
LOAN NUMBER 3958-BAN

PROJECT AGREEMENT

(Strengthening Bangladesh Infrastructure Finance Fund Limited Project)

between

ASIAN DEVELOPMENT BANK

and

BANGLADESH INFRASTRUCTURE FINANCE FUND LIMITED

DATED 10 SEPTEMBER 2020

BAN 51311

PROJECT AGREEMENT

PROJECT AGREEMENT dated 10 September 2020 between ASIAN DEVELOPMENT BANK ("ADB") and BANGLADESH INFRASTRUCTURE FINANCE FUND LIMITED ("BIFFL").

WHEREAS

(A) by a Loan Agreement of even date herewith between People's Republic of Bangladesh ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of fifty million Dollars (\$50,000,000) 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 BIFFL and that BIFFL agrees to undertake certain obligations towards ADB as set forth herein; and

(B) BIFFL, 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. Wherever used in this Project 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

Subloans

Section 2.01. (a) Except as ADB may otherwise agree, BIFFL shall use the Taka equivalent of the Loan proceeds for making Subloans to Qualified Enterprises, which shall be applied exclusively to the cost of Goods, Works and Services and other items of expenditure required to carry out such Qualified Subprojects.

(b) In the carrying out of the Project, BIFFL shall ensure that the eligibility criteria with respect to the Qualified Enterprises, Qualified Subprojects and Subloans as set out in Schedule 2 to the Loan Agreement are satisfied at all times.

(c) Except as ADB may otherwise agree, all Goods, Works and Services to be financed out of the proceeds of the Subloans shall be procured in accordance with the provisions of Schedule 2 to the Loan Agreement.

Section 2.02. BIFFL shall ensure that each Subloan:

- (a) is for (i) construction loans, including refinance of costlier foreign currency loans, and/or (ii) working capital and/or bridge loans to support PPP subproject completion. For the avoidance of doubt, equity investments shall not be permitted;
- (b) except as ADB otherwise agrees, finances no more than 30% of the total estimated cost of the Qualified Subproject;
- (c) has an interest rate that reflects its cost of funds plus a spread to cover transaction cost and risk following full commercial and competitive terms; and
- (d) has been prior- reviewed and approved by ADB as set out in paragraph 12(d) of Schedule 2 to the Loan Agreement.

Section 2.03. In addition to any other provisions which a prudent lender would request, each Subloan agreement shall include provisions to the effect that:

- (a) the Qualified Enterprise shall carry out and operate the Qualified Subproject with due diligence and efficiency and in accordance with sound applicable technical, financial, business and development practices, including maintenance of adequate accounts and records;
- (b) the proceeds of the Loan shall be used only for procurement in member countries of ADB, in accordance with procedures acceptable to ADB, of Goods which are produced in and supplied from, and Works and Services which are supplied from, such countries;
- (c) the Goods, Works and Services shall be used exclusively in the carrying out of the Qualified Subproject;
- (d) ADB and BIFFL shall each have the right to inspect such Goods, Works and Services, the Qualified Enterprise, the Qualified Subproject and any relevant records and documents;
- (e) the Qualified Enterprise shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with sound business practice;
- (f) ADB and BIFFL shall each be entitled to obtain all such information as each shall reasonably request relating to the Subloan, the Goods, Works and Services, the Qualified Subproject, the Qualified Enterprise and other related matters; and
- (g) BIFFL shall be entitled to suspend or terminate further access by the Qualified Enterprise to the use of the proceeds of the Loan upon failure

by the Qualified Enterprise to perform its obligations under its agreement with BIFFL.

Section 2.04. BIFFL shall promptly and effectively exercise its rights in relation to each Qualified Subproject in accordance with the standards of a prudent lender and in such manner as to protect the interests of the Borrower, BIFFL and ADB.

ARTICLE III

Particular Covenants

Section 3.01. (a) BIFFL shall 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 and in the conduct of its business, BIFFL shall perform all the obligations set forth in the Loan Agreement and this Project Agreement.

Section 3.02. BIFFL shall not make a Subloan to any Qualified Enterprise unless such Qualified Enterprise has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds, including adequate working capital, and other resources which are required by such Qualified Enterprise for the carrying out of its Qualified Subproject in respect of which the Subloan is to be made.

Section 3.03. BIFFL shall maintain records and accounts adequate to record the progress of the Project and of each Qualified Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of BIFFL.

Section 3.04. (a) ADB and BIFFL shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

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

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

Section 3.05. (a) BIFFL shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Project; (iii) the Qualified Enterprises, the Qualified Subprojects and the Subloans; (iv) the administration, operations and financial condition of BIFFL; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, BIFFL shall furnish to ADB quarterly reports on the execution of the Project. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following 3-month period.

(c) Promptly after the Loan Closing Date, but in any event not later than 3 months after the said closing date or such later date as ADB may agree for this purpose, BIFFL shall prepare and furnish through the Borrower to ADB a report, in such form and in such detail as ADB shall reasonably request, on the utilization of the Loan, the execution of the Qualified Subprojects, their costs, the performance by BIFFL of its obligations under this Project Agreement, and the accomplishment of the purposes of the Loan.

Section 3.06. (a) BIFFL shall (i) maintain separate accounts and records for the Project; (ii) prepare an annual statement of utilization of funds for the Project in accordance with accounting principles acceptable to ADB; (iii) have such statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited statements, audit reports and management letters, 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 statements of utilization of funds for the Project and the opinion of the auditors on the statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) In addition to the annual audited statements of utilization of funds referred to in subsections (a) hereinabove, BIFFL shall (i) provide its annual financial statements prepared in accordance with financial reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements and compliance with the financial covenants of the Loan Agreement; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) BIFFL shall enable, upon ADB's request, to discuss the statements of utilization of funds for the Project and the financial statements of BIFFL and its financial affairs where they relate to the Project with the auditors appointed by BIFFL pursuant to subsections (a)(iii) and (c)(ii) 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 BIFFL, unless BIFFL shall otherwise agree.

Section 3.07. BIFFL shall enable ADB's representatives to inspect any Qualified Enterprise, any Qualified Subproject, the Goods, Works, and Services, and any relevant records and documents.

Section 3.08. (a) BIFFL 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 Project or in the conduct of its business.

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

(c) Except as ADB may otherwise agree, BIFFL shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 3.09. Except as ADB may otherwise agree, BIFFL shall duly perform all its obligation under the Subsidiary Loan Agreement and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 3.10. BIFFL shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project. BIFFL shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

ARTICLE IV

Effective Date; Termination

Section 4.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify BIFFL of such date.

Section 4.02. This Project 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 4.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE V**Miscellaneous**

Section 5.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project 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) 8636-2444
(632) 8636-2337

For BIFFL

Bangladesh Infrastructure Finance Fund Limited
Level-3, Borak, Unique Heights,
117 Kazi Nazrul Islam Ave,
Dhaka 1217
Bangladesh

Facsimile Number:

(880) 2-934-8518.

Section 5.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 5.01 of the Loan Agreement by or on behalf of BIFFL may be taken or executed by its Chief Executive Officer or by such other person or persons as he/she shall so designate in writing notified to ADB.

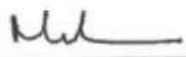
(b) BIFFL shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 5.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project 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 Project 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 
MANMOHAN PARKASH
Country Director
Bangladesh Resident Mission

BANGLADESH INFRASTRUCTURE
FINANCE FUND LIMITED

By 
S M ANISUZZAMAN
Chief Executive Officer