
LOAN NUMBER 3668-BHU

PROJECT AGREEMENT
(Phuentsholing Township Development Project)

between

ASIAN DEVELOPMENT BANK

and

DRUK HOLDINGS AND INVESTMENTS LIMITED

DATED 3 JULY 2018

BHU 50165

PROJECT AGREEMENT

PROJECT AGREEMENT dated 3 July 2018 between ASIAN DEVELOPMENT BANK ("ADB") and DRUK HOLDINGS AND INVESTMENTS LIMITED ("DHI").

WHEREAS

(A) by a Loan Agreement and a Grant Agreement (together, the "Financing Agreements") each of even date herewith between Kingdom of Bhutan ("Beneficiary") and ADB, ADB has agreed to make to the Beneficiary (i) a concessional loan of twenty-eight million seven hundred forty thousand Dollars (\$28,740,000) on the terms and conditions set forth in the Loan Agreement, and (ii) a grant of twenty-four million two hundred sixty thousand Dollars (\$24,260,000) (together with the loan, the "Financings") on the terms and conditions set forth in the Grant Agreement but only on the condition that the proceeds of the Financings be made available to CDCL and that DHI agrees to undertake certain obligations towards ADB set forth herein; and

(B) DHI, in consideration of ADB entering into the Financing Agreement with the Beneficiary, 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.

ARTICLE II

Particular Covenants

Section 2.01. (a) DHI 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, DHI shall perform all obligations set forth in the Financing Agreements to the extent that they are applicable to DHI and all obligations set forth herein.

Section 2.02. DHI shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other

resources as required, in addition to the proceeds of the Financings, for the carrying out of the Project.

Section 2.03. (a) ADB and DHI shall cooperate fully to ensure that the purposes of the Financings will be accomplished.

(b) DHI 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 Financings.

(c) ADB and DHI 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, DHI and the Financings.

Section 2.04. (a) DHI shall or shall cause CDCL to (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Financings proceeds, 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 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in section (a) herein above, DHI shall (i) provide its annual financial statements prepared in accordance with 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 auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) DHI shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and DHI and its financial affairs where they relate to the Project with the auditors appointed by DHI pursuant to subsections (a)(iii) and (c)(i) 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 DHI, unless DHI shall otherwise agree.

Section 2.05. DHI shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.06. (a) DHI 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) DHI 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) DHI shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.07. Except as ADB may otherwise agree, DHI 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 2.08. Except as ADB may otherwise agree, DHI shall apply the proceeds of the Financings to the financing of expenditures on the Project in accordance with the provisions of the Financing Agreements 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 2.09. DHI shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Royal Charter, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. DHI shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

Section 2.10. To monitor compliance with covenants of the Financings, ADB and DHI will jointly undertake reviews of the Project at least twice a year. These reviews will include a review of financial management and procurement arrangements. The reviews are to assess progress in each component, identify issues and constraints, and determine necessary remedial actions. A mid-term review will be conducted during the third year of implementation. The mid-term review will (i) review the scope, design and implementation arrangements and identify adjustments required, (ii) assess progress of the project implementation against performance indicators, and (iii) recommend changes in the design or implementation arrangements, if necessary.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which both of the Financing Agreements shall have come into force and effect. ADB shall promptly notify DHI of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which both of the Financing Agreements shall have terminated in accordance with their respective terms.

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

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) 636-2293

For DHI

Thori Lam Upper Motithang
Post Box 1127, Thimphu
Bhutan

Facsimile Number:

975 2 336259.

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 DHI may be taken or executed by its Chief Executive Officer or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) DHI 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 
KANOKPAN LAO-ARAYA
Country Director
Bhutan Resident Mission

DRUK HOLDINGS AND INVESTMENTS
LIMITED

By 
DASHO KARMA YEZER RAYDI
Chief Executive Officer