
LOAN NUMBER 2801-SAM (SF)

LOAN AGREEMENT
(Special Operations)

(Economic Recovery Support Program – Subprogram 2)

between

INDEPENDENT STATE OF SAMOA

and

ASIAN DEVELOPMENT BANK

DATED 20 MARCH 2012

SAM 43191

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 20 March 2012 between INDEPENDENT STATE OF SAMOA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 2 September 2011 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to support and strengthen the Borrower's economic sector ("Program");

(B) the Program comprises the second subprogram of a program cluster under the Economic Recovery Support Program as described in paragraph 1 of Schedule 1 of this Loan Agreement ("Program Cluster"), and the Borrower has applied to ADB for a loan for the purposes of the Program; and

(C) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

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

24. The term "Program" means the program 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.

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

(c) 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.

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

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

(c) Promptly after the closing date for withdrawals from the Loan Account, but in any event not later than 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 purpose of the Loan.

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

(a) “CBS” means the Central Bank of Samoa;

(b) “Counterpart Funds” means the Tala proceeds accruing to the Borrower and generated from the Loan proceeds under the Program and referred to in paragraph 6 of Schedule 5 to this Loan Agreement;

(c) “Deposit Account” means the account referred to in paragraph 4(a) of Schedule 3 to this Loan Agreement;

(d) “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 of ineligible items specified in the Attachment to Schedule 3 to this Loan Agreement; and

(iii) imports financed by official international or bilateral aid agencies or any other loans or grants made by ADB;

(e) “Eligible Items” means the Eligible Imports and services in connection with the delivery and installation of such imports;

(f) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2007, as amended from time to time);

- (g) "MOF" means the Ministry of Finance of the Borrower;
- (h) "PCC" means the Program Coordinating Committee of the Borrower, as described in paragraph 2 of Schedule 5 to this Loan Agreement or any successor thereof acceptable to ADB;
- (i) "Policy Matrix" means the policy matrix as agreed between the Borrower and ADB, which sets forth actions accomplished or to be accomplished by the Borrower under Subprogram 2 and the Program Cluster and is attached to the Policy Letter;
- (j) "PPMS" means the Program Performance Monitoring System, as described in paragraph 8 of Schedule 5 to this Loan Agreement;
- (k) "Program Cluster" has the meaning specified in Recital B to this Loan Agreement;
- (l) "Program Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOF, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;
- (m) "Program Period" means the period from 1 March 2009 until 30 December 2011; and
- (n) "Tala" means the lawful currency of the Borrower.

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 eight hundred sixty three thousand Special Drawing Rights (SDR6,863,000).

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 the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 June and 15 December 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 Program in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the Eligible Items to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. 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 withdrawal shall be made from the Loan Account in respect of expenditures for Eligible Items incurred more than 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 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 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 and/or the Program Cluster, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

(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.

ARTICLE V

Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Deposit Account shall have been opened as provided in paragraph 4 of Schedule 3 to this Loan Agreement; and

(b) all reform actions and measures relating to the Program, as specified under Policy Actions under the Policy Matrix shall have been taken or achieved and shall have been completed in a manner satisfactory to ADB.

Section 5.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of 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 Finance
Private Bag
Apia, Samoa

Facsimile Number:

+685 21 312.

For ADB

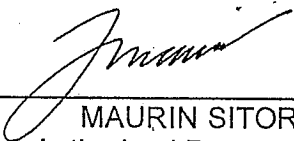
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:


+63 2 636-2444
+63 2 636-2388.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

INDEPENDENT STATE OF SAMOA

By 
MAURIN SITORUS
Authorized Representative

ASIAN DEVELOPMENT BANK


By
BINDU N. LOHANI
Vice-President
(Knowledge Management and Sustainable Development)

SCHEDULE 1**Description of the Program**

1. The principal objective of the Program is to achieve economic recovery and to improve the fiscal position of the Borrower, and the scope includes support for post-tsunami reconstruction needs; maintaining fiscal responsibility; enhancing productivity through structural and governance improvement; providing targeted support for the most vulnerable members of the community; and engaging with key stakeholders on policy issues. The Program is described in more detail in the Policy Letter.
2. The principal objective of the Program Cluster is to assist the Borrower's economic recovery and movement to a higher medium-term growth rate. The Program Cluster comprises 2 subprograms and the Program is the second subprogram.
3. In support of the Program:
 - (a) the proceeds of the Loan shall be used to finance the foreign currency expenditures incurred for the Eligible Items; and
 - (b) the Counterpart Funds shall be used to finance the local currency expenditures relating to the implementation of certain programs and other activities consistent with the objectives of the Program pursuant to the provisions of paragraph 6 of Schedule 5 to this Loan Agreement.
4. The Program is expected to be completed by 30 June 2012.

SCHEDULE 2**Amortization Schedule****(Economic Recovery Support Program – Subprogram 2)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 December 2019	214,469
15 June 2020	214,469
15 December 2020	214,469
15 June 2021	214,469
15 December 2021	214,469
15 June 2022	214,469
15 December 2022	214,469
15 June 2023	214,469
15 December 2023	214,469
15 June 2024	214,469
15 December 2024	214,469
15 June 2025	214,469
15 December 2025	214,469
15 June 2026	214,469
15 December 2026	214,469
15 June 2027	214,469
15 December 2027	214,469
15 June 2028	214,469
15 December 2028	214,469
15 June 2029	214,469
15 December 2029	214,469
15 June 2030	214,469
15 December 2030	214,469
15 June 2031	214,469
15 December 2031	214,469
15 June 2032	214,469
15 December 2032	214,469
15 June 2033	214,469
15 December 2033	214,469
15 June 2034	214,469
15 December 2034	214,469
15 June 2035	214,461
Total	6,863,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3**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. Withdrawals from the Loan Account shall be made for financing foreign currency expenditures incurred for Eligible Items under the Program.

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 (i) in case the proceeds of the Loan will finance imports already made, the value of Eligible Imports in the period concerned exceeded the amount of the requested withdrawal, or (ii) in case the proceeds of the Loan will finance items to be imported, the value of Eligible Imports in the immediately preceding one-year period was equal to or greater than the amount of the requested withdrawal plus all other amounts expected to be withdrawn from the Loan Account during the succeeding one-year period.

(c) 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 first application to ADB for withdrawal from the Loan Account, the Borrower shall nominate an account (the Deposit Account) at CBS 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 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.

Negative List

1. No withdrawals will be made for the following:
- (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Borrower:

Table A12: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
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 ore and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or for goods supplied from the territory of the Borrower;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and
- (vii) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

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.

SCHEDULE 5

Program Implementation and Other Matters

Program Management

1. MOF, as the Program Executing Agency, shall be responsible for (a) overseeing all policy, legal and regulatory actions to be undertaken in connection with the Program; and (b) ensuring that all policy reforms set out in the Policy Letter and Policy Matrix are duly carried out in a timely manner. MOF shall also be responsible for the overall implementation of the Program Cluster and the Program, including reporting to ADB, administering and disbursing the Loan proceeds, and maintaining Program records and accounts.
2. PCC, comprising officials from MOF and CBS, shall function as the Program coordinating committee and shall be responsible for overseeing the implementation of the Program. The PCC shall meet at least every quarter to monitor progress, oversee implementation, and provide guidance and direction to the Program Executing Agency. The PCC shall invite concerned line agencies of the Borrower as well as ADB and other donor partners to participate in meetings to discuss Program Cluster and the Program implementation issues.

Implementation of the Policy Letter

3. The Borrower shall (a) ensure that the policies adopted and actions taken prior to the date of this Loan Agreement as described in the Policy Letter and the Policy Matrix continue in effect for the duration of the Program Period and subsequently; and (b) promptly adopt all other policies and take all other actions as described in the Policy Letter and the Policy Matrix and ensure that such policies and actions continue in effect for the duration of the Program Period and subsequently.

Policy Actions and Dialogue

4. The Borrower shall ensure that all policies adopted and actions taken under the Program, as set forth in the Policy Letter and the Policy Matrix, continue to be in effect for the duration of the Program Cluster.
5. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take into account ADB's views before finalizing and implementing any such proposal.

Use of Counterpart Funds

6. The Borrower shall ensure that the Counterpart Funds shall be used for the local currency costs relating to public expenditure objectives under the Program and that the necessary budget appropriations and adequate resources are allocated and released in a

timely manner in order to ensure effective implementation of the Program and other activities consistent with the objectives of the Program Cluster.

Governance and Anticorruption

7. The Borrower shall: (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Program; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

Monitoring and Review

8. The Borrower shall ensure that MOF is responsible for: (a) establishing and maintaining a PPMS in a form and with a composition acceptable to ADB within 3 months after the Effective Date; (b) carrying out monitoring and evaluation of the Program, for at least 1 year after completion of the Program, or the Program Cluster (whichever is later); and (c) maintaining all relevant monitoring data to evaluate the benefits of the Program. Specific performance indicators as agreed with ADB shall be used to assist with monitoring the implementation of policy actions and their impact on budget outcomes and public enterprise performance (including financial and performance indicators).

9. The Borrower shall ensure that reporting on the progress of the Program through periodic meetings at least every 6 months is made by MOF to ADB in accordance with the performance indicators described in the preceding paragraphs.

10. The Borrower and ADB shall jointly conduct periodic reviews of the macroeconomic and fiscal conditions of the Borrower's economy and assess the impact and evaluate the benefits of the Program and the Program Cluster, in accordance with the PPMS. The Borrower shall cause the MOF to submit a Program completion report to ADB within 12 months after the Effective Date that assesses compliance with, and impact of, the agreed actions under the Program on each sector and describes lessons identified during the Program Period. The Borrower and ADB may use the findings of such assessment and evaluation to refine the Program Cluster.