

February 2007

Regional Cooperation and Integration Financing Partnership Facility: Establishment of the Regional Cooperation and Integration Fund, and Regional Cooperation and Integration Trust Funds

Asian Development Bank

ABBREVIATIONS

ADB	– Asian Development Bank
ASEAN	– Association of Southeast Asian Nations
ASEAN+3	– ASEAN plus People’s Republic of China, Japan, and Republic of Korea
DMC	– developing member country
OCO	– Office of Cofinancing Operations
OREI	– Office of Regional Economic Integration
RCI	– Regional Cooperation and Integration
RCIF	– Regional Cooperation and Integration Fund
RCIFPF	– Regional Cooperation and Integration Financing Partnership Facility
TA	– technical assistance

NOTE

In this report, "\$" refers to US dollars.

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I. THE PROPOSAL

1. I submit for your information the following report on the Regional Cooperation and Integration Financing Partnership Facility (RCIFPF), and for your approval a recommendation for the Asian Development Bank (ADB) (i) to establish the Regional Cooperation and Integration Fund (RCIF), a special fund under the RCIFPF to support technical assistance (TA) activities, and RCI-related trust funds substantially on the terms and conditions of this paper (RCI Trust Funds), to support TA, grant components of investment projects, and any other activities that may be agreed upon between financing partners and ADB; (ii) to accept and administer contributions by bilateral, multilateral, and individual sources to the RCIF and such RCI Trust Funds; and (iii) to adopt the RCIF Technical Assistance Grant Regulations.

2. In line with its new financing partnership strategy,¹ ADB is taking a novel approach to structuring cooperation with development partners through "financing partnership facilities" for ADB's core business areas. Financing partnership facilities are operational mechanisms for strategic, long-term, and multipartner cooperation, which link various forms of assistance in a coordinated manner for a well-defined purpose. Financing partnership facilities may include (i) special and/or trust funds for grants to be administered by ADB; (ii) project-specific financing (i.e., grants, concessional loans, or guarantees) on a joint or parallel basis through framework agreements and letters of intent with development partners; (iii) cooperation arrangements for knowledge provision and exchange; and (iv) any other form of cooperation that partners and ADB may agree upon for a defined program of activities—all provided alongside ADB's own assistance in the sector or theme.

3. This report introduces the overall concept of the RCIFPF, and details the envisaged RCIF and RCI Trust Funds. Sections II and III provide the rationale and objectives of the RCIFPF. Section IV provides implementation details for the RCIFPF and the RCIF and RCI Trust Funds. Sections V and VI cover contributions to the RCIF and RCI Trust Funds and their administration.

II. BACKGROUND AND RATIONALE

4. The demand for RCI activities² among ADB's member countries in Asia and the Pacific has increased sharply in recent years. This is reflected in the recent proliferation of regional cooperation and integration agreements, including free trade agreements.³ The impetus to RCI stems partly from (i) the debilitating contagion effects of the 1997–1998 financial crisis in East and Southeast Asia, (ii) the strong growth and economic ascendance of the People's Republic of China and India, and (iii) the realization that RCI activities that complement national and global efforts are an effective means of sustaining growth and reducing poverty.

5. Regional collective action to improve cross-border infrastructure and devise appropriate policies for trade and investment will (i) help enlarge markets; (ii) promote the flow of goods,

¹ ADB. 2006. *ADB's Financing Partnership Strategy*. Manila.

² Following ADB's established practice, this paper's classification of a project as "regional" includes both cross-border projects and national projects with regional implications (ADB. 2003. *Operations Manual*. Section B1/BP: Regional Cooperation and B1/OP: Regional Cooperation. Manila.).

³ ADB. 2006. *Regional Cooperation and Integration Strategy*. Manila (Table 2, p. 32) lists 18 regional and subregional groupings with at least one ADB regional member. ADB estimates that currently more than 175 bilateral and subregional free trade agreements have either been signed or are currently under negotiation in Asia (para. 57, p. 12 and chart 1, p. 29). Recent free trade agreements entail cooperation on a broader set of issues than merely reciprocal reduction in tariffs.

services, capital, and labor; (iii) provide access to better production and management techniques; and (iv) confer gains from scale economies and enhanced competitiveness. Greater interconnectedness of economies entails risks that have to be mitigated to preserve the gains. Regional collective action that complements national and global efforts to (i) strengthen financial systems and coordinate macroeconomic policies, and (ii) safeguard the environment, health, and social development are necessary to sustain pro-poor growth. If managed well, RCI could be especially beneficial for less-developed economies by increasing their access to markets, capital, and technology; and providing greater opportunities for employment. It could thus reduce the disparity in living standards among economies of the Asia and Pacific region.

6. RCI activities are underfunded, and the regional public goods that they produce are undersupplied, partly because of their public nature.⁴ As the benefits of RCI activities are shared by two or more countries, an assessment of the magnitude and distribution of benefits becomes important to apportion and recoup the cost of providing the regional public good. As a regional development finance institution, ADB is in a unique position to promote interaction among its DMCs and facilitate their search for optimum means to forge closer links with one another while ensuring that they complement national and global efforts.

7. ADB's support to regional cooperation follows a phased approach.⁵ The first phase emphasizes increased understanding among DMCs and ADB of (i) the potential for regional cooperation and (ii) factors that promote or constrain it. In the second phase, projects with potential regional implications are identified through feasibility studies. In the third phase, ADB finances or helps mobilize financing for those projects with strong economic rationale and impact on poverty reduction. DMCs have made notable progress in regional cooperation, although the rate of progress varies substantially across subregions and hence there is an overlap among the three phases between countries. The strong impetus toward RCI in recent years suggests that the demand for TA, investment projects, and other forms of assistance will continue to increase.

8. To meet the rise in demand for RCI activities, and consistent with its strategy, ADB has been gradually increasing financing for RCI, in partnership with other contributors. For example, the amount of TA grants allocated to activities classified as "regional" increased from 21% of total TA grants in 2001 to 35% in 2005.^{6, 7}

9. The available financing for RCI activities, however, is insufficient to meet the rising demand. In the Greater Mekong Subregion Economic Cooperation program alone, for example, 129 TA projects were identified (as of November 2006) at an estimated cost of \$163 million;

⁴ The underprovision of regional public goods is a global phenomenon. For useful surveys, see Estevadeordal, A., B. Frantz, and T. R. Ngyuen. 2002. *Regional Public Goods: From Theory to Practice*. Washington, DC: Inter-American Development Bank and Asian Development Bank; and Birdsall, Nancy. 2004. *Underfunded Regionalism in the Developing World*. Washington, DC: Center for Global Development (Working Paper Number 49, November).

⁵ ADB. 2003. Operations Manual. Section B1/BP: Regional Cooperation (Para 3). Manila.

⁶ Source: ADB annual reports, various years. During 2001–2005, the average annual TA for regional activities was \$47 million (26% of total TA), of which (i) \$22 million comprised grants from the TASF, (ii) \$6 million from the JSF, and (iii) \$19 million from other sources. In 2005, the amount of regional TA rose to \$70 million, primarily reflecting partners' cofinancing of the \$24.97 million TA for the Greater Mekong Subregion Core Environment Program and Biodiversity Conservation Corridors.

⁷ Country-specific TA operations with regional implications amounted to \$4.6 million in 2005.

about \$19 million in financing has been identified.⁸ These figures include only advisory and regional TA. Project preparatory TA is included in the cost of investment projects, which were estimated at \$29.3 billion, with identified financing of \$6.2 billion.

10. The momentum of RCI activities among other subregional groupings in Central, East, South, and Southeast Asia, as well as in the Pacific, is also increasing, suggesting that the potential financing requirements are likely to be substantially larger than what is currently available.

11. ADB's 2001–2015 long-term strategic framework identifies RCI as one of the three crosscutting themes to support ADB's overall objective of poverty reduction in the Asia and Pacific region.⁹ To promote RCI, the strategic framework notes that ADB should examine and develop new funding mechanisms, including “the establishment of regional cooperation funding facilities” (footnote 9 below, p. 37). More recently, ADB's second medium-term strategy (2006–2008) identifies RCI as one of the strategic priorities for ADB operations and affirms the desirability of establishing a regional cooperation funding facility.¹⁰ ADB's *Regional Cooperation and Integration Strategy*, approved in July 2006, notes that additional funds will need to be mobilized for investments and that “ADB will do its best to establish new TA facilities to adequately fund the nonlending support envisaged in the strategy.”¹¹

12. The RCIFPF will help (i) fill the large gap between the demand for RCI activities and its supply, (ii) demonstrate ADB's commitment to one of its strategic priorities, and (iii) strengthen ADB's other strategic priorities¹² from a regional platform in addition to specific country assistance. The RCIFPF would further solidify ADB's four roles in RCI activities as a money bank, knowledge bank, capacity builder, and honest broker, as identified in the RCI strategy.¹³

13. ADB recognizes that effective support for RCI activities to enhance its development impact will require a concerted effort in partnership with government agencies, international organizations, bilateral funding agencies, the private sector, and civil society organizations. Additional support from development partners will help to catalyze investments with high development impact, innovation, and demonstration value; and to support reforms and capacity development. The proposed RCIF and RCI Trust Funds will be key mechanisms to increase support for RCI in DMCs. TA financed by the RCIF and RCI Trust Funds would augment ADB's support in the first two phases noted above (para 7). Grants for components of investment projects from RCI Trust Funds, especially for lower income DMCs, would also enhance the pace of regional cooperation. At the same time, the RCIFPF provides an opportunity for development

⁸ The projects, their estimated costs, and available financing for both TA and investment projects are based on prioritized projects of the nine sector working groups under the GMS Economic Cooperation program (see <http://www.adb.org/GMS/Projects/devmatrix.asp>).

⁹ ADB. 2001. *Moving the Poverty Reduction Agenda Forward in Asia and the Pacific: The Long-Term Strategic Framework of the Asian Development Bank (2001–2015)*. Manila.

¹⁰ ADB. 2006. *Medium-Term Strategy II: 2006–2008*. Manila (p. 13).

¹¹ ADB. 2006. *Regional Cooperation and Integration Strategy*. Manila (p. 19, paras. 94–95).

¹² The second medium-term strategy (footnote 10 above) identifies five strategic priorities for ADB: (i) catalyzing investment, (ii) strengthening inclusiveness, (iii) promoting RCI, (iv) managing the environment, and (v) improving governance and preventing corruption.

¹³ The strategy envisages an increased role for ADB in (i) creating, consolidating, and disseminating knowledge on RCI to DMCs; (ii) helping DMCs and regional and/or subregional bodies, such as the Association of Southeast Asian Nations Secretariat, Pacific Islands Forum Secretariat, and South Asian Association for Regional Cooperation Secretariat, build their institutional capacity to manage RCI; (iii) acting as a catalyst and coordinator of RCI for DMCs; and (iv) providing and mobilizing financial resources for RCI activities (footnote 11 above, p. 18, para. 86).

partners to (i) increase donor harmonization, (ii) realize efficiency gains and joint impact, and (iii) improve transparency in the preparation and implementation of RCI projects.

III. OBJECTIVES AND SCOPE

14. The objective of the RCIFPF, including the RCIF and the RCI Trust Funds, is to enhance regional cooperation and integration in Asia and the Pacific by facilitating the pooling and provision of additional financial and knowledge resources to support RCI activities. The RCIFPF aims to (i) improve cross-border physical connectivity; (ii) increase trade and investment flows in DMCs from regional and nonregional economies; (iii) preserve macroeconomic and financial stability in the region; and (iv) improve regional environmental, health, and social conditions.

15. The RCIFPF is an “umbrella” operational arrangement to enhance administrative coordination and efficiency, and is not a legal entity or structure. The RCIFPF will coordinate existing and new resources, and will facilitate the provision of financial assistance for RCI activities, on a joint or parallel basis with development partners, alongside ADB’s own assistance. Resources from partners under the RCIFPF may be provided through (i) pooled grants through the RCIF, (ii) trust funds for RCI, (iii) project-specific grants under framework agreements¹⁴ to be negotiated with financing partners, (iv) knowledge provision and exchange, and (v) other forms of assistance (Figure). The proposed RCIF will provide grants for TA. RCI Trust Funds will provide grants for TA and components of investment projects as well as any other activities that may be agreed upon between financing partners and ADB.

16. Eligible areas for use of RCIFPF resources will be in accordance with ADB’s *Regional Cooperation and Integration Strategy*, including the following:

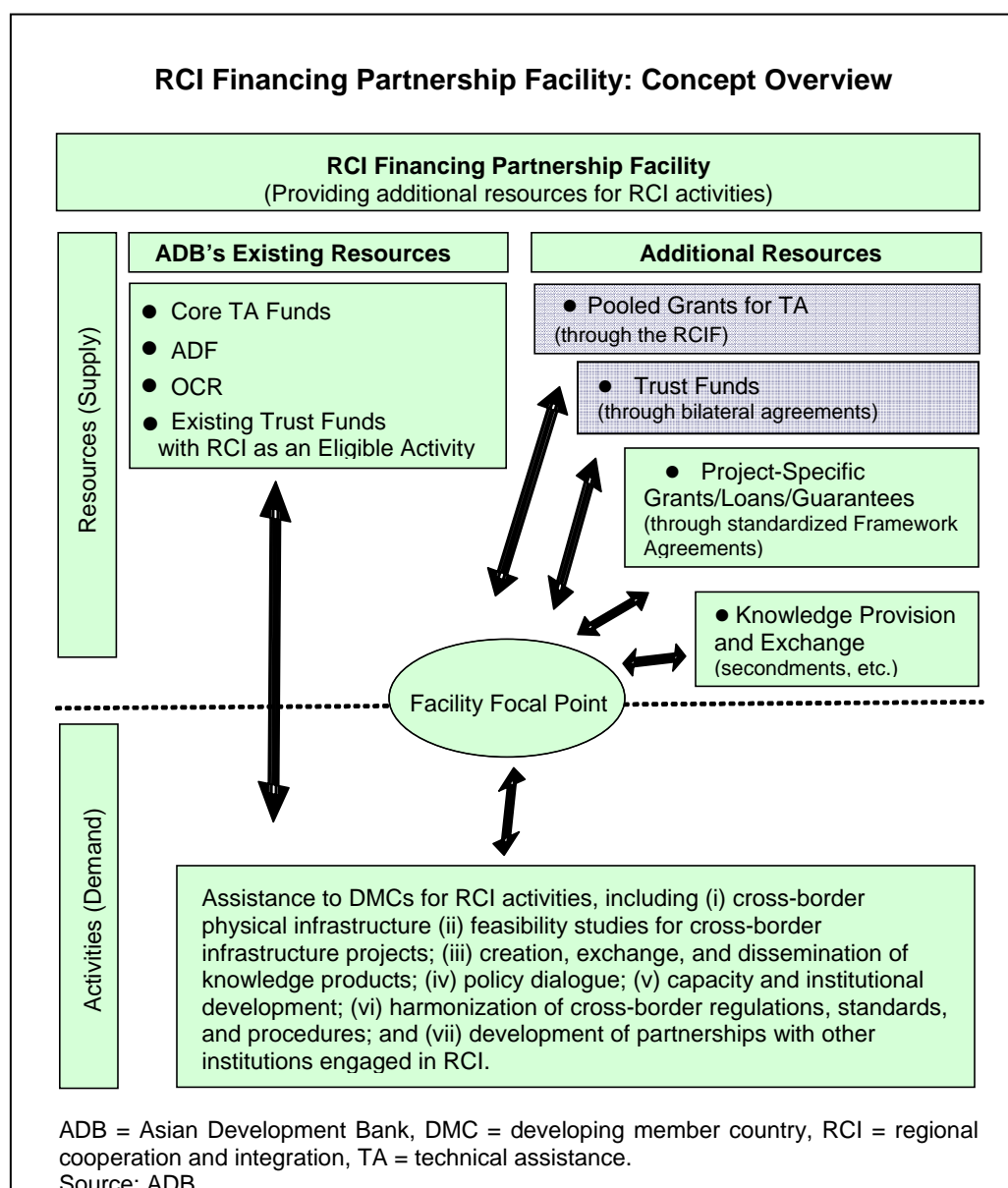
17. **Cross-Border Infrastructure and Related Software**¹⁵. Resources may support (i) physical infrastructure; (ii) harmonization of regulations, standards, and procedures; (iii) other software to increase effectiveness of cross-border infrastructure; and (iv) research and information dissemination;

18. **Trade and Investment.** Resources may support (i) facilitation of policy dialogue on trade and investment in various regional and subregional forums (e.g., Association of Southeast Asian Nations (ASEAN); ASEAN+3 (ASEAN plus People’s Republic of China, Japan, and Republic of Korea); Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation; Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area; Central Asia Regional Economic Cooperation; Greater Mekong Subregion; Indonesia, Malaysia, Thailand Growth Triangle; Pacific Islands Forum; South Asian Association for Regional Cooperation; and South Asia Subregional Economic Cooperation) (ii) capacity and institutional development in DMCs for issues related to free trade agreements, trade reform and facilitation; (iii) research and information dissemination; and (iv) development of stronger partnerships with other institutions that support RCI in trade and investment (e.g., Economic and Social Commission for Asia and the Pacific, Inter-American Development Bank, Organisation for

¹⁴ Such framework agreements will comprise (i) a letter of intent or similar document on the scope of cooperation under the RCIFPF, and (ii) procedural arrangements that standardize processes and documentation for the activities to be financed under the RCIFPF. Administration of these grants can be by ADB; the financing partner (e.g., in the case of parallel financing); or administration arrangements may be shared, depending on partner preferences.

¹⁵ The term “software” in this context refers to policy measures to facilitate the flow of goods, services, capital, and labor once the physical infrastructure (“hardware”) is in place.

Economic Co-operation and Development, Pacific Economic Cooperation Council, World Bank, and World Trade Organization);



19. **Monetary and Financial Cooperation.** Resources may be used to (i) facilitate policy dialogue on monetary and financial cooperation and integration in various established regional forums (e.g., ASEAN, ASEAN+3, Asia-Europe Meeting [ASEM], and Asia-Pacific Economic Cooperation) and others that may be established, for example, under the auspices of Central Asia Regional Economic Cooperation and South Asian Association for Regional Cooperation; (ii) support capacity and institutional development in DMCs for monetary and financial cooperation and integration; (iii) disseminate research and information; and (iv) build stronger partnerships with other institutions that support monetary and financial cooperation and integration (e.g.,

Bank for International Settlements, International Monetary Fund, Organisation for Economic Co-operation and Development, and Pacific Economic Cooperation Council);

20. **Other Regional Public Goods.** Resources may support (i) regional and subregional policy dialogue and initiatives to protect the environment, control communicable diseases, manage the impact of natural disasters, promote clean energy and energy efficiency, improve governance, and prevent human and drug trafficking; (ii) research and information dissemination; (iii) capacity and institutional development; and (iv) regional partnerships and exchange programs to increase the supply of regional public goods.

IV. IMPLEMENTATION ARRANGEMENTS

21. The Office of Regional Economic Integration (OREI) will manage the RCIFPF in consultation with ADB's interdepartmental Regional Cooperation and Integration Community of Practice and operations directors responsible for RCI projects. OREI will be the focal point for the RCIFPF for technical matters. The Office of Cofinancing Operations (OCO) will facilitate contributions to the RCIF and RCI Trust Funds, and will act as the official channel of communications between contributors to the RCIF and RCI Trust Funds and ADB for the financial aspects. OCO will also lead negotiations and discussions with such contributors on procedural agreements for contributions.

22. Selection of project proposals for the RCIF and RCI Trust Funds will be undertaken by ADB based on criteria agreed to by contributors and ADB. Project proposals can be initiated by DMC agencies, development partners, or ADB, and will be screened and prioritized by the concerned ADB department. Prioritized proposals will be submitted for selection to an interdepartmental committee chaired by the head of the RCI Community of Practice (currently headed by the managing director general) in consultation with concerned operations directors. Proposals for support should be consistent with RCIFPF objectives and aligned with regional cooperation strategy and programs and the annual regional programs.

23. Financial assistance will be provided in the form of untied grants (i) from the RCIF for TA, including advisory, project preparatory, and regional TA, and (ii) from RCI Trust Funds for components of investment projects and TA, as well as for any other activities that may be agreed upon between contributors and ADB. Such assistance may be combined with other ADB resources and forms of bilateral or multilateral assistance, such as other trust funds, to provide the most effective support for RCI activities.

24. All ADB DMCs will be eligible for support from the RCIF and RCI Trust Funds for activities prioritized under RCI programs. Activities may be implemented in DMCs or other countries in accordance with applicable ADB requirements and procedures. Assistance may be made available to central and local governments, government agencies, and other entities eligible to receive assistance from ADB. Resources from the RCIF and RCI Trust Funds will be used to finance expenses related to eligible projects for goods, works and services, following ADB's applicable guidelines and procedures.

25. Activities to be financed by the RCIF and RCI Trust Funds will be identified, designed, processed, approved, and implemented in accordance with applicable ADB policies, procedures, and guidelines, including (i) consulting services and procurement; (ii) social and environmental safeguards; (iii) financial management and reporting, and (iv) anticorruption and governance. TA under the RCIF will be provided in accordance with the Regional Cooperation and

Integration Fund Technical Assistance Grant Regulations set forth in Appendix 1. Arrangements for project accounting, auditing, and close monitoring and reporting will be in place for each of the projects supported by the RCIF and RCI Trust Funds, and staff instructions regarding the implementation and administration will be prepared and issued in consultation with ADB's Strategy and Policy Department and other relevant departments.

26. Consulting services and procurement to be financed by the RCIF or RCI Trust Funds will follow ADB's *Guidelines on the Use of Consultants* (April 2006, as amended from time to time) and *Procurement Guidelines* (April 2006, as amended from time to time), respectively. In the case of the administration of TA, the selection and engagement of consultants and the procurement of goods and services under such TA will be the sole responsibility of ADB. In the case of components of investment projects, the selection and engagement of consultants and the procurement of goods, works, and services will be carried out by the DMC recipients in accordance with applicable ADB procedures.

27. Recipients of financing from the RCIF and RCI Trust Funds must ensure that such financing will be deployed for its intended purposes on the same terms, conditions, and principles as set forth in this paper.

V. CONTRIBUTIONS

A. ADB Contribution to the RCIF

28. In its initial stages, RCI requires significant analytical work at a regional level and is thus critically dependent on technical assistance. To demonstrate the importance that ADB accords to RCI, ADB will propose to the Board of Governors to make an allocation to the RCIF in the context of the 2006 ordinary capital resources net income allocation process.

B. Other Contributions

29. In addition, ADB will accept, on an untied grant basis, contributions to the RCIF and RCI Trust Funds from bilateral, multilateral, and individual sources, including companies and foundations. To ensure cost-effective processing and reporting, the minimum contribution to the RCIF will be \$2 million equivalent, and the minimum contribution to an RCI Trust Fund will be \$5 million equivalent.

30. Contributions to the RCIF will be effected through instruments of contribution to be executed by RCIF partners substantially in the form in Appendix 2, whereby the partner will agree to contribute amounts to the RCIF in accordance with the terms of this paper. Contributions to RCI Trust Funds will be effected through channel financing agreements or similar agreements substantially in accordance with the terms and conditions in this paper. Because the terms and conditions of a contribution to an RCI Trust Fund will substantially be in accordance with those in this paper, it is proposed that the establishment of such fund and administration of such contribution not be separately approved by the Board, but be reported to the Board for information, in order to streamline procedures.¹⁶

¹⁶ With respect to an RCI trust fund that does not substantially follow the terms and conditions in this paper, contribution and administration of such fund will be submitted separately for Board approval in accordance with standard ADB procedures.

31. Commitments by a contributor to the RCIF or an RCI Trust Fund will not be subject to any conditions, except as provided in this paper. By depositing an instrument of contribution, or by signing a channel financing or similar agreement substantially upon the terms and conditions set forth in this paper, the partner will be deemed to have accepted the objectives of the RCIF or respective RCI Trust Fund as outlined in this paper, and the terms and conditions set forth in this paper.

32. Contributions to the RCIF and RCI Trust Funds will be made in the form of cash in a freely convertible currency. Contributions may also be made through the redirection of available funds under existing trust funds in ADB, subject to the agreement of the respective contributors. Contributions will be deposited into a US dollar interest-bearing account (the Account) to be specified by ADB under the RCIF or RCI Trust Fund, as appropriate (the Account refers to the relevant account for the respective fund). For contributions received in currencies other than US dollars, ADB will, upon receipt of the funds, convert them into US dollars and transfer them to the Account.

33. Contributions will be held, administered, and invested at the discretion of ADB. Pending disbursements, ADB may invest and reinvest contributions, and any income earned in respect of such investment and reinvestment, as well as interest accrued in respect of the Account (collectively, the available funds net of expenses) will be credited to the Account and used for the purposes of the respective fund, including related administrative expenses.¹⁷

34. ADB will make withdrawals from the Account as necessary to meet the expenditures of projects and activities supported by the available funds. If other currencies are required for payment to meet eligible expenditures, ADB may purchase the required currencies with the available funds. Any fees and charges relating to such purchase will be paid out of the Account.

VI. ADMINISTRATION ARRANGEMENTS

35. With respect to funds provided by contributors, ADB will exercise the same care in the discharge of its functions as it exercises with respect to its own affairs, and will have no further liability in respect of the contributions. The privileges and immunities accorded to ADB under the Agreement Establishing the Asian Development Bank will apply to all property, assets, income, and operations of the RCIF.

36. Contributions will be held and administered by ADB separately from ADB's other resources. As a multipartner fund, the RCIF will commingle all available funds in the Account. Contributions under an RCI Trust Fund will be separately accounted for in accordance with the respective agreement between the contributor and ADB. ADB will maintain records and accounts, in accordance with its standard procedures, that identify the contributions made, the commitments to be financed out of the available funds, including eligible activities and administrative expenses. ADB will provide contributors and, in the case of the RCIF, also the Board with financial statements on these records and accounts, audited annually by external auditors¹⁸, with the cost of these audits to be charged to the respective available funds.

¹⁷ Administrative expenses include service charges, cost of external audits, and finance charges that may be incurred in purchasing required currencies and in remitting funds.

¹⁸ A contributor to an RCI Trust Fund may opt, under standard ADB procedures, not to have the financial statement audited by external auditors.

37. In accordance with its standard procedures, ADB will charge a service fee to cover ADB's incremental cost for the administration, management, supervision, and operation of the RCIF and RCI Trust Funds. The service charge is currently 5% of the amount disbursed for TA and 2% of the amount disbursed for grant components of loan projects. The service charge will be paid from available funds at the same time as disbursement.

38. ADB will submit annual progress reports to contributors and, in the case of the RCIF, also to the Board on the performance of the funds. The reports will be prepared in accordance with ADB's normal reporting standards and annual work programs. ADB will also provide contributors and, in the case of the RCIF, also the Board such reports and information, as appropriate, concerning the progress of activities under the funds. Contributors and ADB will meet once a year after establishment of the RCIF or an RCI Trust Fund to review progress, administration matters, and work program and strategic directions of the respective fund.

39. OREI will be responsible for coordinating with various ADB departments with respect to projects and activities to be supported by the RCIF and RCI Trust Funds. OREI will be the focal point for preparing the annual progress reports on their implementation to be submitted to the contributors and, in the case of the RCIF, also to the Board. OCO will liaise with financial partners on all financial matters related to contributions to the RCIF and RCI Trust Funds.

40. ADB will promptly inform the partners and, in the case of the RCIF, also the Board of any condition that interferes, or threatens to interfere, with ADB's administration of the respective fund.

41. ADB may adopt, from time to time, additional rules for administering the RCIF and RCI Trust Funds that are substantially based upon the terms and conditions of this paper.

42. Unless otherwise agreed by contributors to the RCIF or RCI Trust Funds and ADB, the RCIF and RCI Trust Funds will terminate on such date as the contributions have been substantially disbursed by ADB. At such time, except for actions necessary for winding up the activities of the funds in an orderly and expeditious manner, ADB's functions in relation to the contributions will be considered terminated.

43. Upon termination of the RCIF and RCI Trust Funds, and subsequent liquidation of the Account, unless otherwise agreed with the contributors, any available funds will be returned, in the case of the RCIF, to ADB and the individual partners in proportion to their respective available contributions, and, in the case of an RCI Trust Fund, to the respective contributors. Following termination of the RCIF, ADB will, as soon as practicable, provide the partners and the Board, a final report on the projects and activities supported by it.

VII. RECOMMENDATION

44. It is recommended that the Board of Directors approve

- (i) the establishment of the Regional Cooperation and Integration Fund as a special fund under the Regional Cooperation and Integration Financing Partnership Facility, in accordance with the terms and conditions set forth in this paper;
- (ii) the acceptance and administration by the Asian Development Bank (ADB) of contributions by bilateral, multilateral, and individual sources to the Regional

Cooperation and Integration Fund, in accordance with the terms and conditions set forth in this paper;

- (iii) the adoption of the Regional Cooperation and Integration Fund Technical Assistance Grant Regulations as substantially set forth in Appendix 1; and
- (iv) in the event of any contribution for a regional cooperation and integration trust fund substantially in accordance with the terms and conditions set forth in this paper, the establishment of the regional cooperation and integration trust fund under the Regional Cooperation and Integration Financing Partnership Facility, in accordance with the proposal set forth in paragraph 30 of this paper; and the acceptance and administration by ADB of contributions by bilateral, multilateral, and individual sources to such regional cooperation and integration trust fund substantially in accordance with the terms and conditions set forth in this paper.

**REGIONAL COOPERATION AND INTEGRATION FUND
TECHNICAL ASSISTANCE GRANT REGULATIONS**

DATED [_____]

ARTICLE I

Application to Technical Assistance Grants

Section 1.01. Purpose. The purpose of these Regulations is to set forth certain terms and conditions generally applicable to grants for technical assistance and related operational activities of ADB provided from the Regional Cooperation and Integration Fund.

Section 1.02. Application of Regulations. Any technical assistance agreement with ADB financed by a grant made from the Regional Cooperation and Integration Fund may provide that the parties thereto accept the provisions of these Regulations. To the extent so provided in any such agreement, these Regulations shall apply and shall govern the rights and obligations of the parties thereto with the same force and effect as if they were fully set forth therein. No revocation or amendment of these Regulations shall be effective in respect of any such agreement unless the parties shall so agree in writing.

Section 1.03. Inconsistency with Agreement. If any provision of a technical assistance agreement is inconsistent with a provision of these Regulations, the provision of the technical assistance agreement shall govern.

ARTICLE II

Definitions; Interpretation

Section 2.01. Definitions. Except where the context otherwise requires, the following terms have the following meanings wherever used in these Regulations or in a technical assistance agreement to which these Regulations have been made applicable:

1. "ADB" means Asian Development Bank;
2. "DMC" means a developing member country;
3. "Dollar" or the sign "\$" each means the lawful currency of the United States of America;
4. "Fund" means the Regional Cooperation and Integration Fund of ADB established pursuant to [_____];
5. "Recipient" means the party to the TA Agreement to which ADB has agreed to provide the TA;
6. "TA" means the technical assistance financed by ADB from the Fund; and

7. "TA Agreement" means the particular technical assistance agreement to which these Regulations shall have been made applicable, all agreements supplementary to the TA Agreement and all schedules thereto, as such agreement may be amended from time to time; and such term includes these Regulations as thus made applicable.

Section 2.02. Interpretation. Except where the context otherwise requires, (i) references in these Regulations to Articles or Sections are to Articles or Sections of these Regulations; (ii) the headings of the Articles and Sections and the Table of Contents are inserted for convenience of reference only and are not a part of these Regulations; (iii) singular may include plural and vice versa; and (iv) a reference to any gender includes any other gender.

ARTICLE III

Eligibility and Use of Proceeds

Section 3.01. Activities to be Financed. Eligible activities for financing include the cost of expert services and related facilities required for TA or related operational activities (including staff training and development for eligible DMCs) to be carried out by ADB.

Section 3.02. Use of Proceeds. TA proceeds shall be used only for the purposes set forth in the relevant TA Agreement.

ARTICLE IV

Currency Provisions

Section 4.01. Denomination of the Grant. Except as the Board of Directors may otherwise determine, the TA grant shall be denominated in Dollars.

ARTICLE V

Particular Covenants

Section 5.01. Cooperation and Information. ADB and the Recipient shall cooperate fully to ensure that the purposes of the TA will be accomplished. To that end, ADB and the Recipient shall:

- (i) from time to time, at the request of either one of them, exchange views with regard to any matters relating to the progress of the TA, the purposes of the TA, the performance of their respective obligations under the TA Agreement and furnish to the other party all such related information as it shall reasonably request; and
- (ii) promptly inform each other of any condition which interferes with, or threatens to interfere with, the matters referred to in paragraph (i) above.

ARTICLE VI

Enforceability; Failure to Exercise Rights; Arbitration

Section 6.01. Enforceability. (a) The rights and obligations of ADB and the Recipient under the TA Agreement shall be valid and enforceable in accordance with their terms and, where the Recipient is a member of ADB, notwithstanding the law of any state, or political subdivision thereof, to the contrary.

(b) Neither ADB nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of the TA Agreement is invalid or unenforceable because of any provision of the Articles of Agreement Establishing the Asian Development Bank or for any other reason.

Section 6.02. Failure to Exercise Rights. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the TA Agreement upon any default shall impair any such right, power or remedy, or be construed to be a waiver thereof or an acquiescence in any 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.

Section 6.03. Arbitration. (a) Any controversy between the parties to the TA Agreement and any claim by any such party against any other such party arising under the TA Agreement which shall not be settled by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be ADB on the one side, and the Recipient on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by ADB; a second arbitrator shall be appointed by the Recipient; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, the Umpire shall appoint such arbitrator. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after the giving of such notice, the other party or parties shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party or parties.

(e) If within 60 days after the giving of the notice instituting the arbitration proceeding the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The law to be applied by the Arbitral Tribunal shall be public international law, the sources of which shall be taken for these purposes to include:

(i) any relevant treaty obligations that are binding reciprocally on the parties;

(ii) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognized as having codified or ripened into binding rules of customary law applicable to states and international institutions, as appropriate;

(iii) other forms of international custom, including the practice of states and international institutions of such generality, consistency and duration as to create legal obligations; and

(iv) applicable general principles of law.

(h) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(i) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the TA Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(j) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by ADB on the one side, and the Recipient on the other side. The Arbitral Tribunal shall determine any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs.

(k) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the TA Agreement, and any claim by either party against the other such party arising thereunder.

(l) If within 30 days after the counterparts of the award have been delivered to the parties the award shall not be complied with, any party may enter judgment upon, or institute a

proceeding to enforce, the award in any court of competent jurisdiction against any other party, and may enforce such judgment by execution or may pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of the TA Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member except as such procedure may be available otherwise than by reason of the provisions of this Section.

(m) Service of any notice or process in connection with any proceeding under this Section or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 7.01. The parties to the TA Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE VII

Miscellaneous Provisions

Section 7.01. Notices and Requests. Any notice or request required or permitted to be given or made under the TA Agreement, and any other agreement between any of the parties contemplated by the TA 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 or by mail, telegram, cable, telex, facsimile or electronic mail to the party to which it is required or permitted to be given or made at such party's address specified in the TA Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 7.02. Authority to Take Action. Any action required or permitted to be taken, and any documents required or permitted to be executed, under the TA Agreement, on behalf of the Recipient, may be taken or executed by the representative of the Recipient designated in the TA Agreement for the purposes of this Section or any person thereunto authorized in writing by him. Any modification of the provisions of the TA Agreement may be agreed to on behalf of the Recipient, by written instrument executed on behalf of the Recipient by the representative so designated or any person authorized in writing by such representative; provided that, in the opinion of such representative or other person, such modification is reasonable in the circumstances and will not substantially increase the obligations of the Recipient under the TA Agreement. ADB may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative or other person any modification of the provisions of the TA Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Recipient thereunder.

Section 7.03. Evidence of Authority. The Recipient shall furnish to ADB sufficient evidence of the authority of the person or persons who will, on behalf of the Recipient, take any action or execute any documents required or permitted to be taken or executed by the Recipient under the TA Agreement and the authenticated specimen signature of each such person.

Section 7.04. Execution in Counterparts. The TA Agreement may be executed in several counterparts, each of which shall be an original.

INSTRUMENT OF CONTRIBUTION

[date]

Asian Development Bank
[address]

[Name and identity of partner] (hereinafter referred to as the "Partner") hereby undertakes to contribute to the Regional Cooperation and Integration Fund in an amount of [\$___] in accordance with the provisions of the Board Paper entitled "Regional Cooperation and Integration Financing Partnership Facility: Establishment of the Regional Cooperation and Integration Fund, and Regional Cooperation and Integration Trust Funds" of the Asian Development Bank (the "Paper") and subject to the terms and conditions set forth in the Paper.

The contribution will be paid to the Asian Development Bank in the form of immediately available funds on or prior to [specify date]/in accordance with the following schedule [insert disbursement schedule]:

The contribution shall be paid into [ADB to specify account details].

Dated this ____ day of _____, _____.

For and on behalf of

Authorized Representative