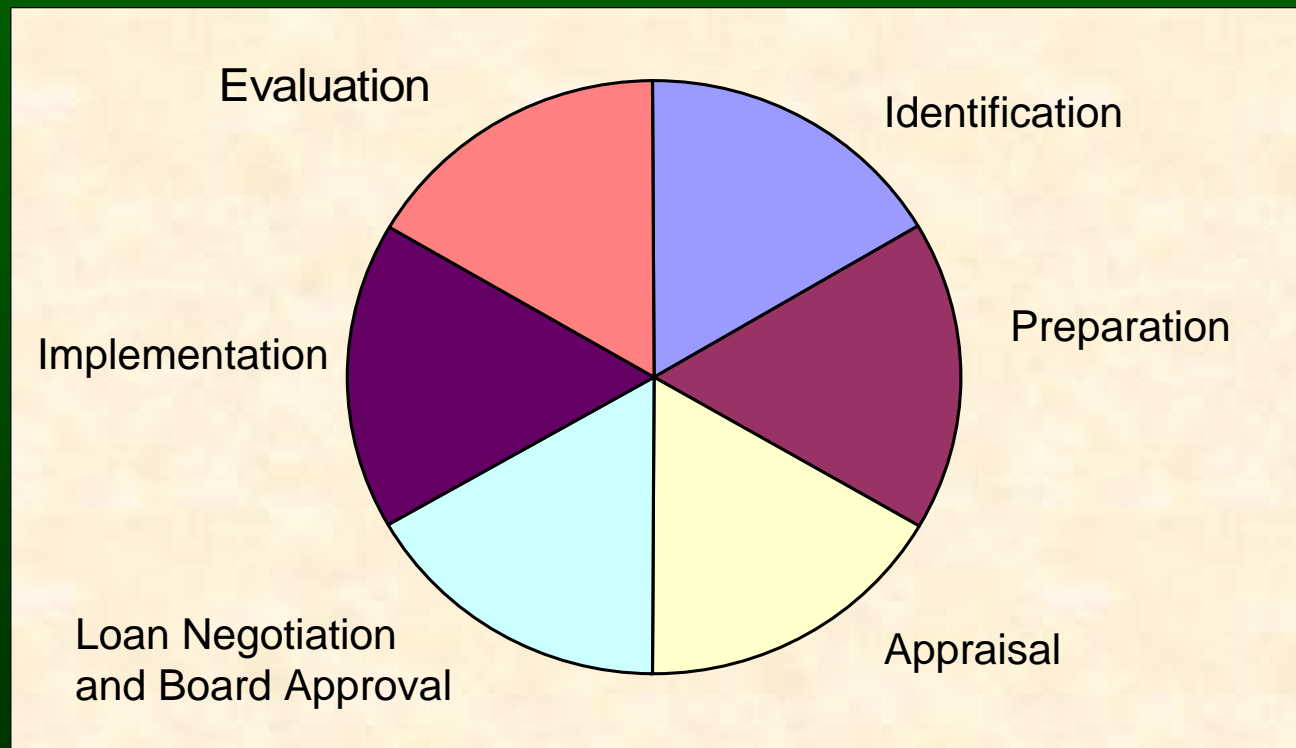


MOF/DOF - OGC Cooperation on Public Sector Loan/Grant Financings

Presentation by
Clare Wee, Assistant General Counsel
Victor You, Senior Counsel

18 September 2006

Six Major Stages of the Public Sector Project/Program Cycle



Stage I: Identification

- Country Strategy and Program (CSP) formulation:
 - OGC inputs, in particular on law and policy reform (LPR)
 - Possible inclusion in the CSP of LPR projects or project components

Stage II: Preparation

- Role as PPTA Counsel
 - Involvement in PPTA design and implementation
 - Review of PPTA consultants' reports, findings, recommendations

Stage III: Project Appraisal

Key responsibilities as Project counsel:

- Mission member
- Draft RRP review
- Fact-finding and/or Appraisal Mission participation
 - Preparation of Aide Memoire/MOU, in particular the assurances
- Drafting the Financing Agreement

Stage IV: Loan/Grant Negotiations (1)

- Prior to negotiations
 - Government authorization for its representatives to negotiate
 - Satisfaction of any conditions to negotiate (typically included in the MOU)

Stage IV: Loan/Grant Negotiations (2)

- During negotiations
 - Minutes of Negotiations (for clarification and interpretation)
 - Public disclosure of the RRP and Financing Agreement following Board approval under the Public Communications Policy
 - Exception for information deemed “confidential” or “sensitive” by the Beneficiary

Stage IV: Loan/Grant Negotiations (3)

- During negotiations
 - Initialing of the negotiated Financing Agreement
 - Attachment to the Minutes of the negotiated Financing Agreement, Procurement Plan, and any other relevant documents
 - Signing of the Minutes by the representatives of the Beneficiary (typically the MOF/DOF official) and ADB

Stage IV: Board Approval

- Prior to Board approval
 - RRP finalization
 - Board circulation of the RRP with the negotiated Financing Agreement
 - Board consideration 21 days after Board circulation
- Board approval

Stage V: Implementation – Signing of the Financing Agreement

- Prior to signing, authorization for the DMC representative to sign
- Signing
- Letter from the Regional Department to the DMC's Governor (often the Minister or Secretary of Finance) regarding signing, delivery of the DMC's execution original, and conditions for effectiveness of the Financing Agreement

Stage V: Implementation – Effectiveness of the Financing Agreement

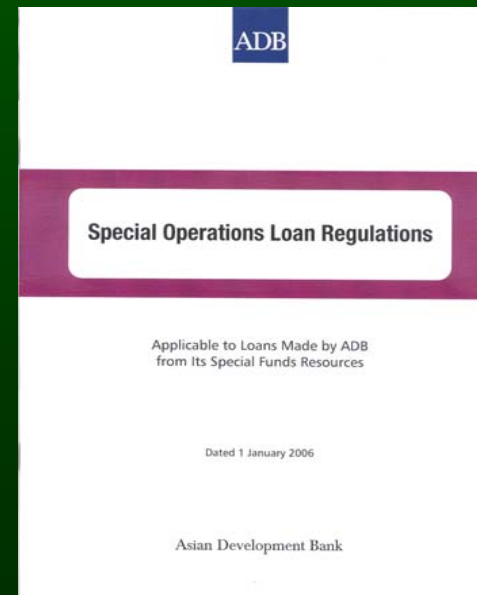
- Satisfaction of (i) conditions under the loan or grant regulations, including submission of legal opinion(s) acceptable to ADB; and (ii) special conditions in Financing Agreement
- Financing Agreement may be declared effective **as soon as** all conditions have been satisfied; the 90-day period commencing from the day after signing of the Financing Agreement is only the period during which effectiveness should be declared

Financing Agreement (1)

Key Provisions

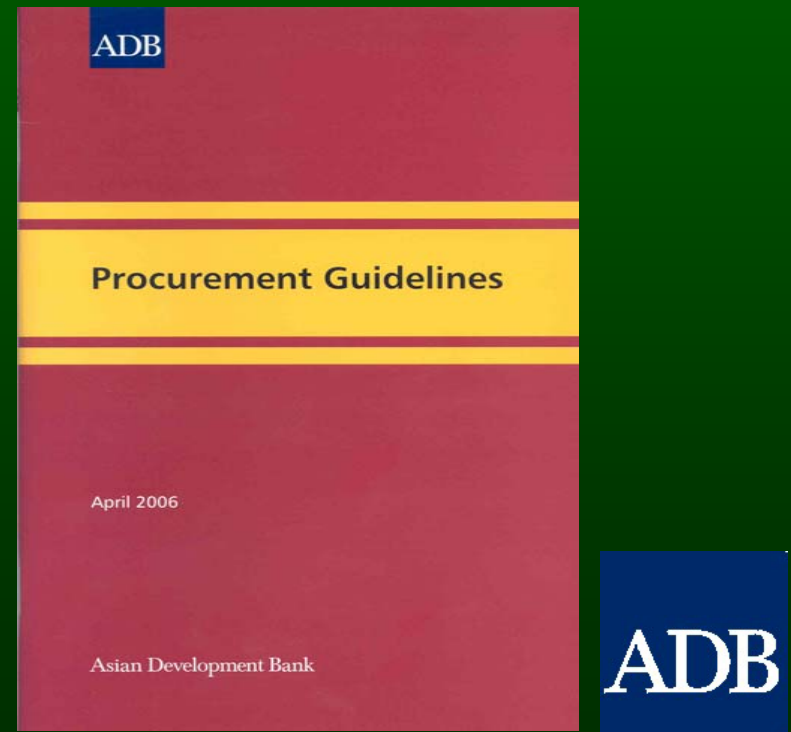
Incorporation by reference of the following:

- Ordinary Operations Loan Regulations (1 July 2001) – Article I
- Special Operations Loan Regulations (1 January 2006) – Article I



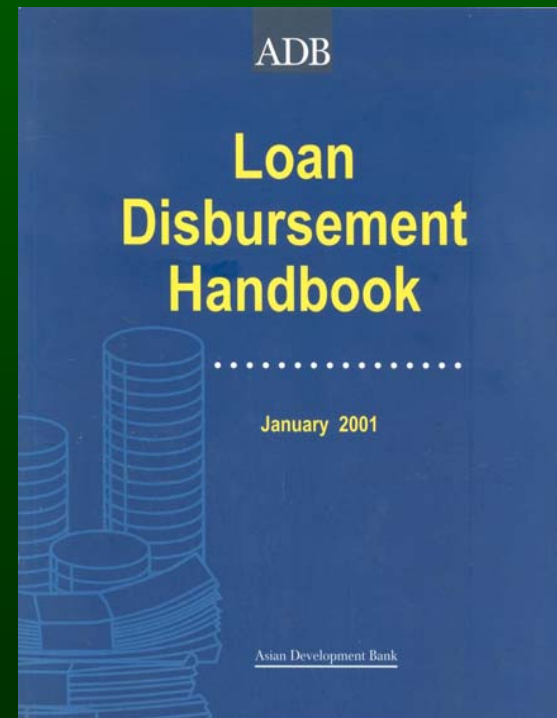
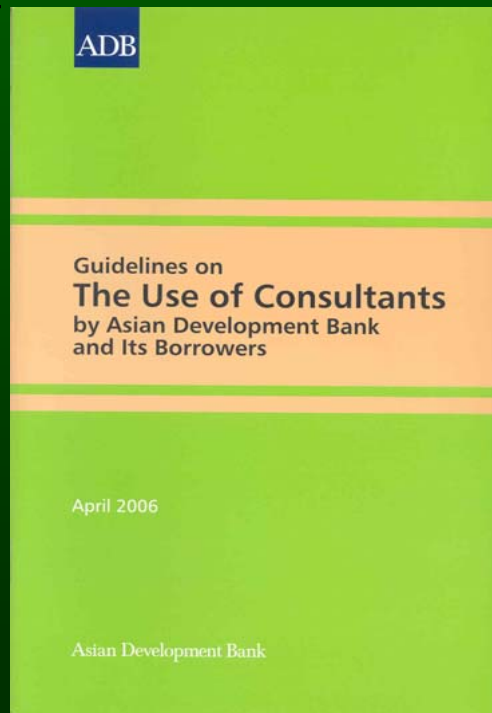
Financing Agreement (2)

- Special Operations Grant Regulations (7 February 2005) – Article I
- Procurement Guidelines (April 2006), as may be amended – Schedule 4



Financing Agreement (3)

- Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers (April 2006), as may be amended – Schedule 4
- Loan Disbursement Handbook (January 2001), as may be amended – Schedule 3



ADB

Financing Agreement (4)

- Key Provisions

- Loan/grant terms, including, as relevant, amount, amortization and grace periods, interest and other charges, and currency – Article II
- Relending/Onlending – Article III

Financing Agreement (5)

- Key Provisions – Audited Accounts
 - Separate Project accounts and annual audits of such accounts and related financial statements “in accordance with appropriate auditing standards consistently applied, by independent auditors ... acceptable to ADB” -- Article IV
 - Submission of audited accounts and financial statements and the auditors’ report within 6 months after the end of each fiscal year – Article IV

Financing Agreement (6)

Key Provisions

- Suspension/Cancellation/Acceleration of Maturity – Article V
 - Ordinary Operations Loan Regulations, Article IX
 - Special Operations Loan Regulations, Article VIII
 - Special Operations Grant Regulations, Article VIII

Financing Agreement (7)

Key Provisions (cont.)

- Effectiveness – Article VI
 - Ordinary Operations Loan Regulations, Article X
 - Special Operations Loan Regulations, Article IX
 - Special Operations Grant Regulations, Article IX

Financing Agreement (8)

Key Provisions (cont.)

- Safeguard Policies, as applicable – Schedule 5
 - Environment Policy (2002)
 - Involuntary Resettlement Policy (1995)
 - Policy on Indigenous Peoples (1998)
- Anticorruption Policy (1998) – Schedule 5

Stage V: Implementation -- Amendments to Financing Agreements

- Amendments to Financing Agreements
 - Through ADB letter to the Beneficiary (typically MOF or DOF) and countersigned by the Beneficiary's representative
 - Public disclosure requirement

Thank you.

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ADB