
LOAN NUMBER 2302-VIE(SF)

PROJECT AGREEMENT

(Greater Mekong Subregion Kunming-Haiphong Transport Corridor:
Yen Vien—Lao Cai Railway Upgrading Project)

between

ASIAN DEVELOPMENT BANK

and

VIETNAM RAILWAYS

DATED 16 JANUARY 2007

PAG:VIE 39175

PROJECT AGREEMENT

PROJECT AGREEMENT dated 16 January 2007 between ASIAN DEVELOPMENT BANK (“ADB”) and VIETNAM RAILWAYS (“VNR”).

WHEREAS

(A) by a Loan Agreement of even date herewith between the Socialist Republic of Viet Nam (the “Borrower”) and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to forty million three hundred ninety-five million Special Drawing Rights (SDR 40,395,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the proceeds of the Loan be made available to VNR and that VNR agree to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) VNR, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) VNR shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, railway and public utility practices.

(b) In the carrying out of the Project and operation of the Project facilities, VNR shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to VNR.

Section 2.02. VNR shall make available, promptly as needed, the facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, VNR shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) 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 the Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. VNR shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. VNR shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) VNR shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, VNR undertakes to insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. VNR shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works and consulting services and other items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and VNR shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) VNR shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and VNR shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, VNR and the Loan.

Section 2.08. (a) VNR shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Goods, Works and consulting services and other

items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial conditions of VNR relevant to the Project; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, VNR shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, VNR shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by VNR of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) VNR shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related 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; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, 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 the Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language. VNR shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) VNR shall enable ADB, upon ADB's request, to discuss VNR's financial statements and its financial affairs, relevant to the Project, from time to time with the auditors, appointed by VNR pursuant to Section 2.09(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 VNR unless VNR shall otherwise agree.

Section 2.10. VNR shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan and any relevant records and documents.

Section 2.11. (a) VNR shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) VNR shall at all times conduct its business in accordance with sound administrative, financial, environmental, railway and public utility practices, and under the supervision of competent and experienced management and personnel.

(c) VNR shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, railway, public utility, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, VNR shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, VNR shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. VNR shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Governing Laws and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify VNR of such date.

Section 3.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted

to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2336

For VNR

118 Le Duan Street
Hanoi, Viet Nam

Facsimile Number:

(844) 942-2866


Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of VNR may be taken or executed by its General Director or by such other person or persons as he shall so designate in writing notified to ADB.

(b) VNR shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

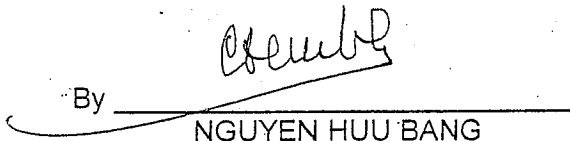
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project 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.

ASIAN DEVELOPMENT BANK

By 
AYUMI KONISHI
Country Director
Viet Nam Resident Mission

VIETNAM RAILWAYS

By 
NGUYEN HUU BANG
Director General