

No. 17546

**SWITZERLAND
and
NEPAL**

Agreement on a development loan of 15 million Swiss francs (with protocol). Signed at Kathmandu on 6 August 1974

*Authentic texts: English, French and Nepalese.
Registered by Switzerland on 15 February 1979.*

**SUISSE
et
NÉPAL**

Accord concernant un prêt d'aide financière de 15 millions de francs suisses (avec protocole). Signé à Katmandou le 6 août 1974

*Textes authentiques : anglais, français et népalais.
Enregistré par la Suisse le 15 février 1979.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND HIS MAJESTY'S GOVERNMENT OF NEPAL ON A DEVELOPMENT LOAN OF 15 MILLION SWISS FRANCS

The Government of the Swiss Confederation and His Majesty's Government of Nepal,

Having regard to the friendly relations between the two Countries,

Desirous of strengthening these relations through closer cooperation in the field of development,

Intending to further assist in the economic development of the Kingdom of Nepal,

Have agreed as follows:

Article 1. The Government of the Swiss Confederation (hereafter called the Lender) shall extend a loan of 15 million Swiss francs (fifteen million Swiss francs) to His Majesty's Government of Nepal (hereafter called the Borrower) for the construction of a road opening up the region East of the Sun Kosi, starting from Lamosangu and leading into the region of Jiri (hereafter called the Project).

It is understood that the Borrower will contribute with a sum of at least 20 million Nepalese Rupees towards the completion of the Project.

Article 2. The loan shall be used to finance the foreign exchange costs of goods and services and local costs arising out of this Project, as agreed between the Borrower and the Lender.

Article 3. The loan shall be put at the disposal of the Borrower on the terms of the annexed Protocol which constitutes an integral part of this Agreement.

Article 4. The Borrower shall pay interest at the rate of 3/4 % (three quarters per cent) per annum on the amount of the loan proportional to its utilization.

Interest payments fall due on 30th June and 31st December of each successive year, beginning at the close of the term during which the first payment has been made by the Lender.

Article 5. The Borrower shall repay the loan in eighty half-yearly instalments of 187,500 Swiss francs (one hundred and eighty-seven thousand five hundred Swiss francs) each, due each 30th June and 31st December of successive years, beginning from 30th June 1985.

If the loan is not fully utilized in accordance with the provisions of Article 10 a revised schedule of repayment shall be established by mutual agreement.

The Borrower shall have the option to refund prematurely, wholly or partially, its debt to the Lender.

Article 6. Interest payments and repayments of capital on the loan shall be made in free and effective Swiss francs to the Swiss National Bank for the account of the Swiss Confederation.

¹ Came into force on 18 March 1975, the date on which the Parties had notified each other of the completion of their constitutional requirements, in accordance with article 14.

Article 7. The Borrower shall exempt the Lender from fiscal levies and taxes of whatever kind on or with regard to the loan, as well as on the proceeds of the loan.

Article 8. Except as the Borrower and the Lender may otherwise agree, the purchase of capital goods and services required for the Project mentioned under Article 1 of this Agreement and to be financed out of the loan shall be made on the basis of international competition.

The conditions laid down under section III of the Protocol of Application shall apply to all supply contracts to be financed out of the loan.

Article 9. No proceeds of the loan shall be used for the payment of any taxes (import duties, levies, fees, duties of any nature) imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement of supply thereof.

Article 10. The Borrower may draw on the loan to make payments on contracts related to the Project over a period of eight years from the entry into force of this Agreement or until such date as agreed between the Contracting Parties.

Article 11. Disputes as to the interpretation or application of the provisions of this Agreement which shall not have been settled in a satisfactory way by means of diplomatic negotiations within a period of six months shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator. These two arbitrators shall nominate a third arbitrator as Chairman who shall be a national of a third State.

If either Contracting Party has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

If both arbitrators cannot come to an agreement about the choice of a third arbitrator (Chairman), within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

If, in the cases specified under paragraph 2 and 3 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge of the Court who is not a national of either Contracting Party.

Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure, each Contracting Party shall bear one half of the expenses of the arbitral tribunal.

The decisions of the tribunal are final and binding for each Contracting Party.

Article 12. The Borrower may, by notice to the Lender, cancel any amount of the loan which the Borrower shall not have withdrawn.

In the event of default by the Borrower in the fulfilment of any commitment or obligation under the Agreement, the Lender may suspend, in whole or in part, the right of the Borrower to make withdrawals from the loan.

If the default which entitled the Lender to suspend the Borrower's right to draw against the loan persists beyond a period of sixty days after the Lender's notice to the Borrower of the suspension, the Lender may at any time claim repayment of all withdrawals made from the loan.

Article 13. Any notices, requests or agreements under this Agreement shall be made in writing to the authorities mentioned under section VI of the annexed Protocol.

Article 14. This Agreement shall come into force on the day when both Governments will have notified each other that the constitutional requirements for the entry into force of the Agreement have been completed.

DONE at Kathmandu on the 6th of August, 1974 in six originals, two originals in English, two originals in French and two originals in Nepali, all texts being equally authoritative. But in case of differences of interpretation the English text shall prevail.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

For His Majesty's Government
of Nepal:

[Signed — Signé]²

PROTOCOL OF APPLICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND HIS MAJESTY'S GOVERNMENT OF NEPAL ON A DEVELOPMENT LOAN OF 15 MILLION SWISS FRANCS

With reference to the Agreement signed to-day between the Government of the Swiss Confederation and His Majesty's Government of Nepal on a development loan of fifteen million Swiss francs to His Majesty's Government of Nepal, the two Contracting Parties have agreed as follows:

I. *Use of the loan*

The Borrower shall use the loan for paying the costs of services and goods needed for the construction of a gravel road opening up the region East of Sun Kosi, starting from Lamosangu and leading into the region of Jiri. The important task of the road is not simply to link two or three economic centers but to serve as a backbone for the integrated development activities in the region. What matters most is not the speedy transit of people and goods but the well adapted services provided to a coherent area of forests, pastures and farmland. In the construction of the road labour-intensive technologies shall be used in order to create, for the benefit of the local population, as many job opportunities as possible. As an indispensable part of the regional concept of the integrated hill development the road project shall be a basis of cooperation between the Government agencies and Panchayats involved.

¹ Signed by F. Real — Signé par F. Real.

² Signed by B. B. Pradhan — Signé par B. B. Pradhan.

II. *List of services and goods financed out of the loan*

1. *Services*

- a. Engineering costs covering detailed design and supervision on civil works;
- b. Construction costs;
- c. Other services connected directly with this Project.

2. *Goods*

Equipment and material necessary for road survey and construction of Project.

III. *Procurement procedures as to services and goods financed out of the loan*

1. *Procurement procedure as to services and goods having to be imported*

a. *Services.* With respect to the consultant services required for the execution of the Project and defined under section II 1 above the Borrower shall appoint specialized consultants acceptable to the Lender and on terms and conditions satisfactory to the Lender.

b. *Goods.* Before bids are invited, the Borrower shall transmit to the Lender for its comments, the text of the invitations to bid and the specifications and other bidding documents together with a description of the advertising procedures to be followed for the bidding, and shall make such modifications in the said documents or procedure as the Lender shall reasonably request. Any further modification to the bidding documents shall require the Lender's concurrence before it is issued to the prospective bidders.

After bids have been received and evaluated, the Borrower shall, before a final decision on the award is made, inform the Lender of the name of the bidder to whom it intends to award the contract and shall transmit to the Lender, in sufficient time for its review, a detailed report on the evaluation and comparison of the bids received, together with the recommendations for award and the reasons for the intended award. The Lender shall promptly inform the Borrower whether it has any objections to the intended award and shall state the reasons for any objections it may have.

If the contract should be awarded over the Lender's reasonable objection, or if its terms and conditions should, without the Lender's concurrence, materially differ from those on which bids were asked, no expenditure thereunder shall be financed out of the proceeds of the loan.

Two copies of the contract shall be transmitted to the Lender promptly after its execution and prior to the first withdrawal of funds from the loan in respect of any such contract.

2. *Procurement procedure as to services and goods to be bought locally*

Contracts for equipment or services to be bought locally shall be awarded by the Borrower. Before such awards take place the Lender shall be informed of the nature and values of the contracts.

IV. *Consultation procedure*

The two Contracting Parties shall cooperate fully to ensure that the purposes of the loan will be accomplished. To that end the two Contracting Parties shall from time to time, at the request of either Contracting Party:

- Exchange views through their representative with regard to the performance of their respective obligations under this Agreement, the administration and opera-

tions in respect of the Project and other matters related to the purposes of the loan;

- Furnish to the other Contracting Party all such information as it shall reasonably request with regard to the general situation of the loan and the execution of the Project.

The Borrower shall in particular enable the representatives of the Lender to inspect the Project, the goods financed out of the proceeds of the loan, and any relevant records and documents.

The Borrower shall afford all reasonable opportunity for representatives of the Lender to visit any part of the Project for purposes related to the loan.

The two Contracting Parties shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purpose of the loan, the maintenance of the services thereof or the performance by either of them of its obligation under this Agreement.

V. *Opening of the credit and payment procedures*

The Lender shall open, immediately after the Agreement has entered into force, with the Swiss National Bank in Zurich, an account denominated "Nepal Development Loan — Eastern Hill Road Project", in favour of the Nepal Rastra Bank which is designated as the agent of the Ministry of Finance of His Majesty's Government of Nepal. This account shall be credited with fifteen million Swiss francs. The crediting shall take place in six annual instalments of two and a half million Swiss francs each, the first instalment being due immediately after the Agreement has come into force. The five remaining instalments fall due on 30th June of each successive year. When the Ministry of Finance through its agent the Nepal Rastra Bank is making payments from this account, under the terms of the contracts executed in accordance with section III above, to suppliers in countries other than Switzerland, the agent shall request the Swiss National Bank or another Swiss bank if the Swiss National Bank so prefers to make payments in other appropriate currencies.

VI. *Authorities in charge of the implementation of the Agreement*

The Delegate of the Swiss Federal Council for technical cooperation on the Swiss side (cable address: Politique Berne) and the Ministry of Finance, His Majesty's Government of Nepal, Kathmandu (cable address: Artha) on the Nepalese side, will be responsible for the implementation of the Agreement.

This Protocol is an integral part of the Agreement between the Government of the Swiss Confederation and His Majesty's Government of Nepal on a development loan of fifteen million Swiss francs to His Majesty's Government of Nepal signed today.

DONE at Kathmandu on the 6th of August, 1974, in six originals, two originals in English, two originals in French and two originals in Nepali, all texts being equally authoritative. But in case of differences of interpretation the English text shall prevail.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

For His Majesty's Government
of Nepal:

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