

TECHNICAL ASSISTANCE FOR ENHANCING EFFICIENCY OF THE CAPITAL MARKET

A. Background

1. The TA is designed to support the proposed Second Capital Market Development Program (CMDP II) which is expected to be approved by ADB at the end of November 2012. To meet the objectives under the Government of Bangladesh's Sixth Five-Year Plan (2011–15), the CMDP II aims to develop a deeper and more stable capital market in Bangladesh to foster investor confidence and facilitate savings and investments. The TA will be provided to meet the capacity building needs of the Securities and Exchange Commission of Bangladesh (SEC) to help the SEC discharge its capital market oversight functions more effectively.

2. The proposed TA will support SEC's own efforts to enhance its capacity and capabilities in the area of enforcement, as well as its efforts to establish a specialized adjudicatory body to hear and rule in capital markets cases. It will also support the government's efforts to make changes in the ownership and governance structure of the two stock exchanges in support of enhanced governance and management of the exchanges.

B. Impact and Outcome

3. The impact of the TA is a better-regulated capital market to help accelerate economic growth and poverty reduction in Bangladesh. The outcome is enhanced effectiveness of the supervisory and regulatory authority for capital markets.

C. Methodology and Key Activities

4. Since this CDTA is a piggybacked TA to the BAN: Second Capital Market Development Program (CMDP II), the CDTA will provide the crucial resources to support implementation of key reform actions under the proposed CMDP II. The proposed CDTA therefore has a strong linkage and complements the proposed CMDP II.

5. The TA will have the following components:

- (i) **Strengthened enforcement capacity of SEC.** This component will focus on upgrading SEC's inspection, investigation and enforcement capacity to more fully meet its current and future regulatory obligations and promote market stability. This component will initially focus on ensuring an effective and efficient structure for detecting possible violations of securities laws and regulations¹, investigating irregularities and prosecuting cases. Subsequently, the focus will be on developing processes for discovering and analyzing evidence, taking testimony under oath, and formulating and prosecuting cases.
- (ii) **Expedited adjudication of enforcement actions.** The second component will focus on developing and promoting mechanisms to ensure disposition of capital markets enforcement actions in an effective and timely manner. This may include the establishment of a separate expert tribunal/court to hear capital market cases.

¹ Such as market or price manipulation, insider trading, failure to comply with conduct of business, capital adequacy, segregation of client assets, or AML rules.

- (iii) **Improved regulation, governance and operation of stock exchanges.** The third component will facilitate the demutualization process of the Dhaka Stock Exchange (DSE) and Chittagong Stock Exchange (CSE) by introducing international best practices in their governance structures.

6. The following are the TA's Key Activities:

- (i) Strengthening inspection, investigation and enforcement capacity of SEC staff.
- a. Developing an effective structure for the SEC's enforcement activities
 - b. Developing internal guidelines and procedures for investigation and enforcement
 - c. Training inspection, investigation and enforcement staff.
- (ii) Expediting the adjudication of enforcement actions.
- a. Developing a model organizational framework for expedited adjudication.
 - b. Drafting the required legislative and procedural framework.
 - c. Enacting the legislation.
 - d. Operationalizing the special tribunal.
 - e. Training judges.
- (iii) Improving regulation, governance and operation of stock exchanges.
- a. Developing appropriate governance structures in the CSE and DSE.
 - b. Drafting the required legislative and procedural framework.
 - c. Enacting the legislation.

D. Cost and Financing

7. The TA is estimated to cost \$850,000 of which \$750,000 will be financed on a grant basis by the Japan Fund for Poverty Reduction and administered by ADB. The government will provide counterpart support in the form of office accommodation and transport, remuneration and per diem of counterpart staff, and other in-kind contributions.

Table 1: Cost Estimates and Financing Plan
(\$'000)

Item	Total Cost
Japan Fund for Poverty Reduction ^a	
1. Consultants	615.4
a. Remuneration and per diem	540.4
i. International	468.4
ii. National	72.0
b. International and local travel	72.0
c. Reports and communications	3.0
2. Equipment	18.4
3. Workshops, local training, seminars and conferences	55.0
4. Contingency	61.2
Total	750.0

^a Administered by the Asian Development Bank.

E. Implementation Arrangements

8. The Bank and Financial Institutions Division of Ministry of Finance will be the Executing Agency for the proposed TA. The SEC will be the Implementing Agency for the proposed TA. The TA will be implemented over a period of 2 years from December 2012 to December 2014.

9. ADB will recruit a consulting firm to provide 17 person-months of international and 12 person-months of national consulting services. For the selection of the consulting firm, the quality- and cost-based selection (80:20) method will be used because of the requirement for high-qualified technique, knowledge, and experience to achieve expected outputs, and the firm will be required to submit technical proposals. ADB will engage the consultants in accordance with its Guidelines on the Use of Consultants (2010, as amended from time to time). TA disbursements will be made in accordance with the Technical Assistance Disbursement Handbook (2010, as amended from time to time). The executing agencies will procure other inputs, including equipment, in accordance with ADB Procurement Guidelines (2010, as amended from time to time). Equipment procured under the TA will be turned over to the SEC upon completion of the TA.

F. Outline Terms of Reference for Consultants

10. The consulting services will include 17 person-months of international expertise and 12 person-months of national consulting services. The tasks and duties of each of these are as follows:

11. **Enforcement Experts** (one international, 6 person-months; one national, 4 person-months). The consultants must have extensive experience (a minimum of 10 years) in market surveillance and supervision. The principal aim of this assignment will be to strengthen inspection, investigation and enforcement capacity of SEC staff. The initial focus will be on ensuring an effective and efficient structure for detecting possible violations of securities laws and regulations (such as market or price manipulation, insider trading, failure to comply with conduct of business, capital adequacy, segregation of client assets, or AML rules), investigating irregularities and prosecuting cases. Subsequently, the focus will be on developing processes for discovering and analyzing evidence, taking testimony under oath, and formulating and prosecuting cases. Specific tasks will include: (i) developing an effective structure for the SEC's enforcement activities (that includes organizing a sustainable program to follow up on customer complaints and termination for cause of members of the stock exchanges); (ii) developing internal guidelines and procedures for investigation and enforcement (that includes establishing a cause investigation program and training SEC officials in performing this function); (iii) assisting SEC in conducting audit and inspection of the stock exchanges and member-brokers of the stock exchanges; (iv) providing on-the-job training to SEC officials in the conduct of audit and inspection of the operations of stock exchange members and other market participants; and (v) training investigation and enforcement staff (which includes training SEC staff in conducting investigation and preparing securities cases for prosecution).

12. **Capital Market Tribunal Experts** (one international, 6 person-months; one national, 4 person-months). The consultants must have extensive experience (a minimum of 10 years) in establishing capital market (and related) tribunals. The principal aim of this assignment will be to develop and promote mechanisms to ensure disposition of capital markets enforcement actions in an effective and timely manner. Specific tasks will include: (i) developing a model organizational framework for expedited adjudication; (ii) drafting the required legislative and procedural framework; (iii) consulting with industry stakeholders; (iv) assist and advise on the

process of enacting the legislation and/or issuing the relevant regulations; (v) operationalizing the special tribunal; and (vi) training judges to handle securities cases in a competent and expedient manner.

13. **Demutualization Experts** (one international, 5 person-months; one national, 4 person-months). The consultants must have extensive experience (a minimum of 10 years) in the process of implementing demutualization in stock exchanges. The principal aim of this assignment will be to develop and promote mechanisms to facilitate the demutualization process of the Dhaka Stock Exchange (DSE) and Chittagong Stock Exchange (CSE) by introducing international best practices in their governance structures. The focus will be on improving regulation, governance and operation of the two stock exchanges. Specific tasks will include: (i) developing appropriate governance structures in the CSE and DSE; (ii) drafting the required legislative and procedural framework; (iii) consulting with industry stakeholders; as well as (iv) assist and advise on the process of enacting the legislation and/or issuing the relevant regulations.