LOAN NUMBER 3242-VIE (SF)

LOAN AGREEMENT
(Special Operations)

(SOE Reform and Corporate Governance Facilitation Program - Project 2)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 10 NOVEMBER 2015

LOAN AGREEMENT
(Special Operations)

LOAN AGREEMENT dated 10 November 2015 between SOCIALIST REPUBLIC OF VIET NAM ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 27 September 2010 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the SOE Reform and Corporate Governance Facilitation Program;

(B) by a periodic financing request dated 27 June 2014 submitted by the Borrower, the Borrower has applied to ADB for loans for the purposes of the Project described in Schedule 1 to the Ordinary Operations Loan Agreement as referred to in Recital (D) below;

(C) the Project will be carried out by the Construction Corporation No. 1 Company Limited ("CC1"), the Song Da Corporation ("SDC") and the Vietnam National Textile and Garment Group ("VINATEX"), and for this purpose the Borrower will make available to CC1, SDC and VINATEX the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB;

(D) by an agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's Ordinary Capital resources an amount equivalent to three hundred ten million Dollars ($310,000,000) in connection with the Project ("Ordinary Operations Loan"); and

(E) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions hereinafter set forth and in the Project Agreement of even date herewith between CC1, SDC and VINATEX and ADB;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("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(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB, the Construction Corporation No. 1 Company Limited, the Song Da Corporation and the Vietnam National Textiles and Garment Group.

(b) The term "Project Executing Agency" appearing in Section 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 term "the Construction Corporation No. 1 Company Limited, the Song Da Corporation and the Vietnam National Textiles and Garment Group".

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations and the Ordinary Operations Loan Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to six million seven hundred ninety thousand Special Drawing Rights (SDR6,790,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) 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 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December 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 equivalent to (i) two million seven hundred sixteen thousand Special Drawing Rights (SDR2,716,000) to CC1, (ii) six hundred seventy-nine thousand Special Drawing Rights (SDR679,000) to SDC and (iii) three million three hundred ninety-five thousand Special Drawing Rights (SDR3,395,000) to VINATEX under the respective Subsidiary Loan Agreements for Special Operations Loan upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied 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 3 to this Loan Agreement..

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Goods and Consulting Services shall be made only on account of expenditures relating to:

(a) Goods which are produced in and supplied from, 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 and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2017 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 4 to the Ordinary Operations Loan Agreement and the Project Agreement.

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

Section 4.03. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the respective Subsidiary Loan Agreement for Special Operations Loan 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 respective Subsidiary Loan Agreement for Special Operations Loan 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 Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement.

(b) Any of the Implementing Agencies shall have failed to perform any of its obligations under the respective Subsidiary Loan Agreement for the Special Operations Loan.

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 events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower and shall have become fully effective and binding upon the Borrower in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 6.02. 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

Delegation of Authority

Section 7.01. The Borrower hereby designates the Implementing Agencies as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02 and 5.03 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by the Implementing Agencies pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on the Implementing Agencies under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Governor of the State Bank of Vietnam is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

State Bank of Vietnam
47 – 49 Ly Thai To
Hanoi, Viet Nam

Facsimile Numbers:

(84-4) 38250-612
(84-4) 38258-385.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2331.

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.

SOCIALIST REPUBLIC OF VIET NAM

By _____
NGUYEN VAN BINH
Governor
State Bank of Viet Nam

ASIAN DEVELOPMENT BANK

By _____
ERIC SIDGWICK
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Amortization Schedule

(SOE Reform and Corporate Governance Facilitation Program – Project 2)

Date	Payment of Principal (expressed in Special Drawing Rights)*
1 June 2020	169,750
1 December 2020	169,750
1 June 2021	169,750
1 December 2021	169,750
1 June 2022	169,750
1 December 2022	169,750
1 June 2023	169,750
1 December 2023	169,750
1 June 2024	169,750
1 December 2024	169,750
1 June 2025	169,750
1 December 2025	169,750
1 June 2026	169,750
1 December 2026	169,750
1 June 2027	169,750
1 December 2027	169,750
1 June 2028	169,750
1 December 2028	169,750
1 June 2029	169,750
1 December 2029	169,750
1 June 2030	169,750
1 December 2030	169,750
1 June 2031	169,750
1 December 2031	169,750
1 June 2032	169,750
1 December 2032	169,750
1 June 2033	169,750
1 December 2033	169,750
1 June 2034	169,750

Schedule 1

Date	Payment of Principal (expressed in Special Drawing Rights)*
1 December 2034	169,750
1 June 2035	169,750
1 December 2035	169,750
1 June 2036	169,750
1 December 2036	169,750
1 June 2037	169,750
1 December 2037	169,750
1 June 2038	169,750
1 December 2038	169,750
1 June 2039	169,750
1 December 2039	169,750
Total	**6,790,000**

* 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 the Table.)

Basis for Withdrawal from the Loan Account

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

Interest Charge

3. The amount allocated to Category 3 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. 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

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

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of 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 such Goods as agreed upon between the Borrower and ADB in the PAM, and Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

Attachment to Schedule 2

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (SOE Reform and Corporate Governance Facilitation Program-Project 2)				
		Total Amount Allocated for ADB Financing (SDR equivalent)		Percentage and Basis for Withdrawal from the Loan Account
Number	Item	Category	Subcategory	
1	Consulting Services	4,449,000		
1A	CC1		1,527,000	100% of total expenditure claimed*
1B	SDC		664,000	100% of total expenditure claimed*
1C	VINATEX		2,258,000	100% of total expenditure claimed*
2	Equipment	2,192,000		
2A	CC1		1,129,000	100% of total expenditure claimed*
2B	VINATEX		1,063,000	100% of total expenditure claimed*
3	Interest Charge	149,000		100% of total amount due
	Total	6,790,000		

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

SCHEDULE 3

Procurement of Goods and Consulting Services

General

1. The procurement of Goods and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the method[s] of procurement set forth below:

(a) International Competitive Bidding;
(b) National Competitive Bidding; and
(c) Shopping.

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

National Competitive Bidding

6. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Consulting Services

7. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

8. The Borrower shall recruit the individual consultants for areas as provided in the Procurement Plan in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that all Goods procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right.

(b) The Borrower shall ensure that all contracts for the procurement of Goods contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

10. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right.

ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.