



Technical Assistance Report

Project Number: 48007-001
Policy and Advisory Technical Assistance (PATA)
September 2014

People's Republic of China: Preparing a Concession Law for Infrastructure and Public Services

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Asian Development Bank

CURRENCY EQUIVALENTS

(as of 26 August 2014)

Currency unit	–	yuan (CNY)
CNY1.00	=	\$0.1624
\$1.00	=	CNY6.1550

ABBREVIATIONS

ADB	–	Asian Development Bank
NDRC	–	National Development and Reform Commission
PPP	–	public–private partnership
PRC	–	People’s Republic of China
TA	–	technical assistance

NOTE

In this report, "\$" refers to US dollars.

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POLICY AND ADVISORY TECHNICAL ASSISTANCE AT A GLANCE

1. Basic Data		Project Number: 48007-001	
Project Name	Preparing a Concession Law for Infrastructure and Public Services	Department /Division	EARD/EAPF
Country Borrower	China, People's Republic of PRC	Executing Agency	National Development and Reform Commission
2. Sector		ADB Financing (\$ million)	
✓ Public sector management	Public expenditure and fiscal management		0.40
		Total	0.40
3. Strategic Agenda		Climate Change Information	
Inclusive economic growth (IEG)	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)	Public financial governance	No gender elements (NGE)	✓
5. Poverty Targeting		Location Impact	
Project directly targets poverty	No	Nation-wide	High
6. TA Category:	B		
7. Safeguard Categorization	Not Applicable		
8. Financing			
Modality and Sources		Amount (\$ million)	
ADB		0.40	
Sovereign Policy and advisory technical assistance: Technical Assistance Special Fund		0.40	
Cofinancing		0.00	
None		0.00	
Counterpart		0.05	
Government		0.05	
Total		0.45	
9. Effective Development Cooperation			
Use of country procurement systems		Yes	
Use of country public financial management systems		Yes	

I. INTRODUCTION

1. The Government of the People's Republic of China (PRC) requested policy and advisory technical assistance (TA) from the Asian Development Bank (ADB) to prepare a concession law for infrastructure and public services. Following a reconnaissance mission in January 2014 and a fact-finding mission in May 2014, ADB and the government reached a preliminary understanding on the objectives, scope, implementation arrangements, costs, and terms of reference for the TA. The design and monitoring framework is in Appendix 1.¹

II. ISSUES

2. The PRC's Twelfth Five-Year Plan, 2011–2015 calls for an expansion in infrastructure and other municipal public services, which is in line with the government's goal of achieving equal access to basic public services.² Deepening the reform of the government's administrative system is also planned. The competence of government administration will be improved to make it more performance oriented.

3. The Several Opinions of State Council on Encouraging and Guiding Healthy Development of Private Investment, a document issued in 2010, had earlier promoted the entry of private capital into the delivery of public services. Areas where private investment is encouraged include infrastructure, municipal services, education, and public rental housing. In November 2013, the Third Plenum of the 18th Central Committee of the Communist Party reinforced the broader importance of the private sector by emphasizing the need for the market to play a decisive role in the PRC's next stage of development.

4. Public-private partnerships (PPPs) can help implement these policy initiatives by bringing the private sector into the delivery of public services. PPPs provide a performance-based management framework that can improve the results achieved by public agencies. They also mobilize additional financial resources and expertise from the private sector to expand and strengthen the delivery of public services. As demonstrated in other countries, sound PPPs can deliver public projects faster, at lower cost, and at higher quality.

5. The PRC has been an active user of PPPs since the early 1990s. More than 1,000 PPPs, with investment commitments in excess of \$100 billion, have been structured to provide transport and communication services, energy, clean water, wastewater treatment, and some social services.³ This extensive experience can be built on to deliver more and higher-quality projects, and to extend the use of PPPs into different areas of the economy (e.g., education).

6. However, PPP activity in the PRC has trended down since the mid-1990s. Some estimates show that the value of investment commitments under PPPs fell to a low in 2010 of \$1.1 billion, which was less than 10% of its peak in 1997.⁴ While the downward trend is largely because of the emergence of alternative ways of financing public services, notably the local government investment vehicles and land transactions, it has also been caused by gaps in the enabling environment, such as the absence of a national PPP law, PPP units, and manuals and procedures for preparing and implementing PPPs.

¹ The TA first appeared in the business opportunities section of ADB's website on 3 June 2014.

² Government of the People's Republic of China. 2011. *Twelfth Five-Year Plan for National Economic and Social Development of the People's Republic of China, 2011–2015*. Beijing.

³ The data show PPPs that involve a private partner. A private partner excludes a state-owned enterprise or its subsidiary that remains majority owned by government entities (World Bank. 2013. Private Participation in Infrastructure Projects Database. World Bank Group. <http://ppi.worldbank.org>).

⁴ World Bank. 2013. Private Participation in Infrastructure Projects Database. World Bank Group.

7. The interest in PPPs is now rebuilding, spurred by the tightening fiscal position of local governments. Rising local government debt levels and central government efforts to curb indirect financing mechanisms used by the local governments are encouraging the pursuit of more transparent, fiscally sustainable alternatives. A window of opportunity to strengthen the quality of the PRC's PPP program has opened. In May 2014, the Ministry of Finance launched internal PPP units to help develop PPP capacity and strengthen the enabling environment. These units are to be replicated by local governments.

8. The 2011 Asian Infrascope study ranked the PRC's enabling environment for PPPs in an emerging category of countries for PPPs. The PRC's "phenomenal wealth of PPP experience" led to a high ranking in operational maturity. However, the PRC received a low ranking for the legal, regulatory, and institutional framework—a key factor being the absence of a national PPP law.⁵ A PPP has different requirements than a conventional public investment project, for example, in relation to procurement and the management of fiscal risk. Most countries with active PPP programs have a corresponding law to clarify how these requirements are managed.

9. The PRC has adopted an incremental approach to the development of the legal and regulatory framework for PPPs. More than 40 regulatory instruments are in place; many best practice approaches to PPPs are also in use. However, many regulatory instruments are sector- or location-specific, and lower-order regulatory instruments are prevalent. In 2013, the State Council approved the preparation of a concession law for infrastructure and other public services, and an initial draft has been prepared. Such a law could strengthen the enabling environment for PPPs by providing a single, basic authorizing document that would help standardize the approaches to preparing and implementing PPPs nationally and across sectors. It could lower the transaction costs faced by market participants, which would facilitate the development of the PPP market, and encourage investment by better protecting the interests of the private sector. It could also help extend the PPP model into new areas of the economy, particularly the social sectors, and develop a broader range of PPPs. Such a law would complement the recently launched internal PPP units.⁶

10. Under the PRC's country partnership strategy, ADB's public sector operations aim to strengthen the enabling environment for private development by financing infrastructure, supporting policy and regulatory reforms, and improving access to finance. Urban development is identified as a priority area for support for private sector participation and PPPs during 2011–2015. The country partnership strategy also provides for complementary support for knowledge sharing to promote best practices.⁷

III. THE POLICY AND ADVISORY TECHNICAL ASSISTANCE

A. Impact and Outcome

11. The impact will be a strengthened enabling environment for PPPs. Performance will be measured by the ranking of the PRC's enabling environment for PPPs in the Asian Infrascope's developed country category by 2018. The outcome will be an improved legal framework for the promotion, development, and implementation of PPPs. Performance will be measured by the presentation of a draft concession law to the State Council in 2015.

⁵ Economist Intelligence Unit. 2011. *Evaluating the Environment for Public–Private Partnerships in Asia-Pacific: The 2011 Infrascope*. Manila: Economist Intelligence Unit Ltd. (commissioned by ADB, March).

⁶ For a discussion of the lessons from the PRC's PPP experience and next steps: ADB. Forthcoming. *People's Republic of China: Public–Private Partnerships in Urbanization*. Workshop Report. To be published under the Regional Knowledge Sharing Initiative.

⁷ ADB. 2012. *Country Partnership Strategy: People's Republic of China, 2011–2015*. Manila.

B. Methodology and Key Activities

12. The TA is an initiative under pillar 2—the enabling environment—of ADB’s Public–Private Partnership Operational Plan, 2012–2020.⁸ The TA will deepen awareness of the legal and regulatory environment needed for PPPs to deliver municipal and other public services.⁹ It will provide observations and suggestions on measures that can be adopted through the finalization of the PRC’s concession law, drawing on international best practice. The bulk of the TA project’s support will support the submission of a strengthened draft law to the State Council. The TA will also provide follow-on support to assist the consideration and refinement of the law.

13. The TA will provide four outputs. Output 1 will be a stocktake of lessons from the PRC and other countries with PPP laws and regulations. Close attention will be paid to insights from (i) countries with active PPP programs, (ii) the experience with international standards such as the United Nations Commission on International Trade Law Model Legislative Provisions for PPPs and the Organisation for Economic Co-operation and Development Basic Elements of a Law on Concession Agreements, and (iii) the PRC’s sector- and location-specific concession regulations. Consideration will also be given to related laws and regulations, such as government procurement laws. The scope of PPP laws and their integration into the institutional environment will be examined to identify lessons relevant to the PRC.

14. The output will be oriented towards the formalization and rational development of the PRC’s PPP program, taking into account the existing legal framework. The observations will also draw on consultations with market participants on matters including the extent to which existing laws and regulations have (i) provided clear guidance, (ii) provided a streamlined approval process, and (iii) balanced the interests of the public and private partners in a PPP. With the support of the TA, the National Development and Reform Commission (NDRC) will lead the consultations. The output will draw on an international consultation which will provide senior NDRC staff an exposure to international best practices for PPP laws.¹⁰

15. Output 2 will be suggestions on the draft concession law. While this output will draw on the broader PPP experience, consistent with the State Council’s approval to prepare the law, the focus will be on concessions. The priority issues that will be addressed to strengthen the legal environment for PPPs are expected to include (i) the definition of concessions and the determination of their scope; (ii) the goals of the legislation; (iii) project selection, preparation, and implementation; (iv) roles, responsibilities, and authorities of key parties; (v) the protection of the reasonable rights of private sector partners and financiers to ensure efficient market operations; (vi) the management of fiscal and other risks; (vii) the reinforcement of open, competitive bidding as the norm and clear principles for the use of alternative procurement methods on an exceptional basis; (viii) the tailoring of government procurement systems for PPPs; (ix) dispute resolution; and (x) the streamlining of PPP approvals.

16. Output 2 will be provided as an initial set of recommendations based on output 1 and input on specific topics selected on a demand-led basis. A research or issues paper will be prepared on topics agreed upon with the NDRC. The output may also support the preparation of

⁸ ADB. 2012. *Public–Private Partnership Operational Plan, 2012–2020*. Manila.

⁹ The TA builds on policy advice and knowledge products on PPPs provided by ADB staff. Complementary support for pillar 1 of the PPP operational plan, 2012–2020—advocacy and capacity development—is also being provided by ADB staff and through ADB. 2013. *Technical Assistance to the People’s Republic of China for Leadership in Public–Private Partnerships*. Manila (TA 8505-PRC) and ADB. 2009. *Technical Assistance to the People’s Republic of China for Facility for Policy Reform and Capacity Building III*. Manila (TA 7317-PRC).

¹⁰ The international consultation is described in footnote c of the Cost Estimates and Financing Plan at Appendix 2.

short policy notes in response to queries from the State Council and other government agencies as the proposed law proceeds through the review and approval process.

17. Output 3 will be a review of potential legal and regulatory amendments. It will support the formulation and review of proposals by government agencies and other stakeholders, drawing on the deliverables of outputs 1 and 2. The NDRC will lead meetings, consultations, and workshops to encourage discussion of observations and suggestions prepared under the TA, and to ensure they are reviewed by international and national experts. The dialogue will aim to identify and resolve any tensions between the draft concession law and other PRC laws, such as bidding and procurement laws. At least one workshop will be conducted in a city outside Beijing. This output will support the activities of a group of external experts established by the NDRC to assist with the preparation of the concession law.

18. Output 3 will support at least three key events. First, a seminar will be held to discuss the PPP-related practices in the PRC and the demands of the PPP legislation, and to seek comments on a revised draft of the concession law. Relevant departments of the State Council, as well as the central and local governments, will be invited to participate in the seminar. Second, a seminar will be held to introduce the experience from other countries on PPP legislation and management. The research results of international and national experts will be shared with relevant departments of the State Council, as well as the central and local governments, to unify their understanding on the necessity and urgency of the concession law. Third, a workshop will be conducted to promote the TA's findings to senior decision makers in order to foster support for the concession law. This will include representatives from the National People's Congress and the State Council.

19. Output 4 will be a widely accessible publication in English and Chinese targeted at senior decision makers. This may be in the form of *ADB's Observations and Suggestions* series. The publication will draw on outputs 1–3 to disseminate information on a plan for the PRC's legal and regulatory environment.

20. The TA will effectively use ADB's TA and publications in other member countries on PPP legislation and regulation. It will seek to add value and avoid duplication of other activities supported by ADB, and will coordinate with ongoing support from other development partners, including the European Bank for Reconstruction and Development, the Government of the United Kingdom, and the World Bank Group.

21. Intra- and interagency dialogue and cooperation on PPPs and inputs from other stakeholders, including market participants, is one of the key assumptions of the TA. Another important assumption is that the NDRC will make sufficient staff time available for TA management. The key risks to success include the following: (i) complementary initiatives that may be required cannot be implemented on a timely basis, (ii) competing policy priorities displace PPPs, and (iii) suitable consultants cannot be identified in a timely manner.

C. Cost and Financing

22. The TA is estimated to cost \$450,000, of which \$400,000 will be financed on a grant basis by ADB's Technical Assistance Special Fund (TASF-other sources). The government will provide counterpart support in the form of meeting space, staff, other services to the consultants, assistance in arranging meetings with counterpart agencies, and other in-kind contributions. The cost estimates and financing plan are in Appendix 2.

D. Implementation Arrangements

23. The NDRC will be the executing agency. The detailed work plan of the consultant team will be updated and agreed upon by the NDRC and ADB as the team is mobilized. The NDRC has established a working group of relevant departments to guide the preparation of the concession law; this group can also work with ADB to direct the TA consultant team. The implementing agency will be the NDRC's Department of Laws and Regulations.

24. The NDRC will coordinate with government authorities and other stakeholders, and assign counterpart staff to assist the consultants. The NDRC will coordinate the day-to-day work of the consultants with ADB and will be responsible for the meetings, local consultations, workshops, an international consultation, and publications. The timing, agenda, and participants of the meetings, consultations, and workshops will be agreed by the NDRC and ADB. Consultants will only be paid after the NDRC accepts their research results and reports. ADB staff will be engaged in the formulation of policy advice on the content of the concession law.

25. The TA will engage two national consultants—a team leader and chief legal adviser, and a coordinator—for a total of 7 person-months. Two international consultants—a legal adviser and a PPP adviser—will be engaged for a total of 2.5 person-months. The team leader will have overall responsibility for coordinating the TA outputs. Given the small input and the need for quick mobilization, the consultants will be engaged individually. The national and international consultants will be jointly responsible under the leadership of the team leader for outputs 1 and 2 (observations and recommendations); the team leader will be primarily responsible for output 3 (dialogue). The team leader and international consultants will be primarily responsible for turning the results of outputs 1–3 into the publication of output 4.

26. National resource persons will also be engaged to provide input on specific topics as needed. Most resource persons will operate through the experts group (para. 17). Because of the diversity of skills required, the seniority of the experts, and the brief inputs, it is impractical to engage such experts as individual consultants.

27. The outline terms of reference for the consultants and resource persons are in Appendix 3. ADB will engage the international and national consultants, and the resource persons, in accordance with its Guidelines on the Use of Consultants (2013, as amended from time to time). The proceeds of the TA will be disbursed in accordance with ADB's *Technical Assistance Disbursement Handbook* (2010, as amended from time to time).

28. The TA will be monitored and evaluated based on the implementation of activities and the satisfactory delivery of outputs, following the agreed time line and budget. To support monitoring and evaluation, the team leader will submit an inception report, a midterm report, a draft final report, and a final report concurrently to the NDRC and ADB. The main mechanism to monitor and assess the TA will be review missions. The publications created by the TA will be provided concurrently to the NDRC and ADB for dissemination to the government and, as appropriate, other stakeholders. The TA will start on 15 September 2014 and be completed on 15 September 2016.

IV. THE PRESIDENT'S DECISION

29. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance not exceeding the equivalent of \$400,000 on a grant basis to the Government of the People's Republic of China for Preparing a Concession Law for Infrastructure and Public Services, and hereby reports this action to the Board.

DESIGN AND MONITORING FRAMEWORK

Design Summary	Performance Targets and Indicators with Baselines	Data Sources and Reporting Mechanisms	Assumptions and Risks
Impact Strengthened enabling environment for PPPs	PRC's enabling environment for PPPs is ranked in the "developed" country category of the Asian Infrascopes by 2018 (2011 baseline: "emerging" category) ^a	Asian Infrascopes benchmarking index and learning tool ^b	Assumptions The concession law is adopted Internal PPP units are effective in building capacity and strengthening the PPP enabling environment Risk Complementary reforms are required but cannot be implemented on a timely basis
Outcome Improved legal framework for the promotion, development, and implementation of PPPs	Draft concession law presented to the State Council in 2015 (2013 baseline: none)	Reports from the State Council NDRC Media reports	Assumption Active interagency dialogue and cooperation on PPPs Risk Competing policy priorities displace PPP
Outputs 1. Stocktake of the lessons from the PRC and other countries with PPP laws and regulations	1.1 Assessment of the experience of other countries with national PPP laws and regulations and the PRC's experience with PPP regulations (by June 2015) 1.2 A report on the international consultation on PPP laws and regulations in selected countries (by December 2015)	NDRC	Assumptions NDRC has sufficient staff time to coordinate consultants and provide timely review of their work The working group of relevant departments established to guide preparation of the concession law is effective
2. Suggestions on the draft concession law	2.1 A research or issues paper on key issues to be addressed by a concession law (by September 2015) 2.2 At least three short policy notes on priority issues faced in the review of a draft concession law (June 2016)	Reports from the State Council NDRC	Relevant stakeholders discuss proposals to improve the legal and regulatory environment for PPPs
3. Review of potential legal and regulatory amendments	3.1 At least three meetings, consultations, or workshops with stakeholders led by NDRC (by June 2016)	NDRC Media reports	Market participants share information on their experience Risk
4. Widely accessible publication targeted at senior decision makers	4.1 At least one publication published in support of outreach (by September 2016)	NDRC and ADB websites	Suitable consultants cannot be identified in a timely manner

Activities with Milestones	Inputs										
<p>1. Observations on the lessons from the PRC and other countries with PPP laws and regulations</p> <p>1.1 Stocktaking of the PPP regulatory instruments in the PRC (by March 2015)</p> <p>1.2 Consultation led by NDRC with market participants (e.g., concessionaires, financiers, public partners, regulators) on their use of these regulatory instruments and views on their performance (by March 2015)</p> <p>1.3 Preparation of report assessing the performance of the regulatory instruments (by June 2015)</p> <p>1.4 Stocktaking of PPP laws and regulations used internationally (June 2015)</p> <p>1.5 Review of international literature on the use of these laws and regulations, and views on their performance (by September 2015)</p> <p>1.6 Preparation of a report on the implications for the PRC of the international experience (by September 2015)</p> <p>1.7 Conduct of an international consultation in countries implementing PPP laws (by December 2015)^c</p> <p>2. Suggestions on the draft concession law</p> <p>2.1 Consultation with the NDRC working group and the experts group on topics to be addressed in a research or issues paper (by March 2015)</p> <p>2.2 Preparation of a research or issues paper on key issues to be addressed by a concession law (by September 2015)</p> <p>2.3 Preparation on a demand basis of at least three short policy notes on priority issues faced in the review of a draft concession law (by June 2016)</p> <p>3. Dialogue on potential legal and regulatory amendments</p> <p>3.1 Consultation with NDRC working group and the experts group of key issues to be discussed at meetings, consultations, or workshops held with stakeholders (by March 2015)</p> <p>3.2 Preparation of a timetable of meetings, consultations, or workshops and draft agendas and list of participants (by June 2015)</p> <p>3.3 Conduct of at least three meetings, consultations, or workshops held with stakeholders and led by NDRC (by June 2016)</p> <p>3.4 Provision of logistics and administrative support to the activities of the experts group (throughout the TA)</p> <p>4. Widely accessible publication targeted at senior decision makers</p> <p>4.1 Preparation of at least one widely accessible publication in support of TA outreach</p> <p>4.2 Public release of at least one widely accessible publication in support of TA outreach (by September 2016)</p>	<p>ADB: \$400,000 Technical Assistance Special Fund (TASF-other sources)</p> <table border="1" data-bbox="1024 346 1468 651"> <thead> <tr> <th data-bbox="1024 346 1339 409">Item</th> <th data-bbox="1339 346 1468 409">Amount (\$'000)</th> </tr> </thead> <tbody> <tr> <td data-bbox="1024 409 1339 436">1. Consultants</td> <td data-bbox="1339 409 1468 436">200.0</td> </tr> <tr> <td data-bbox="1024 436 1339 525">2. Workshops, seminars, and meetings</td> <td data-bbox="1339 436 1468 525">145.0</td> </tr> <tr> <td data-bbox="1024 525 1339 613">3. Miscellaneous administration and support costs</td> <td data-bbox="1339 525 1468 613">15.0</td> </tr> <tr> <td data-bbox="1024 613 1339 651">4. Contingencies</td> <td data-bbox="1339 613 1468 651">40.0</td> </tr> </tbody> </table> <p>Note: The government will provide counterpart support in the form of meeting space, staff, other services to the consultants, assistance in arranging meetings with counterpart agencies, and other in-kind contributions. The budget for workshops, seminars, and meetings includes an allocation of \$30,000 for an international consultation.</p>	Item	Amount (\$'000)	1. Consultants	200.0	2. Workshops, seminars, and meetings	145.0	3. Miscellaneous administration and support costs	15.0	4. Contingencies	40.0
Item	Amount (\$'000)										
1. Consultants	200.0										
2. Workshops, seminars, and meetings	145.0										
3. Miscellaneous administration and support costs	15.0										
4. Contingencies	40.0										

ADB = Asian Development Bank, NDRC = National Development and Reform Commission, PPP = public-private partnership, PRC = People's Republic of China, TA = technical assistance.

^a As defined in the Economist Intelligence Unit (2011).

^b In the absence of a regional update of the Asian Infrascope benchmarking index and learning tool, an independent party will be engaged by ADB (separate from the TA) to prepare an updated score.

^c The NDRC will arrange the international consultation and prepare an accompanying report.

Sources: Asian Development Bank; and Economist Intelligence Unit. 2011. *Evaluating the Environment for Public-Private Partnerships in Asia-Pacific: The 2011 Infrascope*. Manila: Economist Intelligence Unit Ltd. (commissioned by ADB, March).

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Amount
Asian Development Bank^a	
1. Consultants	
a. Remuneration and per diem	
i. International consultants	65.0
ii. National consultants	95.0
b. International and local travel	20.0
c. Reports, publications, and communications	20.0
2. Workshops, seminars, meetings ^b	
a. International and national workshops	60.0
b. International consultation ^c	30.0
c. Resource persons	55.0
3. Miscellaneous administration and support costs ^d	15.0
4. Contingencies	40.0
Total	400.0

Note: The technical assistance (TA) is estimated to cost \$450,000, 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 meeting space, staff, other services to the consultants, assistance in arranging meetings with counterpart agencies, and other in-kind contributions. The value of government contribution is estimated to account for 11% of the total TA cost.

^a Financed by ADB's Technical Assistance Special Fund (TASF-other sources).

^b For training, stakeholder participation, and awareness-raising events within the People's Republic of China and one international consultation. An advance payment facility will be established with the implementing agency to facilitate the workshops, seminars, and the international consultation.

^c The budget for the international consultation is \$30,000. The international consultation will comprise a visit to countries that are leaders in public-private partnerships (PPP), have a comparable legal system, and have extensive experience with a PPP law, or to highly relevant international organizations. The focus will be on regional member countries, but may include non-regional member countries if warranted. The tour is proposed to be conducted before the presentation of the draft law to the State Council. The content and findings of the consultation will be presented in a report to be prepared by the National Development and Reform Commission. Participants may include one officer fluent in English but otherwise will be at deputy director level or higher. The consultation will be arranged by the National Development and Reform Commission and will occur only in eligible ADB member countries, in line with ADB's Charter requirements. (ADB. 1966. *Agreement Establishing the Asian Development Bank*. Manila.)

^d Includes printing costs, translations, supplies for events, printing of banners and leaflets, meeting assistants to reproduce materials, and other support for workshops.

Source: Asian Development Bank estimates.

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

1. The consultants will be responsible for producing the technical assistance (TA) outputs and deliverables effectively and on time, consistent with the design and monitoring framework (DMF), and for organizing and carrying out all TA activities, including workshops. They will also assist in the preparation of a international consultation. Consultants will be engaged individually.
2. The executing agency, the National Development and Reform Commission (NDRC), will provide overall coordination of the TA, including coordination with government authorities and other stakeholders, and will assign counterpart staff to assist the consultants. The implementing agency, the NDRC's Department of Laws and Regulations, will coordinate with the Asian Development Bank (ADB) on the day-to-day work of the consultants and will assume administrative responsibility for seminars, workshops, and an international consultation. Consultants will only be paid after their research results and reports are accepted by the NDRC.
3. The team leader, in cooperation with the executing and implementing agencies and ADB project officers, will oversee, coordinate, and monitor the consultants' work. Accordingly, the consultants will maintain close working relations with the executing and implementing agencies and ADB, and will regularly discuss TA progress and findings. Meetings involving the consultants, the executing and implementing agencies, and ADB staff will be held to provide guidance to the consultants and to review their reports. The consultants will support the dissemination of knowledge work products (e.g., at workshops, conferences, and on executing agency and ADB websites), and will make available both electronic and hard copies to stakeholders.

A. National Consultants

4. **Team leader and chief legal adviser** (intermittent, 5 person-months). The team leader will have strong expertise, extensive experience, and in-depth knowledge of law and policy relating to public-private partnerships (PPPs) in the People's Republic of China (PRC). A solid understanding of the experience of other countries with PPPs and the legal environments for PPPs in various countries is also required. The team leader will have at least 15 years of relevant experience, and a master's degree or higher qualification in law, or in finance, economics, management, or other relevant field, but with strong experience in drafting or advising on relevant legal frameworks. Experience in the preparation and/or implementation of PPP projects in the PRC is desirable.
5. The team leader will be responsible for (i) assigning and coordinating detailed tasks to all team members and managing all team members to deliver high-quality, timely outputs; (ii) researching and writing key outputs; and (iii) engaging stakeholders. Proficiency in written and spoken English is essential and a demonstrated record in producing publications of international standard is strongly preferred.
6. The team leader will have overall responsibility for the quality and timely delivery of the TA outputs to ADB and the executing agency; ensuring relevant national and international experience and lessons are factored into the TA outputs; ensuring completion of all TA activities; and ensuring that team members work in an effective, efficient, collaborative, and timely manner.
7. In fostering implementation that achieves government ownership of the TA, the team leader will be responsible for the following:

- (i) implementing the TA under the guidance of the NDRC and the ADB project officers in accordance with the terms and conditions specified in the TA paper and the agreement between the government and ADB;
- (ii) coordinating and managing the inputs, activities, and outputs of the TA consultants, including allocating responsibilities to consultants and monitoring their performance to achieve the results outlined in the DMF in the specified time frames; initiating and leading discussions of key implementation issues; and managing TA quality control and quality assurance;
- (iii) guiding the analytical work, identifying key issues, presenting and analyzing alternative responses, and effectively using related ADB TA; identifying relevant literature and international experience and factoring those into the analysis; and explaining and justifying the responses recommended by the consultant team;
- (iv) assisting the NDRC in planning their international consultation by helping identify agencies to meet and questions to be investigated in each meeting;
- (v) establishing reporting arrangements with the NDRC and ADB, and ensuring that they and other stakeholders are regularly informed of progress and developments in the work;
- (vi) preparing material suitable for publications and other information releases in Chinese and English, as appropriate to the audience(s), and releasing at least one widely accessible publication;
- (vii) organizing the meetings, consultations, or workshops under output 3 with the NDRC, resource persons, and other relevant stakeholders;
- (viii) preparing and submitting all TA reports on time, and assisting with TA reviews undertaken by the NDRC, and ADB; and
- (ix) consulting, as relevant, with any development partners working on related activities, so that they are informed of activities and that a high level of coordination is maintained to avoid duplication or overlap of work.

8. Detailed responsibilities will include leading and managing the preparation of (i) an assessment of the PRC experience with PPP sector- and location-specific regulations relative to their suitability for the PRC's current goals for the PPP program, (ii) the combination of the international assessment provided by the international consultants with the PRC assessment into output 1, (iii) a research or issues paper on key issues recommended to be addressed by the concession law including specific comments on draft laws provided for that purpose by the executing agency, (iv) an examination of issues raised by PPP units and tax and land policy, and (v) short policy notes on priority issues faced in the review of a draft concession law as identified in consultation with the executing agency and ADB. The team leader will also be responsible for the timely delivery of the reports mentioned in Section 4.

9. **Coordinator** (intermittent, 2 person-months). The coordinator will have a graduate degree in economics, law, accounting, management, public policy, public administration, international development, or a related field, as well as at least 5 years' experience in a business or government environment. Proficiency in English is required.

10. Reporting to the team leader, the coordinator will have day-to-day responsibility for the timely administration of meetings and events, including the identification and mobilization of required resource persons. Detailed tasks will include (i) liaison with participants on the arrangements for events; (ii) handling all logistical requirements of the venues, including the provision of refreshments, audiovisual equipment, and materials; (iii) coordination with external suppliers of any inputs; (iv) coordination and consolidation of the inputs of resource persons to achieve smooth participation in the training; (v) pre-event planning and onsite administration of

training and related activities, from registration to departure of participants; (vi) receipt of invoices, billings and payment for inputs to the training (e.g., venue bills and training materials); (vii) liquidation of expenses; and (viii) managing and supervising translation work and the conduct of other related tasks assigned by the team leader.

B. International Consultants

11. **Legal adviser** (intermittent, 2 person-months). The adviser will have strong expertise, extensive experience, and in-depth knowledge of the international experience with PPPs and the legal frameworks in which they have developed. A solid understanding of the PRC's experience with PPPs is preferred. The adviser must have at least 10 years of relevant post-qualification experience and a master's degree or higher qualification in law. Experience in multiple jurisdictions in the preparation and/or implementation of PPP projects and in advising on the development of PPP laws and policies is highly desirable. Preference will be given to candidates who can demonstrate expertise in both common law and civil law approaches to PPPs. A record in producing publications of international standard is essential. Knowledge of the PRC law and practice in infrastructure and proficiency in Chinese is desirable.

12. Reporting to the team leader, the adviser will provide the team's key source of advice on international legal practices and experience with respect to PPPs. Working from a legal perspective, the adviser will (i) analyze information from government agencies, market participants, and other sources; (ii) participate in consultations to explore and understand issues and develop responses; (iii) identify and examine international literature; (iv) provide inputs, from the perspective of international experience, into the team's recommendations and comments on draft laws; (v) review regulatory issues; and (vi) undertake other tasks as required by the team leader consistent with the DMF.

13. Detailed responsibilities will include the provision of international legal input to the preparation of (i) an assessment of the international experience with PPP laws; (ii) inputs as identified by the team leader on the suitability of existing PPP regulatory frameworks to meet the PRC's current goals for its PPP program, given relevant international experience; (iii) inputs as identified by the team leader on the identification of key issues recommended to be addressed by the concession law, including specific comments on draft laws; and (iv) inputs as identified by the team leader on short policy notes on priority issues faced in the review of a draft concession law as identified by the team leader in consultation with the executing agency and ADB. The adviser will be responsible for working with the team leader to ensure that relevant international legal experience is incorporated into TA deliverables. The adviser will also assist in the preparation and conduct of meetings, consultations, or workshops, and will identify suitable agencies to visit on an international consultation.

14. **Public-private partnership adviser** (intermittent, 0.5 person-months). The adviser will have strong expertise, extensive experience, and in-depth knowledge of the international experience with PPPs. A solid understanding of the PRC's experience with PPPs is preferred. The adviser will have at least 10 years of relevant experience and a master's degree or higher qualification in finance, economics, management, engineering, business, or other relevant field. Experience in the preparation and/or implementation of at least five PPP projects internationally is required. A record in producing publications of international standard is essential. Proficiency in Chinese is preferred.

15. Reporting to the team leader, the adviser will provide the team's key source of advice on the nonlegal aspects of the international experience in PPPs. Working from a technical or

financial perspective, the adviser will (i) analyze information from government agencies, market participants, and other sources; (ii) participate in consultations to explore and understand issues and develop responses; (iii) identify and examine international literature; (iv) review regulatory issues; and (v) undertake other tasks as required by the team leader consistent with the DMF.

16. Detailed responsibilities will include the provision of technical or financial input to the preparation of (i) an assessment of the international experience with PPP laws, (ii) a research or issues paper on key issues to be addressed by a concession law, and (iii) short policy notes on priority issues faced in the review of a draft concession law. The adviser will be responsible for working with the international legal advisor and the team leader to ensure that relevant technical or financial international experience is incorporated into these deliverables. The adviser will also assist in the preparation and conduct of meetings, consultations, or workshops, and will identify suitable agencies to visit on an international consultation.

C. **Resource Persons** (national, intermittent, up to 20 persons, up to 10 days each)

17. The resource persons will have a degree in finance, economics, law, management, public policy, international development, engineering, or a closely related field, as well as at least 10 years experience in helping government agencies prepare and implement investment projects. Reporting to the team leader, the resource persons will participate in awareness-raising and meetings, consultations, or workshops to provide specific expertise and experience relevant to the issues addressed by the event.

D. **Reporting Requirements**

18. The team leader will be responsible for ensuring all TA reports meet a high professional standard. The deliverables of outputs 1, 2, and 3 will be provided in either English or Chinese to a publishable standard, and the TA will fund the translation of deliverables as needed. The reports to be delivered under output 4 will be provided in English, will meet an international, publishable standard, and will be translated into Chinese.

19. In addition to the deliverables required for each output, the team leader will produce the reports described in this para. in order to document, monitor, and assess TA activities. These reports are to be delivered in English. With the support of the TA consultants, and respecting all confidentiality requirements, the team leader will submit the following:

- (i) **Inception report.** A brief report (maximum of 5 pages plus appendixes) that provides a clear plan for implementing the TA, challenges to its success, and a summary of the status of TA performance. It will, to the extent feasible, provide (a) confirmation of the overall TA rationale and design; (b) adjustments recommended to improve TA performance, including to the consultant terms of reference; and (c) a TA implementation schedule.
- (ii) **Semiannual progress notes.** These brief notes (maximum of 2 pages) will inform the executing and implementing agencies and ADB of the status of TA implementation.
- (iii) **Midterm report.** This brief report (maximum of 5 pages plus appendixes) will inform the executing and implementing agencies and ADB of the status of implementing the terms of reference, plans for achieving the TA objectives, a personnel schedule with accomplishments under each item of the DMF, and a detailed TA implementation schedule. This report will record activities, outputs, and outcomes directly against the DMF.

- (iv) **Draft final report.** This report (maximum of 10 pages plus appendixes) will (a) be submitted 2 months before completion of the project; (b) summarize TA activities and results, reporting against the DMF; and (c) recommend any additional steps required to sustain the results of the TA.
- (v) **Final report.** This report will be submitted by the consultants within 1 month of receipt of the comments on the draft final report from the executing and implementing agencies and ADB, and will respond to the comments received.