
LOAN NUMBER 3565-PRC

PROGRAM AGREEMENT

(Guangxi Modern Technical and Vocational Education and Training Development Program –
Results-Based Lending)

between

ASIAN DEVELOPMENT BANK

and

GUANGXI ZHUANG AUTONOMOUS REGION GOVERNMENT

DATED 14 December 2017

PRC 49308

PROGRAM AGREEMENT

PROGRAM AGREEMENT dated 14 December 2017 between ASIAN DEVELOPMENT BANK ("ADB") and GUANGXI ZHUANG AUTONOMOUS REGION GOVERNMENT ("GZARG").

WHEREAS

(A) by a Loan Agreement of even date herewith between People's Republic of China ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of two hundred fifty million Dollars (\$250,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to GZARG and that GZARG agrees to undertake certain obligations towards ADB set forth herein;

(B) GZARG has also applied to KfW for a loan for the Program; and

(C) GZARG, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Particular Covenants

Section 2.01. (a) GZARG shall carry out the Program with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In carrying out the Program and operating the Program facilities, GZARG shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to GZARG, and all obligations set forth in the Schedule to this Program Agreement.

Section 2.02. GZARG shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 2.03. GZARG shall closely monitor the actions specified in the PAP and the PID to ensure that those actions are implemented in a timely and efficient manner.

Section 2.04. (a) ADB and GZARG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

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

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

Section 2.05. GZARG shall furnish to ADB all such reports and information as ADB shall reasonably request concerning the Loan, the implementation Program, including the accomplishment of the DLIs and implementation of the actions specified in the PAP and the PID, and any other matters relating to the purposes of the Loan.

Section 2.06. (a) GZARG shall (i) maintain separate accounts and records for the Program; (ii) prepare unaudited annual financial statements for the Program in accordance with accounting principles acceptable to ADB for Financial Year (FY) 2017, and for each FY until the Loan Closing Date and furnish these to ADB no later than 9 months after the close of each FY; (iii) prepare annual financial statements for FY2017, and for each FY until the Loan Closing Date, for the Loan in accordance with accounting principles acceptable to ADB and furnish these to ADB no later than 6 months after the close of each FY; (iv) have the financial statements for the Loan audited annually 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; (v) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement) and a management letter which sets out the deficiencies in the internal control of the Loan that were identified in the course of the audit, if any; and (vi) furnish to ADB, no later than 6 months after the close of the FY to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Loan and the opinion of the auditors on the financial statements within 14 days of the date of their receipt by posting them on ADB's website.

(c) GZARG shall enable ADB, upon ADB's request, to discuss the financial statements for the Loan and GZARG and its financial affairs where they relate to the Loan with the auditors appointed by GZARG pursuant to subsection (a)(iv) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions

requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of GZARG, unless GZARG shall otherwise agree.

(d) Whenever GZARG delivers the audited financial statements for the Program, GZARG shall certify to ADB that the total expenditures for GZARG's GZAR Modern TVET System Development Plan in the Fiscal Year to which the audited financial statements relate, minus the following ineligible items in such Fiscal Year, are equal or more than the Loan amount withdrawn by the Borrower in that Fiscal Year:

- (i) procurement of works, goods and services from countries which are not members of ADB;
- (ii) procurement of goods, works, and services from persons or entities debarred or suspended by ADB;
- (iii) procurement under High-Value Contracts;
- (iv) any activities which are classified as category A for environmental impact under the SPS; and
- (v) any activities which are prohibited investment activities as provided in Appendix 5 of the SPS.

Section 2.07. GZARG shall enable ADB's representatives to inspect the Program and any relevant records and documents.

Section 2.08. (a) GZARG shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Program or in the conduct of its operations.

(b) GZARG shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

ARTICLE III

Effective Date; Termination

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

Section 3.02. This Program Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Program Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Program Agreement and any agreement between the parties contemplated by this Program Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2407

For GZARG

Guangxi Education Department
No. 69 Zhuxi Avenue
Qingxiu District
Nanning
Guangxi
530021
People's Republic of China

Facsimile Number:

+86 771 581 5042.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Program Agreement by or on behalf of GZARG may be taken or executed by its Chairman or Vice Chairman or by such other person or persons as he or she shall designate in writing notified to ADB.

(b) GZARG shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

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

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

ASIAN DEVELOPMENT BANK

By 

BENEDICT BINGHAM
Authorized Signatory

GUANGXI ZHUANG AUTONOMOUS
REGION GOVERNMENT

By 

HUANG WEIJING
Authorized Signatory

SCHEDULE

Execution of Program

Implementation Arrangements

1. GZARG shall ensure that the Program is implemented in accordance with the detailed arrangements set forth in the PID. Any subsequent change to the PID shall become effective only after approval of such change by GZARG and ADB. In the event of any discrepancy between the PID and this Program Agreement, the provisions of this Program Agreement shall prevail.
2. GZARG shall ensure that all DLIs achieved under the Program continue to be complied with for the duration of the Program.
3. GZARG shall keep ADB informed of discussions with other multilateral or bilateral aid agencies that may have implications for the implementation of the GZARG's "Modern TVET System Development Plan" and the Program and shall provide ADB with an opportunity to comment on any resulting proposals. GZARG shall give due consideration to ADB's views before finalizing and implementing any such proposal.

Covenants Relating to Certain Program Actions

4. GZARG shall ensure that the Program Actions specified in the PAP and the PID are implemented in a timely and efficient manner to achieve the results identified in the Program results framework.
5. GZARG recognizes that truly independent verification of the achievement of DLIs is crucial to ADB, so GZARG shall ensure that all experts who provide verification services under the verification protocols set out in the PID meet standards of independence and expertise acceptable to ADB and that they are permitted to conduct their reviews free of influence or interference. GZARG shall furnish to all reviewers, including, without limitation, each independent third party engaged by ADB under ADB's technical assistance related to the Program, all information, materials and assistance such persons or teams may require to conduct verification of the achievements of DLIs.
6. GZARG shall furnish to ADB and KfW, if it makes a loan for the Program, terms of reference for Industry Steering Committees for their review and comments, prior to establishing such committees or groups.
7. GZARG shall ensure that appropriately qualified expert groups established by GED (i) conduct onsite visits to TVET institutions participating in the pilot program on making TVET education more relevant to industry under DLI 3 to confirm that curricula and training materials have been developed for the target number courses of study and that the upgraded curricula and materials are being implemented; (ii) prepare and deliver a report for GED, evaluating the methodology applied in the pilot program on making TVET education more relevant to industry under DLI 3, and make recommendations to GED on the possibility of applying the piloted methodology more broadly to improve industry relevance of TVET curriculum and training materials; (iii) determine which TVET courses of study are relevant to Guangxi's "14+10" key industries under DLI 4; (iv) screen applicant

TVET institutions and proposals for undertaking TVET self-improvement projects, and prepare evaluation reports under DLI 5; and (v) review TVET institutions' procedures, standards, criteria, methods and templates for monitoring and reporting and, subsequently, such institutions' actual reporting, and prepare reports on their status of meeting provincial guidelines for improved monitoring and reporting under DLI 7.

8. GZARG shall ensure that a mechanism is established under the Program to monitor skills and knowledge transfer activities of TVET institutions which have partner TVET institutions and enterprises in ASEAN countries.

Financial Management

9. GZARG shall ensure that the financial management actions specified in the PAP and the PID are implemented in a timely and efficient manner to achieve the objectives, among others, of (i) reducing financial risks and (ii) capacity building.

Safeguards - General

10. GZARG shall ensure that all Program Actions in the area of environmental and social safeguards are implemented in a timely and efficient manner.

Environment

11. GZARG shall ensure that no works under the Program involve significant adverse environmental impacts which may be classified as category A under the SPS. Prior to commencing any works under the GZAR Modern TVET System Development Plan, GZARG shall conduct a screening based on the criteria and procedures in the Program Safeguards Systems Assessment for the Program to ensure that any works that may be classified as Category A for environmental impacts within the meaning of SPS are excluded from the Program.

12. GZARG shall ensure that the preparation, design, construction, implementation, operations and de-commissioning of all activities under the Program comply with (a) all applicable laws and regulations of the Borrower relating to the environment, health and safety; and (b) the Environmental Safeguards as set out in the SPS; and (c) all measures set forth in the Program Action Plan.

Land Acquisition and Resettlement

13. Prior to commencing any works under the GZAR Modern TVET System Development Plan, GZARG will conduct a screening based on the criteria and procedures set forth in the agreed Resettlement Framework for the Program to ensure that any works that may be classified as Category A for involuntary resettlement as defined in the Resettlement Framework are excluded from the Program.

14. GZARG shall ensure that all land acquisition, involuntary resettlement, and income and livelihood restoration activities under the Program are carried out in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the resettlement framework referred to in the PID; (c) the Involuntary Resettlement Safeguards; and (d) all measures and requirements, including monitoring requirements, set forth in the Program Action Plan.

Ethnic Minorities

15. GZARG shall ensure that the preparation, design, construction, implementation, operations and de-commissioning of all activities under the Program comply with (a) all applicable laws of the Borrower relating to the interests of ethnic minorities; (b) the Indigenous Peoples Safeguards; and (c) all measures set forth in the Program Action Plan.

Labor Standards and Health

16. GZARG shall ensure that the preparation, design, construction, implementation and operation of all activities under the Program comply with ADB's core labor standards and all applicable labor laws and regulations of the Borrower.

17. GZARG shall ensure that information on the risks of sexually transmitted diseases, including HIV/AIDS, is disseminated to the employees of contractors engaged in works under the Program and to members of local communities, including women, in areas surrounding works undertaken under the Program.

Gender

18. GZARG shall ensure that the gender actions and targets specified in the Program Action Plan are carried out in a timely and efficient manner.

Governance and Anti-corruption

19. GZARG shall ensure that the Program complies with the Anticorruption Guidelines and shall, and shall cause GED to, take all appropriate and timely measures to prevent, detect, and respond to any allegations of fraud, corruption or other prohibited activities related to the Program in accordance with the Anticorruption Guidelines.

20. GZARG shall, and shall cause GED to, promptly inform ADB of any allegations of fraud, corruption or other prohibited activities relating to any activities under the Program and shall cause GED and all TVET institutions and other persons and organizations engaged in the Program to, cooperate fully with any investigation by ADB relating to allegations of fraud, corruption, or any other prohibited activities and extend all necessary assistance, including providing access to all relevant books and records, for satisfactory completion of such investigation.

21. Within 90 days of the Effective Date of ADB's Loan, GZARG shall update its relevant websites to (a) provide information on bidding procedures, bidders, contract awards, and physical progress of the Program; (b) post the annual financial statements for the Program, as such financial statements become available; and (c) disseminate other relevant information on the implementation of the Program.