



# **Asian Development Bank's Contribution to Anticorruption and Governance-Related Work in the People's Republic of China**

A review from the 2007 Country Assistance Program Evaluation on the People's Republic of China: *Success Drives Demand for More Innovative and Responsive Services*

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# Abbreviations

|       |  |
|-------|--|
| ADB   | Asian Development Bank                                     |
| ADTA  | advisory technical assistance                              |
| CAPE  | country assistance program evaluation                      |
| CNAO  | China National Audit Office                                |
| GDP   | gross domestic product                                     |
| GPL   | Government Procurement Law                                 |
| KPIO  | Key Projects Inspectorate Office                           |
| MOF   | Ministry of Finance  |
| MTSII | Medium-Term Strategy II 2006-2008                          |
| NDRC  | National Development and Reform Commission                 |
| OECD  | The Organisation for Economic Co-operation and Development |
| OPR   | operational procurement review                             |
| PRC   | People's Republic of China                                 |
| PRCM  | PRC Resident Mission                                       |
| TA    | technical assistance                                       |
| TBL   | Tendering and Bidding Law                                  |
| TI    | Transparency International                                 |
| WTO   | World Trade Organization                                   |

## Note

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

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# I. Corruption Perceptions and Anticorruption Measures

1. The corruption problem in the People's Republic of China (PRC) emanates largely from the transition from a centrally planned economy to a market-oriented one, which had created incentives and opportunities for personal gain through corrupt practices due to unintended loopholes in the legal and institutional frameworks. The Organisation for Economic Co-operation and Development (OECD) reported an increase in the PRC corruption levels toward the end of the 1980s up to the beginning of the 1990s, especially in the coastal areas, which is consistent with the country's reform process<sup>1</sup>.

2. Table 1 presents the corruption perceptions index for the PRC, which indicates the degree to which businessmen and analysts perceive public officials to be corrupt, as surveyed by Transparency International.<sup>2</sup> During the country assistance program evaluation (CAPE)<sup>3</sup> period, the PRC had consistently scored less than 4 out of a "clean" score of 10, suggesting a serious image of corruption in the country. However, while the PRC does score lower than other middle-income countries, its ranking near the median<sup>4</sup> meant that only about seven other Asian countries<sup>5</sup> are perceived to be less corrupt than the PRC.

**Table 1: Corruption Perceptions Index for the People's Republic of China**

| Year | Corruption Perceptions Index |              |              |                  |
|------|------------------------------|--------------|--------------|------------------|
|      | Score <sup>a</sup>           | Surveys Used | Country Rank | No. of Countries |
| 1998 | 3.5                          | 10           | 52           | 85               |
| 1999 | 3.4                          | 11           | 59           | 99               |
| 2000 | 3.1                          | 11           | 63           | 90               |
| 2001 | 3.5                          | 10           | 58           | 91               |
| 2002 | 3.5                          | 11           | 59           | 102              |
| 2003 | 3.4                          | 13           | 66           | 133              |
| 2004 | 3.4                          | 16           | 71           | 146              |
| 2005 | 3.2                          | 14           | 78           | 159              |
| 2006 | 3.3                          | 9            | 70           | 163              |

<sup>a</sup>The nearer to 0, the higher the degree of perceived corruption. Thus, 0 is highly corrupt and 10 is highly clean.

Source: Transparency International website.

<sup>1</sup> OECD. 2005. *Governance in China*. Paris.

<sup>2</sup> TI also maintains a Global Corruption Barometer to survey businessmen's opinions about which sectors are the most corrupt, which spheres of life are most affected, whether corruption has changed, and whether it is likely to be prevalent in the future. Unfortunately, such data was missing for the PRC.

<sup>3</sup> ADB. 2007. *Country Assistance Program Evaluation for the People's Republic of China: Success Drive Demand for More Innovative and Responsive Services*. Manila.

<sup>4</sup> TI gives a separate ranking for Hong Kong, China; Macau, China; and Taipei, China. Thus, the PRC's improved ranking of 70 out of 163 countries, in 2006 did not incorporate Hong Kong, China's 15th slot, Macau, China's 26th slot, and Taipei, China's 34th place.

<sup>5</sup> Of these seven Asian countries in 2006, three are ADB developing member countries: Bhutan, Malaysia, and Thailand.

3. The Millennium Challenge Corporation also ranked 113 countries according to 16 policy indicators that measure a country's capacity to rule justly,<sup>6</sup> invest in human development, and encourage economic freedom in order to determine their eligibility for bilateral aid from the United States. In 2005, while the PRC ranked very low for those governance indicators involving individual rights, it scored above the median in terms of government effectiveness, rule of law, and control of corruption,<sup>7</sup> thus displaying better public governance than other big Asian Development Bank (ADB) borrowers like Bangladesh, Indonesia, Pakistan, and Viet Nam.

4. Nonetheless, the rapid transition period, the business sector's desire to quickly get things done, and the creeping materialism had bred varied forms of corruption. A 2001 study<sup>8</sup> estimated that economic losses from corruption in the PRC during the transition period ranged from 13% to 17% of gross domestic product (GDP), half of which comes from tax fraud. A 2002 study by the same author<sup>9</sup> sought to document claims by different government agencies made in various publications about their own economic losses from corruption. The findings revealed that losses from bad loans in the financial industry alone account for 5% of the GDP, while those associated with arbitrary charges or embezzled capital for key public expenditures like food supplies, oil, other monopolistic industries, and schools approximate 2.5% of GDP. Past efforts to curb corrupt practices may not have been very effective, as evidenced by relatively low conviction rates<sup>10</sup> and continued massive outflow of illegally-gained assets.<sup>11</sup>

5. In recognition of such costs that undermine reform and development, social justice, and Party capability, the Government had taken more concrete measures to weed out corruption following a two-pronged approach:

- (i) **Punishment**, by strengthening the investigation and deterrent aspects of (a) criminal law, with very harsh penalties for bribery, graft, or embezzlement that exceed even the standard in OECD countries; (b) administrative regulations on ethical conduct, embezzlement, income disclosure, and gifts, violations of which will entail warnings, demerits, demotion, dismissal from office, and reduction or loss of pension; and (c) disciplinary codes and sanctions against Party members, which range from warnings, removal from Party posts, or probation within and expulsion from the Party.

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<sup>6</sup> The six governance indicators involve political rights, civil liberties, control of corruption, government effectiveness, rule of law, and voice and accountability.

<sup>7</sup> The PRC is presently categorized under Millennium Challenge Corporation-prohibited countries because it is subject to a United States sanction.

<sup>8</sup> Hu, Angang. 2001. *China: Fighting Against Corruption*, Zhejiang People's Press (Chinese version). The other types of corruption considered were rent-seeking, corruption related to the underground economy, and corruption involving government investments and public expenditures.

<sup>9</sup> Hu, Angang. 2002. *Public Exposure of Economic Losses Resulting from Corruption*, Institute of World Economics and Politics Chinese Academy of Social Sciences.

<sup>10</sup> The same 2001 Hu study estimated that only 10–20% of corruption cases are eventually solved, and only 7% of Party officials received criminal punishment.

<sup>11</sup> According to International Monetary Fund estimates, some \$24 billion of illegally acquired assets are laundered every year. Between \$9 to \$59 billion were supposedly brought out of the PRC in recent years. Figures were quoted from *China Daily* (15 June 2004, 9 July 2004, and 20 August 2004).

- (ii) **Prevention**, which was given equal priority beginning the mid-1990s by (a) reviewing the risks areas that are prone to corruption,<sup>12</sup> particularly by closing loopholes in public procurement and contract management, simplifying procedures on administrative licensing, etc.; (b) encouraging ethical conduct, by promoting professionalism in human resources management and piloting specific measures for promoting integrity in selected cities; and (c) making corruption more difficult to commit and easier to discover, by separating the collection and spending of public funds, beefing up oversight and internal audit institutions, and using new technologies to improve accessibility to public information.

6. The impact of the punishment track in terms of recent detection and prosecution is clear-cut. For example, the number of people being investigated by the Supreme People's Procuratorate rose by 71% from 2004 to 2005. In 2005, 73% of the 41,449 employees it investigated for corruption and dereliction of duty were brought to court. While majority of this number comprised local government officials and executives of state-owned enterprises, such measures still led to the prosecution of senior officials<sup>13</sup> and even some procurators and judges themselves. In the lead up to the National People's Congress in March 2007, President Hu Jintao made pronouncements highlighting the need to further step up anticorruption efforts by stemming graft at its source and continuing to build a clean government.

7. However, challenges remain. The rapid reform of the legal and regulatory framework had led to inconsistency or loopholes that make interpretation and enforceability difficult. In addition, the integrity of the system depends to a large deal on government stability, which is tested every time a corruption case involves higher Party members. There was also an apparent reluctance to penalize private businesses who bribe government officials for fear of hindering private sector development, which is evident from the harsher policy toward the receiver of the bribe rather than the giver.<sup>14</sup> Since it is also the world's fourth largest exporter, there is increased pressure for the PRC to adopt the provisions of the OECD Anti-Bribery Convention that will confirm its intent to "play by the rules." It sent a delegation for the first time to the January 2007 OECD Working Group on Bribery to present its strategy, efforts, and instruments for fighting commercial bribery.

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<sup>12</sup> Commercial bribery was found to be widespread in construction, land use, transaction of property rights, distribution of medicine, government procurement, and development of land resources. Source: "Top officials pledge intensified fight against corruption" 3 March 2006 news article, website of the Embassy of the People's Republic of China in the United States of America.

<sup>13</sup> Like a former party chief in Shanghai and a former Beijing Vice Mayor. Earlier investigations had involved the former head of the PRC's drug administration, a former minister of Land and Resources, a former secretary of the Guizhou Provincial Committee, and former governor of Hubei. Note, however, that disciplinary action for a Party member is enforced by the Central Commission for Discipline Inspection of the Communist Party of China.

<sup>14</sup> TI developed such an indicator of the "supply side" of corruption. Its bribe payers index is based on a survey of business executives asking about the propensity of private sector companies from exporting countries to pay bribes abroad. PRC's bribe payers index ranked second to the worst in terms of rampant bribery, among 21 countries.

## II. ADB Assistance in Governance Reforms



8. The PRC's rapid economic growth has led to (and resulted from) major policy reforms and reforms of the legal system. Key reforms to the legal system include<sup>15</sup> (i) a constitutional amendment to include the rule of law as a guiding principle; (ii) the adoption of economic laws affecting foreign enterprises; (iii) adoption of laws and regulations to reform the banking system and to establish capital markets; (iv) preparation of legislation to create a social security system, protect the environment, and fight against corruption; (v) restoration, development, and reform of the judicial system; and (vi) development of an independent legal profession with legal education and training systems. These reforms have required drafting new legislation and regulations; building new institutions; and training millions of new regulators, judges, and lawyers. In addition, rapid economic growth has generated a demand for policy reform in all areas of activity.

9. ADB has supported the Government in addressing public sector governance issues, in addition to its support to the financial sector. While there was no specific reference to the governance sector in the first CAPE<sup>16</sup> or specific lessons identified, it did refer to fiscal policy reform and private sector development as part of an evaluation of advisory technical assistance (ADTA). It noted that ADB had responded to government requests for support in fiscal policy reform through a series of ADTAs. These had covered fiscal relations between the center and the provinces; policy and regulatory framework and financial management of the social security system; the policy regulatory and institutional framework for foreign direct investment in the power sector; and the legal and regulatory framework for highway financing. A general lesson was that "ADTA resources can be very effective instruments to bring about capacity building and policy reforms". Succeeding country strategy and programs and country strategy and program updates have addressed ADB's strategy toward the governance sector in different ways (Table 2), but all are fairly consistent.

<sup>15</sup> ADB. 2004. *ADB-PRC Partnership in Law and Policy Reform*. Manila.

<sup>16</sup> ADB. 1998. *Country Assistance Program Evaluation in the People's Republic of China*. Manila.

**Table 2: ADB Country Strategy toward Governance**

| CSPU 2002–2004  | CSPU 2003–2005  | CSP 2004–2006 and CSPU 2005–2007  |
|---|---|---|
| <p>No explicit strategic reference to governance other than “ADB is conducting a study on governance issues entitled ‘Sound Development Management’ to be completed in 2001.”<sup>a</sup></p> | <p>The proposed TA program in 2003–2005 reflected the findings of the SDMS (footnote a), to date the most comprehensive treatment of development management issues in the PRC.</p> <p>The program built on previous and ongoing ADB activities to help strengthen the legal, policy, fiscal, and regulatory environment to accommodate greater decentralization and the emerging role of the private sector and market reforms.</p> <p>Future collaborative efforts will promote corporate governance through improved capacity for financial market supervision, a stronger legal and judicial system, and NGO partnerships for poverty reduction.</p> | <p>ADB will strengthen and enhance the public administrative, financial, legal, and regulatory systems needed in a market economy.</p> <p>It will help to improve public accountability and anticorruption efforts.</p> <p>ADB will continue to help the PRC build its enabling environment for private sector development, particularly for SMEs.</p> <p>ADB will help improve public service delivery through developing the capacity of utilities, and thereby improving local governance so it can administer services to the public more effectively.</p> <p>ADB will encourage the use of NGOs in service delivery and improve access to information for such services.</p> <p>ADB’s operations in governance will help improve the institutional basis for improved public administration and financial management in central and western provinces.</p> |

ADB = Asian Development Bank, CSP = country strategy and program, CSPU = country strategy and program update, NGO = nongovernment organization, PRC = People’s Republic of China, SDMS = Sound Development Management Study, SME = small- and medium-sized enterprise, TA = technical assistance.

<sup>a</sup>SDMS, eventually published in 2003 as ADB. 2002. *Development Management—Progress and Challenges in PRC*. Manila.

Source: Compiled from the PRC country strategy and program documents.

10. The publication of *Development Management—Progress and Challenges*<sup>17</sup> was a major milestone. This laid out a detailed framework for ADB’s future governance work in the PRC, including (i) continue to help draft procedures on making and applying rules, strengthen public financial management institutes, particularly at the subnational level, draft economic laws, and strengthen the regulatory framework for a market economy; (ii) continue to help revise laws and regulations that are in conflict with the World Trade Organization (WTO) and ensure policy recommendations and structural reforms in ADB’s loans are consistent with WTO rules; (iii) support the development of the legal aid system, especially in the central and western regions and the development of legal advice, counseling, and alternative dispute resolution mechanisms; (iv) further support accounting and audit systems to regulate the accounting profession and raise

<sup>17</sup> ADB. 2002. *Development Management—Progress and Challenges in the PRC*. Manila.

accounting and auditing standards; (v) reduce impediments to the development of the private sector through work on the reform of economic laws, the regulatory system, and promoting fair competition; (vi) support judicial reform; (vii) support fiscal reform; (viii) design appropriate incentive systems for the implementation of sound corporate governance structures; and (ix) improve the statistical system.

11. ADB's overall strategy toward governance is set out in the *Medium-Term Strategy II 2006–2008* (MTS II). It sets out improving governance as a key part of the overall strategy and states that “MTS II proposes that ADB's governance interventions give priority to public sector management, including procurement, public expenditure management, as well as the legal and regulatory framework and capacity development in sectors or subsectors where ADB is active.”<sup>18</sup> Elsewhere, MTS II states that law and the judiciary, public finance, and economic management are classified as group II sectors, defined as “...sectors that are not selected as core operational sectors. Building ADB's expertise or capacity in group II sectors is not a priority.” The latter is somewhat unclear. Thus, in terms of guiding a country strategy with regard to the governance sector, MTS II provided mixed signals by giving a high priority to governance reforms but highlighting ADB's lack of comparative advantage there. Nevertheless, ADB's past focus on governance in the PRC has been influential in developing suitable policies and laws as summarized below.

### III. ADB Program

12. ADB has had substantial involvement in governance-related work in the PRC since 1998. Some 36 ADTAs have been made for work on law and economic management, including 21 in the legal sector. The CAPE team reviewed all ADTAs in the governance sector from 1998 to 2005, but focused on the examination and evaluation of six ADTAs in some depth through a review of documents and a program of interviews with executing agencies when these were available, project officers, and consultants. It also drew on an Operations Evaluation Department report<sup>19</sup> covering five other governance-related ADTAs on procurement, audit, and performance evaluation.

13. **Procurement.** The legal and regulatory framework governing public procurement in the PRC has been developed since the late 1970s. In 1980, the State Council issued a regulation proposing competitive bidding. Over the next 2 decades, a number of ministries issued similar regulations on public procurement leading to the promulgation of the Tendering and Bidding Law (TBL) in 1999 and the Government Procurement Law (GPL) in 2002.

14. Issues related to the legal and regulatory framework and application of rules were addressed in a World Bank operational procurement review (OPR)<sup>20</sup> in 2002 with ADB participation. The OPR included a review of the GPL, which was then in its final

<sup>18</sup> ADB. 2006. *Medium-Term Strategy II 2006–2008*. Manila (page 15).

<sup>19</sup> ADB. 2006. *Technical Assistance Performance Evaluation Report for Selected TA Projects in Public Administration in the People's Republic of China*. Manila.

<sup>20</sup> World Bank. 2003. *China Operational Procurement Review*. Beijing (pages 86–92).

draft stage, and raised some concerns with the legal framework.<sup>21</sup> To address these concerns, the OPR proposed the consolidation of the TBL and the GPL. However, convention dictates that laws passed in new areas for the first time should be refined only after, say 5 years, to allow more experience to be gained. This has constrained the tightening of the legal framework on procurement.

15. Regarding the application of rules, the OPR identified a small number of main issues “that constitute intractable barriers to good procurement”, including weak planning, unrealistic cost estimates, poor technical specifications, incomplete design studies, suboptimal packaging, and inadequate management capacity. All these barriers need not be “intractable” and can be addressed through intensive capacity development programs. Since the OPR, an increasing amount of public procurement has been carried out in the more than 1,000 procurement and contracting trading centers across the country<sup>22</sup> under the overall supervision of the Ministry of Construction. Daily supervision of the integrity of administrative regulations is conducted by the Ministry of Supervision staff. The Beijing Municipality center has been designed and administered to ensure a high degree of process transparency, security, and predictability. The next step would be for technical specialists to review the suitability for alignment of multilateral development banks’ systems with the PRC system, taking into consideration the degree to which legal, regulatory, and implementation issues raised in the OPR have been addressed in practice. ADB, as a trusted advisor on legal, judicial, and policy reform, should provide such assistance, possibly in a cluster ADTA to achieve sustainability.

16. The Operations Evaluation Department review of ADTAs (footnote 18) for procurement points out that, while legal and regulatory frameworks and associated rules prescribing administrative practices need to be transparent and to outline clear accountabilities, it is in the daily practice of procuring works, goods, and services that corruption occurs. Therefore, addressing corrupt practice requires practical support to strengthen the capacity and coordination between agencies with supervising mandates—daily on site, and periodically through evaluation and audit. Efforts to strengthen anticorruption capacity should build on existing systems and procedures. In this regard,

*Addressing corrupt practice requires practical support to strengthen the capacity and coordination between agencies with supervising mandates—daily on site, and periodically through evaluation and audit.*

<sup>21</sup> The main concerns were (i) although the GPL is cross-referenced to the TBL, the more competitive procedures in the TBL do not appear to apply to “fiscal funds,” which use the GPL; (ii) foreign companies are excluded except when no domestic bidder qualifies; (iii) competitive negotiations are proposed where a two-envelope system would better achieve the objective intended by the competitive negotiations; (iv) consultant selection procedures are not included; (v) provisions dealing with central procurement agencies acting on behalf of purchasing agencies are confusing; (vi) a very complex shopping procedure is outlined, carried out by an evaluation committee, when checking price references on the internet would be simpler and more effective; (vii) no well-established principles govern government contracts, and it is unclear if these contracts should follow commercial contract law; and (viii) no implementing procedures had been drafted.

<sup>22</sup> These centers are locally referred to as “tangible markets” and are based on the Beijing Municipality Construction Procurement and Contracting Trading Center established in 1997 to manage bidding and tendering for publicly funded construction in the municipality. A national association of trading centers meets annually, and regional associations meet regularly to exchange experiences and technology providing an existing institutional structure and network for capacity development activities.

the role of the Ministry of Supervision is critical as its staff monitors the integrity of government officials in implementing the laws, regulations, and rules on-site every day. Other important agencies include the National Development and Reform Commission's (NDRC) Key Projects Inspectorate Office (KPIO), which monitors procurement on-site and conducts periodic evaluations; and the China National Audit Office (CNAO), which conducts financial, compliance, and performance audits of all government agencies.

17. **Audit.** A resolution to establish an audit system was made by the National Planning Commission in 1982. In 1983, CNAO was established, followed by provincial, municipal, and country audit institutions reporting to CNAO and their respective local governments. The Audit Law adopted in 1994 tasked CNAO to promote good governance in the government system. The regulations to implement the Audit Law were promulgated in 1997. The 10th Five-Year Plan emphasized the importance of an auditing system penetrating all aspects of financial management to improve transparency, including a website providing access to audit reports.

18. The objectives of the ADTA on the government auditing system<sup>23</sup> approved in 1998 were to help CNAO to (i) formulate auditing standards and procedures for the government and its enterprises, and (ii) design and implement an auditing training program. The performance evaluation report (footnote 18) rates this ADTA as highly successful and reports that, subsequently, CNAO introduced internal systems for accountability, quality review, and reward. CNAO continues to use and update the training manual developed under the ADTA. In 2003, there was a so-called "audit storm" when the CNAO audit findings led to a number of high-profile corruption-related court cases. In 2002, 50 financial reports from 39 ADB-financed projects were audited by CNAO. It found no cases of misuse of ADB funds, although it identified some issues relating to the use of counterpart funds. Subsequently, ADB supported a review of the financial management system pertaining to ADB-financed projects. The review found, among other things, that (i) the current audit reports for ADB-financed projects were using the format agreed between the Ministry of Finance (MOF), CNAO, and the World Bank; (ii) there is a need to standardize the formats of the financial statements in the audit reports; and (iii) as part of its efforts to increase transparency, CNAO has adopted an audit finding announcement system.

19. **Evaluation.** Several ADB ADTAs have supported evaluation capacity building in the PRC since 1994. The first<sup>24</sup> supported evaluation capacity and introduced the concept of evaluation. It was rated generally successful. The second,<sup>25</sup> approved in 1995, shared the lessons of successful project implementation performance with less experienced agencies, particularly in the interior provinces where ADB operations were expected to grow. This ADTA was also rated generally successful. In 1996, a follow-up ADTA that focused on enhancing the appraisal and evaluation aspects of financial

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<sup>23</sup> ADB. 1998. *Technical Assistance to the People's Republic of China for Strengthening the Government Auditing System*. Manila (TA 3103-PRC, for \$700,000, approved on 26 November).

<sup>24</sup> ADB. 1994. *Technical Assistance to the People's Republic of China for Developing the Performance Evaluation Capability of the People's Bank of China*. Manila (TA 2133-PRC, for \$100,000, approved on 9 August).

<sup>25</sup> ADB. 1995. *Technical Assistance to the People's Republic of China for the Study of Project Planning and Management*. Manila (TA 2462-PRC, for \$225,000, approved on 8 December).

intermediation by the State Development Bank of China was rated partly successful due to lack of executing agency ownership and poor consultant performance monitoring by ADB. In 1997, the first<sup>26</sup> of the three ADTAs to KPIO was approved, with the objective of harmonizing the evaluation system, methodology, practices, and capacities of agencies including CNAO, China International Engineering Consulting Corporation, and the State Development Bank. The ADTA also aimed to develop an appropriate plan of action for building a long-term evaluation capacity. It was rated generally successful. Two subsequent ADTAs for KPIO capacity building were also approved. One<sup>27</sup> was rated highly successful by the performance evaluation report and the other<sup>28</sup> is ongoing.

## IV. Assessment of ADB's Governance-Related Technical Assistance

### 1. Relevance



20. Overall, the relevance of ADTAs reviewed by the CAPE team was high. All executing agencies reported that all evaluated ADTAs were important for the Government, and the CAPE team considered that the ADTA designs met requirements to a medium degree or better. Some ADTAs built on previous work; for example, the ADTA concerned with consultant selection<sup>29</sup> built in some part on the experience gained during the implementation of a number of previous ADTAs.<sup>30</sup> Ownership is an important prerequisite for the success of ADTAs and is influenced by the degree of executing agency involvement at all stages of the process, including identification, design, procurement, and management. Executing agencies reported that they generally felt they had good ownership of the projects, largely because they found them very relevant. All the ADTAs were described by executing agencies as having been identified jointly with ADB and all reported that the executing agency senior management indicated what was required in the ADTA. This high level of ownership by executing agencies was largely endorsed by consultants and project officers.

<sup>26</sup> ADB. 1997. *Technical Assistance to the People's Republic of China for the Strengthening of Evaluation Capacity*. Manila (TA 2821-PRC, for \$400,000, approved on 4 July).

<sup>27</sup> ADB. 1999. *Technical Assistance to the People's Republic of China for Project Performance Management Capacity Building*. Manila (TA 3375-PRC, for \$900,000, approved on 27 December).

<sup>28</sup> ADB. 2005. *Technical Assistance to the People's Republic of China for Developing a Result-Based National Monitoring and Evaluation System for Key Projects*. Manila (TA 4581-PRC, for \$400,000, approved on 21 April).

<sup>29</sup> ADB. 2004. *Technical Assistance to the People's Republic of China for Formulation of the Regulation for Selection and Engagement of Consultants for Government-Financed Projects*. Manila (TA 4486-PRC, for \$300,000, approved on 16 December).

<sup>30</sup> Including ADB. 1997. *Technical Assistance to the People's Republic of China for the Establishment of National Procurement Regulations for the Public Sector*. Manila (TA 2845-PRC, for \$565,000, approved on 20 August); ADB. 2000. *Technical Assistance to the People's Republic of China for the Implementation of the Tendering and Bidding Law and Related Regulations*. Manila (TA 3457-PRC, for \$565,000, approved on 14 June); and ADB. 2001. *Technical Assistance to the People's Republic of China for the Formulation of Government Procurement Law*. Manila (TA 3631-PRC, for \$578,000, approved on 20 February).

21. In one instance,<sup>31</sup> reports reviewing the key issues surrounding development of the legal system were drafted by each of the key agencies involved in reform,<sup>32</sup> supported by recognized international experts. These experts also summarized the findings of the review and planning exercise and assessed the development of the legal and judicial system. The preliminary findings from each of these studies were presented at a workshop. Interviews with each of the agencies confirmed that they had all thought very highly of this ADTA. In particular, they felt very strong ownership of their reports (as they had drafted them) and welcomed the workshop as a forum to discuss their ideas.

22. Overall, ADTA design was reported to be satisfactory by most executing agencies. However, several commented that designs tended to be fairly inflexible, leading to some problems during implementation. This was particularly so when there were not enough resources to make consultants available for a long enough period, particularly when a short extension after report completion would have improved dissemination of findings. A few executing agencies felt that ADTA designs gave too much emphasis to the writing of reports rather than covering all the areas of activity needed for capacity building support. Typically, designs referred to the production of inception, midterm, and final reports. Although these provided useful payment milestones for consultants and ADTA monitoring information, some executing agencies felt that the designs should have focused more on skills transfer.

## 2. Effectiveness

23. These legal ADTAs were assessed as effective. While the executing agencies were satisfied with the outputs and potential outcomes, some project officers gave a lower assessment of their effectiveness. This may have been because of the difficulties that some project officers encountered with consultants during implementation. All the ADTAs that were reviewed achieved most of the specified outputs and outcomes. These projects can be divided into three groups: (i) legal sector reform, (ii) policy advice, and (iii) public administration.

24. **Legal ADTA.** Overall, legal sector-related ADTAs have been effective. A total of 28 ADTAs have been carried out in this sector since 1994 and 21 of these were approved after 1998. The ADTAs have focused on<sup>33</sup> (i) development of a legal system suitable for a market economy, (ii) legal adjustments for integration into the global economy, (iii) transparency of legal information, (iv) banking laws and regulations, (v) development of capital markets, (vi) promotion of small- and medium-sized enterprises, (vii) environmental protection and natural resources management, and (viii) strengthening the legal framework for procurement.

25. In general, this wide-ranging program of assistance has been well received by the Government. Several recent ADTAs have sought to involve all the key agencies involved in legal reform, and these have been particularly welcomed. Examples include

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<sup>31</sup> ADB. 2003. *Technical Assistance to the People's Republic of China for Support to the Review and Planning for Development of the Legal and Judicial System*. Manila (TA 4237-PRC, for \$350,000, approved on 4 December).

<sup>32</sup> The Legislative Affairs Commission, Office of Legislative Affairs, and Supreme People's Court.

<sup>33</sup> Drawn from ADB and the PRC Partnership in Law and Policy Reform (footnote 14).

an ADTA on planning for development of the legal and judicial system (footnote 30) that closely involved the Legislative Affairs Commission, the Office of Legislative Affairs, and the Supreme People's Court, and an ADTA on competition policy and laws<sup>34</sup> that involved the Office of Legislative Affairs, the Ministry of Commerce, and the State Administration for Industry and Commerce (which is part of MOF). In both cases, their close involvement resulted in outcomes being achieved and in the case of the TA on competition policy and laws, the resulting competition legislation is in the process of being approved by government.

26. **Policy Advice.** A small-scale ADTA on policy reform support<sup>35</sup> was approved in 2003 to “provide a quick response mechanism that allows ADB to react quickly to support policy reform initiatives at a time when government is ready to deal with the issue.” The success of this ADTA led to the approval of a larger “cluster ADTA” on policy reform.<sup>36</sup> Using a set of criteria identified in the original cluster ADTA document, components are proposed by MOF (the executing agency) and then agreed by the PRC Resident Mission (PRCM). This cluster TA has financed 10 different policy components. However, the executing agency commented that, although the assistance was useful, the time taken to approve proposals was too long and the basis on which ADB agreed to fund components was unclear. According to the executing agency, the program has been effective overall, although the performance on individual components has been variable.

27. **Public Administration.** In the field of public administration, a recent evaluation report<sup>37</sup> concluded that “the level of [ADB's] design ambition has a significant impact on the effectiveness of an ADTA”. An ADTA approved in 1997 had a stated outcome of formulating national procurement regulations (footnote 29) with achievements measured by the PRC adoption of WTO acceptance of the regulations. At approval, it had been assumed unrealistically that the TBL would have become law by the time the ADTA commenced. It had not, so the State Council was unable to issue instructions for regulation preparation until the law was promulgated. This delayed the issuing of instructions until 2005. In the interim period, NDRC issued administrative rules.

28. Despite these issues, a further follow-up ADTA (footnote 29) was approved in 2000, prior to the completion of the previous ADTA on procurement regulations. This assumed both that the regulations would have been issued by the time the ADTA began and that the Department of Public Procurement would have been established. This was not the case and the assistance was, therefore, ineffective. It was not possible to establish a department to administer regulations that had not been issued because the legislation had not been promulgated. This chain of events highlights a lack of flexibility and willingness to change either content or delivery timeframes for ADTAs. This could

<sup>34</sup> ADB. 2004. *Competition Policy and Laws*. Manila. (TA 4529-PRC, for \$600,000, approved on 23 December).

<sup>35</sup> ADB. 2003. *Technical Assistance to the People's Republic of China for Policy Reform Support*. Manila (TA 4095-PRC, for \$450,000, approved on 26 July).

<sup>36</sup> ADB. 2004. *Technical Assistance to the People's Republic of China for the Facility for Policy Reform*. Manila (TA 4365-PRC, for \$150,000, approved on 11 April).

<sup>37</sup> See footnote 18. TA projects covered were TA 3103-PRC: Strengthening the Government Audit System; TA-PRC: 3375 Project Performance Management Capacity; TA 3457-PRC: Implementation of the Tendering and Bidding Law and Related Regulations; and TA 3631-PRC: Formulation of Government Procurement Law.

have been avoided if a single program of support had been devised at the outset with clear milestones being achieved before subsequent stages were implemented.

29. A more successful example is an ADTA on improving corporate governance and the financial performance of state-owned enterprises.<sup>38</sup> This ADTA successfully developed a rating system for corporate governance whose principles have been accepted by MOF, together with clear approaches to the transfer oversight to a company's Board of Directors. However, the ADTA did not have sufficient resources to complete a detailed framework for the design of supporting software for the implementation of the new system.

30. **Performance of Consultants.** The performance of consultants was generally good. All executing agencies rated consultants' understanding of their needs and their ability to communicate as satisfactory or above. In one instance, the executing agency regarded the consultants as not having satisfactorily communicated best practice. The executing agency had been particularly keen that the consultants should share their international experience, but this had not been the case. Other than this instance, the major issue raised by executing agencies was not the overall quality of consultants but their own role in the selection process, particularly for national consultants. Some executing agencies felt that they knew of good national consultants who did not appear on ADB shortlists. Any such inclusion on shortlists would need to ensure that candidates were subject to the same selection procedures as others and that their selection was transparent.

31. In two cases, executing agencies felt that if they had been more involved in the consultant selection procedure, better consultants could have been selected. Areas needing more future attention included a lack of cultural fit, insufficient country and technical knowledge, and arrogance. The remaining executing agencies all believed that their needs had been well understood. All responding executing agencies stated that the work of consultants enhanced the good name of ADB, and all executing agencies believed that consultants were helping them to do the work through sharing best practice and knowledge rather than doing the work for them.

32. **Performance Measurement.** Few monitoring indicators were specified in the original documents for most ADTAs. Performance measurement centers on overall outcomes and the completion of specified outputs and reports rather than any attempt to measure the longer-term effects and impact of the ADTA. For example, an ADTA may specify an outcome as the revision of policy in a particular area. However, the issue is not whether the policy was revised, but whether the proposed changes were implemented and what their effects were. There is little evidence that such monitoring information was collected by ADB during implementation or after. This is a serious deficiency, since without such information it is impossible to establish whether ADTA outcomes have achieved desired results or to manage ADTAs to achieve intended results. Furthermore, such information forms a valuable source of knowledge to assist in the design and

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<sup>38</sup> ADB. 2002. *Technical Assistance to the People's Republic of China for Improving Corporate Governance and Financial Performance of State-Owned Enterprises*. Manila (TA 3933-PRC, for \$500,000, approved on 25 September).

implementation of future ADTAs and ensures that past experience is fully brought to bear on new programs.

33. **Corruption allegations** relating to ADB's own operations in the PRC during the CAPE period were not many.<sup>39</sup> Between 1998 and 2007, there were disproportionately less cases filed with ADB's Integrity Division involving the PRC (accounting for only 6% of total cases) than Indonesia and the Philippines, relative to their respective shares of the loan portfolio. The predominant type of the PRC case dealt with corruption<sup>40</sup> (ranging from 30% to 49%), and were often associated with improper actions made by bidders under loans (60%; such as submission of false certification or bank guarantees or falsely audited financial report) or ADTAs (23%; like misrepresentation of proposed experts or arrangement to turn over part of a consultant's salary to the executing agency). Of these cases, only 12% resulted in disciplinary action such as sanctions for outside parties or termination of erring ADB staff,<sup>41</sup> a record that is slightly lower than the 16% ADB average. This suggests that the direct impact of alleged PRC corruption on actual ADB operations may not be very significant.

### 3. Efficiency

34. Measured against how well resources were used in achieving desired ADTA outcomes, overall efficiency was assessed as successful. However, executing agencies and consultants raised concerns about inefficiencies in the processes for ADTA implementation, notably over consultant selection and financial procedures and the lack of flexibility during implementation. Some of the legal ADTAs resulted in large workshops (with more than 100 participants), which were funded by executing agencies on a reimbursable basis. Because of misunderstandings about ADB procedures and the eligibility of certain expenses, there were delays in reimbursements.

35. Although executing agencies were generally very satisfied with the quality of consultants recruited by ADB, only two said they were satisfied with the process of choosing consultants. The rest were concerned about their lack of involvement in consultant selection and the length of time taken to complete the process. They identified a need to be involved at all stages of the process from the initial screening of candidates to possible interviews with those short-listed or at least with the preferred candidate. They reported that this would have provided an opportunity for the consultants to feel that they were working for the executing agency and not just for ADB. It would, therefore, have fostered an early and strong working relationship. A further possibility could have been for executing agency approval to be sought on consultant outputs before payment was made.

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<sup>39</sup> Based on information provided by the Office of the Auditor General Integrity Division as of February 2007.

<sup>40</sup> As separate from misrepresentation, fraud, abuse of position, embezzlement, conflict of interest, bribery or kickbacks. ADB's 2006 annual report, para. 16 says "the Integrity Division of the Office of the Auditor General further categorizes corrupt practices as bribery and extortion, theft and embezzlement, collusive practices, kickbacks and others".

<sup>41</sup> Some 15% were closed for being outside Office of the Auditor General Integrity Division's mandate while 25% of the cases were not credible, verifiable, nor material.

36. All executing agencies expressed satisfaction with ADTA supervision. The supervision of legal ADTAs by PRCM received particular praise in terms of technical competence and understanding of executing agency requirements. All executing agencies also expressed a strong preference for ADB supervision to be carried out from PRCM as this ensured a timely response to inquiries. However, one executing agency felt that, even though supervision was intended to be provided from PRCM, many issues were still referred back to Manila for clarification and this frequently delayed ADTA implementation.

37. All executing agencies rated ADB's responsiveness and flexibility as either satisfactory or very satisfactory. Although not seen as a major problem, the time taken by ADB Headquarters to respond to critical issues was reported by executing agencies as sometimes being too long. In the case of the umbrella ADTA facility (footnote 35), which had been redesigned to provide a rapid response to policy questions raised through MOF, there were some implementation difficulties. First, ADB procedures still required full consultant contracts for each smaller ADTA within the umbrella and the workload for a project officer is the same whether the contract is for \$50,000 or \$500,000. As the arrangements could not be altered for smaller contracts, additional resources could have been made available to manage the extra workload. Second, the workload at PRCM is significant. A log frame for each smaller ADTA within the umbrella had to be produced and then approved by the country director. This could be simplified for the smaller ADTAs under the umbrella ADTA facility. Third, it is difficult for PRCM to track expenditure, when some components may originate from ADB Headquarters and the resulting financial information is not shared with PRCM. Fourth, the program is critically dependent on the presence of experienced project officers in PRCM. Fifth, the demand for work under the facility is high and this has led to a large number of proposals that have to be reviewed. This has caused delays with the average decision time being about 3 months. For all assistance under this umbrella ADTA facility, it will remain important that responsible project officers are based at PRCM.

#### **4. Sustainability**

38. All executing agencies, project officers, and consultants thought that changes would be sustainable. However, their sustainability will ultimately be measured by the level of adoption of the policy, regulatory, and legislative changes proposed. In this respect, although recommendations may have been accepted by the respective executing agency, much remains in the hands of the state institutions, such as NDRC, MOF, and the National People's Congress, who are ultimately responsible for the implementation of change. An example is the ADTA on regulations governing selection and engagement of consultants for government-financed projects (footnote 28). This ADTA updated guidelines and drafted regulations. It has also produced training manuals for use once the regulations are approved. The difficulty is that the regulations have not yet been approved. The lead agency is occupied with many pressing matters and it is unlikely that it will address this issue in the short term. Once approval has been given, it is likely that further ADTA will be sought to assist in the training of relevant staff. However, if approval is delayed significantly, it is also likely that the proposed regulations will not be

able to keep up with the pace of change and will require redrafting before they become acceptable.

39. All executing agencies reported that the ADTA provided by ADB had given ADB considerable influence over the future direction of key governance areas. This was especially true for those projects in the legal sector, where one executing agency commented that "...ADB has had more influence over this legal area with this small ADTA than the World Bank and European Union have had with their considerably greater financial resources". Following on from the success of ADTA in the legal reform sector, PRCM is currently reviewing the possibility of ADTA loans for further support to the economic and legal reform sectors. Although discussions are at an early stage, this appears a promising possibility for building on past success in a financially viable way.

## V. Key Issues and Recommendations (from Governance-Related Technical Assistance)

*ADB needs to exploit its position as a trusted advisor in the legal, judiciary, and policy reform sectors by seeking to carry out such assistance on a financially sustainable basis.*

40. In terms of governance, ADB needs to exploit its position as a trusted advisor in the legal, judicial, and policy reform sectors by seeking to carry out such assistance on a financially sustainable basis. Assistance for public administration reform has been less consistent and has been affected by government attention being diverted toward pressing economic reforms. The possibility of ADTA in the legal sector being partly loan financed needs to be developed in view of the high demand for ADB support. It is less likely that public administration support could be funded in this way and such support will, therefore, have to compete for available ADTA funds according to the priorities to be laid down in the forthcoming country partnership strategy. The success of many interventions in the governance sector has been partly due to the involvement of ADB staff who are respected by the Government, have long exposure to the sector in the PRC, and are now at PRCM.

41. The study has shown that several ADTAs have successfully influenced government policy and have undoubtedly raised the profile of ADB in key institutions (Table 3). All ADTAs evaluated as part of this study were rated as at least satisfactory. The possibility of an ADTA loan fund for future governance-related work would appear to offer strong benefits to both ADB and the PRC. However, ADB should build on its past strengths and continue supporting governance ADTAs, even if the proposal for ADTA loans does not ultimately proceed.

**Table 3: SWOT Analysis of ADB Support to the Governance Sector**

| Strengths   | Weaknesses  |
|---|---|
| <ol style="list-style-type: none"> <li>1. Program addresses high government priorities</li> <li>2. Mostly strong PRC ownership</li> <li>3. Good relationship between ADTA program and overall strategy</li> <li>4. Innovative policy reform ADTA enables somewhat quicker response to client demand</li> <li>5. Highly respected PRCM staff</li> <li>6. Leading experts used as consultants</li> <li>7. Reasonable knowledge management in terms of collection, analysis, reuse, and learning from experience</li> </ol>  | <ol style="list-style-type: none"> <li>1. Cumbersome ADTA approval process</li> <li>2. Lack of flexibility with regard to resources and timing</li> <li>3. Focus on written products rather than implementation assistance</li> <li>4. Reliance on a few highly experienced project officers</li> <li>5. No road map</li> <li>6. MTS II is somewhat unclear about the importance of governance</li> <li>7. Few experienced and well qualified senior EA staff</li> <li>8. Future program constrained by the size of the PRCM</li> </ol> |
| Opportunities   | Threats   |
| <ol style="list-style-type: none"> <li>1. ADB could use its role as trusted advisor to further influence governance development</li> <li>2. ADB could provide sectoral support, based on identified needs and road maps</li> <li>3. ADB could build on past sector support, e.g. policy reform and legal reform ADTA projects</li> <li>4. ADB staff governance expertise could be more closely matched with country sector requirements, including at the PRCM</li> <li>5. Cofinanced ADTA loans could be used to increase ownership and gain income</li> </ol> | <ol style="list-style-type: none"> <li>1. ADB may become known for too broad an approach to ADTA</li> <li>2. Potential changes in the government agenda that negates plans and delays implementation</li> </ol>   |

ADB = Asian Development Bank; ADTA = advisory technical assistance, EA = executing agency; MTS = medium-term strategy; PRC = People's Republic of China; PRCM = PRC Resident Mission; SWOT = strengths, weaknesses, opportunities, and threats; TA = technical assistance.

Source: Country assistance program evaluation team.