
LOAN NUMBER 3426-CAM(SF)

LOAN AGREEMENT
(Special Operations)

(Upper Secondary Education Sector Development Program)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 6 OCTOBER 2016

CAM 47136

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 6 October 2016 between KINGDOM OF CAMBODIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 16 August 2016 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's upper secondary education sector ("Program");

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

(C) the Borrower has also applied for a loan from ADB's Special Funds resources in support of Upper Secondary Education Sector Development Project ("Project") and by a loan agreement of even date herewith between the Borrower and ADB ("Project Loan Agreement"), ADB has agreed to provide a loan from its Special Funds resources equivalent to twenty-one million five hundred five thousand Special Drawing Rights (SDR 21,505,000); 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;

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".

(e) Section 5.01(b) is deleted and the following is substituted therefor:

(b) Except as ADB and the Borrower shall otherwise agree, no withdrawals shall be made on account of payments made prior to the Effective Date.

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) "Cambodian Riel" means the currency of the Borrower;

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

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

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

(e) "MOEYS" means the Borrower's Ministry of Education, Youth and Sport or any successor thereto;

(f) "Policy Letter" means the development policy letter referred to in Recital (A) of this Loan Agreement;

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

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

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 ten million seven hundred fifty-two thousand Special Drawing Rights (SDR 10,752,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum 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.

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. 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 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

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 Project 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. 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: all reform actions and measures set out in the Policy Matrix have been undertaken to the satisfaction of ADB.

Section 6.02. 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 VII

Miscellaneous

Section 7.01. The Minister of Economy and 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 Economy and Finance
St. 92 Sangkat Wat Phnom
Khan Daun Penh
Phnom Penh, Cambodia

Facsimile Numbers:

(855 23) 427-798
(855 23) 428-424.

For ADB


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

Facsimile Numbers:

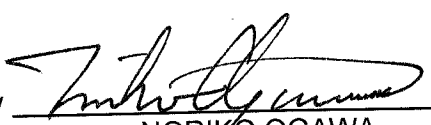
(632) 636-2444
(632) 636-2228.

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.

KINGDOM OF CAMBODIA

By 
H.E. DR. AUN PORNMONIROTH
Senior Minister
Minister, Ministry of Economy and
Finance

ASIAN DEVELOPMENT BANK

By 
NORIKO OGAWA
Deputy Director General
Southeast Asia Department

SCHEDULE 1

Description of the Program

1. The principal objective of the Program is to improve effectiveness of the Borrower's upper secondary education system.
2. The Program is expected to be completed by 30 June 2017.

SCHEDULE 2**Amortization Schedule****(Upper Secondary Education Sector Development Program)**

| <u>Date Payment Due</u> | <u>Payment of Principal</u> (expressed in Special Drawing Rights)* |
|-------------------------|--|
| 15 October 2024 | 336,000.00 |
| 15 April 2025 | 336,000.00 |
| 15 October 2025 | 336,000.00 |
| 15 April 2026 | 336,000.00 |
| 15 October 2026 | 336,000.00 |
| 15 April 2027 | 336,000.00 |
| 15 October 2027 | 336,000.00 |
| 15 April 2028 | 336,000.00 |
| 15 October 2028 | 336,000.00 |
| 15 April 2029 | 336,000.00 |
| 15 October 2029 | 336,000.00 |
| 15 April 2030 | 336,000.00 |
| 15 October 2030 | 336,000.00 |
| 15 April 2031 | 336,000.00 |
| 15 October 2031 | 336,000.00 |
| 15 April 2032 | 336,000.00 |
| 15 October 2032 | 336,000.00 |
| 15 April 2033 | 336,000.00 |
| 15 October 2033 | 336,000.00 |
| 15 April 2034 | 336,000.00 |
| 15 October 2034 | 336,000.00 |
| 15 April 2035 | 336,000.00 |
| 15 October 2035 | 336,000.00 |
| 15 April 2036 | 336,000.00 |
| 15 October 2036 | 336,000.00 |
| 15 April 2037 | 336,000.00 |
| 15 October 2037 | 336,000.00 |
| 15 April 2038 | 336,000.00 |
| 15 October 2038 | 336,000.00 |
| 15 April 2039 | 336,000.00 |
| 15 October 2039 | 336,000.00 |
| 15 April 2040 | 336,000.00 |
| TOTAL | 10,752,000.00 |

* 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, Loan Disbursement Handbook and 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 National Bank of Cambodia 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.
5. The Borrower may withdraw proceeds of the Loan upon effectiveness of this Loan Agreement.

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;
- (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.

SCHEDULE 4**Program Implementation and Other Matters**Implementation Arrangements

1. The Program Executing Agency shall be responsible for (a) overseeing all policy and regulatory actions to be taken in connection with the Program; and (b) ensuring that all policy reforms set out in the Policy Letter and the Policy Matrix are duly carried out in a timely manner.

Policy Actions and Dialogue

2. 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.

3. 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

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

Governance and Anticorruption

5. 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

6. The Borrower shall provide ADB with the opportunity to review and comment on relevant studies, draft legislation, decrees, orders, rules and regulations which may likely impact the objectives and implementation of the Program.