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GRANT NUMBER 0432-KGZ (SF)

GRANT AGREEMENT  
(Special Operations)

(Second Investment Climate Improvement Program – Subprogram 1)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 17 JUNE 2015

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KGZ 41544

## **GRANT AGREEMENT (Special Operations)**

GRANT AGREEMENT dated 17 June 2015 between the Kyrgyz Republic ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

(A) ADB has received from the Recipient a development policy letter dated 5 June 2015 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Grant Agreement, designed to improve the business and investment climate in the Recipient ("Program");

(B) the Program comprises the first subprogram of a programmatic approach, as described in Schedule 1 to this Grant Agreement ("Programmatic Approach"), and the Recipient has applied to ADB for a grant for the purposes of the Program; and

(C) ADB has agreed to provide a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Grant Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations"), are hereby made applicable to this Grant 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(15) is deleted and the following is substituted therefor:

24. The term "Program" means the program for which ADB has agreed to make the Grant, as described in the Grant Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Recipient.

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

(c) Section 2.01(17) 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 Grant Agreement.

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

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

(a) “Deposit Account” means the account referred to in paragraph 3 of Schedule 2 to this Grant Agreement;

(b) “Eligible Imports” means the total imports of the Recipient 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 Attachment 1 to Schedule 2 to this Grant Agreement; and
- (iii) imports financed by official international or bilateral aid agencies or any other loans or grants made by ADB;

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

(d) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);

(e) “MOE” means the Ministry of Economy of the Recipient or any successor thereto;

(f) “MOF” means the Ministry of Finance of the Recipient or any successor thereto;

(g) “NBKR” means the National Bank of the Kyrgyz Republic or any successor thereto;

(h) “Policy Matrix” means the matrix of policy actions as agreed between the Recipient and ADB and attached to the Policy Letter which sets forth actions accomplished or to be accomplished by the Recipient under the Programmatic Approach;

(i) “PPP” means public-private partnership;

(j) “Program Executing Agency” for the purposes of, and within the meaning of, the Grant Regulations means MOE or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program; and

(k) “SME” means small and medium-sized enterprise.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Grant Agreement an amount of twenty million Dollars (\$20,000,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Program in accordance with the provisions of this Grant Agreement.

Section 3.02. The proceeds of the Grant shall be withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Withdrawals from the Grant 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 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2015 or such other date as may from time to time be agreed between the Recipient and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Program, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 3 to this Grant Agreement.

Section 4.02. (a) The Recipient shall maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Grant and to record the progress of the Program.

(b) The Recipient shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. As part of the reports and information referred to in Section 6.04 of the Grant Regulations, the Recipient 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.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the policy actions for the Program as specified in the Policy Letter shall have been carried out to the satisfaction of ADB.

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

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

Ministry of Finance  
58 Erkindik Boulevard  
Bishkek 720040  
Kyrgyz Republic

Facsimile Number:

(996) 312 661 645.

For ADB


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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2424.

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

KYRGYZ REPUBLIC

By   
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
Authorized Representative

**SCHEDULE 1****Description of the Program**

1. The principal objective of the Programmatic Approach is to increase private sector development in the Recipient through an improved business and investment climate. The Programmatic Approach comprises 3 subprograms and the Program is the first subprogram. The Program is described in more detail in the Policy Letter.
2. The Program is expected to be completed by 30 June 2015.



**SCHEDULE 2****Allocation and Withdrawal of Grant Proceeds**

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Grant proceeds from the Grant Account.

2. (a) An application for withdrawal from the Grant Account shall be submitted to ADB by the Recipient and shall be in a form satisfactory to ADB.

(b) Such withdrawal applications shall be accompanied by a certificate of the Recipient confirming that with respect to each year during which the proceeds of the Grant are expected to be disbursed, the value of the Eligible Imports is expected to be greater than the amount of the Grant expected to be disbursed during such year.

(c) The Recipient shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Recipient has certified the value of Eligible Imports in its withdrawal application.

3. (a) Prior to submitting the first application to ADB for withdrawal from the Grant Account, the Recipient shall nominate an account (Deposit Account) at NBKR into which all withdrawals from the Grant 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 accounting principles acceptable to ADB. Upon ADB's request, the Recipient 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.

(c) Throughout the Program implementation period, the Recipient shall submit trade statistics and any other information as ADB may require from time to time to assess the Recipient's compliance with the formula for determining Eligible Imports.

4. The Recipient may withdraw the Grant upon effectiveness of this Grant Agreement.

**Negative List**

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 Recipient:

**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 in the currency of the Recipient or for goods supplied from the territory of the Recipient;
- (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 Recipient or international agreements to which the Recipient is a party; and
- (vii) expenditures on account of any payment prohibited by the Recipient 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 the Program**

1. The Recipient shall establish an enabling legal environment for mobile financial services with the adoption of a payments system law.
2. The Recipient shall cause NBKR to approve a strategic plan for the development of the payment system with respect to retail market development, regulatory framework and oversight.
3. The Recipient shall cause MOE to approve: (a) the concept paper (which includes the business case) for a risk sharing facility to support SMEs (including women-owned/managed SMEs) with potential for growth in line with the national Export Development Program; and (b) the concept paper for a commodities exchange.
4. The Recipient shall cause NBKR to strengthen risk-based supervision for the microfinance sector by approving an internal document through NBKR management on the roles, responsibilities and coordination mechanisms for on-site and off-site supervision of the sector.
5. The Recipient shall cause MOE to complete inter-ministerial review and submit for Government approval the PPP development program (which includes a capacity building program) for the period 2015–2020 with at least 20% women participation on the program.
6. The Recipient shall cause the Ministry of Health to develop a draft health sector strategy which includes PPP and multi-year investment plan and at least one gender and social development project that directly benefits the poor, youth and women.
7. The Recipient shall submit for approval amendments to the PPP law and its regulations to further strengthen the PPP legal and regulatory framework.
8. The Recipient shall cause MOE to operationalize (a) a comprehensive PPP website; and (b) a PPP communication plan, to disseminate information and raise public and private sector awareness about PPPs for infrastructure and social projects that directly benefit the poor or women.
9. The Recipient shall cause MOF to approve fiscal risk guidelines for PPPs (which includes guidance on contingent liabilities) to ensure appropriate and transparent budgeting of fiscal costs of PPP projects and minimizing of fiscal risks.
10. The Recipient shall cause relevant bodies to: (a) tender a pre-feasibility or feasibility study financed under the Project Development Support Facility for at least 1 PPP project, preferably a social sector project; and (b) submit for approval by the Project Development Support Facility Committee at least 2 projects for financing of pre-feasibility or feasibility study under the facility (in addition to the CT scan project).
11. The Recipient shall cause MOF to prepare the proposals for possible financial support schemes (such as a long-term debt facility, viability gap fund and guarantee

mechanisms) to support commercial viability of PPP projects and enable availability of long-term financing for PPP projects.

12. The Recipient shall cause the Prime Minister's Office to approve the revised national Export Development Program.

13. The Recipient shall cause MOE to prepare a draft project proposal, including organizational chart, operational plan and budget, to establish a Eurasian Economic Union helpdesk.

14. The Recipient shall cause MOE to prepare and publish on its website a draft concept paper on the modernization of national quality Infrastructure (which incorporates ADB findings on the existing physical infrastructure and institutional capacity to implement sanitary and phytosanitary standards) to comply with product quality requirements for the Eurasian Economic Union and export markets such as the European Union.

15. The Recipient shall cause MOE to submit the application to the European Union for the Generalized System of Preferences Plus status (which grants preferential or zero tariffs for nearly 7000 export products).

16. The Recipient shall cause the Investment Promotion Agency of MOE to implement its 2015–17 strategic plan, which covers: (a) staffing with at least 30% women technical staff; (b) operationalization of the website in Russian and English to provide information on investment laws and incentives, the economy, taxation and company registration; and (c) operationalization of the customer relationship management system to manage the information flow with potential investors.

17. The Recipient shall establish (with an action and budget plan) an interagency working committee (having at least 1 senior level woman representative) that is led by the Center for Judicial Representation and includes representatives from the Ministry of Foreign Affairs, the Ministry of Justice, MOF, MOE and other relevant government agencies as the first step towards creating an institutional platform for resolution of investment grievances.

18. The Recipient shall cause MOE to sign a contract with one of the three international credit rating agencies (Standard & Poor's, Moody's or Fitch Ratings) to start the sovereign rating process.

19. To ensure matching of skills and vocational training to the needs of local exporters as well as foreign investors, the Recipient shall cause MOE to:

- (a) designate the Investment Promotion Agency of MOE as its representative on the National Skills Development Council of the Agency for Vocational Education; and
- (b) sign a memorandum of understanding with the Agency for Vocational Education for their collaboration on the identification of "market-relevant" skills and the development of "market-responsive" vocational skills training and curriculum, including vocational skills aimed at attracting more women into traditional male occupations.

20. The Recipient shall cause MOF to ensure that at least 20 state and municipal bodies start using the e-procurement system to increase competition, transparency and efficiency in public procurement.

21. The Recipient shall cause to be approved draft law on amendments to the Tax Code to reduce tax filing/payment frequency for SMEs from monthly to quarterly, thereby reducing transaction costs.

### **SCHEDULE 3**

#### **Program Implementation and Other Matters**

##### Implementation Arrangements

1. MOE shall be the Program Executing Agency and MOE, MOF and NBKR will be the implementing agencies for the Program. MOE shall oversee and coordinate the carrying out of policy actions under the Program.

##### Policy Actions and Dialogue

2. The Recipient 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 Programmatic Approach. The Recipient and ADB shall also work closely on achieving compliance with the indicative policy actions for the second and third subprograms of the Programmatic Approach. Such collaboration shall take place on a regular basis from at least 12-18 months prior to the processing of these subprograms and include agreement on clear milestones and timeframes for achieving compliance with the indicative policy actions. In the event an indicative policy action requires revision, details of the proposed revision shall be agreed as well. The Recipient acknowledges that any further subprogram for the Programmatic Approach is subject to approval of ADB's Board of Directors.

3. The Recipient 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 Recipient shall take into account ADB's views before finalizing and implementing any such proposal.

##### Use of Counterpart Funds

4. The Recipient 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 Recipient, 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.