

## OPERATIONS MANUAL POLICIES AND PROCEDURES

These policies and procedures were prepared for use by ADB staff and are not necessarily a complete treatment of the subject. This *Operations Manual* is issued by the Strategy and Policy Department with the approval of the President, and is subject to compliance review. Questions may be directed to Advisor, SPD and Head, Interagency Relations and Nonsovereign Operations Unit, Strategy, Policy, and Review Department.

### TRANSACTION ADVISORY SERVICES

#### A. Introduction and Eligibility

1. The Asian Development Bank (ADB) provides technical advice and assistance to promote investment of public and private capital for development purposes (endnote i). ADB provides transaction advisory services (TAS) to assist public and private sector clients in structuring and procuring viable projects, particularly public–private partnership projects. The Public–Private Partnership Operational Plan, 2012–2020 establishes four pillars to promote public–private partnership projects (endnote ii). TAS support pillar 3: project development.

2. ADB can provide TAS to the following clients for projects in a developing member country (DMC) (endnote i and iii):

- (i) DMC governments and government agencies,<sup>1</sup> and
- (ii) private sector entities and private sector project sponsors.

3. ADB can provide TAS in any of the following forms (endnote iii):

- (i) advice to DMC authorities in seeking and evaluating bids for build-operate-transfer or other public utility or infrastructure projects, and in negotiating with bidders for contracts for such projects;
- (ii) advice to sponsors of large or complex private sector projects on their financial, technical, and environmental aspects;
- (iii) assistance to private sector project sponsors or private sector entities in developing an appropriate financial structure for their projects and in mobilizing the required financing on suitable terms; and
- (iv) advice on, and assistance in, restructuring public or private enterprises, including through mergers and acquisitions or through commercialization or privatization.

#### B. Charter Basis

4. The Agreement Establishing the Asian Development Bank (the Charter) provides the following general mandate and operating principles for the provision of TAS:

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<sup>1</sup> Government agencies include state-owned-enterprises, local governments, and municipalities.

- (i) Article 2(i) specifies one of the functions of ADB is to promote investment of both public and private capital in the region for development purposes.
- (ii) Article 2(ii) and Article 14 (ii) establish the operational principles that in selecting suitable projects ADB will prioritize those that will contribute most effectively to the harmonious economic growth of the region.
- (iii) Article 2(iv) allows ADB to provide technical assistance for the preparation, financing, and execution of development projects, including the formulation of specific project proposals.
- (iv) Article 11 authorizes ADB to provide or facilitate financing to any entity or enterprise operating in a DMC, as well as to international or regional entities concerned with the economic development of the region.
- (v) Article 14(xiv) provides that ADB's operations must be guided by sound banking principles.

### **C. Objectives**

5. The objective of TAS is to catalyze private sector participation by structuring viable projects in DMCs. Through TAS, ADB can influence the choice and design of a project, improve its quality, and enhance the acceptability to both ADB and other investors and/or lenders (endnote iii).

### **D. Operational Principles**

#### **1. Fees**

6. ADB shall charge a reasonable fee for its TAS, to be negotiated in each case, taking into account the scope of services, the costs and risks involved, and market practices (endnote iii).

#### **2. Co-advisory**

7. In providing TAS, ADB may consider working with private banks and other entities to provide such services jointly. In undertaking these services, ADB shall supplement, not supplant, commercial sources of such services (endnote iii).

#### **3. Conflicts of Interest**

8. ADB may have opportunities to play multiple roles for the same project as advisor and financier. ADB must adopt appropriate measures to ensure that its engagement in TAS does not cause any actual or perceived conflicts of interest. Such measures include (endnote iii)

- (i) full disclosure of the likely conflicts to the clients and other parties concerned, and
- (ii) separation of staff's roles and responsibilities to avoid disclosure of confidential information.

9. ADB may or may not participate in the financing of projects for which it provides TAS (endnote iii). ADB must adopt appropriate due diligence procedures to ensure that financing decisions are based on the merit of the project and ADB's operational strategies and priorities, regardless of ADB's role as an advisor (endnote iii).

#### **4. Integrity Due Diligence**

10. ADB must conduct adequate due diligence when engaging in TAS to ensure that integrity-related risks are addressed (endnote iv).

#### **5. Policy Compliance**

11. ADB must ensure that TAS

- (i) comply with the relevant provisions in ADB's policies on the selection of consultants,<sup>2</sup> anticorruption measures,<sup>3</sup> enhancing ADB's role in combating money laundering and the financing of terrorism,<sup>4</sup> and public communications;<sup>5</sup>
- (ii) comply with the applicable laws and regulations of the host country; and
- (iii) do not support a project, an industry, or an activity that is on the prohibited investment activities list, as ADB may amend the list from time to time.<sup>6</sup>

12. TAS are subject to performance evaluation by the Independent Evaluation Department.<sup>7</sup>

#### **Basis:**

- i. ADB. 1966. *Agreement Establishing the Asian Development Bank*. Manila.
- ii. ADB. 2012. *Public-Private Partnership Operational Plan, 2012-2020. Realizing the Vision for Strategy 2020: The Transformational Role of Public-Private Partnerships in Asian Development Bank Operations*. Manila.
- iii. ADB. 1995. *Strategy for the Bank's Assistance for Private Sector Development*. Manila.
- iv. ADB. 2016. *Anticorruption Policy: Enhancing the Role of the Asian Development Bank in Relation to Tax Integrity*. Manila.

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<sup>2</sup> Guidelines on the Use of Consultants (2013, as amended from time to time).

<sup>3</sup> *Operations Manual section C5 (Anticorruption)*.

<sup>4</sup> *Operations Manual section C6 (Enhancing the Asian Development Bank's Role in Combating Money Laundering and the Financing of Terrorism)*.

<sup>5</sup> *Operations Manual section L3 (Public Communications)*, including exception to presumed disclosure of confidential information (para 8).

<sup>6</sup> *Operations Manual section F1 (Safeguard Policy Statement)*.

<sup>7</sup> *Operation Manuals section K1 (Independent Evaluation)*.