
LOAN NUMBER 4019-BHU(COL)
(Additional to Loan No. 3668-BHU[COL] and Grant No. 0573[SF])

LOAN AGREEMENT
(Ordinary Operations [Concessional])
(Phuentsholing Township Development Project – Additional Financing)

between

KINGDOM OF BHUTAN

and

ASIAN DEVELOPMENT BANK

DATED 14 DECEMBER 2020

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 14 December 2020 between KINGDOM OF BHUTAN ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement dated 3 July 2018 between the Borrower and ADB ("Original ADB Loan Agreement"), ADB agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources in an amount of twenty eight million seven hundred forty thousand Dollars (\$28,740,000) for the purposes of the project described in Schedule 1 of the Original ADB Loan Agreement ("Project");

(B) by a grant agreement dated 3 July 2018 between the Borrower and ADB ("Original ADB Grant Agreement"), ADB agreed to make a grant to the Borrower from ADB's Special Funds resources in an amount of twenty-four million two hundred sixty thousand Dollars (\$24,260,000) ("Original ADB Grant") for the purposes of the Project;

(C) by a grant agreement of even date herewith between the Borrower and ADB ("Grant Agreement"), ADB has agreed to make an additional grant to the Borrower from ADB's Special Funds resources in an amount of ten million Dollars (\$10,000,000) ("Grant") for the purpose of financing cost overruns under the Project;

(D) the Borrower has applied to ADB for an additional loan for the purpose of financing cost overruns under the Project;

(E) the Project will be carried out by Druk Holding and Investments Limited ("DHI") as Project Executing Agency (as defined hereinafter) and implemented by Construction Development Corporation Limited ("CDCL") as Implementing Agency (as defined hereinafter), and for this purpose the Borrower will make available to the Project Executing Agency and Implementing Agency the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(F) 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 and in the Project Agreement of even date herewith between ADB, on the one part, and DHI and CDCL, on the other part;

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

 "Project Agreement" means the project agreement of even date herewith between ADB, on the one part, and DHI and CDCL, on the other part, as such agreement may be amended from time to time; and such project agreement includes all schedules to the project agreement;
- (b) The term "Project Executing Agency" appearing in Sections 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 terms "DHI" and "CDCL".

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations and the Original ADB Loan Agreement 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) "CDCL" means Construction Development Corporation Limited, a wholly-owned subsidiary of DHI incorporated in 2009 pursuant to the Companies Act of the Borrower, with the purposes of providing construction, engineering and project management services for projects of the Borrower;
- (b) "DHI" means Druk Holding and Investments Limited, a wholly government-owned corporate body incorporated in 2007 pursuant to the Companies Act of the Borrower, with the purposes of holding and managing the existing and future investments of the Borrower;
- (c) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;
- (d) "Implementing Agency" means CDCL, or any successor thereto acceptable to ADB, which is responsible for implementing the Project;
- (e) "MOWHS" means the Borrower's Ministry of Works and Human Settlements, or any successor thereto;
- (f) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means DHI or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (g) "SAP" means the Strategic Action Plan for Sustainable Township Management, including any update thereto, prepared by the Project Executing Agency in form and substance acceptable to ADB, approved by the Borrower and included in the PAM; and

- (h) "Subsidiary Financing Agreement" means the agreement referred to in Section 3.01 of this Loan Agreement and Section 3.01 of the Grant 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 eighteen million five hundred thousand Dollars (\$18,500,000).

(b) The Loan has a principal repayment period of 24 years, and a grace period as defined in subsection (c) hereinafter.

(c) 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 2.02. 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 15 May and 15 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 Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to the Project Executing Agency under a Subsidiary Financing Agreement upon terms and conditions satisfactory to ADB, and shall cause the Project Executing Agency to make such proceeds available to the Implementing Agency for the purposes of the Project. Except as ADB shall otherwise agree, the terms for relending the proceeds of the Loan shall include

interest at the rate of 1% per annum during the grace period and 2.55% per annum thereafter and a term of 32 years including a grace period of 8 years.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

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

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Original ADB Loan Agreement; provided, however, that all references to the term "Works" in such Schedule shall be substituted by the term "Works and Goods".

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

- (a) Goods, Works and Consulting Services 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, Works and Consulting Services 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 2025 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 the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 3 to this Loan Agreement and the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods, Works, and the Consulting Services, and any relevant records and documents.

Section 4.03. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency and Implementing Agency to perform their obligations under the Project Agreement, 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 Subsidiary Financing Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Financing Agreement shall be assigned, amended, 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 of Section 8.01(m) of the Loan Regulations:

- (a) the Original ADB Grant or the Grant shall have become liable for suspension or cancellation; and
- (b) the Borrower or DHI shall have failed to perform any of their respective obligations under the Subsidiary Financing Agreement.

Section 5.02. The following is specified as an additional event 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 Grant Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled; and
- (b) the Subsidiary Financing Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of each

of the Borrower and DHI shall have become legally binding upon each of them in accordance with its terms.

Section 6.02. The following is specified as an 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 Subsidiary Financing Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, each of the Borrower and DHI and is legally binding upon each of them in accordance with its terms.

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 Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Royal Government of Bhutan
Thimphu, Bhutan

Facsimile Number:

(975) 2 323 154

For ADB

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

Facsimile Numbers:

(632) 8636-2444
(632) 8636-2391.

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.

KINGDOM OF BHUTAN

By 
LYONPO NAMGAY TSHERING
Minister of Finance

ASIAN DEVELOPMENT BANK

By 
KANOKPAN LAO-ARAYA
Country Director
Bhutan Resident Mission

SCHEDULE 1

Amortization Schedule

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Dollar)*
15 May 2029	385,417
15 November 2029	385,417
15 May 2030	385,417
15 November 2030	385,417
15 May 2031	385,417
15 November 2031	385,417
15 May 2032	385,417
15 November 2032	385,417
15 May 2033	385,417
15 November 2033	385,417
15 May 2034	385,417
15 November 2034	385,417
15 May 2035	385,417
15 November 2035	385,417
15 May 2036	385,417
15 November 2036	385,417
15 May 2037	385,417
15 November 2037	385,417
15 May 2038	385,417
15 November 2038	385,417
15 May 2039	385,417
15 November 2039	385,417
15 May 2040	385,417
15 November 2040	385,417
15 May 2041	385,417
15 November 2041	385,417
15 May 2042	385,417
15 November 2042	385,417
15 May 2043	385,417
15 November 2043	385,417
15 May 2044	385,417
15 November 2044	385,417
15 May 2045	385,417
15 November 2045	385,417
15 May 2046	385,417
15 November 2046	385,417
15 May 2047	385,417
15 November 2047	385,417
15 May 2048	385,417
15 November 2048	385,417
15 May 2049	385,417
15 November 2049	385,417

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Dollar)*
15 May 2050	385,417
15 November 2050	385,417
15 May 2051	385,417
15 November 2051	385,417
15 May 2052	385,417
15 November 2052	385,401
Total	18,500,000

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

SCHEDULE 2

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

5. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Works, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Loan Account
		Category	
1	Works**	9,890,000	30.0% of total expenditures claimed*
2	Consulting Services	770,000	9.0% of total expenditures claimed
3	Goods and Equipment**	1,800,000	100.0% of total expenditures claimed*
4	Unallocated	6,040,000	
	TOTAL	18,500,000	

* Exclusive of taxes and duties imposed within the territory of the Borrower.

** Financing allocated to this item under the Original ADB Grant Agreement and the Grant Agreement will be utilized first, and following its full utilization, disbursements under this Category may be undertaken.

SCHEDULE 3

Execution of Project

Implementation Arrangements

1. The Borrower, the Project Executing Agency and Implementing Agency 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 and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower shall ensure, or cause the Project Executing Agency and Implementing Agency to ensure, that (a) all position identified as key personnel of the Project Management Unit and Project Implementation Unit, as set forth in the PAM, are filled for the duration of the Project by individuals with adequate skills, credentials and expertise relevant to each position; and (b) vacancies in such positions, should they occur, are filled within no longer than 3 months.

Safeguards

3. The Borrower shall ensure, or cause the Project Executing Agency and Implementing Agency to ensure, that the Project activities to be financed from the Loan and Grant do not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the Safeguard Policy Statement. In the event that such Project activities do have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Prohibited List of Investments

4. The Borrower shall ensure that no proceeds of the Loan and Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards, Health and Safety

5. The Borrower shall ensure, or cause the Project Executing Agency and Implementing Agency to ensure, that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower shall include, or cause the Project Executing Agency and Implementing Agency to include, specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

6. The Borrower shall cause the Project Executing Agency and Implementing Agency to strictly monitor compliance with the requirements set forth in paragraph 5 above and provide ADB with regular reports.

Gender and Development

7. The Borrower shall ensure, or cause the Project Executing Agency and Implementing Agency to ensure, that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (a) equal pay to men and women for work of equal value, (b) enabling working conditions for women workers, and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities

Counterpart Support

8. The Borrower shall make available all counterpart funds, land and facilities required for timely and effective implementation of the Project, including without limitation any funds required to (a) meet any shortfall between cost and revenues for the operation and maintenance of the Project facilities; (b) mitigate any unforeseen environmental or social impacts; and (c) meet any additional costs arising from design changes, price escalation in construction costs and any unforeseen circumstances. The Borrower shall make the resources thus required available on an annual basis for each fiscal year. In addition to the foregoing, the Borrower shall ensure that the Project Executing Agency and Implementing Agency have sufficient funds to satisfy liabilities arising from any Goods, Works and/or Consulting Services contract.

Interagency Coordination

9. The Borrower shall ensure that all of its relevant ministries, agencies and instrumentalities provide all necessary cooperation and support towards smooth implementation of the Project. In particular, the Borrower shall cause the Project Executing Agency and Implementing Agency to provide full, timely and efficient cooperation in obtaining any licenses, permits or approvals required in connection with the Project. The Borrower shall also ensure that Bhutan Power Corporation and Bhutan Telecom provide all necessary power and telecommunication connections in the Project area.

Strategic Action Plan for Sustainable Township Management

10. The Borrower shall ensure the implementation of the SAP, and shall cause the Project Executing Agency, Implementing Agency, Phuentsholing Thromde and MOWHS to implement their respective responsibilities as set forth in the SAP and in accordance with the deadlines set forth therein. The Borrower shall also ensure that the policy, legal, financial, institutional and human resources actions developed through the SAP are adopted by all necessary authorities within the timeframe set forth in the SAP. The Borrower shall cause the Project Executing Agency to provide quarterly reports to ADB describing progress achieved in implementation of the SAP and approval of its deliverables.

Operation and Maintenance

11. The Borrower shall develop and implement a program for regular and periodic maintenance of the Project facilities in accordance with international best practices acceptable to ADB, and make adequate resources available, through budgetary allocations or otherwise, for this purpose.

Governance and Anticorruption

12. The Borrower, the Project Executing Agency and the Implementing Agency 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 Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

13. The Borrower, the Project Executing Agency and the Implementing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.