



Technical Assistance Report

Project Number: 51037-001
Knowledge and Support Technical Assistance (KSTA)
July 2017

Sri Lanka: Strengthening the Efficiency of the Justice Sector with Focus on Commercial Law, Investment, and Contract Enforcement

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Asian Development Bank

CURRENCY EQUIVALENTS

(as of 30 June 2017)

Currency unit	–	Sri Lanka rupee/s (SLRe/SLRs)
SLRe1.00	=	\$0.00651
\$1.00	=	SLRs153.44

ABBREVIATIONS

ADB	–	Asian Development Bank
MOJ	–	Ministry of Justice
OGC	–	Office of the General Counsel
SAP	–	strategic action plan
TA	–	technical assistance

NOTE

In this report, "\$" refers to United States dollars.

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KNOWLEDGE AND SUPPORT TECHNICAL ASSISTANCE AT A GLANCE

1. Basic Data		Project Number: 51037-001	
Project Name	Strengthening the Efficiency of the Justice Sector with Focus on Commercial Law, Investment, and Contract Enforcement	Department /Division	OGC/OGC
Nature of Activity	Capacity Development	Executing Agency	Asian Development Bank
Modality	Regular		
Country	Sri Lanka		
2. Sector		ADB Financing (\$ million)	
✓ Public sector management	Subsector(s) Law and judiciary		0.75
		Total	0.75
3. Strategic Agenda		Climate Change Information	
Inclusive economic growth (IEG)	Subcomponents Pillar 1: Economic opportunities, including jobs, created and expanded	Climate Change impact on the Project	Low
4. Drivers of Change		Gender Equity and Mainstreaming	
Governance and capacity development (GCD)	Components Client relations, network, and partnership development to partnership driver of change Institutional systems and political economy	Some gender elements (SGE)	✓
Knowledge solutions (KNS)	Application and use of new knowledge solutions in key operational areas Knowledge sharing activities		
5. Poverty and SDG Targeting		Location Impact	
Geographic Targeting	No	Nation-wide	High
Household Targeting	No		
SDG Targeting	Yes		
SDG Goals	SDG17		
6. Risk Categorization		Low	
7. Safeguard Categorization Safeguard Policy Statement does not apply			
8. Financing			
Modality and Sources		Amount (\$ million)	
ADB		0.75	
Knowledge and Support technical assistance: Technical Assistance Special Fund		0.75	
Cofinancing		0.00	
None		0.00	
Counterpart		0.00	
None		0.00	
Total		0.75	

I. INTRODUCTION

1. In July 2016, the Asian Development Bank (ADB) received a request from Sri Lanka's Ministry of National Policies and Economic Affairs, through the Ministry of Finance and the Ministry of Justice (MOJ), to assist the government in enhancing the country's justice sector, which will cover legal, policy, and institutional reforms. On 28 November–2 December 2016, ADB fielded a consultation mission to assess the possibility of assistance. The mission met with high-level representatives from the Ministry of National Policies and Economic Affairs, the MOJ, the Supreme Court of Sri Lanka, the Attorney General's Department, and other government stakeholders. The knowledge and support technical assistance (TA) will focus on the justice sector in relation to commercial law, investment, and contract enforcement. On 6 April 2017, ADB vice-president for administration and corporate management approved the concept paper for the TA.¹

2. The TA is designed to strengthen the legal and institutional framework of the justice sector, specifically in the areas of commercial law, investment, and contract enforcement, to enhance investment in Sri Lanka. Under the TA, ADB will conduct a needs assessment to identify gaps and priority areas, develop a 5-year strategic action plan (SAP) to serve as a road map for the justice sector to improve climate investment, reduce delays in contract enforcement, and increase investors' confidence to do business in Sri Lanka.

3. ADB's Strategy 2020 establishes good governance and capacity development as a driver for change to "improve the cost-effective delivery of public goods and services and broaden inclusiveness" in ADB's developing member countries.² This is further mentioned in the Midterm Review of Strategy 2020,³ emphasizing its importance and necessary inclusion in sector assessments and road maps of country and sector reports.

4. The TA aligns with Sri Lanka's reform agenda to increase economic growth, as presented by the minister of finance during his 10 November 2016 speech in Parliament for the 71st budget.⁴ The minister made special mention of improving the country's legal framework by inviting the judiciary to "make recommendations on possible judicial and legal reforms that will facilitate the process of creating a country to be a destination for better quality living and investment."⁵ The minister acknowledged the need to upgrade infrastructure and allocated SLRs600 million for the construction of court facilities and automation in provinces and SLRs100 million for the establishment of commercial courts to expedite the resolution of commercial disputes.

II. ISSUES

5. Sri Lanka is reaching upper middle-income country status. For the country to sustain economic growth as an upper middle-income country, it is important to improve its business environment. The government has commenced an ambitious drive to attract foreign investments to develop Sri Lanka as a commercial hub and as a possible destination for international commercial arbitration. This was reiterated by the minister of finance during his recent budget

¹ The TA first appeared in the business opportunities section of ADB's website on 5 May 2017.

² ADB. 2008. *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank, 2008–2020*. Manila. p. 14.

³ ADB. 2014. *Midterm Review of Strategy 2020: Meeting the Challenges of a Transforming Asia and Pacific*. Manila.

⁴ Ministry of Finance. Budget Speech 2017.

<http://www.treasury.gov.lk/documents/10181/28027/Budget+Speech+2017/a092d16a-68ec-46d5-8e27-9e3c00243aa8>.

⁵ Footnote 4, p. 8, para. 401.

speech in Parliament. Notwithstanding this effort, Sri Lanka's justice sector is still perceived to have significant delays in dispute settlement and contract enforcement. Overall, the sector does not have the efficiency and effectiveness comparable with that of a middle-income country, particularly in contract and commercial law enforcement. The World Bank ranked Sri Lanka 163rd for contract enforcement and 76th for resolving insolvency in its Ease of Doing Business Index for 2016.⁶

6. Having been influenced by the legacy of British colonial rule, the Sri Lankan justice system is steeped in tradition, with reforms being incremental, ad hoc, and spread over a long period. There is resistance to change the justice sector, particularly from the legal fraternity. Prior to 2015, the government did not encourage development partners to engage with the justice sector, which resulted in the sector not benefiting from the latest thinking both nationally and internationally, especially in commercial law. The justice sector lacks not only resources, but also the ability to use its available resources in a strategic manner. A strategic resource assessment and allocation has not been done, resulting in insufficient and underutilized resources, including information technology equipment. Court automation was attempted at selected courts but has not yielded the expected outcomes, because the stand-alone initiatives were not supported with parallel reforms in the connected physical, human, and legal systems and processes.

7. Similarly, capacity building initiatives have been ad hoc, limiting the judiciary's exposure to a few programs offered by the Judges' Training Institute on traditional subjects delivered from its auditorium in Colombo. The institute does not have a set of judicial training courses or a continuous legal education program within a defined core competency framework, and the latest commercial law subjects are not included in the training initiatives. Capacity enhancement in other areas such as leadership, dispute settlement, stress and time management, court administration, and case management are also lacking in the current curriculum. These have contributed to inadequate judicial capacity and insufficient sophistication in dealing with the fast-changing commercial dispute landscape. Outdated procedures manuals and a lack of strategic human resources management have exacerbated the current situation.

8. The justice sector comprises several institutions, many of which are legally independent of each other, which is why comprehensive reforms are extremely challenging. With increased pressure for the justice sector to be more accountable in terms of finance, performance, integrity, and independence, there is now openness to and willingness for reforms. As the line ministry tasked with coordination, budgeting, and administration of the justice sector, the MOJ believes that substantial reforms cannot be successfully effected without an overall review of the approach. During ADB's consultation mission conducted in the last quarter of 2016, the MOJ identified four areas requiring urgent intervention to deal with ineffectiveness and delay: (i) law reforms, (ii) judicial infrastructure improvements, (iii) court automation, and (iv) capacity building.

9. Prioritizing sector needs to align with Sri Lanka's national development goals and policies, the MOJ proposes (i) a comprehensive study on the commercial, legal, and institutional framework, with a view to conducting a needs assessment to identify gaps and priority concerns; and (ii) the development of a 5-year SAP to serve as a road map for the justice sector, with emphasis on commercial law, investment, and contract enforcement. These will form the basis for reforms and probable support from development partners in the sector. Based on the results

⁶ The World Bank. Doing Business: Measuring Business Regulations. Ease of Doing Business in Sri Lanka. <http://www.doingbusiness.org/data/exploreeconomies/sri-lanka>.

of the needs assessment, ADB will choose one or two priority areas to be supported under the TA.

III. THE TECHNICAL ASSISTANCE

A. Impact and Outcome

10. The TA is aligned with the following impact: foreign investors' confidence increased, leading to improved foreign direct investments in Sri Lanka. The outcome will be a SAP implemented as a road map for commercial and legal regulatory framework for the justice sector in Sri Lanka in relation to its role in commercial law, investment, and contract enforcement.⁷

B. Outputs, Methods, and Activities

11. **Output 1: Strategic action plan developed.** ADB will conduct a comprehensive study through a needs assessment to (i) understand the overall context and the legal, regulatory, and institutional framework of the justice sector in Sri Lanka, focusing on commercial law, investment, and contract enforcement; and (ii) identify gaps and priority needs. Based on the needs assessment, ADB will develop a 5-year SAP to serve as the road map for improving the legal regulatory framework of the justice sector to make it more relevant and effective for commerce, investment, and business in Sri Lanka. The SAP will include recommendations for reform areas, sequence of reforms, institutional strengthening, capacity building, law reforms (both substantive and procedural), strategic human and other resource planning, automation, and use of information technology. The SAP will emphasize commercial law, investment, and contract enforcement.

12. **Output 2: One or two reform areas under the SAP supported.** Based on the priority areas identified under the SAP, the TA will support one or two priority areas of reform. The support may include training and capacity development to improve the skills and knowledge of judges and legal professionals to deal with the commercial and legal regulatory framework of the justice sector, specifically on commercial law, investment, and contract enforcement. ADB will discuss the timing and duration of the training and capacity development with the MOJ.

13. **Output 3: Knowledge products developed and disseminated.** Output 3 includes the production of the needs assessment study and SAP to a publishable quality, as well as dissemination to the public.

C. Cost and Financing

14. The TA is estimated to cost \$937,500 equivalent, of which \$750,000 equivalent will be financed on a grant basis by ADB's Technical Assistance Special Fund (TASF 6). The Government of Sri Lanka will provide counterpart support in the form of counterpart staff, local communications, office space for consultants, and other in-kind contributions. The key expenditure items are listed in Appendix 2.

D. Implementation Arrangements

15. ADB, through the Office of the General Counsel (OGC), will administer the TA. The MOJ, in coordination with the Judicial Service Commission and the Attorney General's Department, will be the implementing agency. A steering committee will be established presided by the chief justice

⁷ The design and monitoring framework is in Appendix 1.

or his or her nominee, and will consist of (i) the MOJ secretary, (ii) the attorney general or his or her representative, (iii) a senior commercial lawyer nominated by the Bar Association of Sri Lanka, (iv) the director of the Judges' Institute, (v) the secretary of the Judicial Service Commission or his or her representative, (vi) the Ministry of Development Strategies and International Trade secretary or his or her representative, (vii) a representative from the Legal Draftsman Department, and (viii) a representative from the private sector. The committee will provide oversight and guidance to the TA technical team and facilitate approval of the SAP.⁸

16. OGC will work with ADB's South Asia Department and Sri Lanka Resident Mission in identifying country needs and demands, as well as implementing TA activities. OGC will be accountable for the delivery of TA outputs, including monitoring and evaluation of TA activities. The TA will be implemented from July 2017 to July 2020. The table highlights the details of the TA implementation arrangements.

Implementation Arrangements

Aspects	Arrangements		
Indicative implementation period	July 2017–July 2020		
Executing agency	ADB (Office of the General Counsel)		
Implementing agencies	Ministry of Justice, in coordination with the Judicial Service Commission and the Attorney General's Department		
Consultants	To be selected and engaged by ADB		
	Team leader for justice sector reform (individual, international)	18 person-months over 3 years, with about 75 field days in Sri Lanka	\$299,000
	Legal and project management specialist (individual, international)	18 person-months over 3 years	\$200,000
	Legal specialist (individual, national)	36 person-months	\$90,000
Procurement ^a	Not applicable		
Advance contracting and retroactive financing	Not applicable		
Disbursement	The TA resources will be disbursed following ADB's <i>Technical Assistance Disbursement Handbook</i> (2010, as amended from time to time).		
Asset turnover or disposal arrangement upon TA completion	No fixed asset will be procured under the TA.		

ADB = Asian Development Bank, TA = technical assistance.

Source: Asian Development Bank.

17. **Consulting services.** ADB will recruit an international consultant that will serve as team leader for 18 person-months on an intermittent basis over 3 years. The team leader will deliver outputs 1–3, including the (i) preparation and finalization of a comprehensive needs assessment and SAP through extensive consultations with stakeholders, particularly the judiciary; (ii) implementation of one or two identified priority areas; and (iii) preparation, finalization, and dissemination of knowledge products. The team leader is expected to spend 75 days in Sri Lanka during the engagement period. He or she will preferably have a master's degree in law with 15 years of professional legal experience, 10 years of experience in commercial law under

⁸ Representatives of the steering committee must be conversant on commercial law matters.

common law, and substantive experience working on justice sector reforms. Familiarity with the challenges faced by the justice sector, particularly in Asian commercial law, would be an advantage.

18. ADB will also recruit an international legal and project management specialist who will be based in Sri Lanka for 18 person-months to provide overall TA management support. The specialist must be knowledgeable in Sri Lankan law and legal system, and must have in-depth knowledge of the challenges faced by the judiciary in Sri Lanka and similar challenges faced by judiciaries in Asia. The specialist is expected to work with the project team, MOJ officials and stakeholders, and ADB's Sri Lanka Resident Mission; and will report to ADB's TA supervising unit counsel. The specialist will preferably have a master's degree in law or its equivalent, specifically in commercial law, with at least 15 years of legal practice under the Sri Lankan legal system and experience working on Sri Lanka's justice sector. ADB will also recruit a national consultant for 36 continuous person-months (to be based full time at the MOJ) to provide overall legal and research support to the team of consultants for the conduct of needs assessment and the preparation of SAP. The national consultant will preferably have a degree in law, with at least 5 years of practice in commercial law or a related field and a strong background in research and writing. The three consultants will work as a team and are mandated to attend meetings within short notice by the MOJ secretary. They will share information with and update the MOJ on TA matters. The consultants⁹ will be engaged by ADB using the individual consultant selection method in accordance with the Guidelines on the Use of Consultants (2013, as amended from time to time).¹⁰

IV. THE PRESIDENT'S DECISION

19. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance not exceeding the equivalent of \$750,000 on a grant basis to the Government of Sri Lanka for Strengthening the Efficiency of the Justice Sector with Focus on Commercial Law, Investment, and Contract Enforcement, and hereby reports this action to the Board.

⁹ Where appropriate, and to reduce administrative burden and improve economy, efficiency, and value for money, consulting services may be engaged under output-based (lump sum) contracts.

¹⁰ Terms of Reference for Consultants (accessible from the list of linked documents in Appendix 3).

DESIGN AND MONITORING FRAMEWORK

Impact the TA is Aligned with			
Foreign investors' confidence increased, leading to improved foreign direct investment in Sri Lanka (Strategy 2020; Midterm Review of Strategy 2020; Ministry of Finance's Budget Speech 2017) ^a			
Results Chain	Performance Indicators with Targets and Baselines	Data Sources and Reporting Mechanisms	Risks
Outcome SAP implemented as a road map for commercial and legal regulatory framework for the justice sector in Sri Lanka in relation to its role in commercial law, investment, and contract enforcement.	a. Sri Lanka's ranking in the World Bank's Cost of Doing Business Index improved by 2020 (2016 baseline: 2016 report) b. Strategic engagement of development partners and well-coordinated use of the Government of Sri Lanka's resources in the justice sector c. Perceived reduction of legal risks in investment risk assessments and increase in foreign direct investments	a. World Bank's Cost of Doing Business Index report b. Country and sector assessment reports of development partners and industry chambers c. Reports of the Central Bank, Board of Investments, and Ministry of Finance of Sri Lanka	Lack of stakeholder commitment to implement the reforms Lack of government resources to sustain the reforms
Outputs 1. Strategic action plan developed. 2. One or two reform areas under the SAP supported.	1a. Needs assessment report endorsed by the MOJ by December 2017 1b. SAP adopted and approved by the MOJ by July 2018 1c. Coordinated and strategic use of resources for sector development by the MOJ and other stakeholders enabled by the SAP 2. Areas of reform implemented by the MOJ and stakeholders	1a. MOJ, ADB, and consultant reports and reports by other development partners on Sri Lanka's justice sector 1c. ADB website and websites in Sri Lanka that are related to the justice sector 1d. Reports of the Central Bank, Board of Investments, Ministry of Finance, Ministry of Development Strategies and International Trade of Sri Lanka ADB country partnership strategy report and reports from other development partners on Sri Lanka's justice sector	Underdeveloped infrastructure affecting the achievement of full benefit of reforms

Results Chain	Performance Indicators with Targets and Baselines	Data Sources and Reporting Mechanisms	Risks
3. Knowledge products developed and disseminated	<p>3a. Number of website hits and downloads of the knowledge products</p> <p>3b. News broadcast and television coverage as reliable sources of information on the subject</p> <p>3c. Number of times referenced by donors and development partners</p>	3a–c. National news; Sri Lanka’s judicial library and online research database	Lack of participation of judges, legal professionals, and other stakeholders in the preparation of the SAP, as well as in training and workshops

Key Activities with Milestones

1. Strategic action plan developed

- 1.1 Recruit consultants (July–August 2017)
- 1.2 Prepare and endorse (by the MOJ) the needs assessment report (December 2017)
- 1.3 Prepare and approve (by the MOJ and the steering committee) the SAP (July 2018)

2. One or two reform areas supported

- 2.1 Select priority areas to be implemented under the TA (July 2018)
- 2.2 Implement the selected priority areas (August 2018–March 2020)

3. Knowledge products of the supported reform areas disseminated to the public

- 3.1 Produce knowledge products (January–June 2020)
- 3.2 Disseminate knowledge products (March–June 2020)

Inputs

ADB: \$750,000

Note: The government will provide counterpart support in the form of counterpart staff, local communications, office space for consultants, and other in-kind contributions. The value of government contribution is estimated to account for 20% of the total TA cost.

Assumptions for Partner Financing

Not Applicable

ADB = Asian Development Bank, MOJ = Ministry of Justice, SAP = strategic action plan, TA = technical assistance.

^a ADB. 2008. *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank, 2008–2020*. Manila; ADB. 2014. *Midterm Review of Strategy 2020: Meeting the Challenges of a Transforming Asia and Pacific*. Manila; and Ministry of Finance. Budget Speech 2017.

<http://www.treasury.gov.lk/documents/10181/28027/Budget+Speech+2017/a092d16a-68ec-46d5-8e27-9e3c00243aa8>.

Source: Asian Development Bank.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Amount
Asian Development Bank^a	
1. Consultants	
a. Remuneration and per diem	
i. International consultants	530.0
ii. National consultants	90.0
b. Out-of-pocket expenditures	
i. International and local travel	30.0
ii. Surveys and research	15.0
iii. Reports and communications	10.0
iv. Miscellaneous administration and support costs ^b	15.0
2. Training, seminars, workshops, forum, and conferences ^c	
a. Facilitators and resource persons	15.0
b. Venue and related facilities	10.0
c. Participants ^d	20.0
3. Contingencies	15.0
Total	750.0

Note: The technical assistance (TA) is estimated to cost \$937,500, of which contributions from the Asian Development Bank (ADB) are presented in the table above. The government will provide counterpart support in the form of counterpart staff, local communications, office space for consultants, and other in-kind contributions. The value of government contribution is estimated to account for 20% of the total TA cost.

^a Financed by the Asian Development Bank's Technical Assistance Special Fund (TASF 6).

^b Includes publication of knowledge products.

^c Includes engagement of external resource persons. This will also include representation expenses following ADB (Budget, Personnel, and Management Systems Department; and Strategy and Policy Department). 2013. Use of Bank Resources: Regional Technical Assistance and Technical Assistance vs. Internal Administrative Expenses Budget. Memorandum. 26 June (internal).

^d Includes meals and materials required for seminars and workshops.

Source: Asian Development Bank estimates.

LIST OF LINKED DOCUMENTS

<http://www.adb.org/Documents/LinkedDocs/?id=51037-001-TARreport>

Terms of Reference for Consultants