

# **EXPORTING LEGAL SERVICES : OPPORTUNITIES AND SUPPORT PROGRAMS**

**International Legal Services Advisory Council  
Attorney-General's Department  
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## **Introduction**

Currently, an estimated 1.3% of Australian law firms export legal services. The value of Australian legal services exports in 1994-1995, according to Australian Bureau of Statistics definitions, was \$146 million with \$61 million worth of imports. Australian lawyers and law firms export their services principally in connection with opportunities that they identify through their own business development initiatives.

There are also opportunities to undertake work with international institutions. These include the Asian Development Bank (ADB) and the World Bank Group. This article highlights some of the opportunities and support programs that are currently available to assist lawyers and law firms in providing legal and law-related services overseas.

Details of some of the international institutions along with the programs they offer are described below. The programs mentioned are currently available to exporters and potential exporters of Australian legal services. However, a check should be made to ascertain the current status of programs referred to in this article before plans are developed to access them.

## **1. Multilateral Development Banks**

Service organisations make up the bulk of Australia's sales to Multilateral Development Banks (MDBs) and MDBs offer significant opportunities to Australian legal services exporters. MDBs also provide an entry point into new markets and enable service providers to develop and acquire additional internationally relevant expertise and skills.

### **1.1 The Asian Development Bank**

The Asian Development Bank (ADB) is based in Manila, the Philippines, and has 56 member countries, of which 40 are from Asia and the Pacific region and 16 from non-regional countries (OECD countries). It is engaged in promoting the economic and social progress of its developing member countries in Asia and the Pacific region.

The ADB had a staff of 1,916 in 1995 from 42 of its member countries. This included 47 Australians amongst the total 647 professional staff, which includes several legal appointments in the ADB's Office of the General Counsel (OGC).

Australia's membership of the ADB allows Australian businesses to bid for projects funded by the ADB. In 1995, Australian firms won US\$142 million worth of projects from the ADB. This is a fraction of the potential funds available - in 1995 the ADB lent in excess of US\$5.5 billion for 72 projects and approved payment of US\$480 million for 297 Technical Assistance (TA) activities.

The ADB administers four main sources of finance :

1. the Ordinary Capital Resources (OCR), which provides relatively non-concessional loans;
2. the Asian Development Fund (ADF), which provides highly concessional loans;
3. the Technical Assistance Special Fund (TASF), which provides technical assistance to developing member countries; and
4. the Japan Special Fund (JSF), which finances technical assistance to developing member countries using untied Japanese funding.

### **Opportunities for legal firms**

In the past, the opportunities for legal firms to bid for ADB projects have been limited. The situation appears to be changing and the pace of change may accelerate.

There are at least three key areas of interest to development agencies such as the ADB, which are tending to increase the demand for legal services.

#### **1) Financial regulation**

There is a growing recognition of the need to find the appropriate balance between deregulation and government control in developing member countries. There is also a need to reform banking law and to establish clearer government regulatory systems. The ADB is now funding projects to strengthen the legal framework in the financial sector.

#### **2) Environmental controls**

The preparation of environmental laws and regulations is increasing in Asia and regulatory problems currently exist in many areas such as water, air, and industrial waste. The ADB is now funding projects to increase capacity in environment impact assessment, to draft environmental legislation and to strengthen associated legal infrastructure.

#### **3) Increasing emphasis on the private sector**

In many developing member countries there is a clear need for assistance with privatisation and with relations between the private sector and government. This is especially so in such countries as Mongolia, the PCR, Vietnam, Laos, Cambodia, Kazakhstan and the Kyrgyz Republic. The ADB is now funding projects to strengthen associated legal frameworks and to provide legal training programs.

### **Legal services of specific interest to the ADB**

These include:

- regulation of securities market;

- institutional strengthening of corporate law authorities ;
- restructuring of money/banking systems;
- mutual fund establishment;
- environmental legislation;
- reform of government regulatory frameworks - customs, insolvency etc
- private/public utilities (eg power generation);
- privatisation;
- private/public utilities contracts;
- leasing arrangements;
- commercial and economic law;
- legal training; and;
- loan recoveries.

### **Doing Business with the ADB**

The ADB generally does not seek out services from particular firms. In the case of Technical Assistance (TA) activities, for instance, it publishes a proposed project and then selects a long list of consultants for further consideration from those listed in its data bases and from those who have submitted an expression of interest. It is most important that firms take the initiative in identifying appropriate projects and then approach the ADB to express interest in them and to otherwise demonstrate their capability.

There are several steps that legal firms should consider:

1. register with the ADB's two data bases. DACON is a register of consultants/firms and DICON is a register of individual consultants, including lawyers. Names from these data bases may be drawn upon in forming a long list of consultants/firms to be considered for a particular TA project. The registration forms are available from the ADB and from Austrade's Projects Office in Sydney.
2. subscribe to information systems which provide information about proposed ADB projects in order to identify appropriate projects:
  - i. Austrade's Tradeblazer home page on the Internet will provide up to date information in an electronic form allowing downloading and manipulation.
  - ii. the ADB's own monthly publication - *Business Opportunities*. The cost of a twelve month subscription is US\$100. The ADB can also be accessed by the Internet. Address: <http://www.asiandevbank.org>
  - iii. the *Development Business* bi-monthly newspaper published by the United Nations. The cost of a twelve month subscription is US\$495;
3. visit the ADB and maintain regular contact with appropriate ADB professional staff. The value of personal contact and relationships cannot be overestimated:

- i. the office of the Australian Executive Director (ED) at the ADB can provide an introductory briefing to Australian lawyers on working with the ADB;
  - ii. the Office of General Council (OGC) in the ADB is consulted on all proposals to contract lawyers to work for the ADB and it is recommended that lawyers visit the staff of the OGC to ensure that they are familiar with their particular area of expertise;
  - iii. Austrade's office in Manila or your agent can provide advice on the status of particular ADB projects and can usually arrange a program of introductory appointments with the ED's office, the OGC and other ADB professional staff;
4. for loan projects, also visit and maintain regular contact with the Executing Agency (EA) being the institution selected by a borrowing country to implement a project which has been funded through a loan from the ADB:
- i. Austrade's office in the relevant Executing Agency country can arrange a program of introductory appointments at the Executing Agency.

### **The project cycle**

When targeting an ADB project it is important to firstly note the distinction between the procurement of consulting services under the Technical Assistance (TA) program of the ADB and the procurement of consulting services under an ADB loan project of an EA.

In most cases TA's are executed by the ADB itself, including the selection of consultants. Expressions of interest in these projects should be addressed to the ADB and it is important that any firm targeting these projects should make itself known to the ADB.

In other cases, the TA is executed by the EA of the borrowing country and in these cases, and in procurement of consulting services under ADB loan projects, the selection of consultants is done by the EA - but in consultation with the ADB. Expressions of interest in these projects should be addressed to the EA. It is important that any firm targeting these projects should make itself known to BOTH the ADB and to the EA.

Consultants may be engaged by the ADB or, if applicable, an EA at any stage of the project cycle - for project identification, environmental impact studies, detailed feasibility studies, project design, project supervision, advisory services and technical assistance during project implementation, additional studies or remedial action.

Timeliness is very important and legal firms should make contact with the ADB (and the EA if applicable) at the earliest possible stage. This is particularly important regarding TA's which can have a very short time frame from the publication of the proposed project to the selection of the consultant; the timeframe can be as short as 3 months for very small (say U\$100,000) projects.

### **Summary of the process**

Briefly, the process of winning a consultancy project funded by the ADB may be summarised as follows:

- registration on the ADB data bases;
- identification of the project;

- collection of information on the project either directly from the ADB (& the EA if a loan project) by phone or during visits or indirectly from Austrade offices or agents;
- submission of a detailed quality expression of interest and capability to the ADB (or the EA if a loan project); and
- if short listed and invited to do so, submission of a detailed bid to the ADB (or the EA in the case of a loan project) closely matching the terms of reference for the project as received with the invitation.

For further information on doing business with the ADB contact:

The Chief  
 Central Operations Services Office  
 Asian Development Bank  
 6 ADB Avenue  
 Mandaluyong, Metro Manila  
 (PO Box 789 Manila, 0980)  
 The Philippines  
 Telephone: (63 + 2) 632 444  
 Facsimile: (63 + 2) 636 2444

Projects Officer  
 Austrade  
 Level 24, 201 Kent Street  
 Sydney NSW 2000  
 Telephone: (61 + 2) 390 2383  
 Facsimile: (61 + 2) 390 2125

Trade Commissioner  
 Austrade  
 Australian Embassy  
 3rd Floor, Salustiana D Ty Tower  
 104 Roseo de Roxas cor Perea Street  
 Legaspi Village, Makati City  
 Metro Manila, The Philippines  
 Telephone: (63 + 2) + 817 7911 Ext 142  
 Facsimile: (63 + 2) + 810 2895

## **1.2 World Bank**

The World Bank is based in Washington, DC, USA, and has 176 member countries comprising four closely associated institutions - the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

Historically, the World Bank has focused on large scale infrastructure and agricultural programs. The Bank has recently announced, however, that it will be placing emphasis on privatisation and social services in developing countries and is specifically seeking expertise in auditing, business consulting and restructuring.

Procedures for obtaining work from the World Bank differ to those for obtaining work through the ADB as the World Bank does not have a Technical Assistance Program. The EA is responsible for preparation of TOR and selection and engagement of the consultants.

Law firms interested in seeking work through the World Bank should register on the DACON system and make themselves known to the Task Manager at the World Bank and more importantly should market themselves to the relevant EA. If a firm is interested in a particular project, they should submit a detailed expression of interest in the project.

Expressions of interest are assessed and short-listed to between 3 and 5 proposals. These proposals are then examined and ranked by the EA. The firm with the highest technical ranking proposal is then contacted with a view to negotiating a fee and making an offer. More commonly however, price is considered along with technical capability.

Once a contract has been negotiated and the project commenced, the supplier must comply with essentially the same project monitoring requirements as stipulated by the ADB.

Information of the World Bank can be accessed through Austrade's "Tradeblazer" home page on the Internet which provides a seamless gateway to the World Bank home page (<http://www.austrade.gov.au/tradeblazer.htm>) The World Bank places a significant number of project information documents on its home page providing considerable detail on many of the projects that are in preparation.

A full listing of all World Bank project opportunities is available by subscription to the World Bank *Monthly Operational Summary* distributed with the UN publication *Development Business*. Address details are:

Development Business  
PO Box 5850  
Grand Central Station  
New York NY 10163-5850  
USA  
Facsimile: (1 + 212) 963 1381  
Cost: US\$495 p.a.

### **1.3 World Bank Australian Consultants Trust Fund**

A recent report on Australia's sales to multilateral development banks found that sales to the World Bank have been roughly constant, whereas sales to the Asian Development Bank have been steadily increasing. To encourage sales to the World Bank, AusAID established the World Bank Australian Consultants Trust Fund (CTF) in 1988/89. The CTF (which provided \$750,000 in 1995/96) promotes the employment of Australian consultants for feasibility studies commissioned by the World Bank, focusing on the Asia-Pacific region. The fund assists the World Bank with funding the cost of fees, travel and subsistence expenses for Australian consultants on short term assignment in support of the World Bank's lending operations.

The CTF is limited to funding any particular individual only once within a twelve month period and the maximum payment to any one individual during a particular engagement is US\$20,000.

Further information on the Trust Fund may be obtained from:

Project Officer  
AUSTRADE

Level 24,  
201 Kent Street,  
Sydney  
NSW 2000  
Telephone: (61 + 2) 390 2383  
Facsimile: (61 + 2) 390 2125

Trade Commissioner  
Austrade  
Australian Embassy  
1601 Massachusetts Avenue, N.W.  
Washington DC 20036  
Telephone: (1 202) 797 3093  
Facsimile: (1 202) 797 3300

Further information may be obtained by contacting the World Bank directly at:

Publications and Subscriptions  
World Bank  
1818 H Street NW  
Washington DC 20433 USA  
Telephone: (1 + 202) 477 1234  
Facsimile: (1 + 202) 477 6391

## **2. Australian Agencies - Currency of Programs**

Various Australian Government programs have been established to support and facilitate work overseas by providers of legal services as well as other services. Many of the programs are currently under review and some may conclude as a result of budget saving initiatives by the Australian Government. A check should therefore be made to ascertain the current status of programs referred to in this article before plans are developed to access them.

### **2.1 AUSTRADE**

#### **Export Market Development Grants**

The Export Market Development Grants (EMDG) Scheme is designed to encourage Australian exporters to seek out and develop overseas markets for goods, services, industrial property rights and know-how, which are substantially of Australian origin. The Scheme applies to a variety of exported goods and services as well as certain services supplied within Australia. Certain legal services provided both from within Australia and overseas offices are eligible under the Scheme.

The Scheme operates by providing taxable grants to Australian residents, - companies, partnership, individuals or approved organisations. To be eligible to apply for a grant, exporters must have a minimum eligible expenditure of \$30,000 in a grant year. First time claimants can accumulate two years' expense to reach this threshold. Grants are paid as a maximum 50% reimbursement on assessable eligible expenditure over \$15,000 (or \$30,000 if combined first two years) to a maximum grant of \$250,000.

In the third to eighth or more years of export earnings the grant payable is determined by a formula.

Examples of 'eligible expenditure' include:

- overseas marketing expenses such as market research, overseas advertising, free samples, trade fairs;
- travel and accommodation;
- establishing and maintaining overseas sales representatives;
- preparing tenders;
- registration of Australian patents, designs, copyright; and
- foreign language training.

### **Austrade Loans**

Austrade Loans are a source of medium-term, low cost finance to help exporters rapidly expand export markets. Funding of between \$150,000 and \$5 million is available as a loan or advance. There are no charges or fees.

Loans are interest free for the first three years and then 90% of the current bank rate for a further three year repayment period. Advances are repaid as a royalty on sales.

Up to \$30,000 can be provided in some cases to purchase capital equipment related to the export activity. Austrade loans are made on a discretionary basis, with a final decision made by the Austrade Board.

Further information on the Export Market Development Scheme or the Loans Scheme may be obtained from:

Austrade Export Hotline 13 28 78  
Internet: <http://www.austrade.gov.au>

## **2.2 The Australian Agency for International Development (AusAID), formally AIDAB.**

### **Private Sector Linkages Program**

The Private Sector Linkages Program (PSLP) commenced in 1993 and is designed to promote sustainable development and economic growth in the Asian region by supporting the establishment or expansion of long-term links between Australian market-oriented enterprises and counterpart enterprises in selected developing countries.

AusAID defines 'market-oriented enterprises' as including private enterprises as well as state owned or government business enterprises operating on a competitive basis.

The program is aimed at assisting specific projects or targeting particular problems but is not intended to fund speculative proposals. In particular, the program is designed to promote Australia's trade and investment relationship with the recipient countries.

AusAID lists the following as activities which may be considered for funding:

- short-term training, secondments and work attachments for representatives from market oriented enterprises in developing countries;

- pre-feasibility studies, feasibility studies and expert advice where there is a high probability of subsequent supply of Australian goods or services on a commercial basis;
- pre-investment studies for joint ventures, or
- the demonstration and adaptation of proven and appropriate Australian technologies.

Activities should be of limited duration and extend for no more than one year. Financial support from the PSLP varies from a minimum of \$25,000 to a maximum of \$250,000 and is confined to no more than 50% of the total eligible activity costs of the Australian applicant.

Proposals are assessed against the following criteria:

- developmental priority;
- contribution to sustainable development and economic growth in the developing country;
- contribution to future commercial relations through the promotion of trade and investment links;
- activity viability;
- capability of applicants and counterparts; and
- level of contribution from applicants and counterparts.

Applicants for PSLP assistance are normally considered on a quarterly basis. Successful applicants are required to enter into a standard grant agreement with AusAID prior to implementation. Once the project is completed, the Australian organisation is required to supply a completion report which describes the activities undertaken and the linkages established.

Further information on the PSLP may be obtained from AusAID's State and Regional Offices, or the Business Cooperation Section, Canberra, as listed below.

Ms Deborah Grogan  
Sydney  
(02) 379 8890

Mr James Powell  
Melbourne  
(03) 9613 5430

Ms Katrina Tap  
Perth  
(09) 231 4408

Ms Kay Farrant-Durnin  
Brisbane  
(07) 3864 8019

Ms Joy Chia  
Adelaide  
(08) 237 6918

Ms Geraldine Cooper  
Canberra Regional Office  
(06) 276 4054

Mr Brad Bowman  
Darwin Regional Office  
(089) 824 105

Business Cooperation Section  
Canberra  
(06) 276 4659

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