
LOAN NUMBER 2527-IND

LOAN AGREEMENT
(Ordinary Operations)

(National Highway Corridor (Sector) I Project - Supplementary)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 4 AUGUST 2009

LAL:IND 34420

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 4 August 2009 between INDIA (hereinafter called the Borrower), acting by its President, and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) by a loan agreement (Loan No. 2029-IND: National Highway Corridor (Sector) I Project) dated 27 October 2004 between the Borrower and ADB (hereinafter called the Initial Loan Agreement), ADB had made a loan (hereinafter called the Initial Loan) in the amount of four hundred million dollars (\$400,000,000) to the Borrower from ADB's ordinary capital resources for the purposes of the project described in Schedule 1 to the Initial Loan Agreement (hereinafter called the Initial Project);

(B) the Borrower has applied to ADB for a supplementary loan for the purposes of financing cost overruns under the Initial Project, as restated and described in Schedule 1 to this Loan Agreement (hereinafter called the Project);

(C) the Project will be carried out by the National Highways Authority of India (hereinafter called NHAI), and for this purpose the Borrower will make available to NHAI the proceeds of the Loan for provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a supplementary loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and NHAI;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, 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 thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

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

(a) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers, dated February 2007 as amended from time to time;

(b) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(c) "Procurement Guidelines" means ADB's Procurement Guidelines, dated February 2007, as amended from time to time;

(d) "Procurement Plan" means the procurement plan for the Project dated 25 May 2009 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(e) "Project" means the Project to be executed by NHAI as referred to under Schedule 1 to this Loan Agreement and includes Subprojects as the context may require;

(f) "Project Agreement" means the Project agreement of even date herewith between ADB and NHAI; and

(g) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred million dollars (\$100,000,000), 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 19 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 LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% 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 sixty (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 June and 15 December 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(6) 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 make the proceeds of the Loan available to NHAI upon terms and conditions mutually agreeable to ADB and the Borrower and NHAI shall cause to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditures shall be 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 cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.04. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2011 or such other date as may from time to time agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause NHAI to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and highway development practices.

(b) In the carrying out of 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 make available to NHAI, promptly as needed and on terms and conditions mutually acceptable to ADB and the Borrower, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall take all action which shall be necessary on its part to enable NHA I to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations:

(a) the Act or any provision thereof shall have been repealed or amended in any manner which in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities; and

(b) the Initial Loan Agreement shall have been suspended and/or cancelled.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. 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 10.04 of the Loan Regulations.

ARTICLE VII**Miscellaneous**

Section 7.01. Any of the Secretary, Additional Secretary, Joint Secretary, Director, or Deputy Secretary in the Department of Economic Affairs of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

The Secretary to the Government of India
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi – 110001

Facsimile Numbers:

(91-11) 2309-2477

(91-11) 2309-7511

For ADB

Asian Development Bank
P.O. Box 789
0980 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 and to be delivered at the principal office of ADB, as of the day and year first above written.

INDIA

By 
DR. ANUP K. PUJARI
Joint Secretary (MI)
Department of Economic Affairs

ASIAN DEVELOPMENT BANK

By 
PRODYUT DUTT
Officer-in-Charge
India Resident Mission

SCHEDULE 1**Description of the Project**

1. The Project will assist in achieving the objectives of the Initial Project by financing costs overruns under the parts and components of the Initial Project as follows:
 - (a) Highway Investment component

Four-lane parts of E-W Corridor, under the Subprojects.
 - (b) Road Safety component

Develop a Safety Zone concept and carry out pilot testing of the concept in about 150-200 km of the E-W Corridor between the cities of Jhansi and Lucknow.
 - (c) Consulting services to support implementation of the components above.
2. The Project is expected to be completed by 30 June 2011.

SCHEDULE 2

Amortization Schedule (National Highway Corridor (Sector) I Project - Supplementary)

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 % based on 10% annuity)
15 December 2011	1.175545
15 June 2012	1.234322
15 December 2012	1.296038
15 June 2013	1.360840
15 December 2013	1.428882
15 June 2014	1.500326
15 December 2014	1.575343
15 June 2015	1.654110
15 December 2015	1.736815
15 June 2016	1.823656
15 December 2016	1.914839
15 June 2017	2.010581
15 December 2017	2.111110
15 June 2018	2.216665
15 December 2018	2.327499
15 June 2019	2.443874
15 December 2019	2.566067
15 June 2020	2.694371
15 December 2020	2.829089
15 June 2021	2.970544
15 December 2021	3.119071
15 June 2022	3.275024
15 December 2022	3.438776
15 June 2023	3.610714
15 December 2023	3.791250
15 June 2024	3.980813
15 December 2024	4.179853

Schedule 2

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a % based on 10% annuity)
15 June 2025	4.388846
15 December 2025	4.608288
15 June 2026	4.838703
15 December 2026	5.080638
15 June 2027	5.334670
15 December 2027	5.601403
15 June 2028	5.881435
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.

(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 two 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: (i) 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 (ii) 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

Allocation and Withdrawal of Loan Proceeds

General

1. This Schedule sets forth the allocation of amounts of the Loan.

Disbursement Procedures

2. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Withdrawals

3. Subject to the provisions of Section 3.01 of this Loan Agreement, and except as the Borrower and ADB may otherwise agree, the Loan proceeds shall be disbursed on the basis of following percentages:

- (i) Works – 90% of total expenditures; and
- (ii) consulting services – 100% of total expenditures, exclusive of taxes and duties.

Imprest Account; Statement of Expenditures

4. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at the Reserve Bank of India. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be Dollars. The initial amount to be deposited into and the ceiling of the Imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for the Project and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed \$300,000.

Retroactive Financing

5. Withdrawals from the Loan Account may be made for reimbursement of reasonable 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 Works, subject to a maximum amount equivalent to 20 percent of the Loan amount.

SCHEDULE 4**Procurement of Goods and Works, and Consulting Services****A. General**

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods [and][paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

C. Conditions for Award of Contract

5. The Borrower shall ensure that NHA shall not award any Works contracts financed under the Loan, unless it has, subject to the provisions of paragraphs 10, 27, and 38 of Schedule 6 to the Initial Loan Agreement; (i) acquired or made available the land and rights in land, free from any encumbrances; and (ii) cleared the utilities, trees and any obstruction from such; land relating to the first Section required to be handed over for commencement of construction in accordance with the schedule as agreed under the related Works contract.

D. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

E. Industrial or Intellectual Property Rights

7. (a) The Borrower 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 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.

8. 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.

9. All contracts procured under international competitive bidding procedures and 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 and Operation of Project Facilities; Financial Matters**Project Implementation

1. The Borrower shall ensure that the Project is implemented in accordance with all the provisions in Schedule 6 to the Initial Loan Agreement and the provisions of this Schedule 5 to this Loan Agreement.
2. NHAI shall continue to act as the Project Executing Agency and shall be responsible for the overall Project execution and implementation.
3. The Borrower shall ensure that NHAI convenes a quarterly management level contract performance review meeting, with contractors that have not substantially completed Works under the Project. NHAI shall inform ADB in advance of such meetings and upon ADB's request, ADB may be present at the meeting as observer.
4. Within 3 months after the Effective Date, NHAI shall have recruited consultants for the Road Safety Component. Furthermore, the Borrower shall ensure that NHAI implements pilot testing of the Safety Zone concept within 21 months after the recruitment of the consultants.

Counterpart Funds

5. The Borrower shall ensure that NHAI provides the required counterpart funds for Project implementation on time, to cover the required remaining funds needed to cover the costs overrun in respect of the Initial Project and the Project, if any. The Borrower shall ensure prompt disbursement of appropriated funds to ensure the successful and timely completion of the Initial Project and the Project.

Amendments to Initial Loan Agreement

6. (a) Section 3.05 of the Initial Loan Agreement is amended hereby as follows: "The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2011 or such other date as may from time to time be agreed between the Borrower and ADB."

- (b) Paragraph 4 of Schedule 1 to the Initial Loan Agreement is amended hereby as follows: "The Project is expected to be completed by 30 June 2011."