
LOAN NUMBER 2598-MLD(SF)

LOAN AGREEMENT
(Special Operations)

(Capacity Development for Economic Recovery Project)

between

REPUBLIC OF MALDIVES

and

ASIAN DEVELOPMENT BANK

DATED 18 MARCH 2010

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LAS:MLD 39658

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 18 MARCH 2010 between the
REPUBLIC OF MALDIVES ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project as more fully described in Schedule 1 to this Loan Agreement;

(B) the Borrower has also applied to ADB for a loan in connection with the Economic Recovery Program ("Program") from its Special Funds resources, and by a loan agreement of even date herewith between the Borrower and ADB ("Program Loan Agreement"), ADB has agreed to make a loan to the Borrower in various currencies equivalent to twenty one million nine hundred twelve thousand Special Drawing Rights (SDR 21,912,000); and

(C) ADB has 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 agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All 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.

Section 1.02. The definitions set forth in the Loan Regulations and the Program Loan Agreement are applicable to this Loan Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (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;

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(c) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2007, as amended from time to time);

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

(e) "Procurement Plan" means the procurement plan for the Project dated 29 October 2009 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(f) "Project Executing Agency" means, for the purposes and within the meaning of the Loan Regulations, MOFT, or any successor thereto agreed by ADB, which is responsible for the carrying out of the Project; 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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to nine hundred thirty nine thousand Special Drawing Rights (SDR 939,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to 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 May and 15 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The Goods, Works, 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, consulting services and other items of expenditure 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, all Goods, Works, and consulting services 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 in respect of Goods, Works, and consulting services shall be made only on account of expenditures relating to:

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

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2012 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 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. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently

applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement (as well as on the use of the procedures for imprest account and statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.02(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant Project records and documents.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have, in the opinion of ADB, failed to perform any of its obligations under the Program Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 hereinabove shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Program Loan Agreement shall have been duly authorized or ratified by, executed and delivered on behalf of, the Borrower, and is legally binding upon the Borrower in accordance with its terms, and all conditions precedent to its effectiveness other than the condition requiring the effectiveness of this Loan Agreement shall have been fulfilled.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Program Loan Agreement shall have been duly authorized or ratified by, executed and delivered on behalf of, the Borrower, and is legally binding upon the Borrower in accordance with its terms.

Section 6.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister, MOFT, is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance and Treasury
Ameenee Magu
Male'
Republic of Maldives

Facsimile Number:

(960) 3324432

For ADB


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

Facsimile Numbers:

(632) 636 2444
(632) 636 2337.

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.

REPUBLIC OF MALDIVES

By 

ALI HASHIM
Minister of Finance and Treasury

ASIAN DEVELOPMENT BANK

By 

HARUHIKO KURODA
President

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to provide technical assistance to develop capacity of MOFT and the implementing agencies for achieving the objectives of the Program.
2. The Project shall consist of the following parts:
 - A. Capacity development of MOFT and various agencies to assist in implementation of policy reform and actions under the Program, including institutional and human resource capacity development; and
 - B. Capacity development of the Privatization Committee and Invest Maldives, supporting formulation of privatization policies and procedures, privatization of select state-owned enterprises, and preparation of public-private partnership projects.
3. The Project is expected to be completed by 31 December 2012.

SCHEDULE 2**Amortization Schedule****(Capacity Development for Economic Recovery Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15-May-2018	19,563
15-Nov-2018	19,563
15-May-2019	19,563
15-Nov-2019	19,563
15-May-2020	19,563
15-Nov-2020	19,563
15-May-2021	19,563
15-Nov-2021	19,563
15-May-2022	19,563
15-Nov-2022	19,563
15-May-2023	19,563
15-Nov-2023	19,563
15-May-2024	19,563
15-Nov-2024	19,563
15-May-2025	19,563
15-Nov-2025	19,563
15-May-2026	19,563
15-Nov-2026	19,563
15-May-2027	19,563
15-Nov-2027	19,563
15-May-2028	19,563
15-Nov-2028	19,563
15-May-2029	19,563
15-Nov-2029	19,563
15-May-2030	19,563
15-Nov-2030	19,563
15-May-2031	19,563
15-Nov-2031	19,563
15-May-2032	19,563
15-Nov-2032	19,563
15-May-2033	19,563
15-Nov-2033	19,563
15-May-2034	19,563
15-Nov-2034	19,563
15-May-2035	19,563
15-Nov-2035	19,563
15-May-2036	19,563
15-Nov-2036	19,563
15-May-2037	19,563
15-Nov-2037	19,563

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15-May-2038	19,563
15-Nov-2038	19,563
15-May-2039	19,563
15-Nov-2039	19,563
15-May-2040	19,563
15-Nov-2040	19,563
15-May-2041	19,563
15-Nov-2041	19,539
Total	939,000

* 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**General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category ("Table"). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table).

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest Charge

3. The amount allocated to Category 4 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 then 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 Procedures

5. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at the MMA. The imprest account

shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be the Dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first 6 months of Project implementation, or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of \$50,000.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Capacity Development for Economic Recovery Project)			
CATEGORY			ADB FINANCING
Number	Item	Amount Allocated SDR	Percentage and Basis for Withdrawal from the Loan Account
1	Equipment and Administration Support	33,000	100 percent of total expenditure*
2	Training / Fellowships	119,000	100 percent of total expenditure*
3	Consulting Services	549,000	100 percent of total expenditure*
4	Interest Charge	38,000	100 percent of amount due
5	Unallocated	200,000	
	Total	939,000	

* Exclusive of local taxes and duties.

SCHEDULE 4

Procurement of Goods, Works, and Consulting Services

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.

Procurement for Goods and Works

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

Shopping

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

Selection of Consulting Services

4. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services under the Project.
5. The Borrower shall also apply the consultants qualifications selection method for selecting and engaging consulting services under the Project in accordance with, among other things, the procedures set forth in the Procurement Plan.

Industrial or Intellectual Property Rights-

6. (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.

7. 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

8. All contracts for procurement of Goods, Works, and 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

Program Implementation and Other Matters

Implementation Arrangements

1. The Borrower shall cause MOFT, in its capacity as the Project Executing Agency, to be responsible for overall coordination, and timely and effective execution of the Project.
2. The Steering Committee and the Apex PMU established under the Program shall undertake their respective roles and functions, described in paragraphs 2 to 4 of Schedule 5 to the Program Loan Agreement, in respect of the Project.
3. MOFT shall be responsible for implementation of Part A of the Project, and the Ministry of Economic Development shall be responsible for implementation of Part B of the Project.

Privatization

4. The Borrower shall ensure that in the event of privatization, restructuring, and/or liquidation of any state-owned enterprises, it shall, and cause such enterprises to, comply with all statutory and contractual obligations to staff relating to changes in conditions of service (early retirement, retrenchment, or otherwise), and any staff plan shall be implemented after prior consultation with all the stakeholders. Any retrenchment plans adopted shall include appropriate mitigation measures, which comply with the Borrower's labor laws and are in accordance with the principles and objectives of ADB's Social Protection Strategy and related policies. The Borrower shall advise ADB of the actions undertaken during the implementation of the retrenchment plans and mitigation measures in a timely manner.

Governance and Anticorruption

5. The Borrower, in addition to its compliance with ADB's *Anticorruption Policy* (1998, as amended to date), shall undertake other measures to ensure good governance, accountability, and transparency. More specifically, the Borrower shall implement the mitigation measures recommended by ADB, and agreed upon by the Borrower, pursuant to the assessment of the Borrower carried out by ADB under its Second Governance and Anticorruption Action Plan set out in Appendix 8 and Supplementary Appendix A to the RRP.

Use of Counterpart Funds

6. The Borrower shall ensure that necessary budgetary allocations are made to meet the recurrent costs under the Project.

Project Review

7. The Borrower and ADB shall review Project implementation at least 3 times a year. The reviews shall include: evaluation of the scope of the Project; implementation arrangements; consultations with MOFT and the Program director; progress with the policy

reform agenda; capacity development measures; and compliance with this Loan Agreement. The Borrower and ADB shall also undertake a mid-term review, and a Project completion review 3 months after its completion.

Project Performance Monitoring and Evaluation

8. Within 4 months of the Effective Date, the Borrower shall cause MOFT to establish a Project performance monitoring system acceptable to ADB that will generate quarterly reports describing: the progress made in the Project; any changes to the implementation schedule; identifying any problems encountered; and the remedial actions taken. The Borrower shall cause MOFT, line ministries and other implementing agencies to monitor progress every quarter against the baseline indicators and targets.