

# U.S. Country Commercial Guides



## Asian Development Bank

2017

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# **Doing Business in Asian Development Bank (ADB)**

## **Market Overview**

The Asian Development Bank (ADB) was established in December 1966. As a premier multilateral development financial institution, ADB aims for an Asia-Pacific free of poverty. The Bank's Three-point agenda is: (i) inclusive economic growth, (ii) environmentally sustainable growth, and (iii) regional integration. To achieve these goals, ADB provides loans, technical assistance, grants, and equity investments to implement development projects and programs. From 2012 to 2016, ADB has provided an average of about \$25 billion of assistance annually, including co-financing. In 2016, assistance reached \$31.7 billion. The Bank currently has 67 member countries and 42 countries. The U.S. and Japan are the co-largest shareholders of the Bank, each holding fifteen percent of the Bank's shares.

A large percentage of ADB resources are invested into the infrastructure sector, including the water, energy, transport, urban development, and information and communications technology sectors. Other leading sectors for the Bank include environment, regional cooperation and integration, financial sector development, and education. ADB also operates on a lesser scale in health, agriculture, and public sector management.

To maximize the development impact of its assistance, ADB facilitates policy dialogues, provides advisory services, and mobilizes financial resources through co-financing.

In early 2017, ADB passed a new procurement policy. This policy will move the Bank further towards a value-for-money model and may increase U.S. companies' chances for success. The new policy emphasizes a fit for purpose concept that includes the following core principles; Economy, Efficiency, Fairness, Transparency, Quality and Value for Money.

## **Market Challenges**

Project and program development begin long before actual procurement of goods and works take place. U.S. firms face strong competition from firms and individuals from across the bank's member countries. Regional competitors from within the Asia Pacific region may have a competitive advantage due to proximity, lower costs of production, and longstanding supplier relationships. Firms and individuals new to the region may have to partner or first subcontract with more established firms. Thus, U.S. firms must be equipped with marketing strategies appropriate to the ADB market and know ADB procurement rules as well as the borrowing countries' procurement laws and regulations.

As a development bank, ADB lends directly to its member countries under its public sector operations. Under the bank's fast growing private sector financing

operations, ADB also lends directly to, or occasionally makes an equity investment in, a private sector entity or project sponsor.

ADB does hire consultants directly for its technical assistance grants. However, under loan projects, consultants are hired directly by borrowing member countries. Suppliers of equipment, goods and works are contracted directly by borrowing governments through their executing or implementing agencies.

## **Market Opportunities**

ADB-financed projects and programs exist in some 42 developing member countries (DMCs). Of these DMCs, Indonesia (\$5.6 billion), India (\$4.4 billion), China (\$3 billion), Pakistan (\$2.5 billion), Bangladesh (\$2.1 billion), Vietnam (\$1.9 billion), Azerbaijan (\$1.8 billion), Kazakhstan (\$1.7 billion), Philippines (\$1.6 billion), and Myanmar (\$1.59 billion) received the largest share of ADB assistance in 2016.

In 2016, the largest sectors of ADB assistance were: energy (\$10 billion), transport & ICT (\$6 billion), finance (\$5 billion), public sector management (\$4 billion), water supply/sanitation (\$3 billion), education (\$2 billion), agriculture and natural resources (\$1.4 billion), industry and trade (\$1.3 billion), and health (185 million).

ADB established an Office of the Public-Private Partnerships (OPPP) to bolster its engagement in Public-Private Partnerships to meet Asia's growing infrastructure needs.

ADB assistance translates into a varied range of opportunities for consultants, contractors, equipment and goods suppliers, and subcontractors. For instance, individual consultants and consulting entities (firms, universities, NGOs, etc.) are employed for pre-investment and sector studies, detailed design, contract preparation, and project supervision. Suppliers and contractors provide goods and works and services to realize project and program objectives.

Since the ADB's inception in 1966, U.S. firms have won over \$8.8 billion in ADB contracts.<sup>1</sup> For every dollar that the U.S. has contributed to the ADB, U.S. firms have won back \$1.52 in ADB procurement contracts. Japan, the largest donor, has won back \$0.74.

U.S. firms have fared well in securing ADB-funded contracts. Based on ADB's 1966 to 2016 data, U.S. firms ranked:

- **First** in consulting services contracts for technical assistance (TA);
- **Second** for consulting services under ADB loans to borrowing members' governments;

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<sup>1</sup> Based on Origin of Goods and Services, Operations Services and Financial Management Department (OSFMD), March 2017

- **Seventh** for procurement of goods, works and services under loans to borrowing member governments; and
- **Sixth** in total procurement under ADB loans, TA and grants.

During the 2012–2016 timeframe, ADB procured approximately \$3 billion consulting contracts and \$45 billion worth of goods, works and services. U.S. firms secured 1,437 consulting and procurement contracts valued at \$1.2 billion.<sup>2</sup> U.S. consulting services are a strong suit, given the U.S. firms’ technical expertise.

During the same 2012 to 2016 timeframe,<sup>3</sup> U.S. firms ranked:

- **Third** in consulting services contracts for TA;
- **Eighth** for consulting services procurement contracts derived from ADB loans to borrowing members’ governments;
- **Tenth** in total procurement under ADB loans, TA and grants.
- **Twelfth** for procurement of goods, works and services under loans to borrowing member governments; and

Opportunities for firms:

- Procurement under project loans:
  - Procurement under loans to DMCs involves purchase of goods, works and services from suppliers and contractors by borrowing DMCs to implement ADB–financed projects and programs. Latest notices on [project procurements](#).
  - Individual consultants and consulting entities (firms, universities, NGOs, etc.) are engaged for a variety of assignments such as project appraisals, report preparation, and studies. [Latest consulting opportunities](#).
- Institutional Procurement entails purchase of goods, works and services from external suppliers and contractors for ADB’s own institutional use. Visit ADB website [Institutional Procurement section](#) to access the latest notices.
- [Transaction Advisory Services \(TAS\)](#) are fee-based advisory services provided by ADB for the development and implementation of Public–Private Partnership (PPP) projects, including screening and identification of PPP projects, advice on commercial and financial structures, conducting due diligence, preparation of bidding documents and project contracts, marketing to potential investors and lenders, assistance in bid evaluation processes, and facilitation of financial closing.
- [Private Sector Operations and Direct Equity investments \(Non–sovereign\)](#). ADB provides direct financial assistance to private sector projects and

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

occasionally takes direct equity stakes in private companies. While ADB's participation is usually limited, it leverages a large amount of funds from commercial sources to finance these projects.

In 2017, ADB approved a [new procurement framework](#) that will cut down on procurement processing times and improve quality, based on six principles: economy, efficiency, fairness, transparency, quality, and value for money.

## **Market Entry Strategy**

**Project Procurement:** Consultants, contractors and consortia of bidding firms must remember that: Under ADB's technical assistance program, ADB recruits the consultants directly. Under ADB loans to member country governments for a project/program, the responsibility for the implementation of the project, including award and administration of contracts, rests with the borrower.

To be considered for ADB consulting assignments, consultants must register on [ADB's Consultant Management System \(CMS\)](#).

Registered consultants automatically receive recruitment notices and from there, express interest in the projects.

In addition to strong qualifications, competing successfully depends on an ability to do business in the country in which the project will be implemented, and with the borrowing government that conducts the bidding and eventual implementation. Firms with a local presence, whether through a partner or representative, or their own branch office or subsidiary, will be better positioned to compete effectively than firms which do not have such a presence.

Primary suppliers and contractors must be well informed about the intricacies of doing business in the countries where a project will be implemented. These include local language, culture, business practices, tariffs, quotas, restricted or prohibited imports, temporary entry of goods, standards, testing and certification requirements, labeling requirements, pricing, taxes, and others.

Suppliers and subcontractors can work with primary contractors to provide goods and services called for by the project goals. This necessitates marketing products, technology and services to primary contractors, and connecting with consultants who conduct project preparatory work.

An effective marketing strategy begins with an understanding of the [ADB project cycle](#). ADB works with DMC governments to seek inputs from stakeholders from project conception to final approval. This process begins long before actual procurement begins. Firms who take the time to understand stakeholder interests as well as specific project requirements increase their competitiveness. See also Table 1 on page 7. Firms may also see assistance from the U.S. Commercial Service Liaison Office to the [Asian Development Bank](#) (Twitter:

[@csabd](#); Facebook: [U.S. Commercial Service's Liaison Office to Asian Development Bank](#))

The Asian Development Bank website offers a wealth of information to help business clients understand ADB programs and strategies. Here are some key links:

- [Country Planning Documents](#) (ADB and DMC's sectoral thrusts and project investments during a three- to five-year timeframe)
- [Project Information](#) (project details, procurement plans and project officers)
- [Business Opportunities](#) (for the latest procurement and consulting opportunities)
- [ADB Procurement Reforms](#)
- [Procurement Guidelines](#)
- [Guidelines on the Use of Consultants by ADB and Its Borrowers](#)
- [ADB Events](#)
- [ADB Subscription](#)

To build an effective marketing strategy, it is particularly advisable for firms to position themselves in advance of any planned procurement in a given ADB project. The following links provide information on projects as early as three to four years in advance of project approval:

- [Country Partnership Strategy](#)
- [Country Operations Business Plans](#)

Based on the Country Business Plans, The U.S. Commercial Service's Liaison Office for ADB (CS ADB) produces *market briefs* for U.S. clients which summarize ADB approved and planned projects. The market briefs are available by country and by sector and are updated yearly. U.S. firms may request being added to the [mailings](#).

U.S. firms can and should also monitor ADB projects as they go through the project cycle. They should also check current bidding announcements through the CS ADB monthly broadcasts. A request may be sent through the [CS ADB website](#).

Table 1

ADB Project Cycle	Type of Opportunity	Customer	Sources of Information
1. Country Partnership Strategy/ Regional Cooperation Strategy	Staff Consultants (Pre-pipeline, pipeline project identification)	ADB, Borrowing Country	ADB website: Consulting Services Recruitment Notices (CSRN)/CS ADB Market Briefs
2. Preparation	Consultants	Borrowing Country	ADB website: Project Procurement Plan; CSRN
3. Approval	N/A	N/A	Project Data Sheet/ADB Project Reports
4. Implementation	Suppliers (sub or prime)/ Contractors (sub or prime) / Consultants	Borrowing Country	ADB website: Project Procurement Plan; CSRN; ADB Procurement Notices
5. Completion/ Evaluation	Consultants	ADB	CSRN

**ADB Institutional Procurement:** For procurement carried out by ADB for its own internal requirements, vendors can check the following links:

- [Business Opportunities](#)
- [Registration on Supplier Management System](#)
- [Procurement Notices](#)

**ADB Assistance to the Private Sector:** Private sector entities can apply for ADB assistance in the form of equity investments, loans, and guarantees. Priority areas are infrastructure and financial/capital markets. ADB may also lend to other sectors (agriculture, social sectors) to a limited extent. To be eligible for private sector assistance, the proponent must be:

- an entity wholly owned or controlled by one or more private entities;
- an entity, wholly owned or controlled by a sovereign, undertaking commercial activities (sub-sovereign and other public sector entities);
- an entity, partially owned or controlled by one or more private entities and a sovereign, undertaking commercial activities; or
- a local government or other sub-sovereign entity (including municipalities and other forms of local government) that can contract and obtain financing independently from the sovereign;
- Provided, in each case, the proposed recipient is:
  - established and/or operating in a developing member country (DMC), and
  - a legal entity that can sue and be sued.

For details, please read:

- [Project approval process](#)
- [Application](#)
- Procurement: [‘The Guidelines on Procurement under Private Sector Arrangement’](#)

## Political & Economic Environment

The Asian Development Bank (ADB) enjoys an AAA rating in international and domestic capital markets and possesses strong support from its 67 shareholding member countries (22 are donor members; 42 are active borrowers; 3 are in a “graduated” status).

[ADBs’ Members section of their website.](#)

ADB member countries are allocated votes based on their capital subscription at the time of membership and for additional capital subscriptions. As of December 2016, the U.S. and Japan each hold the largest shareholdings of 15.6% of total shares and voting power of 12.7% of total membership.

The *Agreement Establishing the ADB* (the *ADB Charter*) vests all powers in the [Board of Governors](#), the bank’s highest policy-making body composed of Finance Ministers or Secretaries of each member country. The Board of Governors formally meets once a year during the ADB's Annual Meeting. The incumbent U.S. Governor for the ADB is Acting Deputy Secretary Andrew Baukol of the U.S. Department of Treasury.

The Board of Governors elects the 12 country representatives to the [Board of Directors](#) to which it delegates some of its powers. Each member of the Board performs full-time duties at the ADB headquarters in Manila. Board members direct general ADB operations, including ADB policy governance, approving ADB projects, and overseeing the bank’s operating budget. The U.S. Executive Director at ADB is a presidential appointee who carries the rank of ambassador. As the U.S. Executive Director position is currently vacant, the United States is represented by Alternate Executive Director Michael C. Strauss.

The current ADB President, Takehiko Nakao, chairs the Board and heads the management team composed of six Vice-Presidents. The management team supervises the work of ADB's operational, administrative, and knowledge departments.

[The Management Team](#)

[ADB Organizational Chart](#)

As of 31 December 2016, ADB has 3,092 staff of which 147 are American (5% of total ADB staff).

The U.S. government collaborates with ADB primarily through the U.S. Department of Treasury. The U.S. Department of Commerce also has statutory obligation to support businesses at the Bank. Many other U.S. government agencies also work with the Bank.

ADB maintains strategic partnerships with the United Nations, other multilateral development banks (e.g., the World Bank, the Asian Infrastructure Investment Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank), and numerous other international organizations.

To help guide its mission in the coming decades, ADB is preparing a new strategy, Strategy 2030, which will outline the bank's vision and key directions for engagement with its developing member countries.

For specifics on each individual member country's political and economic environment, visit the [State Department Bilateral Fact Sheets website](#).

## **Selling US Products & Services**

### **Using an Agent to Sell U.S. Products and Services**

Member countries' firms may sell their products through agents and representatives for ADB-financed projects in a given country. ADB recognizes the sovereign laws of its borrowing countries. ADB's *Procurement Guidelines* spells out six principles (i.e., economy, efficiency, fairness, transparency, quality, and value for money) that must be adhered to by borrowing countries, including fraud and corruption.

Foreign firms entering agreements with local agents and distributors should consult with a competent host country legal counsel before entering into any agreements to ensure that the agreement is in accordance with host country laws and requirements.

U.S. Commercial Service [Country Commercial Guides](#) give specific details on "Using an Agent to Sell U.S. Products and Services" in most countries.

### **Establishing an Office**

ADB respects its borrowing countries' sovereign laws on establishing in-country offices of a foreign firm and supports its borrowing countries' programs to attract foreign firms to open offices in their countries. Visit the section on "Establishing an Office" of the [Country Commercial Guide](#) for your particular interest.

Foreign firms and consultants may find that ADB-funded projects and programs require Project Management Offices (PMO) situated in the borrowing countries. Firms and consultants must be aware that executing agencies or implementing agencies of the borrowing countries are responsible to establish these PMOs.

### **Franchising**

ADB-funded projects or programs offer minimal opportunities for franchisors.

### **Direct Marketing**

Direct marketing is not an effective way to get contracts derived from ADB-funded projects or programs or from ADB's own institutional procurement. ADB executives are frequently unresponsive to unsolicited proposals and offers.

### **Joint Ventures/Licensing**

Project Procurement: ADB procurement guidelines allow joint ventures (JV) and consortia to participate in ADB-funded projects or programs. In some cases, large ADB projects may require mandatory JV and associations between various firms. Check the [Procurement Guidelines](#) for more information

Large projects and programs encourage and sometimes require associations between consultants in the form of JV or sub-consultancy agreement to conduct

project preparatory technical assistance, advisory technical assistance, capacity development technical assistance, or regional technical assistance. Check the [‘Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers’](#). Interested consultants must register in [ADB’s Consultants Management System \(CMS\)](#) to participate in consulting opportunities.

**ADB’s Institutional Procurement:** ADB frequently procures goods, works and services for its own operations at Manila Headquarters and Resident Mission Offices. Suppliers and service providers interested to offer their products and services to ADB must register at [ADB Supplier Management System](#).

**[ADB’s Assistance to the Private Sector:](#)** ADB invests in private sector-led projects focused on finance and infrastructure and encourages associations between firms to execute projects.

## **Selling to the Government**

**Project Procurement:** Firms interested to bid on ADB-funded projects must remember that the responsibility for the implementation of the project and for the award and administration of contracts rests with the borrower. Prime contractors, therefore, must position themselves to sell to that government; subcontractors must effectively market their products and services to the successful prime contractors long before actual procurement of goods and services.

Each country has its sovereign laws governing foreign firms selling to the government, including whether they can sell direct or must operate through a local entity (agent, representative, etc.). Countries that are signatories to multilateral agreements like the World Trade Organization’s (WTO) Government Procurement Agreement (GPA), and bilateral Trade Promotion Agreements with the United States, must abide by their commitments under those agreements in conducting procurements for ADB-funded projects in the host country.

To learn about selling to the government in countries of interest to your firm see the “Selling to the Government” section of each country’s [Country Commercial Guide](#).

U.S. firms interested in specific ADB-funded projects should consider contacting the U.S. Commercial Service’s Liaison Office to the ADB early in the process and prior to bidding.

**Institutional Procurement:** Although not a government, ADB is an independent development and financial institution with independent procurement policies guided by principles of fairness, transparency, and integrity. Interested suppliers must register at the [Bank’s Supplier Management System](#).

The U.S. Commercial Service Liaison Offices at the Multilateral Development Banks: The Asian Development Bank often co-finances projects with other multilateral development banks (MDBs). The U.S. Commercial Service maintains Liaison Offices in the following MDBs: the Asian Development Bank, the World Bank, the Inter-American Development Bank, the African Development Bank, and the European Bank for Reconstruction and Development. These MDBs provide financial and technical assistance to its member countries in order to implement projects and programs instrumental for economic growth and development. The Commercial Liaison Offices help American businesses learn how to get involved in bank-funded projects, and advocate on behalf of American bidders. Learn more by contacting the [Commercial Liaison Office to the Asian Development Bank](#), the [World Bank](#), the [Inter-American Development Bank](#), the [African Development Bank](#), and the [European Bank for Reconstruction and Development](#).

### **Selling Factors & Techniques**

Generally, contractors, individual and consulting firms with reputable experience in the Asia-Pacific market and involved in Asian Development Bank's priority sectors possess a competitive advantage.

**Project Procurement:** A good grasp on the opportunities embedded in the ADB project cycle is instrumental in targeting sales efforts proficiently.

ADB-funded projects are developed through a long process of stakeholder consultations, commencing from the formation of Country Partnership Strategy and culminating in the development of individual projects. Once a project is designed and approved, ADB lends money to the borrowing member country government, which assumes full responsibility for implementing the project, including awarding of contracts.

Private sector firms looking to develop and/or sponsor projects in ADB developing member countries may explore ADB's private sector window. Infrastructure and finance sector projects are high priorities for ADB consideration. To understand the project approval process, developers and sponsors may visit [ADB's Assistance to the Private Sector](#) for a list of requirements necessary for ADB to assess the project's viability and its suitability for ADB financing.

To initiate rapport with ADB officials, firms are highly encouraged to share trends and developments, as well as approaches to solving emerging problems, instead of communicating unsolicited proposals and sales pitches.

ADB Officials accept such interactions as opportunities for the professional development of their staff members. Therefore, well-conceived fact-finding meetings, Brown Bag Lunches, and other such interactions, free of overt reference to specific products can be useful tools for American firms.

While dynamic in many respects, ADB's environment and culture maintains necessary levels of formality and decorum. Diversity in languages, cultures, and religions in Asia and the Pacific reflect the 67 ADB member countries. Although the English language is commonly used at ADB, it is often not the native language of most interlocutors. Hence, clear, concise, formal communication offers the best opportunity to be understood correctly and to reduce the risk of offense.

ADB's Institutional Procurement: Firms offering their products and services to ADB's own headquarters and resident mission offices are highly encouraged to register in the [Suppliers Management System](#). Institutional procurement methods vary based on the estimated value and/or nature of goods and services being procured. These procurement methods are: (i) open competitive bidding, (ii) limited tendering, (iii) shopping, and (iv) direct or sole source contracting.

ADB's Assistance to Private Sector: Private sector firms in ADB developing member countries looking for funding to implement infrastructure and finance sector projects must understand the project approval process; visit [ADB's Assistance to Private Sector](#) for a complete introduction.

ADB does not have a standard [form of application for ADB assistance](#); however, ADB would need information to appraise project's viability. Firms, therefore, must submit compliant and well-written proposals for very well qualified projects. The standards are high and the project should be well developed and supported by all potential stakeholders.

## **Electronic Commerce**

To facilitate transparency and efficiency in the procurement process, the Asian Development Bank's (ADB) new procurement reforms encourage borrowers to modernize their procurement systems, including electronic procurement (e-procurement). E-procurement will provide a seamless communication with bidders and will be used for advertisements, notices and amendments, distribution of procurement documents and submission of bids or proposals.

Further, suppliers and consultants may find a spread of ICT-related opportunities in transport (intelligent transport systems), urban development (smart cities), water (smart water), climate change (modelling systems and space technology), education (online pedagogical platforms), energy (smart grid solutions), environment (green technology solutions), finance (FinTech), health (E-health platforms), infrastructure (cloud computing), and public sector management (e-governance).

## **Pricing**

As noted in ADB's new procurement policy:

- Pricing for Goods and Works: Bids for goods shall be invited based on Cost, Insurance and Freight (CIF), or Carriage and Insurance Paid To (CIP) for all goods offered from abroad, and Ex Works (EXW) for locally available or manufactured or assembled goods, including those previously imported. In supply and installation contracts, the bidder shall be required to provide a separate quotation for each of the product and service required. *‘In turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance and operation. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.’* For civil works contracts, bidders shall generally be required to quote unit prices or lump sum prices of the works, including all duties, taxes and other levies.
- Price Adjustment: The bidding documents shall clearly indicate whether price adjustments are permitted in the event of inflation or of major cost changes of the contract components, e.g., labor, equipment, and materials. The price changes shall be based on adjustments in the cost of the major components of the contract. *If used, the bidding documents shall provide for the method of adjustment formula or formulae. The comparison of bid prices shall be carried out on the basis of base price only.*
- Pricing for Consulting Services: For time-based consulting contracts, payments are linked to inputs, and bidders will be required to quote prices based on the identified inputs like monthly rates for personnel mentioned in the contract, and other actual expenses. *In other cases, pricing may be agreed on alternative bases such as lump sum fees; agreed remuneration rates for experts typically payable on the basis of the time inputs actually provided in the case of indefinite delivery (price agreement) contracts; percentage payments based on performance triggered on the achievement of selected milestones; or a success fee (normally expressed as a percentage of the sale price of the assets) for retainer or contingency (success) fee contracts.*

ADB’s Institutional procurement: For ADB’s own procurement for its headquarters and resident mission offices, contractors must always remember that bid price shall include, among others, (i) labor costs; (ii) transportation costs; (iii) administrative, supervision and overhead expenses; (iv) profit; and (v) incidental expenses for the provision of the required services. The bid price offered in the Bid Form will be flat rates for full execution of the services in every respect.

The price of goods shall constitute full compensation to the supplier, including all costs, fees and other charges of any kind incurred by the supplier.

## **Sales Service/Customer Support**

The new and ongoing ADB procurement regimes firmly state the need for 'quality' and 'value for money', among others, in the core procurement principles of ADB Procurement Policy. These principles affirm and welcome firms and consultants capable of demonstrating value and quality on various ADB-funded contracts, and will demand effective after-sales services, training, and other forms of support key to long-term success of a development project.

## **Due Diligence**

To participate in an Asian Development Bank-funded contracts as prime or subcontractor, any firm may bid in Joint Venture with domestic firms and/or foreign firms. To mitigate risks of private sector partnership, firms should conduct thorough due diligence and work with competent legal counsel in host countries before entering into any agreement, ensuring that agreements have the force of law in all applicable jurisdictions.

The International Company Profile (ICP) service of the U.S. Commercial Service offers a preliminary step in the due diligence process. To learn about ICP terms and conditions in countries of interest to your firm work with your local U.S. Export Assistance Center to contact the Commercial Service in each country.

(Please note that the ICP is not intended to be a substitute for a comprehensive due diligence review to meet obligations under the Foreign Corrupt Practices Act of 1977)

## Leading Sectors for US Exports and Investments

### Energy

For the period 2017 to 2018, ADB has earmarked about \$12 billion for the energy sector. Regional breakdown follows: Southeast Asia (\$5.2 B); Central West (\$3.3 B); South Asia (\$1.5 B); East Asia (\$1.4 B); Pacific Islands (\$250 M). Projects to be funded are in the areas of energy efficiency and conservation, renewable energy, energy storage, power generation and distribution.

For specific opportunities in the energy sector, review the [market brief for energy sector](#), and review [Country Commercial Guide](#), and check the country of your interest.

### Transportation

According to Asian Development Bank (ADB), Asia and the Pacific will need \$2.5 trillion investment in the transport sector for the period 2010 through 2020. In support, ADB has provided the [Sustainable Transport Initiative](#) which focuses on safe, accessible, affordable, environment-friendly transport systems in the region. Additionally, ADB intends to allocate more than \$14 billion for the period 2017 through 2019, mostly in South Asia (i.e., Bangladesh, Nepal, Sri Lanka, and India); Central West Asia (i.e., Afghanistan, Georgia, Kyrgyz, Tajikistan, Kazakhstan, Pakistan, Azerbaijan, Turkmenistan, and Uzbekistan); and Southeast Asia (i.e., Cambodia, Laos, Indonesia, Myanmar, Thailand, Philippines, and Vietnam). Mongolia, China, and Pacific Islands countries will also receive ADB assistance. Contractors will usually find opportunities in the construction of roads, highways, bridges, and railways, while consultants will find business in project management, engineering, and planning. Opportunities also exist in urban smart transport systems and intelligent transport systems.

For specific opportunities in the transportation sector, [review the market brief for transport sector](#), visit [Country Commercial Guides](#), and check the country of your interest.

### Water Resources and Urban Development

Asian Development Bank's (ADB) [Urban Operational Plan 2012–2020](#) outlines ADB's direction and approach for its urban sector operations, while envisioning [livable cities spread across Asia and the Pacific](#). ADB's assistance in urban development predominantly encompasses the water supply and sanitation sectors.

Meanwhile, [ADB's water policy](#) encourages a participatory approach to conserve and protect water resources in Asia and the Pacific. Supporting this policy, [ADB's Water Operational Plan, 2011 – 2020](#) provides guidance to ADB's regional departments in defining their respective in-country water operations.

Furthermore, [ADB's Asian Water Development Outlook 2016](#) shows positive trends in strengthening water security across Asia and the Pacific and discusses challenges in the water sector. To address this challenge, ADB will invest more than \$10 billion in water and urban infrastructure and services from 2017 through 2018. These investments will flow into projects and programs involving water supply and sanitation, irrigation and drainage, wastewater management, environmental improvement, integrated water resources management promotion, flood management, watershed and wetland conservation, urban information systems, urban mobility, and smart cities.

For 2017 to 2018, ADB investments in water and urban development sectors will be in Southeast Asia (i.e., Cambodia, Myanmar, Vietnam, Laos, Philippines, and Indonesia); East Asia (i.e., Mongolia and China); South Asia (i.e., Bangladesh, Bhutan, India, Nepal, Sri Lanka, and Maldives); the Pacific Islands (i.e., Solomon Islands, Kiribati, Papua New Guinea, Palau, Timor-Leste, Tonga, Marshal Islands, Vanuatu, and Micronesia); and Central and West Asia (i.e., Azerbaijan, Georgia, Kazakhstan, Pakistan, Tajikistan, and Uzbekistan).

Consultants will find consulting contracts in project preparatory work, advisory and capacity building, and project implementation. Contractors may find business opportunities in the supply of water and waste management, and civil works.

For specific opportunities in the water sector and urban development sector, review the [market brief for environment and urban development sectors](#), and visit [Country Commercial Guide](#), and explore the country of your interest.

## **Public Management and Finance**

ADB's [Second Governance and Anti-Corruption Action Plan](#) outlines specific actions to improve governance and fight corruption in ADB operations. To support these initiatives, ADB provided \$3.9 billion in 2016 and will allocate around \$7 billion from 2017 through 2019. Opportunities exist mostly in consulting services for capacity building and advisory technical assistance in all ADB regions.

For more discussion on specific opportunities in public management and finance, review the [market brief for industry and finance sectors](#), and visit [Country Commercial Guide](#), and explore the country of your interest.

## **Education**

Asian Development Bank's (ADB) [Education by 2020: A Sector Operations Plan](#) states that ADB will strengthen knowledge sharing and grow partnerships in the education sector. To this end, ADB invested more than \$3 billion from 2012 to 2016 and will invest an estimated \$4 billion for the period 2017 through 2019. Consultants and contractors will find opportunities in training and skills

development to be implemented in Kyrgyz Republic, Bangladesh, India, Sri Lanka, Cambodia, Bhutan, Indonesia, Vietnam, Tajikistan, Nepal, Laos, and Myanmar.

For more discussion on specific opportunities in the education sector, review the [market brief for education sector](#), and visit [Country Commercial Guide](#), and explore the country of your interest.

## **Health and social protection**

Asian Development Bank's (ADB) [Operation Plan for Health, 2015-2020](#) aims to support Universal Health Coverage (UHC) through health infrastructure, governance, and financing. *UHC means that all people and communities can use the promotive, preventive, curative, rehabilitative and palliative health services they need, of sufficient quality to be effective, while also ensuring that the use of these services does not expose the user to financial hardship* (World Health Organization).

In 2016, the health sector received \$185 million of ADB Assistance. For the period 2017 to 2019, ADB will invest around \$2.3 billion to implement health and social protection projects and programs in Uzbekistan, Kazakhstan, Laos, Vietnam, China, Mongolia, Papua New Guinea, Tonga, India, Bangladesh, Bhutan, and Sri Lanka. Business opportunities exist in projects and programs involving hospital infrastructure with strong ICT systems, sentinel laboratories for early warning on contagious diseases, health information management, social and elderly care, as well as health information exchanges.

For more discussion on specific opportunities in health sector, review the [market brief for health sector](#), and visit [Country Commercial Guide](#), and explore the country of your interest.

## **Agriculture and Natural Resources**

Asian Development Bank's (ADB) [Operational Plan for Agriculture and Natural Resources, 2015-2020](#) prioritizes food security through: (i) productivity and reduction of pre- and postharvest losses of food crops; (ii) market connectivity and value chain linkages; (iii) food safety, quality, and nutrition; and (iv) management of natural resources. To implement these, ADB annually provides \$2 billion for agriculture, and it has earmarked more than \$8 billion for the period 2017 through 2019 in Mongolia, China, Bangladesh, Nepal, Bhutan, India, Sri Lanka, Afghanistan, Kazakhstan, Pakistan, Tajikistan, Kyrgyz, Uzbekistan, Cambodia, Indonesia, Laos, Myanmar, Vietnam, and Philippines.

Opportunities for consultants and contractors include supply of high-level technology, sharing of smart agricultural practices, agricultural value-chain development, and agri-logistics and fresh food wholesale markets.

For specific opportunities in agriculture and natural resources sector, review the [market brief for agriculture and natural resources sector](#), visit [Country Commercial Guide](#), and explore the country of your interest.

# Trade Regulations, Customs, & Standards

## Web Resources

[Asian Development Bank website](#)

[Trade in the Greater Mekong Sub-region](#) (Countries: Cambodia, the People's Republic of China [Yunnan Province and Guangxi Zhuang Autonomous Region], Lao People's Democratic Republic, Myanmar, Thailand, and Viet Nam):

[Trade Facilitation Program in Central Asia Regional Economic Cooperation Program](#) [CAREC; countries: Afghanistan, Azerbaijan, People's Republic of China, Georgia, Kazakhstan, Kyrgyz Republic, Mongolia, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan; Multilateral institution partners: Asian Development Bank [Secretariat], European Bank for Reconstruction and Development, International Monetary Fund, Islamic Development Bank, United Nations Development Program, and World Bank.)

[Indonesia-Malaysia-Thailand Growth Triangle](#)

Information on trade regulations, customs and standards needed to participate in Asian Development Bank-funded projects is specific to the countries where the projects are implemented, not to the ADB itself. Hence, many segments of a traditional Country Commercial Guide are not included here. To learn about these aspects of doing business in countries of interest to your firm see the “Trade Regulations, Customs and Standards” section of each country’s [Country Commercial Guide](#) and U.S. Department of State [Background Notes](#).

# Investment Climate Statement

## Openness to and Restriction on Foreign Investment

[The Asian Development Bank \(ADB\) reported](#) in 2015 that Asia and the Pacific continues to be the world's top destination for foreign direct investment (FDI), which reached \$527 billion or nearly 30% of the world total. ADB further states that trade and FDI are key drivers of growth and prosperity in the region. Although supportive of its borrowing countries in attracting, facilitating, and retaining FDI, and in maximizing positive FDI spillover effects on the local economy, ADB is not prescriptive with regard to borrowing country policies.

Each country sets its own laws on FDI, and each ADB-funded project is structured in accordance with those laws. Some developing member countries limit foreign ownership of key aspects of the project, or reject foreign ownership if the investment is deemed inconsistent with national security, economic development, or other national interest objectives. To learn about the FDI laws in countries of interest to your firm see the “Openness to and Restrictions upon Foreign Direct Investment” section of each country’s [Country Commercial Guide](#).

## Conversion and Transfer Policies

ADB Project Procurement: For Asian Development Bank (ADB)-funded goods, works and services, payment of the contract price is generally settled in the currency or currencies expressed in the bid of the successful bidder.

*When the bid price is required to be stated in the local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments shall be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain. (Procurement Guidelines, April 2015)*

For price comparison, bid prices shall be converted to a single currency selected by the borrower (local currency or fully convertible foreign currency) and stated in the bidding documents. *The borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (e.g., central bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity. (Procurement Guidelines, April 2015)*

For consulting services, Request for Proposals shall clearly state that firms may express the price for their services, in any fully convertible currency. *If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided the proposal includes no more than three foreign currencies. The borrower may require consultants to state the portion of the price representing costs in*

*the currency of the borrower's country. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal. (Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers, March 2013)*

To learn the nuances of the borrowing countries' restrictions and policies on conversion and transfer policies, see the "Conversion and Transfer Policies" sections of each country's [Country Commercial Guide](#). Know more about options in insuring against currency inconvertibility review the products offered by the U.S. Government's [Overseas Private Investment Corporation](#).

**ADB Institutional Procurement:** The Asian Development Bank (ADB) pays its consultants as well as suppliers of goods, works and services for its own headquarters and resident mission offices in freely convertible currencies stated in the contract.

**ADB Assistance to Private Sector:** Asian Development Bank loans and equity investment for private sector firms are usually in U.S. Dollar or in freely convertible currencies as provided in the contract.

### **Expropriation and Compensation**

The Asian Development Bank (ADB) honors and is not prescriptive on the expropriation and compensation laws of its borrowing countries. Nevertheless, ADB notes the deleterious effects of abusive expropriation on economic development. To learn about policies regarding expropriation in countries of interest to your firm see the "Expropriation and Compensation" section of each country's [Country Commercial Guide](#).

### **Dispute Settlement**

**ADB Project Procurement:** The Asian Development Bank (ADB) strongly suggests its borrowers to include in its contracts a clause for dispute settlement and recommends international commercial arbitration over other methods of dispute settlements. In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a faster dispute settlement.

ADB shall not be named an arbitrator or be asked to name an arbitrator.

To learn about dispute settlement mechanisms in countries of interest to your firm see the "Dispute Settlement" section of each country's [Country Commercial Guide](#).

**ADB Institutional Procurement:** Within 30 days of dispute notice, the user unit in consultation with ADB's Office of Administrative Services (OAS) - Contracts Administration Unit, and the supplier's or contractor's personnel directly involved should first attempt in good faith to settle the dispute among

themselves before escalating it to the Director, Institutional Services Division of OAS (OASIS) and Principal Director), OAS and their respective counterparts.

After the initial 30-day-period, the Parties shall consider referring unresolved disputes to mediation, unless ADB considers the dispute not suitable for mediation or the supplier/contractor does not concur. The Parties shall appoint a neutral mediator from a reputable association of accredited mediators or their own short-list of dispute resolution professionals. The mediator shall formulate a simplified procedure for mediation and complete the mediation within 15 days from his appointment.

Should dispute resolutions under the preceding paragraphs fail, either party shall begin arbitration by sending notice to the other party stating in detail the issue to be resolved and that the dispute shall be referred to arbitration. [The International Chamber of Commerce's Rules of Arbitration](#) in force upon commencement of arbitration shall apply. Governed by Philippine law, the arbitration shall be in the English language, and shall take place in Manila. Each party shall pay its own costs.

**ADB Assistance to Private Sector:** Private companies are responsible for managing their ADB-assisted projects; hence, dispute settlement among private firms, including prime and subcontractors involved in the project, are governed by the sovereign laws of the country where the project is implemented.

Allegations of fraud and corruption should be reported to Asian Development Bank's Office of [Anticorruption and Integrity \(OAI\)](#). The OAI ensures that funds entrusted to ADB are not misused.

### **Protection of Property Rights**

The Asian Development Bank (ADB) advises its developing member countries of the significance of solid protections of property rights, and of the harmful effects that poor protections have on development. Nevertheless, ADB is not prescriptive with regard to borrowing countries policies on protection of property rights. To learn about policies regarding protection of property rights in countries of interest to your firm see the "Protection of Property Rights" section of each country's [Country Commercial Guide](#).

### **Transparency of the Regulatory System**

The Asian Development Bank (ADB) advises its developing member countries of the importance of transparent regulatory systems, and of the deleterious effects a lack of transparency has on development. However, ADB is not prescriptive with regard to borrowing country regulatory systems. To learn about the transparency of regulatory systems in countries of interest to your firm see the "Transparency of the Regulatory System" section of each country's [Country Commercial Guide](#).

## **Efficient Capital Markets and Portfolio Investment**

The Asian Development Bank (ADB) enjoys an AAA credit rating with a strong capital position and conservative capital management practices. An AAA rating permits ADB to borrow funds at lowest rates available in the international capital markets. Sovereign borrowers have benefited from the lowest possible pricing on long-term loans funded through these borrowings because of ADB's cost pass-through pricing policy. To retain this rating, ADB maintains an adequate amount of capital and ensures its capital is protected from market fluctuations in interest rates and foreign exchange values.

The Ordinary Capital Resources (OCR) is the largest part of ADB's capital base, usually used to provide loan assistance for development projects. OCR includes the authorized and subscribed capital stock (shareholder capital, both paid-in and callable); resources raised through borrowings; funds received in repayment of loans or guarantees and from divestment of equity investments; income derived from loans, guarantees, and equity investments; and other funds or income received by ADB that are not part of the Special Funds resources.

In 2016, authorized and subscribed capital stock reached \$143 billion and \$142 billion, respectively.

Risk management at ADB is fostered on three pillars: governance, policies, and processes. Governance begins with the Board of Directors, playing a key role in reviewing and approving risk policies that set ADB's risk tolerance levels. ADB also has an independent risk management group to independently quantify and monitor risk.

To learn about the functioning of capital markets in countries of interest to your firm see the "Efficient Capital Markets and Portfolio Investment" section of each country's [Country Commercial Guide](#).

## **Competition from State-Owned Enterprises**

In 2014, the Asian Development Bank (ADB) reported that engaging the private sector through public-private partnerships and privatization improves the performance and service delivery of [state-owned enterprises \(SOEs\)](#).

SOEs generally provide utilities, infrastructure, and banking services, and absorb a substantial amount of public investment. ADB works with developing member governments so that SOEs provide better services and generate a positive return on government investment.

To learn about policies regarding competition from SOEs in countries of interest to your firm see the "Competition from State-Owned Enterprises" section of each country's Country Commercial Guide.

ADB Project Procurement: The new ADB procurement policy has no explicit prohibition on SOE participation to bid on ADB-funded contracts and consulting services.

ADB Institutional Procurement: SOEs are not prohibited from registering as a supplier to the [Supplier Management System](#) and to compete for contracts in ADB's own institutional procurement.

ADB Assistance to Private Sector: The Private Sector Operations is not precluded from entering into financial arrangements with SOEs.

## **Political Violence**

According to Asian Development Bank (ADB), many poor people in Asia and Pacific live in countries with weak governance, ineffective public administration/rule of law, and civil unrest; these countries have been denoted to as [countries in fragile and conflict-affected situations \(FCAS\)](#).

Countries in FCAS have bleak access to loans/capitalization. To address this, ADB offers political risk guarantees to lenders of most forms of debt. These comprise commercial bank loans, loans made by shareholders, loans guaranteed by shareholders or third parties, capital market debt instruments, bonds, financial leases, letters of credit, promissory notes, and bills of exchange.

This political risk guarantees protect a lender against a borrower's inability to service guaranteed debt as a result of physical damage to a project's assets, or an interruption in a borrower's business activities, as a result of war, revolution, insurrection, terrorism, or other politically motivated acts.

ADB's guarantee product is usually in financial services and capital markets (e.g., banking, leasing, insurance, and funds); and infrastructure (e.g., power, transportation, water supply and waste treatment, and telecommunications). However, ADB may consider other sectors on a case-by-case basis.

To know more about the presence or level of political violence in countries of interest to your firm check the "Political Violence" section of each country's Country Commercial Guide.

For up-to-date information on political and security conditions in countries of interest to your firm, please refer to the [State Department](#) Consular Bureau's Travel Warning and Country Specific Information. U.S. Citizens traveling overseas are encouraged to register with the Smart Traveler Enrollment Program (STEP) so that U.S. Embassies can contact you and your loved ones and provide assistance in an emergency.

U.S. businesses and organizations overseas are also welcome to inquire at the Embassy about joining the Overseas Security Advisory Committee (OSAC).

## Corruption

The Asian Development Bank (ADB) has a zero-tolerance policy toward corruption. ADB's Office of Anticorruption and Integrity (OAI) says *fighting corruption and fraud is crucial to achieving the goal of reducing poverty in the Asia and the Pacific region*. True to this, OAI ensures that finite development funds entrusted to ADB are not mishandled, and is officially designated point of contact for allegations of fraud or corruption pertaining to ADB-related activities or staff members.

OAI conducts project procurement-related reviews, advises on integrity due diligence, and advances awareness of ADB's anticorruption policy.

Further, ADB trains, educates, and disseminates information to raise awareness on its Anticorruption Policy and to enhance the skills of staff, civil society, and the private sector in detecting and preventing fraud and corruption in ADB projects.

To report fraud or corruption to ADB, visit [Report Fraud or Corruption](#) and [Whistleblower and Witness Protection](#) of ADB's website.

In addition to ADB's anti-corruption efforts, the U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, by requiring them to honor their obligations under relevant international conventions. A U.S. firm that believes a competitor engaging in corrupt practices should alert appropriate U.S. agencies, as noted below.

**U.S. Foreign Corrupt Practices Act:** In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which generally makes it unlawful for U.S. persons and businesses (domestic concerns), and U.S. and foreign public companies listed on stock exchanges in the United States or which must file periodic reports with the Securities and Exchange Commission (issuers), to offer, promise or make a corrupt payment or anything of value to foreign officials to obtain or retain business. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. Moreover, the FCPA contains accounting provisions applicable to public companies. These accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. For more information and guidance on the statute, the Department of Justice and the Securities and Exchange Commission published '[A Resource Guide to the U.S. Foreign Corrupt Practices Act](#)'. For more detailed information on the FCPA generally, see the [Department of Justice FCPA website](#).

**Guidance on the U.S. FCPA:** The Department of Justice's (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals and issuers to request a statement

of the Justice Department's present enforcement intentions under the anti-bribery provisions of the FCPA regarding actual, prospective business conduct. The details of the opinion procedure are available on DOJ's Fraud Section Website at [www.justice.gov/criminal/fraud/fcpa](http://www.justice.gov/criminal/fraud/fcpa) and general information is contained in Chapter 9 of the publication A Resource Guide to the [U.S. Foreign Corrupt Practices Act](#).

Although the Department of Commerce has no enforcement role with respect to the FCPA, the department supplies general information to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information, see the website of the [Office of the General Counsel, U.S. Department of Commerce](#).

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

Other Instruments: U.S. Government policy promotes good governance, including host countries' implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, U.S. has been pro-active in expanding international framework to fight corruption. Several examples are the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions negotiated under the auspices of the OECD (Anti-bribery Convention), the United Nations Convention against Corruption (UN Convention), the Inter-American Convention against Corruption (OAS Convention), the Council of Europe Criminal and Civil Law Conventions, and a growing list of U.S. free trade agreements.

Organisation for Economic Co-operation and Development (OECD) [Anti-bribery Convention](#): The Anti-bribery Convention entered into force in February 1999. As of January 2016, there are 41 parties to the Convention, including the United States. China and India are not parties, although the U.S. Government strongly supports their eventual accession to the Anti-bribery Convention. The Anti-bribery Convention obligates the Parties to criminalize bribery of foreign public officials in international business transactions, which the United States has done under U.S. FCPA.

UN Convention: [The UN Convention](#), composed of 178 parties, requires countries to establish criminal and other offences to cover a wide range of acts of corruption, from basic forms of corruption such as bribery and solicitation, embezzlement, and trading in influence to the concealment and laundering of the

proceeds of corruption. The Convention contains transnational business bribery provisions.

OAS Convention: The 34-member States of the Organization of American States (OAS) adopted the [Inter-American Convention against Corruption](#), i.e., OAS Convention. This OAS Convention establishes a set of preventive measures against corruption, provides for the criminalization of certain acts of corruption (transnational bribery and illicit enrichment), and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation, among other things.

Council of Europe Criminal Law and Civil Law Conventions on Corruption: Many European countries are parties to either the Council of Europe (CoE) Criminal Law Convention on Corruption, the Civil Law Convention on Corruption, or both. The Criminal Law Convention requires criminalization of a wide range of national and transnational conduct, including bribery, money-laundering, and accounting offenses. It also incorporates provisions on liability of legal persons and witness protection. The Civil Law Convention includes provisions on whistleblower protection, compensation for damage relating to corrupt acts, and nullification of a contract providing for or influenced by corruption, among other things. To monitor compliance with these and related anti-corruption standards, CoE also established the [Group of States against Corruption \(GRECO\)](#) in 1999. Currently, GRECO comprises 49 member countries, including United States (website; [Criminal Law Convention on Corruption ETS No. 173](#); [Criminal Law Convention on Corruption ETS No. 174](#))

Free Trade Agreements: U.S. Government policy includes anticorruption provisions in free trade agreements (FTAs). The most recent FTAs negotiated require trading partners to criminalize “active bribery” of public officials (offering bribes to any public official must be made a criminal offense, both domestically and trans-nationally) as well as domestic “passive bribery” (solicitation of a bribe by a domestic official). All U.S. FTAs may be found at the [U.S. Trade Representative website](#).

Local Laws: U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce (DOC) cannot provide legal advice on local laws, the DOC’s U.S. and Foreign Commercial Service can provide assistance in navigating the host country’s legal system and obtaining a list of local legal counsel.

Assistance for U.S. Businesses: The U.S. DOC’s U.S. and Foreign Commercial Service (U.S. FCS) can provide services that may assist U.S. companies in conducting their due diligence as part of the company’s overarching compliance program when choosing business partners or agents overseas. The U.S. and

Foreign Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its [website](#).

The United States provides commercial advocacy on behalf of exporters of U.S. goods and services bidding on public sector contracts with foreign governments and government agencies. An applicant for advocacy must complete a questionnaire concerning its background, the relevant contract, and the requested U.S. Government assistance. The applicant must also certify that it is in compliance with applicable U.S. law, that it and its affiliates have not and will not engage in bribery of foreign public officials in connection with the foreign project, and that it and its affiliates maintain and enforce a policy that prohibits bribery of foreign public officials. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel, and reported through the Department of Commerce Trade Compliance Center [“Report a Trade Barrier” website](#). Potential violations of the FCPA can be reported to the Department of Justice via email to [FCPA.Fraud@usdoj.gov](mailto:FCPA.Fraud@usdoj.gov).

#### Anti-Corruption Resources

- The U.S. Securities and Exchange Commission [FCPA Unit](#): provides general information about the FCPA, links to all SEC enforcement actions involving the FCPA, and contains other useful information.
- General information about anticorruption and transparency initiatives, relevant conventions and the FCPA is available at the Department of Commerce Office of the General Counsel [website](#).
- [The Trade Compliance Center’s](#) contains an online form through which U.S. companies can report allegations of foreign bribery by foreign competitors in international business transactions
- The U.S. State Department’s annual [Human Rights Report](#): provides additional country information related to corruption.
- [The Asia Pacific Economic Cooperation \(APEC\)](#) has developed anticorruption and ethics resources and APEC [Anti-Corruption and Transparency Working Group](#).
- Transparency International’s (TI) annual [Corruption Perceptions Index \(CPI\)](#) measures the perceived level of public-sector corruption in around 180 countries and territories worldwide; the TI’s annual [Global Corruption Report](#) provides a systematic evaluation of the state of corruption, an in-depth analysis of a focal theme, a series of country reports, and an overview of the latest research findings on anti-corruption diagnostics and tools.

•[The World Economic Forum’s Global Enabling Trade Report](#) is published every two years, assesses the quality of institutions, policies and services facilitating the free flow of goods over borders and to their destinations

•[Global Integrity’s annual Report](#) typically assesses anti-corruption and good governance mechanisms in various countries.

## **Bilateral Investment Agreements**

Bilateral and multilateral trade and investment agreements, as well as taxation treaties, are all observed in the conduct of Asian Development Bank-funded operations. In countries where the United States has Trade Promotion/Free Trade Agreements, American firms bidding on contract may enjoy competitive advantages over firms from countries that have no such agreements. On the other hand, in countries with which the United States does not have Trade Promotion/Free Trade Agreements, American firms bidding on projects may be at a competitive disadvantage against firms from countries that are signatories to such agreements.

To learn about the status of bilateral trade and investment agreements in countries of interest to your firm see the “Bilateral Investment Agreements” section of each country’s [Country Commercial Guide](#).

## **OPIC and Other Investment Insurance Programs**

The U.S. Government offers loans and guarantees, political risk insurance and support for private equity funds through the [Overseas Private Investment Corporation \(OPIC\)](#), which help American firms confidently engage business in over 150 countries, including some of the world’s most challenging commercial environments.

To learn about OPIC and other investment insurance programs in countries of interest to your firm see the “OPIC and Investment Insurance Programs” section of each country’s [Country Commercial Guide](#).

Meanwhile, the Asian Development Bank (ADB) provides guarantees for eligible projects, which enable financing partners to transfer certain risks to ADB that they cannot easily absorb or manage on their own.

ADB’s guarantees, either comprehensive or limited coverage, support infrastructure projects (e.g., power, transportation, water supply and waste treatment, and telecommunications), financial institutions, capital market (e.g., banking, leasing, insurance, and funds) investors and trade financiers, and include a wide variety of debt instruments.

Guarantees can be afforded when ADB has a direct or indirect participation in a project or related sector, through a loan, equity investment or technical assistance.

ADB's two primary guarantee products are *political risk guarantee* and a *credit*, which are designed to mitigate risk exposure of financing partners.

ADB's political risk guarantee (PRG) intends to facilitate private sector development, either through public or private sector projects. This guarantee suits when commercial lenders are prepared to accept commercial (or credit) risks of a project, but not the political risks.

These risks include transfer restriction, expropriation, political violence, contract disputes, and non-honoring of a sovereign obligation or guarantee.

ADB provides partial credit guarantees (PCG) to lenders of most forms of debt, including commercial bank loans, loans made by shareholders, loans guaranteed by shareholders or third parties, capital market debt instruments, bonds, financial leases, letters of credit, promissory notes, and bills of exchange.

PRG covers nonpayment by the borrower or issuer on the guaranteed portion of the principal and interest due.

## **Labor**

The Asian Development Bank (ADB) diligently incorporates social safeguards, including labor considerations, in its operational policies. U.S. firms participating in any ADB-funded operation must be aware of ADB's safeguard policies and learn about the labor laws and conditions in countries where ADB projects are to be implemented. In addition, consulting with competent lawyers with local labor expertise is strongly advised. For more information, check the "Labor" section of each country's [Country Commercial Guide](#).

ADB's labor market programs support the development of job-relevant skills and workers' retraining, particularly the low-skilled and marginalized. They also facilitate employment. Key sectors that may serve as entry points for promoting and expanding labor market programs include education and infrastructure (energy, information and communication technology, water, and transport).

The labor market programs also include *active labor market policies and programs*, e.g., pre-employment training, skills development and upgrading, public works, matching supply and demand for labor, and *passive labor market policies and programs*, e.g., compliance with core labor standards, job security provisions, and improving working conditions.

Additionally, ADB, with its ADB's [Policy on Gender and Development](#), promotes gender equity; thus, gender considerations such as gender sensitivity, gender analysis, and gender planning are now mainstreamed into ADB operations and activities.

## **Right to Private Ownership and Establishment**

The Asian Development Bank (ADB) recognizes the importance of maintaining strong rights to private ownership and establishment, but is not prescriptive with regard to borrowing countries' policies on rights to private ownership.

To learn about *Limits on Foreign Control and Right to Private Ownership and Establishment* in countries of interest to your firm see the *Limits on Foreign Control and Right to Private Ownership and Establishment* section of each country's [Country Commercial Guide](#).

## **Responsible Business Conduct**

The Asian Development Bank (ADB) [supports inclusive business](#), which is integrated in ADB's Strategy 2020. According to ADB, inclusive businesses differ from social enterprises and corporate social responsibility. These are private sector investments focused on low income markets, which aim to make reasonable profits while creating tangible development impact through sustainable jobs and better income opportunities and services for the poor.

Since ADB started its inclusive business initiative, the number of its investments in inclusive companies has increased. In 2013, five out of the 16 approved private sector projects qualified as inclusive businesses.

Apart from inclusive business initiative, ADB is allocating funds to strengthen [Corporate Social Responsibility in Pakistan](#).

Whenever warranted, and particularly in private sector projects, ADB mandates corporate social responsibility action plans from project sponsors. Examples are a hydropower project in Pakistan where livelihood restoration and CSR formed part of the project design. In the Philippine Visayas Base Load Power project, the project sponsor provided ADB a full CSR report as part of the bank's due diligence.

Visit the 'Corporate Social Responsibility' section of each country's [Country Commercial Guide](#) to learn more.

# Trade & Project Financing

## Methods of Payment

ADB Project Procurement: The Asian Development Bank (ADB) observes its [Loan Disbursement Handbook](#) and international commercial practices for payment methods.

Payment methods, including bank transfer, letter of credit and certified check, and the timing of payment, are normally specified in the contract between the primary contractor and the borrowing government. Subsequently, primary contractors settle their payment obligations to their subcontractors and suppliers according to terms agreed upon by the parties involved. To learn about conditions in countries of interest to your firm see the “Methods of Payment” section of each country’s [Country Commercial Guide](#).

ADB-funded contracts for supply of goods are generally paid in full upon delivery and inspection except for installation and commissioning contracts, where a portion of the payment may be made after the supplier has complied with all its contract obligations. Utilizing letters of credit is encouraged to assure prompt payment to the supplier. In major contracts for equipment and plant, provision is made for suitable advances; in contracts with long duration, progress payments are usually observed during the period of manufacture or assembly.

For consulting services, payment provisions, including amounts to be paid, payment schedule and procedures, are agreed upon during negotiations and subsequently entered into a contract. The contract should further provide for the payment of financing charges if payment is delayed due to client’s fault beyond the time allowed in the contract. Payments may be made at regular intervals (usually for time-based contracts) or for agreed outputs (for lump sum contracts). Payments for advances exceeding 10% of the contract amount are normally backed by advance payment guarantees.

ADB Institutional Procurement: ADB pays the contract price for its headquarters’ and country offices’ procurement requirements according to the agreed terms and payment method specified in the contract. By and large, contractor’s request for payment is made to ADB in writing with the invoice specifying the services performed and related goods delivered. ADB usually remits payment of the contract price through electronic transfer.

ADB Private Sector Financing: ADB financing and risk mitigation assistance to private sector-led projects or business activities in developing member countries disburses funds according to the contractual agreement with ADB, which also includes loan, investment, issuing bank, or revolving credit agreement. The disbursement may also be made through reimbursement to the investee company for expenditures incurred, or to confirming banks against letters of credit in favor of suppliers.

The recipients of ADB's private sector financing select their own contractors and suppliers, following ADB's Anticorruption Policy. Payment to contractors adheres to the accepted payment methods of the respective country where the project is implemented. Visit the [Country Commercial Guide](#) of the country of your interest to learn more about their methods of payment.

U.S. Government Trade Financing Instruments: U.S. exporters may consider short-, medium-, and long-term export credit, finance and insurance products/programs offered by the Export-Import Bank of the United States, which is the official export credit agency of the United States tasked to assist in financing the export of U.S. goods and services to international markets.

Meanwhile, the Overseas Private Investment Corporation offers loans, guarantees, and political risk insurance for American exporters. Products, services and programs of these organizations are available in many ADB borrowing member countries.

### **Foreign Exchange Controls**

Asian Development Bank's (ADB) risk mitigation products are discussed in the Project Financing section.

ADB recognizes its borrowing governments' foreign exchange restrictions and policies. However, it encourages domestic reforms in Asia to facilitate readiness for capital account convertibility and more exchange rate flexibility in the long-term, while maintaining the [current exchange rate practices with capital controls in place](#).

In ADB-funded procurement where payments flow from borrowing country government to primary contractor and from primary contractor to subcontractor or supplier, capital flow to or from countries employing foreign exchange controls are subject to those controls.

In ADB's institutional procurement, payments made by the ADB directly to consultants, contractors and suppliers for its own offices in headquarters and/or mission may be subject to the respective country where payment for procurement will transpire.

American firms considering ADB assistance to implement or expand their own projects in ADB's developing member countries must ensure that foreign exchange controls of the host country will not prevent the host country from meeting foreign currency liabilities or prevent foreign entities from repatriating profits. ADB private sector assistance provides loans, equity investments, guarantees, among other financial vehicles.

To learn about foreign exchange controls in countries of interest to your firm see the “Foreign Exchange Controls” section of each country’s [Country Commercial Guide](#).

### **US Banks & Local Correspondent Banks**

Many U.S. banks and local correspondent banks operate in various countries where Asian Development Bank (ADB)-funded activities are implemented. For instance, [ADB’s Trade Finance Program \(TFP\)](#) names Citibank, JPMorgan Chase Bank, and Wells Fargo Bank, among other U.S. Banks, as active TFP participants. To learn about U.S. and local correspondent bank arrangements in countries of interest to your firm see the “U.S. and Local Correspondent Bank” section of each country’s [Country Commercial Guide](#).

### **Project Financing**

ADB funds projects mostly from its ordinary capital resources, which are provided to lower-to-middle-income countries at near-market terms. For lower income countries, interest rates are lower. In addition, ADB provides funding from its Asian Development Fund for projects directly related to poverty alleviation in the lowest income countries. ADB manages several other funds that are usually sector-oriented (environment, climate change, water, high-level technology, and infrastructure)

From 2012 to 2016, the Asian Development Bank (ADB) financed an average of \$25 billion each year comprised of loans, equity investments, and grants for government-sponsored projects (public sector) and private sector-led projects. In 2016 alone, ADB assistance reached over \$31.7 billion. Of this, \$7.5 billion went to private sector operations comprising loans, equity investments and guarantees.

For more details, visit [ADB’s Private Sector \(Nonsovereign\) Financing section of the website](#).

# **Business Travel**

## **Business Customs**

U.S. businessmen interested to visit the Asian Development Bank Headquarters (ADB HQ) in Manila, Philippines must take note of the [Philippine Visa Requirements](#). The Philippine Peso (Currency Code: PHP) is the local currency in the Philippines.

Currency exchange centers/money changers can be found in ADB HQ and in commercial centers all over the country. Major credit cards and debit cards are also widely accepted in most establishments.

Business attire is used for meetings and calls on ADB staff and officials at ADB headquarters and its resident missions.

Guests must conduct meetings and calls at ADB HQ in business attire.

ADB is open from Mondays through Fridays, 8 AM to 5 PM. Meetings at ADB HQ are best scheduled in mid-morning or early afternoon. Do not attempt to do business on a weekend or a holiday, unless the ADB contact has specifically indicated his or her availability on such days. Visit [ADB website](#) to see holidays at ADB HQ.

Around the third week of December through the second week of January of the following year, office-related activities tend to wind down to give way for the holidays. Meetings should be scheduled before or after those weeks.

For business travel to ADB-funded projects implemented in a specific country, read on the “Business Travel” section of each country’s [Country Commercial Guide](#).