrangements

1. The Borrower, through the Ministry of Finance and Mass Media, and the PFIs 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 this Loan Agreement and the Project Agreements, the provisions of this Loan Agreement and the Project Agreements shall prevail.

Condition for Withdrawal and Disbursement Procedures

2. No withdrawal shall be made from the Loan Account for a PFI until the PFI has provided ADB with a legal opinion specifying that the Project Agreement has been duly authorized, executed and delivered on behalf of the PFI, and is legally binding on the PFI in accordance with its terms.

3. When submitting an allocation request, each PFI must request a minimum of \$1 million equivalent. The relevant interest rate shall be, at the Borrower's option, the most recent 1-month or 6-month average weighted deposit rate as published by the CBSL, or the rate determined through an auction mechanism to be agreed by the Borrower and ADB, if applicable, and confirmed by ADB prior to the allocation.

4. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook. ADB shall finance 100% of the expenditures claimed under each Subloan.

5. Prior to the last allocation, the Steering Committee and ADB may claw back any undisbursed allocation from any PFI and reallocate to another PFI.

PFI Eligibility Criteria

6. The Borrower shall ensure that each PFI satisfy and maintain the following eligibility criteria:

- (a) confirmation from the CBSL that the PFI is in good regulatory standing, including its corporate governance, reputation/integrity, and compliance with CBSL's combating money laundering and financing of terrorism requirements;
- (b) ADB's financial and integrity due diligence requirements;
- (c) compliance with CBSL's regulatory capital minimum as of the PFI's last audited financial statements;
- (d) a maximum net nonperforming loan ratio of 5%, or such ratio as determined by the Steering Committee and ADB from time to time, as of the PFI's last audited financial statements;

- (e) the PFI was profitable as of its last audited financial statements;
- (f) a minimum (tangible) equity of at least SLRs 1 billion as of the PFI's last audited financial statements;
- (g) If the PFI has an outstanding disbursed loan from ADB, it is eligible for the Project as long as it does not prepay the existing ADB loan (for the avoidance of doubt, such pre-payment is a breach of the PFI eligibility criteria and ADB retains the right to discontinue with the PFI for the Project);
- (h) the PFI shall maintain a management information system that can provide quarterly reports on Subloan disbursements, repayment performance, lending spreads, and Qualified Enterprises- and Qualified Subprojects-related information;
- (i) the PFI shall consent that ADB can publicly disclose the results of disbursements, repayment performance, lending spreads, lending to Qualified Enterprises, and any other such information on the use of Subloans; and
- (j) in the event the PFI failed to fully disburse the funds as Subloans within 18 months from the date of ADB's disbursement to the Ministry of Finance and Mass Media, such PFI shall pay the Borrower a penalty of 50% of the borrowed interest rate on the undisbursed portion of the funds (such penalty being in addition to the borrowed interest rate).

7. ADB shall enter into a Project Agreement with each PFI. Such Project Agreement is based on a standard form developed by ADB for the Project. ADB in consultation with the Steering Committee may invite additional prospective PFIs to participate in the Project subject to an assessment of the PFIs' compliance with the eligibility criteria described in paragraph 5 of this Schedule. Similar Project Agreements shall be entered into with such PFIs.

#### Qualified Enterprises

8. The Borrower shall cause the PFIs to ensure that each Qualified Enterprise:
- (a) is economically and financially viable (as demonstrated by, for example, its capacity to repay the Subloan);
  - (b) is not a related party with respect to the PFI under the Borrower's law and regulations or the CBSL's requirements, including with respect to the PFI's board of directors or senior management;
  - (c) including any subsidiaries if it is a corporate group, has (i) an annual turnover of less than SLRs 750 million; or (ii) less than 300 employees if its business is in manufacturing or 200 employees if its business is in services;

- (d) is not borrowing for the purpose of acquiring any vehicle, unless the Qualified Enterprise's primary business is tourism or transportation or otherwise approved by the PMU (for the avoidance of doubt, no Qualified Enterprise shall borrow for the purpose of acquiring any "three-wheeler", even if the Qualified Enterprise's primary business is tourism or transportation); and
- (e) shall provide contribution by way of equity, if required by the PFIs, to the Qualified Subproject in accordance with commercial norms.

#### Qualified Subproject

9. The Borrower shall cause the PFIs to ensure that each Qualified Subproject:
- (a) is for activities that have minimal or no adverse environmental or social impacts under ADB's Safeguard Policy Statement (for the avoidance of doubt, activities with environmental, involuntary resettlement or indigenous peoples impact and classified as Category A or B pursuant to ADB's Safeguard Policy Statement are excluded from the Project);
  - (b) does not entail any activities that are included in the list of prohibited activities provided in Appendix 5 of ADB's Safeguard Policy Statement; and
  - (c) is included in Attachment 1 of the Environmental Management System Framework (as may be updated by ADB from time to time during implementation subject to due diligence check) or is confirmed as Category C for environmental impact by the PMU's safeguard officer.

#### Qualified Subprojects that are Classified as Category B for Environmental Impact

10. (a) Notwithstanding the generality of subparagraphs 8(a) and (c) of this Schedule, in the event any PFI wishes to provide Subloans for Qualified Subprojects that are classified as Category B for environmental impact pursuant to ADB's Safeguard Policy Statement, the Borrower shall cause the PFI to ensure that before any such Qualified Subproject is approved for financing:

- (i) the PFI's environmental management system is used to screen and categorize the significance of potential environmental impacts associated with the prospective Qualified Subproject and designated staff are trained in using the system, both acceptable to ADB; and
- (ii) an IEE and an EMP are prepared for such Qualified Subproject as required pursuant to the environmental management system.

(b) A PFI that meets the requirements in subparagraph (a) hereinabove may also provide Subloans for Qualified Subprojects that do not meet the requirement in subparagraph 8(c) of this Schedule, provided that the requirements in subparagraphs 8(a) and (b) of this Schedule are met.

11. The Borrower shall cause such PFI to ensure that the preparation, design, construction, implementation, operation and decommissioning of such Qualified Subproject comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; (c) the environment management system; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a safeguards monitoring report.

12. The Borrower shall cause such PFI to ensure that (a) necessary budgetary and human resources are made available to fully implement the environment management system; and (b) each Qualified Enterprise under the Qualified Subproject makes necessary budget and human resources to fully implement the respective EMP.

13. The Borrower shall cause each PFI to do the following:

- (a) submit annual safeguards monitoring reports to ADB;
- (b) if any unanticipated environmental and/or social risks and impacts arise during Qualified Subproject implementation promptly, inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the environment management system and any EMP promptly after becoming aware of the breach.

#### Subloans

14. The Borrower shall cause the PFIs to ensure that:

- (a) 20% of the total number of Subloans shall be made to Qualified Enterprises that have not previously borrowed from a licensed commercial bank or a licensed specialized bank;
- (b) 20% of the total number of Subloans shall be made to Qualified Enterprises that are led by women or at least 51% of its ownership is controlled by women, or at least 60% of its senior managers are women or at least 50% of its board members are women;
- (c) 70% of the total Subloan amounts shall be made to Qualified Enterprises that are "targeted SMEs", namely SMEs that are:
  - (i) located outside of the Colombo District (i.e. the SME may be registered in the Colombo District as long as the Qualified Subproject is for activities outside that district);
  - (ii) using the Subloans for their working capital against which fixed or financial assets are not pledged;
  - (iii) led by women as described in subparagraph (b) hereinabove;  
or

- (iv) has not previously borrowed from a licensed commercial bank or a licensed specialized bank as described in subparagraph (a) hereinabove;
- (d) for Subloans that are not described under subparagraph (c)(ii) hereinabove, less than 50% of such Subloan amounts shall be used for the Qualified Enterprise's working capital; and
- (e) the maximum amount for each Subloan is SLRs 50 million.

#### Reflows to PFIs

15. If Subloans are repaid to the PFIs prior to their repayment to the Borrower, the PFIs may further onlend the funds to Qualified Enterprises provided the PFIs: (a) maintain a separate ledger for such onlending; and (b) onlend at a rate that is equal to or less than CBSL's most recently published monthly average weighted deposit rate plus the average weighted credit margin that the PFI charged on the initial Subloans.

#### Gender and Development

16. The Borrower, through the Ministry of Finance and Mass Media, shall ensure that (a) the gender action plan is implemented in accordance with its terms; (b) adequate resources are allocated for implementation of the gender action plan; and (c) progress on implementation of the gender action plan, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

#### Financial Covenant

17. The Borrower, through the Ministry of Finance and Mass Media, shall cause the PFIs to ensure that the PFIs' annual audited financial statements, or if not addressed therein the auditors' opinion(s) for the PFIs' annual audited financial statements, address the financial covenants in subparagraphs 5(c), (d), (e) and (f) of this Schedule.

#### Governance and Anticorruption

18. The Borrower and the PFIs 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.

#### Combating Money Laundering and Financing of Terrorism

19. The Borrower, through the Ministry of Finance and Mass Media, shall ensure that the PFIs:

- (a) comply with applicable laws and regulations of the Borrower on combating money laundering and financing of terrorism and that Loan proceeds are not used, directly or indirectly, in money laundering or financing of terrorism;

- (b) formulate and implement internal control procedures, including customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and
- (c) promptly inform the Borrower and ADB if there is any violation or potential violation of subparagraph (a) hereinabove. In the event that ADB informs any PFI of its concern that there has been such an alleged violation, such PFI shall: (i) cooperate in good faith with ADB and its representatives so that ADB can determine whether such a violation has occurred; (ii) respond promptly and in reasonable detail to any query from ADB; and (iii) furnish documentary support for such response upon ADB's request.