
LOAN NUMBER 2866-BAN(SF)

LOAN AGREEMENT
(Special Operations)

(Financing Brick Kiln Efficiency Improvement Project)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 20 JUNE 2012

BAN 45273

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 20 June 2012 between PEOPLE'S REPUBLIC OF BANGLADESH ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan from ADB's Special Funds resources for the purposes of Part B of the Project described in Section 3.01 of this Loan Agreement;

(B) by an agreement of even date herewith between the Borrower and ADB, ADB has agreed to lend to the Borrower from ADB's ordinary capital resources an amount of thirty million Dollars (\$30,000,000) for purposes of Part A of the Project ("Ordinary Operations Loan Agreement");

(C) the Borrower will carry out the Project together with Bangladesh Bank, and for this purpose the Borrower will make available to Bangladesh Bank the proceeds of the loans provided for herein and in the Ordinary Operations Loan Agreement, upon terms and conditions satisfactory to ADB; and

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

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 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(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and Bangladesh Bank.

(b) The term "Project Executing Agency" appearing in Section 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term "Bangladesh Bank".

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) “Administration Agreement” means the administration agreement between the Borrower and Bangladesh Bank pursuant to which Bangladesh Bank will make available the proceeds of the Loans to the PFIs;

(b) “Bangladesh Bank” means the central bank of the Borrower established pursuant to Bangladesh Bank Order, 1972, and any successor thereto acceptable to ADB;

(c) “Brick Kiln Directive” means the Borrower’s Directive No. Paribesh/Circular/Notice/169/2002(2nd)/357 regarding, among other things, the phasing-out of FCKs from the brick manufacturing industry;

(d) “DOE” means the Department of Environment under the Borrower’s Ministry of Environment and Forest, and any successor thereto;

(e) “Environmental Management Plan” or “EMP” means the environmental management plan incorporated in an IEE, including any update thereto;

(f) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(g) “ESMS” means an environmental and social management system for the Project, including any update thereto, prepared and submitted by a PFI pursuant to the requirements set forth in the SPS, and cleared by ADB;

(h) “FCK” means fixed chimney kiln;

(i) “GAP” means the gender action plan attached to the PAM, which was prepared for the Project and agreed between ADB and the Borrower;

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

(k) “HHK” means hybrid Hoffmann kiln;

(l) “Initial Environmental Examination” or “IEE” means an initial environmental examination for a Qualified Subproject, including any update thereto, prepared jointly by a Qualified Enterprise, a PFI and Bangladesh Bank for a Qualified Subproject, pursuant to the requirements set forth in the ESMS of the relevant PFI;

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

(n) “Loans” means the loan provided for in this Loan Agreement and the Ordinary Operations Loan;

(o) “MOF” means the Borrower’s Ministry of Finance, acting through the Bank & Financial Institutions Division, and any successor thereto;

(p) “Ordinary Operations Loan” means the loan provided for in the Ordinary Operations Loan Agreement;

(q) “Ordinary Operations Loan Agreement” means the agreement between the Borrower and ADB referred to in Recital (B) of this Loan Agreement;

(r) “Ordinary Operations Loan Regulations” means the loan regulations referred to in Section 1.01 of the Ordinary Operations Loan Agreement;

(s) “PAM” means the project administration manual for the Project dated 28 March 2012 and agreed between the Borrower, Bangladesh Bank and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower, Bangladesh Bank and ADB;

(t) “Part A” means part A of the Project as described in Section 3.01 of this Loan Agreement;

(u) “Part B” means part B of the Project as described in Section 3.01 of this Loan Agreement;

(v) “Participating Financial Institution” or “PFI” means a financial institution, which satisfies the selection and eligibility criteria set out in paragraph 2 of Schedule 3 to this Loan Agreement, and has entered into a Participation Agreement with Bangladesh Bank;

(w) “Participation Agreement” means an agreement between Bangladesh Bank and a PFI pursuant to which the PFI shall be entitled to use proceeds of the Loans for the purpose of Subloans;

(x) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(y) “Project Executing Agency” or “EA” for the purposes of, and within the meaning of, the Loan Regulations and the Ordinary Operations Loan Regulations, means MOF or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(z) “PSC” means the project steering committee for the Project, as described in the PAM;

(aa) “Qualified Enterprise” means an enterprise, which satisfies the eligibility criteria set out in paragraph 11 or paragraph 12 of Schedule 3 to this Loan Agreement, as applicable;

(bb) "Qualified Subproject" means a specific subproject, which satisfies the eligibility criteria set out in paragraph 6 through paragraph 8 of Schedule 3 to this Loan Agreement, as applicable;

(cc) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(dd) "Safeguards Monitoring Report" means each report prepared and submitted by Bangladesh Bank to ADB on the performance of the PFIs and the Qualified Enterprises with regard to each ESMS, including any corrective and preventative actions;

(ee) "Subloan" means a loan made, or proposed to be made, by a PFI out of proceeds of the Loans to a Qualified Enterprise for a Qualified Subproject;

(ff) "Taka" means the lawful currency of the Borrower;

(gg) "VSBK" means vertical shaft brick kiln; and

(hh) "Works" means construction or civil works to be financed out of the proceeds of the Loans, 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 twelve million nine hundred seventy-two thousand Special Drawing Rights (SDR12,972,000).

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 subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 May and 1 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 1 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount 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

Description of Project; Use of Proceeds of the Loan

Section 3.01. The Project comprises the financing of energy efficiency improvements in the brick kiln sector of the Borrower by causing PFIs to make Subloans to Qualified Enterprises for Qualified Subprojects in accordance with the provisions of this Loan Agreement, the Ordinary Operations Loan Agreement and the Project Agreement. The Project consists of the following components: (i) Part A: upgrading FCK facilities to improved zigzag kiln facilities; and (ii) Part B: construction of new VSBK, HHK or tunnel kiln facilities.

Section 3.02. (a) The Borrower shall make the proceeds of the Loan available to Bangladesh Bank under an Administration Agreement upon terms and conditions satisfactory to ADB, and shall bear the foreign exchange risk in respect thereof.

(b) Bangladesh Bank shall relend the proceeds of the Loan, in Taka equivalent, to the PFIs pursuant to Participation Agreements upon terms and conditions acceptable to ADB. Except as ADB may otherwise agree, the terms for relending the proceeds of the Loan shall (i) include interest at rates that reflect Bangladesh Bank's cost of funds and the prevailing market conditions, and a repayment period of 5 years, inclusive of a grace period of at least 6 months; and (ii) permit early repayment without penalty.

Section 3.03. (a) Except as ADB may otherwise agree, the Borrower shall ensure that the proceeds of the Loan are (i) only used for Subloans to Qualified Enterprises for Qualified Subprojects under Part B of the Project, and (ii) applied exclusively to the cost of Goods and Works required to carry out such Qualified Subprojects.

(b) Except as ADB may otherwise agree, the Borrower shall ensure that all Goods and Works are procured in accordance with the provisions of Schedule 2 to this Loan Agreement.

(c) Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

(d) Except as ADB may otherwise agree, the Borrower shall establish or cause to be established immediately after the Effective Date, an imprest account at Bangladesh Bank. 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 imprest account shall only be used for the purposes of the Project. The currency of the imprest account shall be the Dollar. The ceiling for the imprest account shall not exceed the lower of (i) the estimated expenditure for the following 6 months of Project implementation, or (ii) the equivalent of 10% of the Loan amount.

(e) 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 \$2,000,000.

Section 3.04. Withdrawals from the Loan Account in respect of Goods and Works shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from, and Works 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 and Works 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 2015 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause Bangladesh Bank to carry out the Project with due diligence and efficiency and in conformity with sound applicable technical, financial, business and development practices.

(b) In the carrying out of the Project, the Borrower shall perform, or cause to be performed, all the obligations set forth in Schedule 3 to this Loan Agreement.

(c) Except as ADB may otherwise agree, the Borrower shall not repeal, suspend or substantially amend the Brick Kiln Directive.

Section 4.02. In addition to the reports and information set forth 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 (a) the PFIs, the Qualified Enterprises, the Qualified Subprojects and the Subloans; and (b) the performance, administration, operations and financial condition of Bangladesh Bank and the PFIs.

Section 4.03. The Borrower shall enable ADB's representatives to inspect Bangladesh Bank, the PFIs, the Qualified Enterprises, the Qualified Subprojects, the Goods and Works, and any relevant records and documents maintained by Bangladesh Bank, the PFIs and the Qualified Enterprises.

Section 4.04. (a) The Borrower shall promptly take all action, including the provision of funds, facilities, services and other resources, which shall be necessary on its part to enable Bangladesh Bank to perform its obligations under the Project Agreement, the Administration Agreement and the Participation Agreements, and shall not take or permit any action which would interfere with the performance of such obligations.

(b) The Borrower shall promptly take all action which shall be necessary on its part to enable the PFIs to perform their obligations under the Participation Agreements, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Administration Agreement, and cause Bangladesh Bank to exercise its rights under each Participation Agreement, in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loans.

(b) No rights or obligations under the Administration Agreement, or any of the Participation Agreements, shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

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 Section 8.01(m) of the Loan Regulations:

(a) the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement;

(b) Bangladesh Bank shall have failed to perform any of its obligations under the Project Agreement, the Administration Agreement or a Participation Agreement; and

(c) a PFI shall have failed to perform any of its obligations under a Participation Agreement.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. 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 Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions to its effectiveness, other than a condition requiring the effectiveness of this Loan Agreement, shall have been fulfilled; and

(b) the Administration Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and Bangladesh Bank, and shall have become fully effective and binding on the parties thereto in accordance with its terms, subject only to the effectiveness of this Loan Agreement and/or the Ordinary Operations Loan Agreement.

Section 6.02. The following is specified as 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: that the Administration Agreement has been duly authorized by, and executed and delivered on behalf of the Borrower and Bangladesh Bank, and is legally binding upon the Borrower and Bangladesh Bank in accordance with its terms, subject only to the effectiveness of this Loan Agreement and/or the Ordinary Operations Loan Agreement.

Section 6.03. 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 VII

Miscellaneous

Section 7.01. The Senior Secretary, the Secretary, or any Additional Secretary, Joint Secretary or Joint Chief or Deputy Secretary or Deputy Chief, Senior Assistant Secretary or Senior Assistant Chief, Assistant Secretary, Assistant Chief of the Economic Relations Division, Ministry of Finance, 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

Economic Relations Division
 Ministry of Finance
 Government of the People's Republic of Bangladesh
 Sher-e-Bangla Nagar
 Dhaka 1207, Bangladesh

Facsimile Number:

(880-2) 8113088.

For ADB

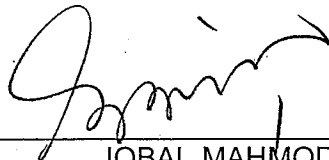
Asian Development Bank
 6 ADB Avenue
 Mandaluyong City
 1550 Metro Manila
 Philippines

Facsimile Numbers:

(632) 636-2444
 (632) 636-2377.

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.

PEOPLE'S REPUBLIC OF
 BANGLADESH

By 
 IQBAL MAHMUD
 Senior Secretary
 Economic Relations Division

ASIAN DEVELOPMENT BANK

By 
 M. TERESA KHO
 Country Director
 Bangladesh Resident Mission

SCHEDULE 1**Amortization Schedule****(Financing Brick Kiln Efficiency Improvement Project)**

<u>Date Payment</u> <u>Due</u>	<u>Payment of Principal</u> <u>(expressed in Special Drawing Rights)*</u>
1 November 2020	270,250
1 May 2021	270,250
1 November 2021	270,250
1 May 2022	270,250
1 November 2022	270,250
1 May 2023	270,250
1 November 2023	270,250
1 May 2024	270,250
1 November 2024	270,250
1 May 2025	270,250
1 November 2025	270,250
1 May 2026	270,250
1 November 2026	270,250
1 May 2027	270,250
1 November 2027	270,250
1 May 2028	270,250
1 November 2028	270,250
1 May 2029	270,250
1 November 2029	270,250
1 May 2030	270,250
1 November 2030	270,250
1 May 2031	270,250
1 November 2031	270,250
1 May 2032	270,250
1 November 2032	270,250
1 May 2033	270,250
1 November 2033	270,250
1 May 2034	270,250
1 November 2034	270,250
1 May 2035	270,250
1 November 2035	270,250
1 May 2036	270,250
1 November 2036	270,250
1 May 2037	270,250
1 November 2037	270,250
1 May 2038	270,250
1 November 2038	270,250

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

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)*</u>
1 May 2039	270,250
1 November 2039	270,250
1 May 2040	270,250
1 November 2040	270,250
1 May 2041	270,250
1 November 2041	270,250
1 May 2042	270,250
1 November 2042	270,250
1 May 2043	270,250
1 November 2043	270,250
1 May 2044	<u>270,250</u>
TOTAL	<u>12,972,000</u>

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

SCHEDULE 2

Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods and Works shall be subject to and governed by the applicable provisions of the Procurement Guidelines and the PAM.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines.

Procurement

3. Bangladesh Bank shall ensure that each PFI requires the Qualified Enterprises to undertake procurement of Goods and Works with due attention to economy and efficiency and in accordance with established private sector or commercial practices, acceptable to ADB.

Industrial or Intellectual Property Rights

4. (a) Bangladesh Bank shall cause each PFI to ensure that all Goods and Works procured by a Qualified Enterprise (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) Bangladesh Bank shall cause each PFI to ensure that all contracts entered into by a Qualified Enterprise 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) hereinabove.

SCHEDULE 3

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and Bangladesh Bank shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower, Bangladesh Bank and ADB. In the event of any discrepancy between the PAM on the one part and this Loan Agreement and the Ordinary Operations Loan Agreement on the other part, the provisions of this Loan Agreement and the Ordinary Operations Loan Agreement shall prevail.

Selection and Eligibility Criteria for Participating Financial Institutions

2. To be eligible as a PFI, a financial institution must:

- (a) be duly licensed to operate as a bank or hold itself out as a provider of credit in the territory of the Borrower;
- (b) have a strategy, a lending policy and a satisfactory track record of performance in financing brick kiln and energy efficiency projects;
- (c) have a credit rating of at least BBB– in accordance with the Bangladesh long-term national rating scale of Credit Rating Information and Services Limited, or an equivalent rating by any other credit rating agency acceptable to ADB;
- (d) be in compliance with applicable prudential regulations and guidelines of Bangladesh Bank, including but not limited to those relating to minimum risk-weighted capital, recognition of income, loan classification, loss provisioning, ratio of nonperforming loans to overall loans, and anti-money laundering;
- (e) have demonstrated compliance with Bangladesh Bank's guidelines on corporate governance of banks and financial institutions, which includes (a) corporate governance structures that promote effective identification, monitoring, and management of all material business risks; (b) systems for ensuring compliance with all statutory and regulatory requirements; (c) implementation of financial disclosure requirements for market participants and observers; and (d) setting of corporate governance objectives, strategies, and techniques;
- (f) have a demonstrated capacity for (a) proper risk management with adequate processes and procedures covering, among others, credit risk, asset liability risk, and operational risk, and (b) monitoring its portfolio, pursuing loan recoveries and submission of compliance reports;

- (g) have prepared and adopted an ESMS and have environmental and social safeguards management systems and trained personnel to monitor compliance with the ESMS;
- (h) have a business plan, approved by its senior management or board of directors, pertaining to the financing of energy efficiency improvements in the brick sector, which includes (a) a pipeline of prospective Qualified Subprojects, and (b) adequate internal organizational arrangements to implement the business plan, including the institutional and human resources required for originating, evaluating, approving and monitoring Qualified Subprojects in accordance with the provisions of this Loan Agreement and the Project Agreement; and
- (i) have the capacity to comply with the terms and conditions of the Participation Agreement.

3. Bangladesh Bank shall select the PFIs and shall prepare a due diligence report in relation to each PFI selected for participation in the Project, which report must – among other things – demonstrate that the PFI satisfies the eligibility criteria set forth in paragraph 2 hereinabove. Bangladesh Bank shall make any such report available to the PSC and ADB upon request.

Participation Agreements

4. Bangladesh Bank shall cause the PFIs to perform their obligations under the Participation Agreements. Each Participation Agreement shall include, among other things, the following provisions pursuant to which the PFI shall:

- (a) at all times during the term of the Participation Agreement, continue to satisfy the eligibility criteria for PFIs set out in paragraph 2 hereinabove;
- (b) not extend a Subloan with proceeds of the Loans other than to Qualified Enterprises for a Qualified Subproject in accordance with the provisions of this Loan Agreement, the Ordinary Operations Loan Agreement and the Project Agreement;
- (c) give financing preference to Qualified Subprojects under Part B of the Project according to technology in the order of, first tunnel kilns, second HHKs, and third VSBKs, except as ADB and Bangladesh Bank may otherwise agree;
- (d) determine the amount and the terms of each Subloan in accordance with its own loan management procedures, provided that the PFI must charge interest on Subloans at rates that reflect its cost of funds plus a spread that covers transaction costs and risk adjusted returns, based on the credit standing of the relevant Qualified Enterprise;
- (e) make necessary budgetary and human resources available to fully implement its ESMS and cause each Qualified Enterprise to whom it

extends a Subloan to make available necessary budget and human resources to fully implement the respective EMP;

- (f) cause each Qualified Enterprise to whom it extends a Subloan to construct, implement and operate the Qualified Subproject in compliance with the applicable laws and regulations of the Borrower relating to health and safety, and the core labor standards, as set out in the relevant conventions of the International Labor Organization, on (i) prohibition of child labor, (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste, (iii) elimination of forced labor, and (iv) freedom of association;
- (g) cause each Qualified Enterprise to whom it extends a Subloan to implement the relevant provisions of the GAP, including, without limitation, that (i) at least 10% of its workforce for the Qualified Subproject must be women, (ii) it offers preferential treatment for women displaced due to the closure of FCKs in the recruitment of workers; (iii) it must offer equal pay for work of equal value; and (iv) it must provide separate facilities for male and female workers;
- (h) undertake only to finance brick kiln investments comprising (i) the upgrading of FCKs to improved zigzag kiln facilities or (ii) the construction of new VSBK, HHK or tunnel kiln facilities, provided that these brick kilns are constructed and operated in compliance with the core labor standards as set out in the relevant conventions of the International Labor Organization;
- (i) establish and maintain sound operational policies and procedures for supervision and monitoring the Subloans so as to ensure achievement of the Project objectives;
- (j) furnish to Bangladesh Bank quarterly reports on the execution of the Qualified Subprojects, in such form, in such detail and within such a period as Bangladesh Bank shall reasonably request to enable Bangladesh Bank to fulfill its reporting requirements to ADB under this Loan Agreement and the Project Agreement;
- (k) (i) establish and maintain separate accounts for the Project in accordance with sound accounting principles and the requirements set forth in the PAM, (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses) audited annually in accordance with appropriate auditing standards consistently applied by an independent auditor selected and engaged in accordance with the competitive selection procedures, acceptable to ADB and Bangladesh Bank, (iii) have such auditor's report, related accounts and financial statements (all in English) submitted to Bangladesh Bank annually not later than 6 months after the end of the fiscal year, and (iv) submit semiannual unaudited accounts to Bangladesh Bank within the seventh month of a fiscal year; and

- (l) ensure that no material organizational changes (either financial, operational, or structural), will be approved or implemented by the PFI without prior approval of Bangladesh Bank. Material organizational change means an organizational change in the PFI or a merger, amalgamation, acquisition, winding-up or dissolution of the PFI which could hinder or prevent the PFI from performing its obligations under the Participation Agreement.

5. Bangladesh Bank shall submit to ADB a copy of each Participation Agreement within one month of execution.

Qualified Subproject; Design Standards

6. To be eligible as a Qualified Subproject under Part A of the Project, a subproject must comprise the upgrading of a FCK to an improved zigzag kiln and must have obtained certification from DOE that it has been designed in accordance with the design standards, specifications and construction methods published by DOE pursuant to paragraph 9 hereinafter.

7. To be eligible as a Qualified Subproject under Part B of the Project, a subproject must comprise the construction of a new VSBK, HHK or tunnel kiln and must have obtained certification from DOE that it has been designed in accordance with the design standards, specifications and construction methods published by DOE pursuant to paragraph 10 hereinafter or, in the absence of such standards, in accordance with design standards, specifications and construction methods that reflect best international practice.

8. In addition to the requirements set out in paragraph 6 and paragraph 7 hereinabove, as applicable, each Qualified Subproject must:

- (a) be located in Bangladesh;
- (b) neither involve any involuntary resettlement impacts nor affect indigenous peoples within the meaning of the Safeguard Policy Statement;
- (c) not involve any environmental impacts that would make the subproject a Category A subproject for purposes of the Environmental Safeguards;
- (d) comply with the Borrower's and ADB's requirements on environmental and social safeguards and core labor standards;
- (e) comply with the applicable provisions of the GAP;
- (f) be economically and financially viable; and
- (g) not involve financing any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

9. As soon as reasonably possible, and no later than one month after the Effective Date, the Borrower, through DOE, shall have approved and published on the website of DOE, the design standards, specifications and construction methods that must be followed for the conversion of FCK facilities to improved zigzag kiln facilities.

10. The Borrower, through DOE, shall undertake best efforts to adopt and publish on the website of DOE, 'best practice' design standards, specifications and construction methods for the construction of new VSBK, HHK or tunnel kiln facilities within the project implementation period.

Qualified Enterprise

11. To be eligible as a Qualified Enterprise for a Subloan under Part A of the Project, an enterprise must:

- (a) operate, and be licensed by the competent authorities of the Borrower to operate, FCK facilities in the territory of the Borrower;
- (b) make an upfront contribution of at least 30% of the estimated cost of the Qualified Subproject;
- (c) commit in writing only to own or operate improved zigzag kilns, VSBK, HHK and/or tunnel kiln facilities and not to own or operate any less energy efficient brick kiln facilities, such as bull's trench kiln, greenfield zigzag kiln or FCK facilities, after the Qualified Subproject has been completed; and
- (d) have the capacity, and commit in writing, to implement the Qualified Subproject in accordance with the provisions of this Loan Agreement and the Project Agreement.

12. To be eligible as a Qualified Enterprise for a Subloan under Part B of the Project, an enterprise must:

- (a) be financially sound and have demonstrated a satisfactory track record of performance in the operation of a construction material manufacturing facility for at least three consecutive years;
- (b) submit a sound business plan for construction and operation of the proposed Qualified Subproject;
- (c) make an upfront contribution of at least 30% of the estimated cost of the proposed Qualified Subproject;
- (d) meet such reasonable other financial or commercial viability criteria as may be imposed by the PFI providing the Subloan;
- (e) undertake in writing only to own or operate improved zigzag kiln, VSBK, HHK and/or tunnel kiln facilities and not to own or operate any less energy efficient brick kiln facilities, such as bull's trench kiln,

greenfield zigzag kiln or FCK facilities, after the Qualified Subproject has been completed; and

- (f) have the capacity, and commit in writing, to implement the Qualified Subproject in accordance with the provisions of this Loan Agreement and the Project Agreement.

Subloan

13. Unless otherwise agreed by ADB, each Subloan must:

- (a) be screened and approved by Bangladesh Bank;
- (b) finance not more than 50% of the estimated cost of a Qualified Subproject out of proceeds of the Loans; and
- (c) finance at least 20% of the estimated cost of the Qualified Subproject from resources at the disposal of the PFI other than (i) proceeds of the Loans or (ii) proceeds made available by other national, bilateral or multilateral development agencies or institutions.

14. Bangladesh Bank and the PFI shall not approve any Subloan that finances more than the equivalent of \$5,000,000 out of proceeds of the Loans.

Screening, Categorization, and Environmental and Social Assessment and Planning

15. The Borrower and Bangladesh Bank shall ensure, and cause the PFIs to ensure, that before any Qualified Subproject is approved for financing:

- (a) the ESMS of the relevant PFI is used to screen and categorize the significance of potential environmental, indigenous peoples or involuntary resettlement impacts associated with such Qualified Subproject; and
- (b) an IEE and EMP are prepared for such Qualified Subproject as required pursuant to the relevant ESMS.

Environmental Safeguards

16. The Borrower and Bangladesh Bank shall cause each of the PFIs to ensure that the preparation, design, construction, implementation, operation and decommissioning of each Qualified Subproject comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the ESMS; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Social Safeguards

17. The Borrower and Bangladesh Bank shall cause the PFIs to ensure that the Qualified Subprojects neither involve any involuntary resettlement impacts nor affect indigenous peoples within the meaning of the Safeguard Policy Statement. In the unforeseen event that such resettlement impacts do occur or indigenous peoples are affected, the Borrower and Bangladesh Bank shall take all measures required, and cause the relevant PFI to take all measures required, to ensure compliance with (a) all applicable laws and regulations of the Borrower relating to involuntary resettlement or indigenous peoples, (b) the ESMS, and (c) the SPS.

Safeguards Monitoring and Reporting

18. The Borrower and Bangladesh Bank shall do, and cause each of the PFIs to do, the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB;
- (b) if any unanticipated environmental and/or social risks and impacts arise during Qualified Subproject implementation, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report to ADB and DOE any actual or potential breach of compliance with the measures and requirements set forth in the ESMS and any EMP promptly after becoming aware of the breach.

Health; Labor Standards

19. The Borrower and Bangladesh Bank shall cause each of the PFIs to ensure that Works contracts and bidding documents under the Qualified Subprojects financed under this Project include specific provisions requiring contractors to comply (a) with all applicable laws and regulations of the Borrower relating to health and safety and with the core labor standards, as set out in the relevant conventions of the International Labor Organization, on (i) prohibition of child labor, (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste, (iii) elimination of forced labor and (iv) freedom of association; and (b) with the requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities surrounding the Qualified Subproject sites.

Revolving Funds

20. Pending repayment to ADB, the Borrower and Bangladesh Bank shall cause all funds received from repayments under the Participation Agreements and Subloan agreements to be used as revolving funds to provide further Subloans to Qualified Enterprises for Qualified Subprojects in accordance with the provisions of this Loan Agreement, the Ordinary Operations Loan Agreement and the Project Agreement, except as otherwise agreed by ADB.

Review

21. Within 12 months from the Effective Date, the Borrower, ADB and Bangladesh Bank shall jointly undertake a comprehensive review of the Project. The review shall assess the Project's achievements and progress in implementing the Project against the performance targets and the project implementation schedule in order to identify any difficulties or constraints encountered in implementing the Project and to make adjustments, if necessary, for the remaining Project implementation period. In particular, the review shall, among others, evaluate the rate of utilization of proceeds of the Ordinary Operations Loan for Part A of the Project, compliance with the loan covenants generally, and compliance with the Environmental Safeguards, core labor standards and the provisions of the Gender Action Plan specifically.

Governance and Anticorruption

22. The Borrower and Bangladesh Bank shall do, and cause each of the PFIs and Qualified Enterprises to do, the following: (i) 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 Project; and (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

23. The Borrower and Bangladesh Bank shall cause each of the PFIs to ensure that all contracts in relation to the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the contractors, suppliers, consultants, and other service providers as they relate to the Project.

Combating Money Laundering and Financing of Terrorism

24. The Borrower shall ensure that Bangladesh Bank and each of the PFIs:
- (a) comply with applicable laws and regulations of the Borrower on combating money laundering and financing of terrorism and that Loan proceeds are not used, directly or indirectly, in money laundering or financing of terrorism; and
 - (b) formulate and implement internal control procedures, including customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and promptly informs the Borrower and ADB if there is any violation or potential violation of subparagraph (a) hereinabove. In the event that ADB informs Bangladesh Bank of its concern that there has been such an alleged violation, Bangladesh Bank shall: (i) cooperate in good faith with ADB and its representatives so that ADB can determine whether such a violation has occurred; (ii) respond promptly and in reasonable detail to any query from ADB; and (iii) furnish documentary support for such response upon ADB's request.