
LOAN NUMBER 3921-MON (COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])

(Fifth Health Sector Development Project [Emergency Assistance Loan for Additional
Financing])

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 14 MAY 2020

MON 45009

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 14 May 2020 between MONGOLIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement dated 7 February 2013 between the Borrower and ADB ("Original Loan Agreement"), ADB agreed to make a loan in various currencies equivalent to nineteen million four hundred eighty-three thousand Special Drawing Rights (SDR19,483,000) available to the Borrower for the purposes of the project described in Schedule 1 to the Original Loan Agreement ("Original Project");

(B) the Borrower has applied to ADB for an additional financing loan for the purposes of the Emergency Assistance Project described in Schedule 1 to this Loan Agreement ("Project"), which comprises a change in scope to the Original Project;

(C) the Project will, and the Original Project will continue to be, carried out by the Ministry of Health of Mongolia and for this purpose the Borrower will make available to MOH the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital 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 ADB's Ordinary Operations (Concessional) 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.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations and in the Original Loan Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires; provided that the term "Project" as used in such definitions shall refer to both the Original Project and the Project. Additional terms used in this Loan Agreement and terms used in this Loan Agreement with different meanings from the Original Loan Agreement have the following meanings:

- (a) "Implementing Agency" means, with respect to the Project, MOH or any successor thereto acceptable to ADB, which is responsible for implementing the Project.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount in various currencies equivalent to twenty-one million nine hundred sixty thousand Special Drawing Rights (SDR21,960,000).

(b) The Loan has a principal repayment period of 30 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (a) hereinabove 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 2.02. The Borrower shall pay to ADB an interest charge at the rate of 1% 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.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 October and 1 April 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 amount 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 Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make the proceeds of the Loan available to the Project Executing Agency upon terms and conditions satisfactory to ADB and shall cause the Project Executing Agency to apply such proceeds exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and 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. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 April 2022 or such other date as may from time to time be agreed between the Borrower and ADB through an exchange of letters between Borrower's Ministry of Finance and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In carrying out the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. (a) The Borrower shall (i) maintain or caused to be maintained 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 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 this Loan Agreement as well as on the use of the procedures for the advance account 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 end of each related fiscal year, 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 on its website, 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.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) 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 Borrower, unless the Borrower shall otherwise agree.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Original Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. 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 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Government Building 2
S. Danzan Street 5/1
Ulaanbaatar 15160
Mongolia

Facsimile Number:

(976) 11-320247

For ADB

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

Facsimile Numbers:

(632) 8636-2444
(632) 8636-2534.

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.

MONGOLIA

By 
KHURELBAATAR CHIMED
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
PAVIT RAMACHANDRAN
Country Director
Mongolia Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to achieve improved quality of health services in the territory of the Borrower.
2. The Project shall comprise:

Improve hospital hygiene and infection prevention and control:

Output 1: Upgrade sterilization departments in all (secondary and tertiary level) hospitals nationwide that provide a “referral” level of care as defined in the Law on Health of the Borrower (“referral hospitals”) and that were not upgraded under the Original Project.

Output 2: Increase the capacity of referral hospitals to diagnose and treat COVID-19 and other severe acute respiratory infection patients by providing intensive care and ambulance services.

Output 3: Improve diagnostic capacity for COVID-19 and other severe acute respiratory infections at the National Center for Communicable Diseases and provincial hospitals in border *aimags* with a high risk of imported cases.

Output 4: Construct and equip a warehouse facility to maintain and manage centralized stockpiles of medicines and medical devices for emergency situations in Ulaanbaatar.
3. The Project is expected to be completed by 31 October 2021.

SCHEDULE 2**Amortization Schedule**

Date Payment Due	Payment of Principal (expressed in SDR)
1 October 2030	219,600
1 April 2031	219,600
1 October 2031	219,600
1 April 2032	219,600
1 October 2032	219,600
1 April 2033	219,600
1 October 2033	219,600
1 April 2034	219,600
1 October 2034	219,600
1 April 2035	219,600
1 October 2035	219,600
1 April 2036	219,600
1 October 2036	219,600
1 April 2037	219,600
1 October 2037	219,600
1 April 2038	219,600
1 October 2038	219,600
1 April 2039	219,600
1 October 2039	219,600
1 April 2040	219,600
1 October 2040	439,200
1 April 2041	439,200
1 October 2041	439,200
1 April 2042	439,200
1 October 2042	439,200
1 April 2043	439,200
1 October 2043	439,200
1 April 2044	439,200
1 October 2044	439,200
1 April 2045	439,200
1 October 2045	439,200
1 April 2046	439,200
1 October 2046	439,200
1 April 2047	439,200
1 October 2047	439,200

Date Payment Due	Payment of Principal (expressed in SDR)
1 April 2048	439,200
1 October 2048	439,200
1 April 2049	439,200
1 October 2049	439,200
1 April 2050	439,200
1 October 2050	439,200
1 April 2051	439,200
1 October 2051	439,200
1 April 2052	439,200
1 October 2052	439,200
1 April 2053	439,200
1 October 2053	439,200
1 April 2054	439,200
1 October 2054	439,200
1 April 2055	439,200
1 October 2055	439,200
1 April 2056	439,200
1 October 2056	439,200
1 April 2057	439,200
1 October 2057	439,200
1 April 2058	439,200
1 October 2058	439,200
1 April 2059	439,200
1 October 2059	439,200
1 April 2060	439,200
Total	21,960,000

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

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category "Interest Charge" is for financing the interest charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest charge.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

For Disaster and Emergency Assistance Loans

6. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date in connection with medical equipment needed for COVID-19 treatment and prevention, subject to a maximum amount equivalent to 30% of the Loan amount; provided that the expenditures have been incurred after the emergency occurred but not earlier than 26 February 2020.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
CATEGORY			ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Percentage and Basis for Withdrawal from the Loan Account
1	Goods and Works	20,843,000	100% of total expenditure claimed*
2	Consulting Services	93,000	100% of total expenditure claimed
3	Interest charge	292,000	100% of amounts due
4	Unallocated	732,000	
	Total	21,960,000	

*Exclusive of VAT and duties within the territory of the Borrower.

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works and Consulting Services for the Project shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively; provided that procurement shall not be restricted to member countries of ADB. Notwithstanding the foregoing, the Borrower may restrict procurement to ADB member countries except where ADB has determined that such restriction is not conducive to the efficient procurement of Goods, Works or Consulting Services to enable the project to achieve its purposes, in which circumstances ADB may require the Borrower to apply universal procurement.

2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

3. The Borrower, through MOH, shall ensure that all Goods, Works and Consulting Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Borrower may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan.

Conditions for Award of Contract

4. The Borrower shall, and shall cause MOH to, ensure that Works contracts which involve environmental impacts are not awarded until:

- (a) the Ministry of Environment and Green Development has granted all required approvals; and
- (b) the Borrower, through MOH, has incorporated the relevant provisions from the EMP into the Works contract.

Industrial or Intellectual Property Rights

5. (a) The Borrower, through MOH, shall ensure that all Goods and Works procured (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, through MOH, shall ensure that all contracts 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) of this paragraph.

6. The Borrower, through MOH, shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower 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, the provisions of this Loan Agreement shall prevail.

Counterpart Support

2. The Borrower shall ensure that counterpart financing necessary for the Project is provided in time, and that MOH makes available all funds and resources necessary for international accreditations, construction, administration, management, and O&M of the Project facilities financed under the Project on a timely basis. The Borrower shall further ensure that additional counterpart funding is available to cover any funding shortfalls that may occur during Project implementation. Without limiting the foregoing, the Borrower shall include in yearly budgets submitted for Ministry of Finance endorsement and Parliamentary approval sufficient recurrent funds to fulfill its undertakings under this covenant.

Donor Coordination

3. The Borrower shall coordinate its and its agencies' purchases of hospital hygiene and infection prevention and control equipment and supplies that use funding or other support from ADB, agencies of the United Nations, World Bank, other international financial institutions and donors to ensure no duplication of support or overlaps and gaps in acquisitions of equipment. The Borrower shall cause MOH to issue a ministerial order that includes lists of equipment and medical supplies to be procured under donor-funded projects, including the Project, to ensure proper donor coordination.

Safeguards

Environment

4. The Borrower, through MOH, shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE or the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Resettlement

5. The Borrower, through MOH, shall ensure that (a) the Project shall not have any involuntary resettlement impacts within the meaning of the SPS; (b) no involuntary land acquisition or resettlement shall be involved in the Project; (c) all Works shall be undertaken at

existing locations of Project facilities on land owned by the Borrower; and (d) the land is free of encumbrances. In the event that any resettlement impacts are unavoidable for any Project activities, the Borrower shall inform ADB, prepare a resettlement plan for such activities in accordance with the SPS, and carry out any such land acquisition and resettlement activities in accordance with the SPS and such resettlement plan.

Indigenous Peoples

6. The Borrower, through MOH, shall ensure that the Project shall not have any adverse impacts on indigenous peoples, if any, within the meaning of the SPS, and all activities under the Project shall be carried out in a culturally appropriate and participatory manner to meet the needs of various peoples in the Project area. If any adverse impact on indigenous peoples is anticipated, the Borrower, through MOH, shall ensure that an indigenous peoples plan is prepared in accordance with the SPS and take all steps required to ensure that the Project complies with and is carried out in accordance with the applicable laws and regulations of the Borrower, the SPS and such indigenous peoples plan.

Human and Financial Resources to Implement Safeguards Requirements

7. The Borrower, through MOH, shall make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

8. The Borrower, through MOH, shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE or the EMP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that may arise during construction, implementation or operation of the Project that were not considered in the IEE or the EMP; and
- (d) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-Project condition upon the completion of construction.

Safeguards Monitoring and Reporting

9. The Borrower, through MOH, shall do the following:

- (a) submit annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;

- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the Project, the IEE or the EMP, 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 EMP promptly after becoming aware of the breach.

Prohibited List of Investments

10. The Borrower 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.

Labor Standards, Health and Safety

11. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

12. The Borrower shall strictly monitor compliance with the requirements set forth in paragraph 11 above and provide ADB with regular reports.

Gender and Development

13. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Governance and Anticorruption

14. The Borrower shall, and shall cause MOH and the IAs to, (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.

15. The Borrower shall, and shall cause MOH and the IAs to, ensure that anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, 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.

16. The Borrower shall, and shall cause MOH and the IAs to, ensure that (a) periodic inspection of Project contractors is undertaken to ensure that fund withdrawal and settlement procedures are followed; and (b) information about various matters concerning the Project is disclosed on the website established for the Original Project, including general Project information, procurement, Project progress, and contact details in the English and Mongolian languages. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of Goods, Works and Consulting Services procured.

Grievance Redress Mechanism

17. The Borrower shall cause MOH to ensure that within 3 months after the Effective Date, complaint and problem management mechanisms acceptable to ADB are established and a task force is functioning effectively to (a) review and document eligible complaints of Project stakeholders; (b) proactively address grievances; (c) provide the complainants with notice of the chosen mechanism/action; and (d) prepare periodic reports to summarize the number of complaints received and resolved, and final outcomes of the grievances and chosen actions and make these reports available to ADB as part of the quarterly progress reports. Eligible complaints include those related to the Project, any of the service providers, any person responsible for carrying out the Project, complaints on misuse of funds and other irregularities, and grievances due to any safeguard or social issues.