
LOAN NUMBER 3691-PHI

LOAN AGREEMENT
(Ordinary Operations)

(Expanding Private Participation in Infrastructure Program – Subprogram 2)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED AUGUST 28, 2018

PHI 48458

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated AUGUST 28, 2018 between the REPUBLIC OF THE PHILIPPINES ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 14 June 2018 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's targeted investment rate for infrastructure development ("Program");

(B) the Program comprises the second subprogram of a programmatic approach, as described in Schedule 1 to this Loan Agreement ("Programmatic Approach"), and the Borrower has applied to ADB for a loan for the purposes of the Program; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

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(tt) is deleted and the following is substituted therefor:

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(vv) is deleted and the following is substituted therefor:

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) "BTr" means the Bureau of Treasury of DOF or any successor thereto;
- (b) "Counterpart Funds" means the local currency generated from the Loan proceeds under the Program and referred to in paragraph 6 of Schedule 4 to this Loan Agreement;
- (c) "DBM" means the Department of Budget and Management of the Borrower or any successor thereto;
- (d) "Deposit Account" means the account referred to in paragraph 3 of Schedule 3 to this Loan Agreement;
- (e) "DOF" means the Department of Finance of the Borrower or any successor thereto;
- (f) "DOTr" means the Department of Transportation of the Borrower or any successor thereto;
- (g) "DPWH" means the Department of Public Works and Highways of the Borrower or any successor thereto;
- (h) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (i) "NEDA" means the National Economic and Development Authority of the Borrower or any successor thereto;
- (j) "Policy Letter" means the development policy letter referred to in Recital (A) of this Loan Agreement;
- (k) "Policy Matrix" means the policy matrix as agreed between the Borrower and ADB, which sets forth actions accomplished by the Borrower under the Program and is attached to the Policy Letter;
- (l) "PPP Center" means the Public-Private Partnership Center of the Borrower or any successor thereto;
- (m) "Program Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means DOF or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;

- (n) "Program Implementing Agencies" means NEDA, DOTr, DPWH, PPP Center, BTr and DBM or any successors thereto, which are responsible for the day-to-day implementation of the Program; and
- (o) "Program Steering Committee" means the program steering committee established under the second subprogram of the Programmatic Approach, chaired by DOF, comprising representatives from the Program Implementing Agencies.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of three hundred million Dollars (\$300,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 12 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) 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 2.02. 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:

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

Section 2.03. 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 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (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 paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(f) 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

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 for 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 9.02 of the Loan Regulations shall be 31 October 2019 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 information and reports referred to in Sections 7.01 and 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

the implementation of the Program, including carrying out of the actions set out in the Policy Letter.

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. The Secretary of Finance 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

Department of Finance
DOF Building
Roxas Boulevard
Manila, Philippines

Facsimile Numbers:

(632) 523-9216
(632) 521-9495

For ADB


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

Facsimile Numbers:

(632) 636-2444
(632) 636-2331.

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.

REPUBLIC OF THE PHILIPPINES

By 
CARLOS G. DOMINGUEZ
Secretary
Department of Finance



ASIAN DEVELOPMENT BANK

By 
KELLY BIRD
Country Director
Philippines Country Office

SCHEDULE 1**Description of the Program**

1. The principal objective of the Programmatic Approach is to improve private participation in infrastructure. The Programmatic Approach comprises two subprograms and this Program is the second subprogram.
2. The scope of the Program includes: (a) strengthening government financial support to PPPs; (b) expanding and efficiently implementing the pipeline of PPP projects; and (c) strengthening the legal and regulatory frameworks for PPPs. The Program seeks to implement the initiatives completed under the first subprogram.
3. The proceeds of the Loan is expected to be utilized by 31 October 2019.

SCHEDULE 2**Amortization Schedule**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 November 2021	0.542983
15 May 2022	0.624430
15 November 2022	0.718095
15 May 2023	0.825809
15 November 2023	0.949681
15 May 2024	1.092133
15 November 2024	1.255953
15 May 2025	1.444345
15 November 2025	1.660997
15 May 2026	1.910147
15 November 2026	2.196669
15 May 2027	2.526169
15 November 2027	2.905095
15 May 2028	3.340859
15 November 2028	3.841988
15 May 2029	4.418286
15 November 2029	5.081029
15 May 2030	5.843183
15 November 2030	6.719660
15 May 2031	7.727610
15 November 2031	8.886751
15 May 2032	10.219764
15 November 2032	11.752728
15 May 2033	<u>13.515636</u>
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

- (a) to the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule; and
- (b) any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within 2 calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (a) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (b) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3**Withdrawal of Loan Proceeds**

1. Except as set out in this Schedule or as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.
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 (Deposit Account) of the Bangko Sentral ng Pilipinas (BSP) into which all withdrawals (in foreign currency) from the Loan Account shall be deposited, and which shall be further credited to the account of the Treasurer of the Philippines with the BSP. The Deposit Account shall be established, managed and liquidated in accordance with the applicable regulations and procedures of the Borrower.

(b) Accounts and records in respect of the Deposit Account shall be maintained in accordance with accounting principles applied by the Borrower in maintaining accounts and records in respect of the Deposit Account. 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, 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 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 the overall implementation of the Program.
2. The Program Implementing Agencies shall be responsible for the day-to-day implementation of the Program.
3. The Borrower shall ensure that the Program Steering Committee shall meet semiannually and if needed, on an ad hoc basis, to: (a) monitor progress of the Programmatic Approach and the medium-term directions and expected results highlighted in the Policy Matrix; and (b) provide guidance and direction to the Program Executing Agency and the Program Implementing Agencies for the implementation of the policy actions under the Programmatic Approach and the medium-term directions and expected results highlighted in the Policy Matrix. The Borrower may invite ADB to participate in the meetings held by the Program Steering Committee as an observer.

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.
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.

Use of Counterpart Funds

6. 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

7. The Borrower, the Program Executing Agency, and the Program 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

8. 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 Programmatic Approach.