

**BOTSWANA HOUSING (GABORONE) PROJECT LOAN
AGREEMENT (RATIFICATION) ACT, 2003**

No. 9



of 2003

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Ratification of Agreement
3. Loan to be paid into Development Fund
4. Loan to be charged upon Consolidated Fund
5. Ratification of signing

SCHEDULE

An Act to ratify and give effect to the Government Concessional Loan Botswana Housing (Gaborone) Project Loan Agreement entered into between the Government of the Republic of Botswana and the Export-Import Bank of China.

Date of Assent: 16.05.03.

Date of Commencement: 30.05.03.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Botswana Housing (Gaborone) Project Loan Agreement (Ratification) Act, 2003.

Short title

2. The Agreement entered into on 30 October, 2001, between the Government of the Republic of Botswana and the People's Republic of China as set out in the Schedule hereto, is hereby ratified.

Ratification of Agreement

3. The proceeds of the loan raised by the Government shall be paid into the Development Fund.

Loan to be paid into Development Fund

4. All sums required to repay the loan and any other charges thereon shall be charged upon and paid out of the Consolidated Fund.

Loan to be charged upon Consolidated Fund

5. The signing, on behalf of the Government, of the agreement embodying the terms and conditions of the loan, and the doing of all such things as may be necessary or expedient to effect or facilitate the loan, are hereby ratified.

Ratification of signing

SCHEDULE

GOVERNMENT CONCESSIONAL LOAN BOTSWANA HOUSING (GABORONE) PROJECT LOAN AGREEMENT

This Government Concessional Loan Agreement is signed on October 30, 2001.

BETWEEN

The Governemnt of the Republic of Botswana represented by the Ministry of Finance & Development Planning (hereinafter referred to as the "Borrower"), having its registered office at Private Bag 008, Gaborone, Botswana, as one party

AND

The Export-Import Bank of China (hereinafter referred to as the "Lender"), having its registered office at Jinyun Tower B, No. 43-A, Xizhimenbei St., Beijing 100044, People's Republic of China, as the other party.

Whereas

(1) The Government of the People's Republic of China and the Government of the Republic of Botswana signed The Framework Agreement between the Government of the People's Republic of China and the Government of the Republic of Botswana on Provision of a Government Interest-Subsidized Concessional Loan by China to Botswana (hereinafter referred to as the "Framework Agreement") on 30th October, 2003 which by the two sides have agreed on general principles relating to the extension of the above concessional loan.

(2) The Ministry of Finance & Development Planning of Botswana and the Ministry of Foreign Trade and Economic Cooperation of China (hereinafte referred to as "MOFTEC") have agreed that the concessional loan under the Framework Agreement can be used to finance the Botswana Housing-Project.

(3) The Borrower and the Lender have agreed that an aggregate amount of no more than thirty two million four hundred ten thousand Renminbi Yuan (RMB Yuan 32, 410, 000.00) or the equivalent of P19, 523, 784.00 at the current rate of exchange under the Framework Agreement will be utilized as a concessional loan to finance the Project.

(4) The Building Contract (hereinafter referred to as the "Commercial Contract") pertaining to the Project was signed by the Botswana Housing Corporation and the Complant Botswana (Pty) Ltd.(A Subsidiary of China National Overseas Engineering Corporation) on May 23, 2001, the serial No. of the Commercial Contract being "Contract C539" .

Now the Borrower and the Lender reach the following agreements:

ARTICLE 1 DEFINITIONS

Where used in this agreement, unless the context otherwise requires, the following terms have the following meanings:

1.1 "Account" refers to a lending account called "The Government of the Republic of Botswana - Botswana Housing (Gaborone) Project Account", which shall be opened and maintained by the Lender on its books, to record the amounts owing or repaid or paid by the Borrower, after submission of an application by the Borrower to the Lender that he opens such an account.

1.2 "Agreement" refers to this document and its appendices and any written amendments to the present document and its appendices upon the consent.

1.3 "Availability Period" refers to the period commencing on the Effective date and ending on the last drawdown dates stipulated in Article 3.2.

1.4 "Banking Day" refers to a day on which banks are open for business in Beijing and Gaborone.

1.5 "Borrower" refers to the Government of the Republic of Botswana represented by the Ministry of Finance & Development Planning.

1.6 "China" means the People's Republic of China.

1.7 "Commitment Fee" refers to a fee to be paid by the Borrower to the Lender, semi annually, at an annual interest rate of zero point five percent(0.5%) based on the undrawn and uncanceled amount of the Loan.

1.8 "Commercial Contract" refers to the Building Contract pertaining to the Project signed by the Botswana Housing Corporation, as the end-user, and the Complant Botswana (Pty) Ltd. (A Subsidiary of the China National Overseas Engineering Corporation), as the contractor, on May 23, 2001.

1.9 "Effective Date" refers to the date specified in a written notice sent by the Lender to the Borrower after all the conditions precedent to the effectiveness of this Agreement have been fully satisfied.

1.10 "End-user" refers to the Botswana Housing Corporation, which ultimately utilizes the Loan via on-lending by the Borrower.

1.11 "Grace Period" refers to the period from and including the Effective Date, to but excluding the first repayment date ascertained in accordance with Article 4.3 during which period the Borrower may only pay the interest without having to repay the principal to the Lender. Grace Period includes the Availability Period.

1.12 "Lender" has the meaning set forth in the First paragraph of the first page. It is a state bank duly authorized by the Government of China to handle Government Concessional Loan.

1.13 "Loan" refers to a concessional loan facility up to the maximum aggregate amount of thirty two million four hundred ten thousand Renminbi Yuan (RMB Yuan 32, 410, 000.00), made available by the Lender to the Borrower under this Agreement.

1.14 "Management Fee" refers to an amount to be paid by the Borrower to the Lender, in one lump, within thirty (30) days after the Effective Date and before the first drawing date, in an amount equal to zero point two five percent (0.25%) of the total amount of the Loan.

1.15 "Maturity Period" refers to the period from the Effective Date to the date when all amounts owing under this agreement shall be otherwise paid in full, including Grace Period and Repayment Period.

1.16 "Onlending Agreement" refers to the loan agreement to be entered into between the Borrower and End-user, in accordance with which the proceeds of the Loan onlent by the Borrower are used by the End-user to complete the Project.

1.17 "Recipient Country" refers to the country of Botswana.

1.18 "Repayment Period" refers to the period from and including the ending date of the Grace Period through the date of repayments of the aggregate principal amount outstanding and payments of all the interest accrued.

ARTICLE 2 CONDITIONS AND UTILIZATION OF THIS LOAN

2.1 The Lender makes available to the Borrower under this Agreement a concessional loan facility (hereinafter, the Loan) up to the maximum aggregate amount of thirty two million four hundred ten thousand Renminbi Yuan (RMB Yuan 32, 410, 000.00).

2.2 The Loan shall be used exclusively to finance the Project.

2.3 Where the proceeds of the Loan are to be used to procure materials, services and technologies, the same of Botswana and China shall be given priority.

2.4 The applicable interest rate for the Loan is four percent (4%) per annum.

2.5 The maturity for this Loan is twelve (12) years, including four (4) years of Availability Period and eight(8) years of Repayment Period.

2.6 The Borrower shall pay the Lender a management fee in one lump, within thirty (30) days after the Effective Date and before the first drawing date, in an amount equal to zero-point-two-five percent (0.25%) of the total amount of the Loan (the "Management Fee"). This Management Fee shall be paid to the account designated in Article 4.4 of this Agreement.

2.7 All the drawings and payments under this Agreement in connection with the Loan under the Agreement shall be recorded in Renminbi. In case advances in US Dollar (or other convertible currencies depending on the Project) are requested, the amount advanced shall be purchased with Renminbi in accordance with the official selling rate of US Dollar (or other convertible currency) to Renminbi in the People's Republic of China on the date of aforesaid advance and recorded in Renminbi. Any principal, interest and other cost due and payable under the Agreement may be repaid or paid in US Dollar (or other convertible currency) and recorded in Renminbi in accordance with the official buying rate of US Dollar (or other convertible currency) to Renminbi in the People's Republic of China on the date such payments are received by the Lender. The Lender shall not bear any foreign exchange risk. The Borrower hereby promises that payment amounts due and payable under this Agreement shall not be affected by any changes in the exchange rate between Renminbi and any other currencies or the exchange rates among the currencies other than Renminbi.

ARTICLE 3 DRAWING OF THE LOAN

3.1 The Borrower may make drawings on any Banking Day within the Availability Period, provided that each drawing is subject to the satisfaction of the following conditions:

- (A) This Agreement and the Onlending Agreement have become effective and remain effective; and
- (B) The Borrower has paid the Management Fee to the Lender in accordance with Article 2.6 hereof ; and
- (C) All the representations and special covenants made by the Borrower in Article 6 and Article 7 of this Agreement are true and correct on and as of the date of drawing; and
- (D) The Loan is not suspended or terminated; and
- (E) The Irrevocable Drawing Notice given by the Borrower is in line with the process and use of the drawing provided in Drawing Schedule agreed by the Borrower and Lender.

3.2 The Availability Period commences on the Effective Date of this Agreement. The expiry date of disbursement is the first day of the thirty-seven (37th) month, after the Effective Date. The Availability Period may be extended, provided that a request for extension is put forth by the Borrower to the Lender thirty (30) days prior to the availability expiration date, and such request is approved by the Lender. After the Availability Period or the extension thereof, the undrawn portion shall be deemed to be automatically canceled.

3.3 The Borrower shall make the drawing according to the Drawing Schedule approved by the Lender. The Borrower shall submit to the Lender relevant Commercial Contract and other Payment Documents when Applying for the drawing of the Loan. The Lender will check and supervise the use of the loan proceeds according to the Drawing Schedule and the provision hereof. The Drawing Schedule shall be formulated pursuant to the Project and be adjusted pursuant to the actual progress of the Project, provided that the Drawing Schedule, after being made or adjusted, shall be approved by the Lender.

3.4 For each drawing under this Agreement, the Borrower shall send the IRREVOCABLE DRAWING NOTICE by express mail to the Lender in the form set forth in Appendix 1 at least fifteen (15) Banking Days prior to the proposed drawing date, instructing and authorizing the Lender to remit the proceeds of the requested advance to an account designated by the Borrower. The drawing date must be a Banking Day. The Lender shall not make any advance until a valid IRREVOCABLE DRAWING NOTICE is received and the intended use of the proceeds of the particular drawing is verified. The aforesaid IRREVOCABLE DRAWING NOTICE shall be duly signed by the authorized person stated in the Letter of Authorization.

3.5 Provided that the Lender makes the advance according to the IRREVOCABLE DRAWING NOTICE, the Borrower shall be deemed indebted to the Lender in respect to such advance, and shall undertake to repay such advance to the Lender together with any interest thereon in accordance with this Agreement.

3.6 The Borrower shall pay semi-annually to the Lender a Commitment Fee (the Commitment Fee") at an annual rate of zero point five percent (0.5%) based on the undrawn and uncanceled amount of the Loan on March 20 and September 20 of each year. Such Commitment Fee shall begin to accrue on the date falling at the interval of 30 days after the Effective Date of this Agreement and shall be calculated on the basis of the actual number of days elapsed and a 360-day year. The commitment fee shall be paid into the account of the Lender as designated in Clause 4.4 hereof.

ARTICLE 4 REPAYMENT OF PRICIPAL AND PAYMENT OF INTEREST

4.1 The Borrower is obligated to repay to the Lender all the principal of the Loan, and pay all the interest accruing thereon as stipulated in this Agreement.

4.2 The Borrower shall pay interest on principal amount drawn and outstanding under this Agreement from the drawing date until such principal amount shall be paid in full, at a rate of four percent (4%) per annum. Such interest shall be paid semi-annually, on March 20 and September 20 of each year and calculated on the basis of the actual number of days elapsed and a 360-day year. During the Repayment Period, interest payment date shall be adjusted to match the principal repayment date, until all the payments under this Loan are made in full. If an interest payment date is not a Banking Day, such payment shall be made on the next succeeding Banking Day, and such increased days shall be included into the computation of payment of interest.

4.3 All the drawn principal amounts shall be repaid semi-annually to the Lender by sixteen (16) times equal instalments after the last day of the Grace Period. The first repayment date shall be the first day of the fifty-fifth (55th) month after the Effective Date.

4.4 Any payments or repayments made by the Borrower under this Agreement shall be remitted to the following account or any other account from time to time designated by the Lender on the due dates:

Payee: The Export-Import Bank of China
Opening Bank Banking Department of Bank of China Head Office, 410 Fu Cheng Men Nei Street, Beijing

Account No.: 80019041615001

4.5 If the due date for any payments is not a Banking Day, such payment shall be made on the next succeeding Banking Day. And such interest, Commitment Fee and other applicable payments shall be increased accordingly.

4.6 The Borrower shall submit an application to the Lender requesting that the Lender open and maintain on its books a lending account called "The Government of the Republic of Botswana - Botswana Housing (Gaborone) Project Account" ("the Account") to record the amounts owing or repaid or paid by the Borrower. The amounts of the Loan recorded as drawn and outstanding recorded in this Account shall be the evidence of the Borrower's obligation in the absence of manifest error.

Both the Borrower and the Lender shall keep accurate book records of any transaction under this Agreement and verify such records once a year.

ARTICLE 5 PREPAYMENT

5.1 The Borrower may, subject to the terms and conditions hereunder, prepay any one or more repayment installments at any time prior to the due date(s) thereof and pay the accrued interest on the principal amount prepaid up to the date of such prepayment, calculated in accordance with Article 4.2 hereof. Prepayment shall be applied in inverse order of due dates thereof. When making a prepayment, the Borrower shall give the Lender a written notice of its intention to make such prepayment at least thirty(30) days in advance.

ARTICLE 6 REPRESENTATIONS BY THE BORROWER

6.1 The Borrower hereby represents to the Lender as follows:

- (A) The Borrower is the Government of the Republic of Botswana and has power, authority and legal rights to borrow the Loan on the terms and conditions hereunder;
- (B) The Borrower has completed all the procedures as required by the laws of the Borrower's country in order to make this Agreement a valid and binding obligation of the Borrower in accordance with the terms and conditions of this Agreement.
- (C) Starting from the Effective Date, this Agreement will be the valid and binding obligation of the Borrower.

ARTICLE 7 SPECIAL COVENANTS

7.1 The Borrower hereby covenants to the Lender that any obligation of the Borrower arising from the Agreement shall rank *pari passu* with any other unsecured debts of the Borrower. Accordingly, any preference or priority granted by the Borrower to such debts shall be forthwith applied to this Agreement without prior request from the Lender.

7.2 The Borrower hereby promises that it will use the proceeds of the Loan under this Agreement in accordance with the purpose of the Loan referred to in Article 2.2 and 2.3 hereof, and will pay the interest and repay the principal to the Lender in accordance with the terms and conditions hereunder. All the obligations of the Borrower shall be unconditional under any circumstance.

7.3 Any tax, charge and cost which may occur in the Borrower's country on using the Loan and making any payment to the Lender shall be borne by the Borrower. In consequence, the Borrower undertakes that all payments of principal, interest, Commitment Fee and Management Fee shall be net and free of any deduction whatsoever.

7.4 The Borrower shall submit to the Lender:

- (A) The Drawing Schedule for the next year in the fourth quarter of each year during the Availability Period;
- (B) Reports on the actual progress of the project, operation status and the actual utilization of the disbursed Loan proceeds semi-annually during the Maturity Period;
- (C) Any other information pertaining to the performance of the Agreement at any time reasonably requested by the Lender.

7.5 The Lender shall be entitled to examine and supervise the use of the Loan proceeds and the performance of this Agreement. The Borrower shall facilitate the Lender's effort in this regard.

7.6 The Borrower shall by written notice immediately inform the Lender of any following event:

- (A) Any material decision, change, accident and other significant facts pertaining to the Project;
- (B) Any material adverse change in the financial, economic and other conditions of the Borrower;
- (C) Any change with respect to the authorized persons and the specimen of their signatures referred to in Article 10.1(A) hereof;
- (D) Any change with respect to the communication address of the Borrower referred to in Clause 9.5;
- (E) The occurrence of any events as referred to in Article 8 hereof which may entitle the Lender to suspend or terminate the Loan hereunder;
- (F) Any significant amendment or supplement to the Commercial Contract.

ARTICLE 8 SUSPENSION AND TERMINATION OF THE LOAN

8.1 If any of the following events occurs, the Lender may, by written notice to the Borrower, suspend or terminate making further advances under this Agreement, and/or declare the drawn and unpaid principal amount of the Loan as well as the interest accrued thereon and fees therefrom shall become immediately due and payable without further demand, notice or other legal formality of any kind:

- (A) The Borrower, for any reasons whatsoever, fails to pay any due amount of principal, interest, Commitment Fee or Management Fee as agreed in this Agreement;
- (B) Any representation or covenant made by the Borrower in Article 6 and 7, and other provisions of this Agreement, any certificate, document, material delivered pursuant to this Agreement is found to be untrue or inaccurate in any material respects;
- (C) The Borrower is in breach of any other terms, conditions or covenants made under this Agreement and does not remedy such breach within 30 days after receipt of written notice of breach from the Lender;

- (D) Material deterioration of the financial conditions of the Borrower or significant change with respect to the Project, either of which, in the opinion of the Lender, may have material adverse effect on the ability of the Borrower to repay the Loan;
- (E) The Borrower is in default of any of its other debt obligations, or any charge, guarantee or other security obligation now or hereafter created by the Borrower becomes enforceable, or the Borrower decides not to pay its debts generally;
- (F) There are force majeure in the Recipient Country such as serious natural calamity, war or other social unrests, which may jeopardize the normal environment for the Project implementation;
- (G) There occurs any change in the laws and government policies in the country of either the Lender or the Borrower, which makes it impossible for either the Lender or the Borrower to perform its obligations under this Agreement;
- (H) There is any fact pertaining to the project other than force majeure, which may jeopardize the smooth implementation of the Project.

ARTICLE 9 MISCELLANEOUS

9.1 The Borrower may not assign any of its rights or obligations hereunder in any way, manner or form to any third party whatsoever without the prior written consent of the Lender.

9.2 This Agreement is legally independent of the Commercial Contract or Onlending Agreement. Accordingly, any claims or disputes arising out of the Commercial Contract or Onlending Agreement shall not affect the obligations of the Borrower under this Agreement.

9.3 The Agreement as well as all rights and obligations arising hereunder shall be governed by and construed in accordance with the English Law.

9.4 All disputes arising in connection with this Agreement shall be settled by friendly negotiations. If no solution is found through negotiations, the disputes shall be settled by arbitration. Arbitration shall be submitted to the China International Economic and Trade Arbitration Commission.

9.5 Unless changed by notification from either party, any notice or other document to be given under this Agreement shall be in writing and may be given by personal delivery, or sent by post or facsimile or by telex to each of the parties thereto at its respective address or facsimile or telex set out below:

to the Lender: Concessional Loan Dept.
The Export-Import Bank of China
Jinyun Tower B, No. 43-A, Xizhimenbei St.,
Beijing 100044 P. R. China
Fax No: (8610) 62272613
Telex: 210292 EXIM CN
Telephone: (8610) 62278899

to the Borrower: The Ministry of Finance & Development Planning
Private Bag 008
Gaborone, Botswana
Fax No: (267) 356086
Telex: 2401BD
Telephone: (267) 350100

Any notice or document is deemed to have been delivered:

- (1) if sent by personal delivery: at the time of delivery;
- (2) if sent by post: 14 days after posting exclusive of Saturday, Sunday and statutory holidays;
- (3) if sent by facsimile or telex, when the notice or document is dispatched.

9.6 All financial documents between the Borrower and the Lender shall be written in English.

9.7 Unless otherwise provided for, failure or delay in the part of the Lender to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude exercise of any other right, power or privilege.

9.8 The appendixes and schedules to this Agreement shall be deemed as an integral part of this Agreement and have the same legal effect.

9.9 Matters not covered in this Agreement shall be settled through friendly negotiation and execution of supplementary agreements between the Borrower and the Lender.

ARTICLE 10 CONDITIONS TO EFFECTIVENESS

10.1 The effectiveness of this Agreement is subject to the satisfaction of the following conditions:

- (A) The Lender has received from the Borrower a Letter of Authorization in the form of appendix 2 hereof (the Letter of Authorization), authorizing the execution of this Agreement and documents in connection with this Agreement, together with Specimen Signatures;
- (B) The Onlending Agreement has been duly executed;
- (C) The Lender has approved the Drawing Schedule formulated by the Borrower in accordance with the progress of the Project;
- (D) The Building Contract between Botswana Housing Corporation and the Complant Botswana (Pty) Ltd.(A Subsidiary of the China National Overseas Engineering Corporation) is formally signed and become effective.

10.2 This Agreement shall become effective as of the date specified as the effective date (the Effective Date) in a written notice sent by the Lender to the Borrower after all the conditions precedent to the effectiveness of this Agreement have been fully satisfied.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on their respective behalf, by their duly authorized representatives, as of the day and year first above written, in duplicate, in English and Chinese with equal force, the Borrower and the Lender will keep one thereof.

Signed by:

Name: B. Gaolathe
Title: Minister of Finance &
 Development Planning

on behalf of
The Government of the
Republic of Botswana

Signed by :

Name: Heli
Title: General Manager
Concessional Loan Department

on behalf of
The Export-Import Bank of China

PASSED by the National Assembly on this 25th day of March, 2003.

C.T. MOMPEI,
Clerk of the National Assembly.