
LOAN NUMBER 3425-SRI(SF)

TECHNICAL ASSISTANCE LOAN AGREEMENT
(Special Operations)

(Transport Project Preparatory Facility)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 28 OCTOBER 2016

SRI 44350

**TECHNICAL ASSISTANCE LOAN AGREEMENT
(Special Operations)**

TECHNICAL ASSISTANCE LOAN AGREEMENT dated 28 October 2016 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Technical Assistance Loan Agreement ("Loan Agreement");

(B) the Project will be carried out by the Borrower's (i) Ministry of Higher Education and Highways ("MOHEH") acting through the Road Development Authority ("RDA"); (ii) Ministry of Transport and Civil Aviation ("MOTCA") acting through Sri Lanka Railways ("SLR"); and (iii) Ministry of Ports and Shipping ("MOPS") acting through the Sri Lanka Ports Authority ("SLPA"), and for this purpose the Borrower will make available to RDA, SLR and SLPA the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in each Project Agreement of even date herewith between ADB, RDA and SLPA respectively;

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

"Project Agreement" means each of the (i) Project Agreement of even date herewith between ADB and RDA; and (ii) Project Agreement of even date herewith between ADB and SLPA, as such agreements may be amended from time to time; and such term includes all agreements supplementary to each Project Agreement and all schedules to each Project Agreement.

- (b) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by "RDA" and "SLPA".

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) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

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

(d) "MOHEH" means the Borrower's Ministry of Higher Education and Highways, or any successor thereto acceptable to ADB;

(e) "MOPS" means the Borrower's Ministry of Ports and Shipping, or any successor thereto acceptable to ADB;

(f) "MOTCA" means the Borrower's Ministry of Transport and Civil Aviation, or any successor thereto acceptable to ADB;

(g) "PAM" means the project administration manual for the Project dated 9 August 2016 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;

(h) "Procurement Plan" means the procurement plan for the Project dated 9 August 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Consulting Guidelines, and other arrangements agreed with ADB;

(i) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOHEH, MOPS and MOTCA, or any successors thereto acceptable to ADB;

(j) "RDA Subsidiary Grant Agreement" means the agreement between the Borrower and RDA referred to in Section 3.01(a) of this Loan Agreement;

(k) "SLPA Subsidiary Grant Agreement" means the agreement between the Borrower and SLPA referred to in Section 3.01(b) of this Loan Agreement;

(l) "SPS" means ADB's Safeguard Policy Statement (2009); and

(m) "Transport Project" means projects in the road, railways and ports sectors which meet the eligibility criteria set out in paragraph 4 of Schedule 5 to this Loan Agreement, and for which any preparatory, startup or implementation activities shall be carried out under the Project utilizing the proceeds of the Loan.

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 seventeen million four hundred seventy-one thousand Special Drawing Rights (SDR17,471,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% 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.

(b) 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 March and 15 September 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 a portion of the proceeds of the Loan available to RDA as a grant under the RDA Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall make a portion of the proceeds of the Loan available to SLPA as a grant under the SLPA Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB.

(c) The Borrower shall make a portion of the proceeds of the Loan available to SLR through the budgetary provisions under the annual budget of the Borrower upon terms and conditions satisfactory to ADB.

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

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. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Consulting Services shall be made only on account of expenditures relating to:

- (a) Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2023 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 the Project, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreements.

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

Section 4.03. (a) The Borrower shall (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 Loan 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 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 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) 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.

(d) For the purposes of this Section 4.03, "Project" means Transport Projects in the rail sector carried out by MOTCA acting through SLR.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable RDA and SLPA to perform their obligations under their respective 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 each Subsidiary Grant Agreement 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 either Subsidiary Grant Agreement shall be assigned, amended, 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 9.04 of the Loan Regulations.

ARTICLE VI

Delegation of Authority

Section 6.01. The Borrower hereby designates each of RDA, SLR and SLPA as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.06 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 6.02. Any action taken or any agreement entered into by RDA, SLR or SLPA pursuant to the authority conferred under Section 6.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 6.03. The authority conferred on RDA, SLR and SLPA under Section 6.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VII

Miscellaneous

Section 7.01. Each of the Secretary of the Ministry of Finance, Deputy Secretary to the Treasury and Director General of the Department of External Resources 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

Secretary
Ministry of Finance
Colombo 1
Sri Lanka

Facsimile Numbers:

+94 11 243-3349
+94 11 244-7633

For ADB

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

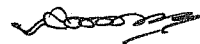
Facsimile Numbers:

(632) 636-2444
(632) 636-2340.

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

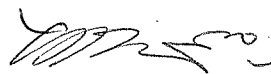
By



R. H. S. SAMARATUNGA
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By



SRI WIDOWATI
Country Director
Sri Lanka Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Project is improved readiness of priority Transport Projects.
2. The Project shall comprise:
 - (a) the development of feasibility studies and detailed engineering designs for the Transport Projects; and
 - (b) the provision of implementation support for the Transport Projects.
3. The Project includes the provision of Consulting Services to support the activities described in paragraph 2 of this Schedule 1.
4. The Project is expected to be completed by 31 December 2022.

SCHEDULE 2

Amortization Schedule

(Transport Project Preparatory Facility)

<u>Payment Due Date</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 March 2022	436,775
15 September 2022	436,775
15 March 2023	436,775
15 September 2023	436,775
15 March 2024	436,775
15 September 2024	436,775
15 March 2025	436,775
15 September 2025	436,775
15 March 2026	436,775
15 September 2026	436,775
15 March 2027	436,775
15 September 2027	436,775
15 March 2028	436,775
15 September 2028	436,775
15 March 2029	436,775
15 September 2029	436,775
15 March 2030	436,775
15 September 2030	436,775
15 March 2031	436,775
15 September 2031	436,775
15 March 2032	436,775
15 September 2032	436,775
15 March 2033	436,775
15 September 2033	436,775
15 March 2034	436,775
15 September 2034	436,775
15 March 2035	436,775
15 September 2035	436,775
15 March 2036	436,775
15 September 2036	436,775
15 March 2037	436,775
15 September 2037	436,775
15 March 2038	436,775
15 September 2038	436,775
15 March 2039	436,775
15 September 2039	436,775
15 March 2040	436,775
15 September 2040	436,775
15 March 2041	436,775
15 September 2041	<u>436,775</u>
Total	17,471,000

*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 of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be 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 2 is for financing the interest charge on the Loan during the implementation period of the Project.

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 Procedure

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

Retroactive Financing

6. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Transport Project Preparatory Facility)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Consulting Services and Project Management Unit	16,791,000	100% of total expenditure claimed*
2	Interest Charge	680,000	100% of amounts due
	Total	17,471,000	

*Exclusive of taxes and duties imposed within the territory of the Borrower.

SCHEDULE 4**Selection of Consulting Services**General

1. The selection and engagement of Consulting Services shall be subject to and governed by the Consulting Guidelines.
2. Except as ADB may otherwise agree, Consulting Services shall be selected and engaged only on the basis of the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the selection method or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Consulting Guidelines.

Consulting Services

4. Except as set forth in the paragraph below, the Borrower shall apply Quality- and Cost-Based Selection for Consulting Services.
5. The Borrower shall recruit individual experts for roads, railways and ports in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

6. The Borrower 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.

ADB's Review of Procurement Decisions

7. Contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5**Execution of Project; Financial Matters**Implementation Arrangements

1. The Borrower, RDA, SLR and SLPA 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 make available, promptly as and when needed, the funds, facilities, services, and other resources as shall be necessary or required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Safeguards

3. The Borrower, RDA, SLR and SLPA shall ensure that the Project does not have any environmental, involuntary resettlement or indigenous peoples impacts within the meaning of the SPS. In the event that the Project does have such impacts, the Borrower, RDA, SLR and SLPA shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Transport Projects

4. The Borrower, RDA, SLR and SLPA shall ensure that prior to receiving any funding under this Project, a perspective Transport Project is (a) in line with the Borrower's national strategies and specific sector development plans; and (b) is included in ADB's country partnership strategy for Sri Lanka.

5. The Borrower, RDA, SLR and SLPA shall ensure that all Transport Projects are prepared in accordance with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; and (b) the SPS.

6. The Borrower, RDA, SLR and SLPA shall ensure that environmental measures in accordance with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; and (b) the SPS are incorporated in the detailed designs for all Transport Projects.

7. The Borrower, RDA, SLR and SLPA shall ensure that for Transport Projects which may entail land acquisition and involuntary resettlement, resettlement plans are prepared in accordance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; and (b) the SPS.

8. The Borrower, RDA, SLR and SLPA shall ensure that adequate measures to avoid or minimize land acquisition and involuntary resettlement are incorporated in the detailed designs for all Transport Projects.

9. The Borrower, RDA, SLR and SLPA shall ensure that for Transport Projects which may entail indigenous peoples impacts, indigenous peoples plans are prepared in accordance with (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; and (b) the SPS.

Prohibited List of Investments

10. The Borrower, RDA, SLR and SLPA 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.

Governance and Corruption

11. The Borrower, RDA, SLR and SLPA 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.

12. The Borrower, RDA, SLR and SLPA shall ensure that the 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.