



Technical Assistance Report

Project Number: 49151-001
Regional—Capacity Development Technical Assistance (R-CDTA)
June 2015

Enhancing Public–Private Partnership Project Development through Support for ADB Transaction Advisory Services in Southeast Asia and the Pacific

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Asian Development Bank

ABBREVIATIONS

ADB	–	Asian Development Bank
DMC	–	developing member country
OPPP	–	Office of Public–Private Partnership
PPP	–	public–private partnership
TA	–	technical assistance
TAS	–	transaction advisory services

NOTE

In this report, “\$” refers to US dollars.

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CAPACITY DEVELOPMENT TECHNICAL ASSISTANCE AT A GLANCE

1. Basic Data		Project Number: 49151-001	
Project Name	Enhancing Public–Private Partnership Project Development through Support for ADB Transaction Advisory Services in Southeast Asia and the Pacific	Department /Division	OPPP/OPPP
Country Borrower	REG	Executing Agency	Asian Development Bank
2. Sector		ADB Financing (\$ million)	
✓ Multisector	ADB's corporate management, policy and strategy development		1.39
		Total	1.39
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	
Private sector development (PSD)	Promotion of private sector investment	No gender elements (NGE)	✓
5. Poverty Targeting		Location Impact	
Project directly targets poverty	No	Rural	Medium
		Urban	Medium
6. TA Category:	B		
7. Safeguard Categorization	Not Applicable		
8. Financing			
Modality and Sources		Amount (\$ million)	
ADB		1.39	
Capacity development technical assistance: Technical Assistance Special Fund		1.39	
Cofinancing		0.00	
None		0.00	
Counterpart		0.00	
None		0.00	
Total		1.39	
9. Effective Development Cooperation			
Use of country procurement systems		No	
Use of country public financial management systems		No	

I. INTRODUCTION

1. Strategy 2020 of the Asian Development Bank (ADB) identifies private sector development and private sector operations as drivers of change in Asia and the Pacific.¹ Under Strategy 2020, ADB will expand work with the private sector to generate greater economic growth in the region. Public-private partnership (PPP) is seen as an important modality to achieve this objective, and ADB's Strategy 2020 emphasizes the promotion of PPPs in all of ADB's core operations.

2. The proposed capacity development technical assistance (TA) will directly contribute to pillar 3 of ADB's Public-Private Partnership Operational Plan, 2012-2020 by supporting ADB's transaction advisory services (TAS).² Following the Midterm Review of Strategy 2020, ADB's Office of Public-Private Partnership (OPPP) was established in which ADB's TAS function is centralized.³ Transaction advisory encompasses ADB providing transaction advice directly to its developing member countries (DMCs), including specialized support and advice on legal, financial, technical, and other matters on a specific transaction. As required, specialist consultants under this TA would support OPPP's TAS team. Concept clearance for this TA was received on 24 April 2015.⁴

II. ISSUES

A. Support for Infrastructure Development

3. Southeast Asia and the Pacific are in need of significant infrastructure investment, although several challenges exist:

- (i) Traditional sources of infrastructure finance are strained;
- (ii) Public budgets are overstretched, with little room for additional spending on infrastructure.
- (iii) Debt markets are retreating as banks (particularly those in Europe), which used to play a leading role in structured finance, are still recovering from the global financial crisis and adjusting to tighter regulatory requirements, including Basel III.
- (iv) Multilateral development banks, including the World Bank and ADB, have limited capital that is insufficient to meet the infrastructure needs of the region, estimated by ADB at \$8 trillion from 2010 to 2020.
- (v) Overseas development assistance has played a relatively modest role, having provided only 2.5%–3.0% of total investments in infrastructure.
- (vi) Developing country capital markets lack the depth and breadth to provide the kind of long-term financing required for infrastructure development and investment. The outlook for traditional financing means that governments must consider alternative financing models to leverage private capital into infrastructure development and investment.

4. Developing countries in the region are facing a huge shortfall in infrastructure investment, which has negative consequences on economic growth. Measures are therefore

¹ ADB. 2008. *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank, 2008-2020*. Manila.

² ADB. 2012. *Public-Private Partnership Operational Plan 2012-2020*. Manila. (Pillar 3: Project Development – Regional Departments actively encourage PPPs and enhance DMC capacity to carry out project identification and subsequent development.)

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

⁴ The TA first appeared in the business opportunities section of ADB's website on 12 May 2015.

urgently needed to meet the additional funding requirements. Countries have three principal options: (i) review traditional sources of public finance and explore additional funding from them, (ii) investigate mechanisms for generating more resources from off-budget sources, and (iii) consider a greater role for PPPs as a way to procure infrastructure and identify and address impediments to the development of PPP transactions. While the advantages of PPPs have long been recognized, many countries are still experiencing difficulties in their implementation. There is a need to increasingly mobilize and better coordinate project preparation resources to develop bankable PPP projects. In 2004-2014, fund managers around the world have raised nearly \$300 billion from institutional investors specifically for infrastructure investment, and the bulk of capital in these funds is from long-term investors such as pension funds and life insurance companies.⁵ Infrastructure investments generally provide asset–liability matching; stable, inflation-linked returns; and a relatively low risk profile compared with other equities.

B. Support for Public–Private Partnership Development

5. PPP is viewed as a modality to serve the region’s infrastructure financing needs by supporting public spending with private sector capital flows. It is widely believed that a dearth of well-structured, viable investment opportunities leads to a significant amount of capital in these private funds remaining uninvested. However, there is ample private sector capital or commercial debt available to finance well-prepared projects with a bankable risk profile. The real problem is that during the cycle of infrastructure projects becoming infrastructure assets, there is a gap in terms of (i) adequacy and quality of investment preparation, and (ii) early stage investment and development.

6. The Midterm Review of Strategy 2020 (i) envisions ADB becoming a more active project developer in addition to its established role as a project financier, and (ii) emphasizes the need to provide TAS to advise DMC clients on developing bankable infrastructure projects and bringing private sector participation to those projects. As the central operational unit within ADB, OPPP provides TAS as a fee-based service; this allows OPPP to avoid crowding out private sector advisors by pricing its mandates in line with market norms. Through TAS, ADB seeks to help developing countries deliver modernized and efficient infrastructure services. ADB’s strategic support promotes and supports PPP development in these countries, and addresses the gap between public sources of funding and infrastructure needs.

7. Since its inception, OPPP has undertaken significant marketing efforts jointly with the sector teams of ADB’s regional departments and resident missions, resulting in the development of a pipeline of possible PPP infrastructure transactions in Southeast Asia and the Pacific for which OPPP would be able to provide TAS. While ADB’s TAS teams will bring together specialists with commercial skills and sector expertise, ADB will need to retain external specialists and consultants to support the TAS teams.

III. THE CAPACITY DEVELOPMENT TECHNICAL ASSISTANCE

8. The TA will support the transaction advisory process which will aid project preparation and develop the capacity of DMCs for future PPP implementation. The TA will complement other assistance provided by ADB to strengthen the legal, policy, and institutional framework for PPP. For example, in the case of Pacific DMCs, OPPP will work with the Pacific Private Sector Development Initiative on potential PPP projects, as it has done in the past.

⁵ Preqin Global Infrastructure Report. 2015. <https://www.preqin.com/item/2015-preqin-global-infrastructure-report/4/10606>

9. The TA will provide technical, legal, financial, negotiation, and other specialist support (insurance, tax advice, translator, data room management, and others) for TAS transactions in conducting due diligence, preparing documentation (including concession agreement and other agreements), developing financial models assisting the timely completion of contract negotiations, and performing other activities as required by the TAS process. The outputs will focus on information needed by the DMC client to develop bankable PPP projects. Based on the initial size and term of the TA, it is expected that the TA can support one to two TAS transactions.

10. The expected structure of each TAS mandate ADB seeks to enter with its DMC clients will result in the appointment of ADB as the lead or co-lead mandated advisor (in either such capacity, the mandated advisor) for the specific PPP project. In turn, ADB will engage consultants on a project-by-project basis. The TAS mandate will require that the collective mandated advisory team owes an exclusive duty of care⁶ to the DMC client in ensuring that a bankable transaction is prepared. Each consultant and external expert, however, will provide its outputs directly to ADB in its capacity as the mandated advisor. Thus, each consultant, external expert, and advisor hired under this TA by ADB will owe its exclusive duty of care to ADB as mandated advisor. While consultants and external experts will deliver outputs and owe a duty of care to ADB, their support will be provided for the ultimate benefit of the DMC client.

A. Impact and Outcome

11. The impact will be improved and increased infrastructure PPPs for poorly serviced populations in DMCs. Successful PPP transactions that are supported by the TA will demonstrate ADB's TAS capability and provide model cases for future projects.

12. The outcome will be an increase in successfully awarded PPP transactions, which will be assessed by completion of contract negotiations and DMC client acknowledgement of a signed concession agreement for projects that have TAS mandates.

B. Methodology and Key Activities

13. The TA will provide technical, legal, financial, and negotiation support for OPPP's TAS operations. The outputs of the TA will take several forms, including technical studies, project agreements, legal support, financial analysis support, financial models, negotiation support, and other outputs produced by consultants hired under the TA. Not all TAS mandates will require these items, but TA consultants will provide them as outputs, depending on relevant analysis conducted by ADB as mandated advisor.

14. The outputs of the TA are as follows:

- (i) **Technical studies.** The studies will provide information needed to finalize the technical parameters of the project and project agreements, and address key obligations of the government under the agreements. Specific studies will be determined based on the underlying transaction.
- (ii) **Legal support.** The TA will assist the mandated advisor in ensuring that

⁶ Duty of care defines the reporting relationship, i.e. if a consultant has duty of care to ADB, it reports to ADB.

appropriate legal inputs (from both international law and local law perspectives) are identified and incorporated in the project agreements, and that the drafting and structure of the project agreements are consistent with best international standards. Project agreements are expected to include a concession agreement and other supporting agreements as required by the particular project or sector.

- (iii) **Financial analysis support.** TAS mandates typically will require several financial models throughout the course of the engagement, including a value-for-money analysis, a financial model prepared in support of the proposed transaction structure, shadow bid models, and a final financial model that integrates the risk positions and financial structure of the project agreed between the government and the preferred bidder. In addition to development of these models, financial analysis support also includes review of the preferred bidder's financial model and other financial analysis tasks as may be required for a transaction.
- (iv) **Negotiation support.** The consultant team will support the mandated advisor in assisting and advising the government during negotiations with the bidder(s).
- (v) **Other supports as needed.** In addition to the forms of support mentioned above, the specifics of a transaction may require specialist inputs in areas including insurance, tax, geology, environment, social safeguards, independent audit of financial models, and other specialist inputs a may be required for a transaction. The TA may be called upon to provide these inputs as required by ADB as mandated advisor. Separately, the TA may also be used to retain consultants providing transaction support services, including translation, data room management, and other forms of support.

C. Cost and Financing

15. The TA is estimated to cost \$1,390,000, which will be financed on a grant basis by ADB's Technical Assistance Special Fund (TASF-V). The cost estimates and financing plan are in Appendix 2. It is expected that the TA will be expanded with additional financing from development partners, based on the growth of OPPP's TAS business. ADB will discuss with each DMC client whether to reimburse ADB for costs incurred under TA if reimbursement by the DMC client is legally and administratively permissible under applicable law. If the DMC client agrees to reimburse ADB for its costs under the TA, ADB and the DMC will enter into a separate Memorandum of Understanding (MOU) that will document the terms of the reimbursement arrangements, including amount and timing of payments, and reflect the terms and conditions of the relevant TA framework agreement and the TA letter between ADB and the DMC client. When there is no reimbursement arrangement, ADB will not recover its costs incurred under TA as part of fees payable under the terms of the TAS mandate.

D. Implementation Arrangements

16. **Executing and implementing agencies.** ADB will be the executing agency and OPPP will be the implementing agency. As part of every TAS mandate entered into by OPPP, it will seek the assistance of the DMC agencies managing the PPP process. Within ADB, OPPP will work closely with regional departments to benefit from sector expertise and coordinate with various DMC agencies. OPPP will coordinate with relevant regional departments and resident missions, as they have sector expertise, country knowledge and relationships, and a local

presence. OPPP will also work and coordinate with ADB's Office of the General Counsel regarding any legal support provided by legal consultants.

17. **Recipient government inputs.** Recipient governments are expected to provide counterpart staff, office space, and other support, as articulated in the TAS mandate between ADB and the relevant government agency. Prior to entering into a TAS mandate, ADB will consult with the government counterparty about use of this TA and other forms of support.

18. **Monitoring and evaluation.** The TA will be monitored and evaluated based on the implementation of activities and satisfactory delivery of outputs following the agreed timeline and budget allocation. To support monitoring and evaluation (and when commercially practicable), consultants will submit an inception report, quarterly progress notes, a midterm report, a draft final report, and a final report to ADB. Because the provision of TAS will require OPPP to have frequent interactions with consultants hired under this TA, there will be regular monitoring of overall TA progress, assessment of performance, and confirmation of the relevance of the TA. Any knowledge products created by the TA will be provided to the DMC client of the TAS mandate and to ADB for dissemination to the government and other stakeholders, as appropriate and while respecting project confidentiality restrictions.⁷

19. **Engagement of consultants.** ADB will engage international and national consultants, as well as any resource persons or office equipment as needed, in accordance with its Guidelines on the Use of Consultants (2013, as amended from time to time). TA proceeds will be disbursed in accordance with ADB's *Technical Assistance Disbursement Handbook* (2010, as amended from time to time). Consultants are expected to be selected via quality- and cost-based selection procedures. Over time, OPPP also intends to create a short list of consulting firms under an indefinite delivery contract so OPPP can engage them upon receiving mandates for specific projects. Because of the lead time required for hiring consultants under the current guidelines, OPPP may also start recruiting consultants for a TAS mandate shortly before the mandate is officially signed.

20. **Timing.** The TA will be implemented from 15 June 2015 to 15 June 2018 on an as-needed basis. Closing of the TA is anticipated by 31 December 2018. Further specifics on the TA scope will be determined as TAS mandates, which require this TA, are awarded to OPPP. At the very least, OPPP signed its first mandate in May 2015, so further specifics on the TA scope for the first mandate will be provided in the second quarter of 2015.

IV. THE PRESIDENT'S DECISION

21. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance not exceeding the equivalent of \$1,390,000 on a grant basis for Enhancing Public-Private Partnership Project Development through Support for ADB Transaction Advisory Services in Southeast Asia and the Pacific, and hereby reports this action to the Board.

⁷ Through TAS, OPPP is providing a service to ADB's DMCs. Thus, TAS mandates will typically have a confidentiality clause that may restrict OPPP's ability to share information provided to a DMC client with certain parties outside or even inside ADB.

DESIGN AND MONITORING FRAMEWORK

Design Summary	Performance Targets and Indicators with Baselines	Data Sources and Reporting Mechanisms	Assumptions and Risks
<p>Impact Improved and increased infrastructure PPPs for poorly serviced populations in DMCs</p>	<p>At least one additional PPP transaction in each target country where technical assistance is used</p> <p>Increased investment for infrastructure projects, measured by at least \$100 million of foreign investment or lending generated by PPPs supported by this technical assistance</p>	<p>Government plans and pipelines for PPP in target countries</p> <p>Government records and project information</p> <p>Industry reporting sources such as Project Finance International and other trade publications</p>	<p>Assumptions International investors remain open to engagement in PPPs in emerging markets</p> <p>Government support for PPP in DMCs continues</p> <p>Risks Budget constraints prevent the pursuit of additional PPPs</p> <p>Change in government results in cancellation of projects</p>
<p>Outcome Increase in successfully awarded PPP transactions</p>	<p>Completion of negotiations for and award of concession agreement of at least two transactions by December 2018</p>	<p>DMC client acknowledgement of signed concession agreement</p>	<p>Assumptions The government and bidders remain committed to the PPP tendering schedule</p> <p>Government support for PPP in DMCs continues</p> <p>Risk Political uncertainty slows decision making or completion of transactions</p>
<p>Outputs Technical studies, project agreements, legal support, financial analysis support, financial models, negotiation support, and other supports as required by transaction advisory services mandates completed</p> <p>Model PPP transaction structures developed</p>	<p>DMC client endorsement of consultant outputs based on milestones reached (see Activities with Milestones)</p>	<p>DMC client acknowledgement of outputs and milestones achieved</p>	<p>Assumptions ADB's Office of Public-Private Partnership obtains mandates for at least two transactions</p> <p>Government staff remain committed to developing PPP as a new mode of service delivery, and to building their capacity for PPP</p> <p>Risk Suitable consultants cannot be identified in a timely manner</p>

Activities with Milestones	Inputs	
1. Support first mandate	ADB: \$1,390,000	
1.1 Hire legal consultant for first transaction by month 1 (June 2015)		
Activities with Milestones	Item	Amount
1.2 Draft concession agreement for first transaction by month 4 (September 2016)	(\$'000)	
1.3 Complete support for bidding process for first transaction by month 9 (February 2016)	Consultants	1,190.00
1.4 Complete support for negotiation and concession award for first transaction by month 10 (March 2016)	Training, seminars, and conferences	50.00
1.5 Conduct workshop with ADB and DMC client based on first transaction experience by month 16 (September 2017)	Miscellaneous administration and support costs	50.00
2. Support second mandate		
2.1 Hire necessary consultants for second transaction by month 9 (February 2016)		
2.2 Draft concession agreement for second transaction by month 14 (July 2016)		
2.3 Complete support for bidding process for second transaction by month 18 (November 2016)		
2.4 Complete support for negotiation and concession award for second transaction by month 30 (November 2017)		
2.5 Conduct workshop with ADB and DMC client based on second transaction experience by month 36 (May 2018)	Contingencies	100.00

ADB = Asian Development Bank, DMC = developing member country, PPP = public-private partnership.
Source: Asian Development Bank.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Total Cost
Asian Development Bank Financing^a	
1. Consultants	
a. Remuneration and per diem	1,100.0
b. International and local travel	90.0
2. Training, seminars, and conferences ^b	50.0
3. Miscellaneous administration and support costs ^c	50.0
4. Contingencies	100.0
Total	1,390.0

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

^b This category includes international and local travel costs for Asian Development Bank staff and consultants as resource persons.

^c Printing, translation, and communication.

Source: Asian Development Bank estimates.

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

1. A range of consultancy inputs could be obtained to support this technical assistance (TA) and the Asian Development Bank (ADB) Office of Public–Private Partnership’s transaction advisory services mandates. The following types of consultants are most likely to be hired, although others could be hired as well on a project-specific basis. The terms of reference are indicative and will be updated and modified as required for each project for which the Office of Public–Private Partnership receives a transaction advisory services mandate. Estimates of person-months are based on the TA being used for two projects.

2. **Technical advisor** (48 person-months). The technical advisor, which is expected to be a firm, will have particular expertise that will vary based on the sector and country needs of the project. However, certain tasks will be part of the advisor’s terms of reference:

- (i) conduct technical due diligence on the project prior to tendering;
- (ii) develop feasibility studies and other relevant technical reports;
- (iii) provide technical and commercial advice for the project;
- (iv) consider safeguard requirements in relation to project layout, design, or projected operational characteristics;
- (v) advise on all technical questions received from bidders and provide responses to be issued by DMC client or the mandated advisor, as appropriate;
- (vi) assist DMC client agency as instructed (subject to confirmation by the mandated advisor) in conducting discussions with the bidder;
- (vii) assist the mandated advisor and the legal advisor in preparing required modifications to project agreements;
- (viii) provide support, as necessary, for the negotiation process;
- (ix) attend to any other matter of a technical nature relating to the project, as instructed by the mandated advisor; and
- (x) attend to all other matters of a technical nature relating to the transaction for which ADB is the mandated advisor.

3. **Legal advisor** (72 person-months). The legal advisor will be a law firm with substantial experience in public–private partnership transaction advisory, including preparing and negotiating all project agreements to a high standard, as well as drafting concession agreements in multiple sectors and international project finance. The legal advisor must have previous experience in the drafting of sector-specific concession agreements and other related project agreements, including in markets where no precedent for such documentation exists. The legal advisor can include international and/or local counsel as required by the transaction, and is likely to include three individuals (partner, senior associate, and associate) per transaction. Working under the overall guidance of the mandated advisor, the responsibilities of the legal advisor will include:

- (i) conduct legal due diligence on the project for benefit of the government and/or mandated advisor;
- (ii) advise and assist the government and the mandated advisor in addressing all legal matters that arise during negotiations with the bidder(s);
- (iii) assist the government and the mandated advisor in proposing contractual drafts of the project agreements to reflect the final negotiated and agreed position;
- (iv) provide support, as necessary, for the negotiation process;
- (v) assist the team coordinator in submitting TA reports; and

- (vi) attend to all other matters of a legal nature relating to the transaction for which ADB is the mandated advisor.

4. **Financial advisor** (48 person-months). The financial advisor can be an individual or a firm. If an individual, the financial advisor will have a postgraduate degree in finance or a closely related field, as well as at least 10 years of experience with major infrastructure projects, international project finance, and advising on public–private partnership transactions, including support during negotiations and the preparation of project agreements. Previous experience in the region is desirable. Working under the overall guidance of the mandated advisor, the responsibilities of the financial advisor will include:

- (i) advise the government and the mandated advisor on all financial matters that arise during negotiations with the bidder(s);
- (ii) prepare any financial models required to support the tendering process, including financial models in support of the transaction structure, shadow bid models, and a final financial model;
- (iii) provide a review and evaluation of the preferred bidder’s updated financial model;
- (iv) assist the government and the mandated advisor in finalizing project agreements to reflect the final negotiated and agreed position;
- (v) provide support, as necessary, for the negotiation process;
- (vi) assist the team coordinator in submitting TA reports; and
- (vii) attend to all other matters of a financial nature relating to the transaction for which ADB is the mandated advisor.