

LOAN NUMBER 2185-CAM(SF)

LOAN AGREEMENT  
(Special Operations)

(Subprogram III - Financial Sector Program Loan)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 8 NOVEMBER 2005

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 8 November 2005 between KINGDOM OF CAMBODIA (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 4 October 2001 (hereinafter called the Policy Letter), setting forth certain objectives, policies and actions designed to develop the Borrower's financial sector among which some of them are described in Schedule 1 to this Loan Agreement, and are to be implemented under this Loan Agreement (hereinafter called the Program). The Program represents the third of three subprograms which are being processed sequentially upon the successful completion of the previous program, and which together form the financial sector program loan cluster (hereinafter together called the Program Cluster);

(B) the Borrower has applied to ADB for a loan from its Special Funds resources for the purposes of the Program;

(C) the Government of the Borrower (hereinafter called the Government) has also applied to ADB for technical assistance to support the implementation of the Program, and ADB has agreed to provide a technical assistance grant to the Government for this purpose in an aggregate amount equivalent to five hundred thousand dollars (\$500,000); and

(D) ADB has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions hereinafter set forth.

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 May 2004 (the "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:

(j) Section 2.01(24) is deleted and the following is substituted therefor:

24. The term "Program" means Subprogram III of the financial sector program loan cluster 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.

(k) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program".

(l) 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.

(m) The term "Project Executing Agency" wherever it appears in the Loan Regulations shall be substituted by the term "Program Executing Agency".

(n) Section 6.05 (c) is deleted and the following is substituted therefor:

(c) Promptly after the closing date for withdrawals from the Loan Account, but in any event not later than three (3) months thereafter or such later date as may be agreed for this purpose between the Borrower and ADB, the Borrower shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution of the Program, including its cost, the performance by the Borrower of its obligations under this Loan Agreement and the accomplishment of the purposes of the Loan.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Bankers Association" means the association of commercial banks and other financial institutions or any successor thereof operating in the territory of the Borrower, whose Articles of Association shall have been formally approved or endorsed by the National Bank of Cambodia pursuant to the Law on Banking and Financial Institutions of the Borrower;

(b) "Blueprint" means the financial sector development plan for 2001-2010 adopted by the Borrower and referred to in paragraphs 6, 8, and 10 of Schedule 5 to this Loan Agreement;

(c) "Cambodian Riel" or "KR" means riel in the currency of the Borrower;

(d) "Counterpart Funds" means the KR proceeds accruing to the Borrower and generated from the proceeds of the Loan under the Program and referred to in Schedules 1 and 5 to this Loan Agreement;

(e) "Deposit Account" means the account referred to in paragraph 4 of Schedule 3 to this Loan Agreement;

(f) "Eligible Items" means the goods imported under the Program (except those specifically excluded pursuant to Attachment 1 to Schedule 3 to this Loan Agreement), the foreign exchange costs of which are eligible for financing out of the proceeds of the Loan;

(g) "fiscal year" or "FY" means fiscal year of the Borrower, commencing on the first day of January each year ending on the last day of December of the same year;

(h) "MEF" means Ministry of Economy and Finance of the Borrower, and any successor thereto;

(i) "MOC" means the Ministry of Commerce of the Borrower, and any successor thereto;

(j) "National Assembly" means the National Assembly of the Borrower and any successor thereto;

(k) "NBC" means the National Bank of Cambodia, and any successor thereto;

(l) "Policy Letter" means the development policy letter dated 4 October 2001 addressed by the Borrower to ADB and referred to in Recital (A) of this Loan Agreement;

(m) "Policy Matrix" means the policy matrix as revised and agreed between the Borrower and ADB which sets forth actions to be taken by the Borrower under the Subprograms I, II, and III of the Program Cluster;

(n) "Program Cluster" means the three subprograms which together form part of the financial sector development plan of the Borrower and which are referred to in Recital (A) of this Loan Agreement;

(o) "Program Cluster period" means the period during which the Program Cluster will be implemented;

(p) "Program Executing Agency" means, for the purposes and within the meaning of the Loan Regulations, NBC, which is responsible for the carrying out of the Program;

(q) "Program Period" means the period from 1 January 2006 until 30 June 2007; and

(r) "Tranche" means the proceeds of the Loan to be withdrawn, pursuant to and subject to the provisions of paragraph 5 of Schedule 3 to this Loan Agreement, and to be utilized, in amounts not exceeding the equivalent of six million seven hundred sixty three thousand Special Drawing Rights (SDR6,763,000).

## **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 six million seven hundred sixty three thousand Special Drawing Rights (SDR6,763,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (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 payment of the first principal amount of the Loan on the 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.

## **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 may be withdrawn from the Loan Account only for the purposes of financing foreign currency expenditures incurred for Eligible Items under the Program 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, all Eligible Items to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Withdrawals from the Loan Account shall be made only on account of expenditures relating to Eligible Items which:

- (a) are produced in, and 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) meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. Except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account in respect of expenditures for Eligible Items incurred more than one hundred eighty (180) days prior to the Effective Date.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2007 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 5 to this Loan Agreement.

Section 4.02. (a) The Borrower shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Loan and to record the progress of the Program.

(b) The Borrower shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. (a) 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 and the Policy Matrix.

(b) Without limiting the generality of the foregoing or Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB quarterly reports on the carrying out of the Program and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter and the Policy Matrix.

**ARTICLE V**

**Effectiveness**

Section 5.01. A date ninety (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**

**Miscellaneous**

Section 6.01. The Ministry 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 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Economy and Finance  
Phnom Penh, Cambodia

Facsimile Number:

+855 23 427798

+855 23 428424

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

+63 2 636-2331

+63 2 636-2444.

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 and to be delivered at the principal office of ADB, as of the day and year first above written.

KINGDOM OF CAMBODIA

By /s/ AUN PORN MONIROTH  
Authorized Representative

ASIAN DEVELOPMENT BANK

By /s/ SHYAM P. BAJPAI  
Authorized Representative

**SCHEDULE 1****Description of Program**

1. The principal objective of the Program and the Program Cluster is to promote the development of a sound, market-based financial system to support enhanced resource mobilization and sustainable economic growth by establishing an appropriate regulatory and operational framework for the banking and insurance sectors, as well as for the financial markets. The scope of the Program includes the following components: (i) strengthening the supervision of banks and the payment system; (ii) strengthening capacity of the insurance regulator and promoting private sector involvement; (iii) implementing the legal framework for money market development; and (iv) developing accounting and auditing practices and promulgating laws to underpin commercial activities and financial markets.
2. The Program and the Program Cluster are described in more detail in the Policy Letter and the Policy Matrix. The Program will be implemented during the period from 1 January 2006 to 30 June 2007.
3. In support of the Program:
  - (a) the proceeds of the Loan shall be used to finance the foreign exchange costs of Eligible Items; and
  - (b) the Counterpart Funds shall be used primarily to finance the local currency costs relating to the implementation of the reforms consistent with the objectives of the Program.
4. The proceeds of the Loan are expected to be utilized by 30 June 2007.

**SCHEDULE 2****Amortization Schedule****(Subprogram III- Financial Sector Program Loan Cluster)**

<u>Date Payment Due</u>			<u>Payment of Principal</u> (expressed in SDR)*
15	March	2014	211,343
15	September	2014	211,343
15	March	2015	211,343
15	September	2015	211,343
15	March	2016	211,343
15	September	2016	211,343
15	March	2017	211,343
15	September	2017	211,343
15	March	2018	211,343
15	September	2018	211,343
15	March	2019	211,343
15	September	2019	211,343
15	March	2020	211,343
15	September	2020	211,343
15	March	2021	211,343
15	September	2021	211,343
15	March	2022	211,343
15	September	2022	211,343
15	March	2023	211,343
15	September	2023	211,343
15	March	2024	211,343
15	September	2024	211,343
15	March	2025	211,343
15	September	2025	211,343
15	March	2026	211,343
15	September	2026	211,343
15	March	2027	211,343
15	September	2027	211,343
15	March	2028	211,343
15	September	2028	211,343
15	March	2029	211,343
15	September	2029	<u>211,367</u>
Total SDR			<u>6,763,000</u>

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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds**

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Loan proceeds from the Loan Account.

2. (a) Withdrawals from the Loan Account shall be made for the financing of the foreign exchange cost of Eligible Items.

(b) No withdrawals from the Loan Account shall be made in respect of (i) any local expenditures; or (ii) any foreign exchange expenditures which have been financed by credits from official international or bilateral aid agencies or any other loans made by ADB.

3. (a) 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.

(b) Such withdrawal applications shall be accompanied by a certificate of the Borrower confirming that with respect to each year during which the proceeds of the Loan are expected to be disbursed, the value of the Eligible Imports is expected to be equal to or greater than the amount of the Loan expected to be disbursed during such year.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Borrower during the relevant period minus the following imports during the same period:

- (i) imports from countries which are not members of ADB;
- (ii) imports for ineligible items specified in Attachment 1 to this Schedule; and
- (iii) imports financed from credits from official international or bilateral aid agencies or any other loans made by ADB.

(d) The Borrower shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Borrower has certified the value of Eligible Imports in its withdrawal application.

4. (a) Prior to submitting the application to ADB for withdrawal from the Loan Account, the Borrower shall open an account (the Deposit Account) at NBC 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 consistently maintained sound accounting principles. Upon ADB's request, the Borrower shall have the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with appropriate auditing standards. Promptly after their preparation but in any

event not later than six (6) months after the date of ADB's request, certified copies of such audited accounts and records shall be furnished to ADB, all in the English language.

(c) Throughout the Program implementation period, the Borrower shall submit trade statistics and any other information as ADB may require from time to time to assess the Borrower's compliance with the formula for determining Eligible Imports.

5. Notwithstanding any other provisions of this Loan Agreement or the Loan Regulations and except as ADB may otherwise agree, no withdrawals shall be made from the Tranche unless ADB shall be satisfied, after consultation with the Borrower, that (a) sufficient progress has been achieved by the Borrower in the carrying out of the Program; and, in particular, and (b) the Borrower has fulfilled the conditions for the release of the Tranche specified in Attachment 2 to this Schedule, in a manner acceptable to ADB.

**List of Ineligible Items**

1. No withdrawals shall be made in respect of:

(a) expenditures for goods included in the following groups or sub-groups of the United Nations Standards International Trade Classification, Revision 3, or any successor groups or sub-groups under future revisions as shall be designated by ADB by notice to the Borrower:

<u>Group</u>	<u>Sub-Group</u>	<u>Description of Items</u>
112		alcoholic beverages
121		tobacco, unmanufactured tobacco refuse
122		tobacco, manufactured (whether or not containing tobacco substitutes)
525		radioactive and associated materials
667		pearls, precious and semi-precious stones, unworked or worked
718	718.7	nuclear reactors and parts thereof, fuel elements (cartridges) nonirradiated, for nuclear reactors
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 ores and concentrates)

(b) expenditures in the currency of the Borrower or of goods supplied from the territory of the Borrower;

(c) payment made for expenditures incurred more than 180 days prior to the Effective Date;

(d) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or agreed to finance, including any contract financed under any loans from ADB;

(e) expenditures for goods intended for military or para-military purposes or for luxury consumption; or

(f) expenditures for pesticides categorized as extremely hazardous or highly hazardous in Class 1a and 1b, respectively, of the World Health Organization's Classification of Pesticides by Hazard and Guidelines to Classification.

**Conditions for Release of the Tranche**

- I. Development of Banking Sector
  - A. Development of Banking Sector Infrastructure
    - (i) The secured transactions law shall have been adopted by the National Assembly;
    - (ii) MOC shall have established a public registry for secured transactions; and
    - (iii) National Bank of Cambodia shall have formed a unit and undertaken the preparatory work needed to establish a financial intelligence unit (FIU) responsible for anti-money laundering and combating the financing of terrorism.
  - B. Commercial Law Development and Capacity Building
    - (i) A law for commercial arbitration shall have been adopted by the National Assembly;
    - (ii) An insolvency law shall have been submitted to the National Assembly;
    - (iii) MOC shall have ensured that commercial laws are disseminated via the internet; and
    - (iv) MOC shall have worked with the relevant law institutes to develop and adopt commercial law curricula based on the new commercial laws for training judges/lawyers/legal clerical staff.
- II. Development of the Insurance Sector
  - A. Strengthening Capacity of the Regulator
    - (i) MEF shall have reviewed, updated, and implemented appropriate prudential regulations to enhance solvency, liquidity, and good governance requirements and supported technical assistance to the insurance regulator.
  - B. Promoting Private Sector Involvement in the Insurance Sector
    - (i) MEF shall have implemented the key actions of the plan to commercialize CAMINCO, the insurance company of the Borrower, and any successor thereto, as agreed with ADB with a view to divest the Borrower's shares at the earliest opportunity.

III. Development of the Inter-bank and Money Markets

A. Legal Framework for Money Market Development

- (i) A law on negotiable instruments and payment transactions shall have been adopted by the National Assembly; and
- (ii) NBC shall have drafted and adopted implementing regulations for the law on negotiable instruments and payment transactions.

IV. Development of Accounting and Auditing Practices

A. Capacity support to develop professional accountants for the Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA)

- (i) MEF shall have ensured that financial support for at least 70 scholarships is available per year for the development of professional members of KICPAA.

## **SCHEDULE 4**

### **Procurement**

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraph of this Schedule shall apply in the procurement of Eligible Items to be financed out of the proceeds of the Loan.

2. (a) Except as provided in subparagraph (b) of this paragraph, each contract for Eligible Items shall be awarded on the basis of either the purchaser's normal commercial procurement practices, in the case of procurement by the private sector, or the Borrower's prescribed procurement procedures, in the case of procurement by the public sector, having due regard for the principles of economy and efficiency.

(b) Each supply contract for Eligible Items which are commonly traded commodities shall be awarded on the basis of procedures appropriate to the trade and acceptable to ADB.

## SCHEDULE 5

### Program Implementation and Other Matters

#### I. Use of Counterpart Funds

1. The Borrower shall ensure that the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of the Program and other activities consistent with the objectives of the Program Cluster, as more fully described under paragraph 1 of Schedule 1 to this Loan Agreement and the Policy Letter and shall, in particular, provide necessary budget appropriations to finance the structural adjustment costs relating to the implementation of the reforms under the Program.

#### II. Implementation and Coordination

2. Except as the Borrower and ADB may otherwise agree, NBC, as the Program Executing Agency, shall be responsible for implementation of the Program including administration and disbursement of loan proceeds, maintenance of accounts, and preparation of quarterly progress reports. The senior NBC officer appointed Program director for the Program Cluster shall continue in that position. MEF and MOC shall assist with the implementation of the Program.

3. The Financial Sector Steering Committee (FSSC) previously established under the Program Cluster, shall continue to coordinate policy decisions required to pursue the policy reform actions under the Program. FSSC shall be chaired by the Governor of NBC and shall include senior representatives from MEF, MOC, NBC, and relevant agencies of the Borrower. The FSSC shall meet at least once every three months to ensure that the proposed reforms are undertaken in accordance with the agreed timetable, all as set forth in the Policy Matrix and shall review the progress of the Program implementation. A working group consisting of representatives from MEF, MOC, NBC, relevant agencies of the Borrower, and the Bankers Association and established under the FSSC during the Program Cluster period, shall continue to assist and oversee day-to-day Program implementation. The Interbank Markets Working Group, comprising representatives from NBC and Bankers Association and established during the Program Cluster period, shall continue to facilitate the operation of interbank markets, the banking institute, and arrangements for the sharing of credit information among members of the Bankers Association.

#### III. Implementation of the Policy Letter and Policy Matrix

4. The Borrower shall: (a) ensure that the policies adopted and actions taken as described in the Policy Letter prior to the date of this Loan Agreement continue to be in effect during the Program Period; and (b) adopt the other policies and take other actions included in the Program as specified in the Policy Letter and the Policy Matrix in a timely manner, and ensure that such policies and actions continue to be in effect.

5. The Borrower shall ensure that preparatory actions, acceptable to ADB are undertaken in a timely manner, for:

(a) the establishment of an arbitration center, prior to the promulgation of the law on arbitration; and

- (b) the implementation of the proposed law on government securities.

#### IV. Policy and Sector Dialogue

6. The Borrower shall keep ADB informed of, and the Borrower and ADB shall, from time to time, engage in active policy dialogue on sector issues, policy reforms, and other measures during the Program Period and on additional reforms that may be considered necessary or desirable, and exchange views on, the progress made in carrying out the policies and actions set out in the Policy Letter and the Policy Matrix, and any changes to the financial sector Blueprint.

7. The Borrower shall promptly discuss with ADB problems and constraints encountered during implementation of the Program and adopt appropriate measures to overcome or mitigate such problems and constraints in a timely manner.

8. The Borrower shall regularly update and refine the Blueprint based on its achievements and shall consult with ADB with respect to the refinements through the regular policy dialogue.

9. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral agencies that have implications for implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take ADB's views into consideration before finalizing and implementing any such proposals.

#### V. Reporting

10. Pursuant to Section 6.05 of the Loan Regulations and Section 4.03(b) of this Loan Agreement, NBC shall submit the quarterly reports to ADB within 20 days from the end of each quarter. The reports shall, as a minimum, include descriptions of the progress made during the last three months, changes to the implementation schedule, problems and/or issues encountered and remedial actions taken, and the work to be undertaken in the following period. In the event the Borrower revises the Blueprint, the reports shall also include details of the revisions, their rationale and an updated version of the Blueprint.

11. At the end of the Program, the Borrower shall cause NBC to submit the completion report to ADB covering the Program and the Cluster Program, within three months of completion of the Program conditions pursuant to Section 6.05(c) of the Loan Regulations.

#### VI. Program Performance Management and Reviews

12. The Borrower shall cause NBC to (a) collect benchmark or baseline data for specific Program performance indicators, as agreed with ADB; (b) continually assess the Program impact; and (c) carry out monitoring and evaluation of the Program in accordance with agreements reached with ADB, including facilitating consultation with relevant agencies, civil society, and other key stakeholders as appropriate.

Schedule 5

13. At such time or times as the Borrower and ADB shall agree, joint reviews shall be carried out concerning the Borrower's progress in implementing the policy reforms set out in the Policy Letter and Policy Matrix, including, in particular, the fulfillment of the Tranche conditions. To facilitate these reviews, NBC shall provide ADB with relevant information, in addition to the reports and information. These reviews shall form the basis for discussions between the Borrower and ADB on further measures that may be considered necessary or desirable to promote the continued reforms and release of the Tranche.