
LOAN NUMBER 3948-NEP(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])
(Civil Aviation Sector Improvement Program)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 9 JULY 2020

NEP 38349

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 9 July 2020 between NEPAL ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 16 April 2020 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's civil aviation sector ("Program");

(B) the Borrower has applied to ADB for a loan for the purposes of the Program; and

(C) ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital 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 ADB's Ordinary Operations (Concessional) Loan Regulations, dated 1 January 2017 ("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(v) is deleted and the following is substituted therefor:

"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(x) is deleted and the following is substituted therefor:

"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 5.01(b) is deleted.

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) "ACI" means Airport Council International or any successor thereto;
- (b) "ASAN" mean the Air Service Authority of Nepal to be established to operate airports and air navigation services under the ASAN Act;
- (c) "ASAN Act" means the Borrower's Air Service Authority Act under consideration of the Parliament;
- (d) "CAAN" means the Civil Aviation Authority operating under the Borrower's Civil Aviation Authority Act, 2053;
- (e) "CAAN Act" means the Borrower's new Civil Aviation Authority Act under consideration of the Parliament;
- (f) "CAANepal" means the restructured CAAN to be established to function as the regulatory body for civil aviation under the CAAN Act;
- (g) "CANSO" means Civil Air Services Organization or any successor thereto;
- (h) "Counterpart Funds" means the local currency generated from the Loan proceeds under the Program and referred to in paragraph 4 of Schedule 4 to this Loan Agreement;
- (i) "Deposit Account" means the account referred to in paragraph 3 of Schedule 3 to this Loan Agreement;
- (j) "First Tranche" means the portion of the proceeds of the Loan in an amount of twenty-five million Dollars (\$25,000,000) to be withdrawn pursuant to and subject to the provisions of paragraph 5 of Schedule 3 to this Loan Agreement;
- (k) "ICAO" means the International Civil Aviation Organization or any successor thereto;
- (l) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (m) "MOCTCA" means the Borrower's Ministry of Culture, Tourism and Civil Aviation or any successor thereto;

- (n) "MOF" means the Ministry of Finance of the Borrower, or any successor thereto;
- (o) "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 the Program and is attached to the Policy Letter;
- (p) "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;
- (q) "SARP" means standards and recommended practices; and
- (r) "Second Tranche" means the balance of the proceeds of the Loan remaining in the Loan Account after the utilization of the First Tranche, to be withdrawn pursuant to and subject to the provisions of paragraph 6 of Schedule 3 to this Loan Agreement.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of fifty million Dollars (\$50,000,000).

(b) The Loan has a principal repayment period of 16 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB 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.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 01 September and 01 March 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. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2023 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 4 to this Loan Agreement.

Section 4.02. (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, 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. A date 30 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 Secretary or Joint Secretary (International Economic Cooperation Coordination Division) of MOF 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
Singha Durbar
Kathmandu, Nepal

Facsimile Number:

977-1-421-1720

For ADB

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

Facsimile Numbers:

(632) 8636-2444
(632) 8636-2340.

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

NEPAL

By 

SHREEKRISHNA NEPAL

Joint Secretary

International Economic Cooperation

Coordination Division

Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

MUKHTOR KHAMUDKHANOV

Country Director

Nepal Resident Mission

SCHEDULE 1**Description of the Program**

1. The principal objective of the Program is to strengthen the Borrower's aviation safety oversight capabilities and operational efficiencies. The scope of the Program includes (a) the establishment of a legal and implementation framework of the civil aviation sector reforms; (b) the establishment and functionalization of CAANepal; and (c) the establishment and functionalization of ASAN. The Program is described in more detail in the Policy Letter.
2. The Program is expected to be completed by 30 June 2023.

SCHEDULE 2

Amortization Schedule

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in USD)*
1 September 2028	1,562,500
1 March 2029	1,562,500
1 September 2029	1,562,500
1 March 2030	1,562,500
1 September 2030	1,562,500
1 March 2031	1,562,500
1 September 2031	1,562,500
1 March 2032	1,562,500
1 September 2032	1,562,500
1 March 2033	1,562,500
1 September 2033	1,562,500
1 March 2034	1,562,500
1 September 2034	1,562,500
1 March 2035	1,562,500
1 September 2035	1,562,500
1 March 2036	1,562,500
1 September 2036	1,562,500
1 March 2037	1,562,500
1 September 2037	1,562,500
1 March 2038	1,562,500
1 September 2038	1,562,500
1 March 2039	1,562,500
1 September 2039	1,562,500
1 March 2040	1,562,500
1 September 2040	1,562,500
1 March 2041	1,562,500
1 September 2041	1,562,500
1 March 2042	1,562,500
1 September 2042	1,562,500
1 March 2043	1,562,500
1 September 2043	1,562,500
1 March 2044	1,562,500
TOTAL	50,000,000

* 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 set out in this Schedule or as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.
2. 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.
3. (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 Nepal Rastra Bank into which all withdrawals from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with the applicable regulations and procedures of the Borrower.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with accounting principles acceptable to ADB. Upon ADB's request, the Borrower shall have the financial statements for the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB. Promptly after their preparation but in any event not later than 6 months after the date of ADB's request, copies of such audited financial statements and the opinion of the auditors on the financial statements, in the English language, shall be furnished to ADB.
4. No Loan proceeds shall be withdrawn to finance any item specified in Attachment 1 to this Schedule.
5. The Borrower may withdraw the First Tranche upon effectiveness of this Loan Agreement.
6. Notwithstanding any other provisions of this Loan Agreement and except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account for the Second Tranche unless ADB is satisfied, after consultation with the Borrower, that:
(a) sufficient progress has been achieved by the Borrower in the carrying out of the Program;
(b) the policy actions that were met for the release of the First Tranche as specified in the Policy Matrix continue to be complied with by the Borrower; and (c) the Borrower has met the policy actions for the release of the tranche specified in Attachment 2 to this Schedule.

Negative List

No withdrawals of Loan proceeds 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: 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 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;
- (iii) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (iv) expenditures for narcotics;
- (v) 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
- (vi) 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.

Policy Actions for Release of the Second Tranche

1. The Government shall have approved requisite rules for the implementation of the CAAN Act, and the ASAN Act following approval and enactment of the related bills by the Parliament;
2. CAANepal shall have been legally established, in accordance with the CAAN Act, to commence its regulatory functions. This includes:
 - 2.1. the establishment of the board and director general; completion of transfer of staff, properties, assets, and liabilities from CAAN to CAANepal; and approval of gratuity fund arrangements;
 - 2.2. the approval and notification by CAANepal of its organizational structure and key performance indicators (KPIs) as per ICAO SARPs in the areas of (i) aviation safety; (ii) aviation security; (iii) licensing and certification of service providers; (iv) authorization and approval of aviation activities; (v) surveillance, inspection and audits of service providers; and (vi) capacity development; and
 - 2.3. the approval by MOCTCA and CAANepal of the updated Nepal Aviation Safety Plan revised from the current one (2018–2022) based on ICAO's latest safety audit recommendations, relevant standards and guidelines.
3. ASAN shall have been legally established, in accordance with the ASAN Act, to commence its service provider functions. This includes:
 - 3.1 the establishment of the board and managing director; completion of transfer of staff, properties, assets, and liabilities from CAAN to ASAN; and approval of gratuity fund arrangements;
 - 3.2 the approval of creation of separate environment/social and legal/procurement units;
 - 3.3 the approval and notification by ASAN of (i) the integrated institutional management strategy comprising medium-term business plan; (ii) the medium-term financial framework, and forecasted financial statements based on projections of revenue/fee and expenditure/investment consistent with the business plan; and (iii) the financial management improvement plan with timelines, including introduction of accrual-based financial statements, an enterprise resource planning system at least in the fields of financial budget, asset management, and accounting, and management accounting system;
 - 3.4 the approval and notification by ASAN of key performance indicators with clear distinction between those for airports and air navigation services, in the following areas:
 - (i) core business operation and functions;
 - (ii) aviation safety consistent with ICAO's SARP;

- (iii) aviation security consistent with ICAO's SARP;
 - (iv) service quality consistent with industry standards and guidance materials as published by ACI and CANSO respectively;
 - (v) productivity/cost effectiveness;
 - (vi) financial; and
 - (vii) social and environmental consistent with industry standards and guidance materials as published by ICAO, International Air Transport Association, ACI and CANSO;
- 3.5 the approval by ASAN of gender equality and social inclusion (GESI) initiatives, including (i) GESI audit within ASAN; (ii) an operational plan based on the GESI audit; and (iii) an increased percentage of women and socially excluded in the workforce of ASAN to be set by (a) Employees Regulation guided by the Borrower's Civil Service Act for ASAN's new recruitment, and (b) GESI operational plan; and
- 3.6. the approval by ASAN of an Operational Capacity Program (OCP) to ensure safe, efficient, and effective aviation services. The OCP shall include (i) equipment and high technology requirements to comply with ICAO's SARPs; (ii) gap analysis of technical and operational human resource requirements and development of training needs; and (iii) assessment of feasibility of use of external resources including private sector for specific needs.

SCHEDULE 4**Program Implementation and Other Matters**Implementation Arrangements

1. The MOF shall be the Program Executing Agency. The MOCTCA, CAAN, CAANepal, and ASAN shall be the implementing agencies responsible for implementing respective policy actions under the Program.

Policy Actions and Dialogue

2. The Borrower shall ensure that all policy actions adopted 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.

3. 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

4. The Borrower shall ensure that the Counterpart Funds are used to finance the implementation of certain programs and activities consistent with the objectives of the Program.

Governance and Anticorruption

5. The Borrower, the Program Executing Agency and the implementing agencies 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

6. The Borrower and ADB shall jointly conduct periodic reviews of the progress of the Program to assess the progress of the Program, fulfillment of policy actions, relevance of the assumptions, risks and mitigating measures that might impact Program success.