

TA No. 4140-BAN: Supporting Good Governance Initiatives
Proposed Change in Scope and Increase in Technical Assistance Amount

I. INTRODUCTION

1. The technical assistance (TA) Supporting Good Governance Initiatives was approved in July 2003.¹ The TA comprised two parts. Part A was designed to support governance initiatives in the secured financing market in the private sector and part B was designed to support public sector anticorruption initiatives.

2. Following a TA agreement executed between the Government of the People's Republic of Bangladesh and the Asian Development Bank (ADB) on 6 November 2003, implementation of part A of the TA commenced in January 2004 through four individual consultants. Part A of the TA is being executed by the Finance Division, Ministry of Finance. Implementation of part B commenced in January 2004 through the consulting services of International Business and Technical Consultants, Inc. (IBTCI) of the United States of America, in association with Uniconsult International Limited of Bangladesh. Part B of the TA is being executed by the Prime Minister's Office (PMO).

3. As approved, the TA was scheduled to commence in October 2003 and to be completed in May 2004. However, actual commencement was delayed until January 2004.² The delayed start of consulting services was due in part to the TA agreement process and in part to the time taken to identify and field appropriate consultants to undertake the challenging governance assignments under the TA. The progress of part A has been affected by the need to address additional challenges arising from stakeholder dialogue. These include the need to promote consensus for secured transactions reform by having the TA identify regionally relevant developments on secured transactions reform in the Asia and Pacific region. Progress under part B has been affected by the need to develop an Anticorruption Commission (ACC) Implementation Plan following the enactment of an ACC Act in February 2004 and to prioritize and operationalize the ACC Implementation Plan in consultation with the newly appointed ACC commissioners, rather than with the Government, to appropriately recognize the independence of the new ACC. Furthermore, to assist the ACC to succeed and avoid unrealistic expectations being placed on it, it has been important to progress governance reviews as the basis for governance audits and a public expenditure tracking survey (PETS) methodology in line ministries to prevent corruption. In that regard, there has been a demand to extend governance reviews in line ministries where there are significant proposed development interventions. In addition, there has been a demand from the Ministry of Law, Justice and Parliamentary Affairs (MOLJP) since March 2004 for a part C to the TA related to identification of operational and infrastructure support needs in implementing the separation of the executive from the judiciary function; and the establishment of an independent, professional public prosecution service as well as legal education development. Such proposed changes in the TA have received full support and formal confirmation from the Government. Related to such changes, there is a need for an additional \$100,000 in TA grant financing for TA 4140-BAN.

¹ ADB. 2003. *Technical Assistance to the People's Republic of Bangladesh for Supporting Good Governance Initiatives*. Manila (TA No. 4140-BAN, for \$950,000, approved on 4 July 2003). An additional \$50,000 in TA grant financing from ADB's TA funding program was allocated in December 2003.

² The TA was extended until February 2005.

II. BACKGROUND

4. The TA was designed to assist transparency in the secured financing sector of private credit markets through a combination of legal, registry, and institutional governance reforms under part A related to promoting governance in the private sector, complemented by public sector anticorruption initiatives under part B.

5. The three components of **Part A** were legal reform, registry reforms, and institutional governance reforms in the secured financing sector. The TA terms of reference supported

(i) legal reform through (a) consensus building for a modern legal framework for secured transactions, (b) finalization of a new draft secured transactions law for Bangladesh, and (c) harmonization of a modern secured transactions regime with other laws in Bangladesh;

(ii) registry reform through (a) development of an overall architecture for a transparent, electronic registration system based on the foundation of a modern secured transactions law, and (b) evaluation of a reformed secured transactions registry through a study tour; and

(iii) institutional governance through development of tailored governance indicators on rules, processes, and practices in core governance competencies (including integrity and accountability) for self-regulatory certification of secured financing institutions.

6. The five components of **Part B** were support for the establishment of ACC, formulation of a national anticorruption strategy, institutional coordination of anticorruption efforts, prevention of corruption in line ministries, and training and capacity building on anticorruption. The TA terms of reference supported

(i) ACC establishment through (a) consensus building on the nature, objectives, mandate, and structure of the ACC; and (b) associated drafting of an ACC law, rules, regulations, and procedures and their dissemination;

(ii) a national strategy on anticorruption through the development of a national integrity strategy;

(iii) institutional coordination on anticorruption through a National Committee on Corruption Prevention (NCCP) which would, among other things, facilitate a collective cross-verification by investigative and regulatory agencies and obtain feedback from civil society and stakeholders on the output of the NCCP;

(iv) prevention of institutional corruption in line ministries through public expenditure tracking surveys and governance audits; and

(v) training and capacity building on anticorruption among other things through (a) an initial train-the-trainers training on corruption prevention, (b) evaluation of a modern ACC as part of a study visit, and (c) estimation of resources required to build the capacity to prevent corruption.

7. As originally approved, the total cost of the TA was estimated at \$1,187,500 equivalent, comprising \$832,000 in foreign exchange cost and \$355,500 equivalent in local currency. The

TA's \$950,000³ financed the entire foreign exchange cost and \$118,000 equivalent of the local currency cost. It provided for 29 person-months of international and 31 person-months of domestic consulting services.

III. PROPOSED CHANGE IN TA SCOPE AND AMOUNT

A. Scope

8. **Part A.** The scope of part A of the TA has been affected by the course of stakeholder dialogue. The TA has undertaken careful and extended stakeholder dialogue to explain the nature and purpose of this law reform for improved use of movable property as collateral for credit and to promote a broad-based reform consensus for it. There is a need to further buttress secured transactions reform consensus, given concerns by policymakers on the applicability of this reform to the operating environment in Bangladesh.

9. To support further secured transaction reform consensus-building steps, two changes to part A are proposed. First, it is proposed that Viet Nam, a developing member country in the Asia and Pacific region, be selected for the study of a modern registry system⁴ since Viet Nam's operating environment is more relevant to that of Bangladesh than is that of a developed country. Second, it is proposed that the implementation arrangements for the TA be broadened so as not to overburden the Finance Division of the Ministry of Finance in relation to the demands of the ongoing stakeholder dialogue. While the Finance Division will continue to be the Executing Agency for the TA, and to provide a project director, working group members consisting of experienced stakeholders from financial institutions and Bangladesh Bank will provide a secretariat to the TA, with a nominee on the working group acting as member secretary.

10. **Part B.** The scope of Part B has been affected by the demands on the TA resulting from the pace of establishment of the ACC and the expanded demand on related activity regarding governance reviews in line ministries.

11. To address new demands for ACC and governance review work, three changes under part B are proposed. First, it is proposed that certain priority actions under a draft ACC Implementation Plan be operationalized as of January 2005. The ACC Act was enacted in February 2004 and was thereafter gazetted. This early accomplishment of legislative milestones resulted in PMO requesting TA support for the development of an ACC Implementation Plan under which the operational transition of the ACC could be optimally managed. The draft ACC Implementation Plan⁵ was duly prepared and discussed with PMO and the TA steering committee representatives of the Government, and received their in-principle support. The draft ACC Implementation Plan was also duly discussed with aid agencies at the Local Consultative Group for Governance in Dhaka and received their endorsement and support. In November 2004, three ACC commissioners were duly appointed. With the appointment of the

³ These cost estimates were predicated on the original \$950,000 TA financing approved in 2003, of which ADB is financing \$700,000 equivalent on a grant basis from ADB's TA funding program and is administering \$250,000 equivalent on a grant basis from the Governance Cooperation Fund. Subsequently, an additional \$50,000 was financed from ADB's TA funding program so that current TA funding is \$1,000,000.

⁴ Viet Nam was selected since it had already adopted a modern secured transactions law using an ADB TA and is in the process of considering a change from a paper-based to an electronic registry.

⁵ The draft Anticorruption Commission (ACC) Implementation Plan was developed with a phase 1 for priority actions and phase 2 for subsequent steps. Phase 1 focuses on key areas of operational credibility for the new ACC such as the processes and criteria for selecting of ACC staff.

commissioners, the existing Bureau of Anticorruption stands dissolved and the ACC establishment process is concluded, with a corresponding need to support the initial steps in the operational transition of the ACC. However, the selection of ACC commissioners has also meant a need to adequately preserve, protect, and defend the independence of the ACC. Consequently, ADB and the Government agreed that any final endorsement of the draft ACC Implementation Plan would need to come from the ACC commissioners, and PMO would cease to be the Executing Agency (EA) for the ACC portion of part B of the TA. ADB is currently in dialogue with the ACC commissioners to obtain endorsement of the ACC Implementation Plan.

12. Second, governance reviews in part B that the TA have been proceeding to provide a basis for governance auditing in the selected sectors by the TA during inception, namely the transport sector (roads and highways) and the education sector (secondary education).⁶ The purpose of governance reviews is to assess governance risks in all aspects of an organization related to management accountability, transparency process, and system vulnerabilities (such as rules, delegated authority, and qualifications of staff) and identify risk indicators (red flags) for material leakage or capture to allow better monitoring of high-risk areas for the purpose of preventing fraud and corruption. The governance reviews are being carried out at ministry and project levels. The reviews are also accompanied by an associated devising of a methodology (outline PETS) for surveying beneficiaries through various techniques like rapid data assessment and pilot questionnaires so as to add a bottom-up element to governance reviewing. Governance review and an outline PETS methodology establish a foundation for undertaking governance audits⁷ for ministries and projects. Following consultation with the Government, it is proposed that the scope of governance reviews and outline PETS under part B be extended to cover Bangladesh Railways, given that there is a proposed Bangladesh Railways Sector Development Project intervention in 2005.

13. **Part C.** Finally, discussions with MOJLP confirmed the need and urgency for a part C to the TA. The three key objectives of the proposed part C would be to undertake (i) an assessment of particular operational needs related to the newly formed Judicial Service Commission (JSC), (ii) an assessment of the institutional and infrastructural needs of the public prosecution system, and (iii) an assessment of the current curricular offerings and needed changes thereto at the leading legal education centers in Bangladesh.

14. In terms of the separation of the executive from the judiciary function, the Government has currently filed a request for further extension of time for such separation.⁸ The Government has shown its commitment in this area by proclaiming a rule on the establishment of JSC, with rules on appointment and service structure, postings and transfers, and promotions and discipline to be proclaimed in due course. JSC members have been chosen, but its operational needs must be identified if an implementation plan for JSC is to be developed. Part C of the TA would therefore focus on examining the operational needs of JSC to enable it to function effectively.

⁶ Sectors were selected taking account of ADB sectoral interventions. In addition, cognizance was taken of full public expenditure tracking surveys (PETS) work being undertaken by other aid agencies like the Department for International Development (DFID) in the education sector under the Financial Management Reform Program (FMRP).

⁷ Governance reviews will form the basis for governance audits which will be pursued through follow-on sectoral and core governance interventions in partnership with each other.

⁸ This represents the twentieth extension sought by the Government since the Supreme Court's decision in the Masdar Hossain case mandated a separation of the executive from the judiciary function in December 1999.

15. The TA would further examine the existing public prosecution system with a view to identify requirements for enhancing the system's capacity to deliver its services with greater efficiency, transparency, accountability, and fairness.

16. In addition, the TA will examine the curricular and teaching practices at the major legal education centers in Bangladesh with a view to identify areas of legal study that need to be either freshly introduced or strengthened to make such educational standards competitive with regional and global trends.

B. Implementation and Duration

17. **Part B Implementation Arrangements.** The ACC portion of part B will be undertaken directly with the ACC itself, with the Cabinet Secretariat of the Government acting as its liaison point. Part B consultants working on the ACC will be entitled to share the existing project office accommodation. PMO will continue to act as EA for all other parts of part B.

18. **Part C Implementation Arrangements.** The MOLJP will act as EA for part C for administrative purposes. MOJLP will assign a senior officer as the focal point for the conduct of part C of the TA. Part C consultants will be entitled to share the existing Project office accommodation, but will make their own arrangements for all other administrative support.

19. **TA Time Period.** The extended tasks for parts A and B and the addition of part C require the time period of the TA to be extended to 30 June 2005.

C. Outputs and Phasing of Outputs of the TA

20. Part A of the TA has already produced an inception report, an interim report, and a draft second interim report. By April 2005, part A will produce a final report on a draft secured transactions law and registry architecture, including analytical input from the registry study tour in Viet Nam, and governance survey indicators.

21. Part B has already produced an inception report, an interim report, and a draft second interim report. By April 2005, part B will require a final report, which has undertaken priority work under phase 1 of the ACC Implementation Plan and completed governance review work.

22. Part C will require a TA report by April 2005 on a preliminary assessment of the operational needs and challenges of the JSC system, the transitional needs for establishing an improved public prosecution and legal education center needs.

D. Inputs for the TA

23. To undertake the additional work for part B on the ACC Implementation Plan and further governance reviews and outline PETS methodology work, an additional 1.5 person-months of an international ACC legal expert will be required from supplementary TA financing.

24. To support the work for the new part C of the TA, an additional 1.5 person-months of international judicial independence and legal education experts and an additional 2 person-months of domestic consultant time for judicial independence and public prosecution experts will be required from supplementary TA financing.

25. The additional consulting services for parts B and C, which is to be financed by supplementary TA financing of \$100,000 from ADB's TA Special Funds resources, are shown in the Appendix under supplementary financing cost estimates. All such consulting services for part B will be provided through the existing consulting firm of IBTCI.⁹ All such consulting services for part C will be provided by individual consultants recruited through direct selection in accordance with ADB's *Guidelines on the Use of Consultants* and PAI 2.06, para. 8. Direct selection will be used, given the highly specialized nature of the assignment on which such consultants have performed satisfactorily in the past and/or due to their premier qualifications. Detailed terms of reference that will be used for all such recruitment can be obtained on request.

E. TA Project Reviews

26. A further TA review is scheduled for mid February 2005.

IV. THE PRESIDENT'S RECOMMENDATION

27. The President recommends that the Board approve on a no-objection basis (i) the extension of TA implementation until 30 June 2005; (ii) increasing the total TA budget by \$100,000; and (iii) allocating such funds as shown in the Appendix and utilizing them for the proposed change in scope.

⁹ This will be undertaken by contract variation.

PROPOSED NEW BUDGET FOR TA 4140-BAN: SUPPORTING GOOD GOVERNANCE INITIATIVES

Item	Original Cost Estimate ^a			Revised Cost Estimate ^b under Current TA			Supplementary Financing ^c			Total Cost Estimate		
	Foreign Exchange	Local Currency	Total Amount	Foreign Exchange	Local Currency	Total Amount	Foreign Exchange	Local Currency	Total Amount	Foreign Exchange	Local Currency	Total Amount
A. Asian Development Bank and Governance Cooperation Fund Financing^d												
1. Remuneration and Per Diem	696,573	61,900	758,473	861,960	77,400	939,360	80,105	6,000	86,105	942,065	83,400	1,025,465
2. Miscellaneous	–	3,400	3,400		14,663	14,663	–	–	–	–	14,663	14,663
3. Equipment	13,000	–	13,000	4,480	–	4,480	–	–	–	4,480	–	4,480
4. Training	1,500	3,250	4,750	1,500	3,250	4,750	–	–	–	1,500	3,250	4,750
5. Studies	29,000	–	29,000	29,000	–	29,000	–	–	–	29,000	–	29,000
6. Contract Negotiations	5,000	–	5,000	5,000	–	5,000	–	–	–	5,000	–	5,000
7. Contingencies	18,827	2,200	21,027	2,747	–	2,747	13,895	–	13,895	16,642	–	16,642
Contract Total	763,900	70,750	834,650	904,687	95,313	1,000,000	94,000	6,000	100,000	998,687	101,313	1,100,000
Amount Left in TA Budget	129,600	35,750	165,350									
Subtotal (A)	893,500	106,500	1,000,000									
B. Government Financing												
1. Local Counterpart Staff	–	90,000	90,000							–	90,000	90,000
2. Office Accommodation	–	90,000	90,000							–	90,000	90,000
3. Administrative	–	57,500	57,500							–	57,500	57,500
Subtotal (B)	–	237,500	237,500							–	237,500	237,500
Total	893,500	344,000	1,237,500							998,687	338,813	1,337,500

^a Financed by ADB's technical assistance funding program and Governance Cooperation Fund.

^b Original cost estimates as of TA approval, adjusted by additional TA financing of \$50,000 approved at end-2003.

^c As a result of contract variation of \$165,350 from existing TA funds, to finance an additional 6.5 person-months of international consulting time and an additional 6 person-months of domestic consulting time for parts A and B.

^d Subject to Board no objection.

Source: ADB estimates