Government of Mongolia: Developing a Conducive Environment for Public Private Partnerships
(Financed by the ADB’s Technical Assistance Special Funds-IV)

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# Table of Contents

A. INTRODUCTION 2

B. OUTLINE OF THE INCEPTION REPORT 2

C. BACKGROUND 3
   1. ADB Support for PPPs in Mongolia 3
   2. Policy Context 5
   3. Assessment of the PPP Environment in Mongolia 5
   4. Government Executing and Implementing Agency and PPP Project Team 5

D. KEY ISSUES 6
   1. PPP Project Activity 6
   2. Learning by Doing 6
   3. Public Investment Planning and PPP Project Pipeline 8
   4. Legal and Regulatory Framework for PPP 8

E. TA IMPLEMENTATION 9
   5. Mobilisation 9
   6. Key Activities to Date 9

F. APPENDIX: UPDATE OF TA STATUS 10

## ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<td>DMF</td>
<td>Design and Monitoring Framework</td>
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<td>DPSP</td>
<td>Development Policy and Strategic Planning</td>
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<td>IPPPD</td>
<td>Innovation and Public–Private Partnership Department</td>
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<td>MED</td>
<td>Ministry of Economic Development</td>
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<td>PPP</td>
<td>Public–Private Partnership</td>
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<td>TA</td>
<td>Technical Assistance</td>
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A. INTRODUCTION

1. This inception report contains:

   — a plan and schedule for implementing the technical assistance (TA) under TA 8236 MON Developing a Conducive Environment for Public-Private Partnerships (PPP)\(^1,^2,^3\),

   — outlines challenges to successful implementation, and

   — summarises activities undertaken to date.

   The report confirms the scope and direction of the TA rationale and design, while indicating adjustments that reflect evolving circumstances and that will improve TA performance. No major impediment has been encountered and the project is proceeding broadly along the path set out in the TA report.

2. The TA provides support for:

   — screening priority projects to identify those suited to inclusion in a PPP project pipeline;

   — strengthening the legal and regulatory framework for PPPs;

   — integration of PPP planning with the public investment planning process;

   — capacity development in PPP preparation and implementation;

   — preparation of knowledge products including short policy and technical notes.

B. OUTLINE OF THE INCEPTION REPORT

3. The inception report places the TA in the context of (i) ADB Support for PPP in Mongolia, (ii) the Mongolia policy context, (iii) an assessment of Mongolia’s PPP environment, and (iv) Mongolia’s experience with PPP project activity to date.

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1 ADB 2012 Technical Assistance to Mongolia for Developing a Conducive Environment for Public-Private Partnerships Manila (TA 8236-MON, December)

2 “Within ADB operations, all contracts such as performance-based contracts (management and service contracts), lease–operate–transfer, build–own–operate–transfer, design–build–finance–operate, variants, and concessions are considered as various forms of PPP. Contracts involving turnkey design and construction as part of public procurement (engineering, procurement, and construction contracts) are excluded. Also excluded are simple service contracts that are not linked to performance standards (those that are more aligned to outsourcing to private contractor staff to operate public assets) and construction contracts with extended warranties and/or maintenance provisions of, for example, up to 5 years post-completion (wherein performance risk-sharing is minimal as the assets are new and need only basic maintenance). However, in some cases, service contracts can be used as a first step in moving to a higher form of PPP, especially in situations where the public sector is just beginning to explore PPP modalities.” ADB 2012 Public–Private Partnership Operational Plan 2012–2020 Realizing the Vision for Strategy 2020: The Transformational Role of Public–Private Partnerships in Asian Development Bank Operations

3 In Mongolia the term concession is used interchangeably with PPP instead of seeing concession as one form of PPP
4. The inception report reviews the tasks to be addressed in the project under the headings of:

- **learning by doing**: this includes the TA elements of capacity development in PPP preparation and implementation and preparation of knowledge products including short policy and technical notes;

- **public investment planning and PPP pipeline**: this includes the TA elements of screening priority projects to identify those suited to inclusion in a PPP project pipeline and integration of PPP planning with the public investment planning process;

- **legal and regulatory framework for PPP**: this addresses the TA component of strengthening the legal and regulatory framework for PPPs.

5. The inception report describes what has happened in the TA, the mobilising of the TA consultants, the working relationship with the executing and implementing agency (IPPPD of MED), and activities to date.

6. The report concludes by setting out the work plan and use of resources to be carried out in the TA.

**C. BACKGROUND**

1. **ADB Support for PPPs in Mongolia**

7. The TA builds on the work carried out in two earlier phases of ADB TA support\(^4,5\). A first phase of support helped to develop a basic legal and institutional framework for PPP by contributing to the Law on Concessions and the establishment of the PPP unit at State Property Committee (SPC). The second phase strengthened the capacity of the PPP unit and supported the preparation of a PPP handbook and other material to explain how to identify and structure PPP projects, PPP tendering, and monitoring and managing private partner implementation of PPP arrangements.

8. ADB’s country partnership strategy for Mongolia, 2012–2016 aims to achieve inclusive and sustainable growth\(^6\). Support for PPPs will assist by bringing in private financing for the infrastructure needed to improve access to essential public services in transport, energy, and water supply, as well as other municipal infrastructure. This will ease bottlenecks in the economy, resulting in more equitable and efficient growth. Private sector development, which is expected to play a significant role in achieving the strategic objectives of the government and ADB, will be fostered through support for PPPs.

9. ADB’s support continues across the four pillars of the PPP Operational Plan:

   (i) Advocacy and capacity development, by helping create awareness of the potential of PPPs, encouraging leadership in PPPs, working at a sector level to identify the potential of PPPs, and developing the capacity of government and the private sector for PPPs;

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\(^5\) ADB 2010 *Technical Assistance to Mongolia for Public-Private Partnership Development* Manila (TA 7577-MON)

(ii) Fostering the enabling environment, by helping develop the policy, legal, regulatory, and institutional framework needed to facilitate, guide, and manage the development of PPPs;
(iii) Project development, by assisting in the development and finalization of pathfinder projects. This could be provided via expert support, tool kits, funding costs of transaction advisors, or procurement support; and
(iv) Project financing: this could include the provision of credit enhancement products (e.g., equity, long-term debt, re-financing, subordinate debt, co-financing, and guarantees), establishing credit guarantee facilities, or provide public sector financial support through schemes such as viability gap funding.

10. Support for advocacy and capacity development, the strengthening of the enabling environment, and project identification will continue under TAs managed by East Asia Regional Department of ADB (EARD). EARD has offered support to the central and local government for the development and processing of pathfinder PPP projects. Additional and non-programmed transaction advisory support could be provided possibly on a cost-recovery basis through a development fee paid by the private partner.7

11. Prospective areas include health, public transport, logistics, water supply, and urban development. A number of good opportunities exist with ADB supported projects, including: the bus-way and bus e-ticketing within the Urban Transport Development Investment Programme with UB City; the demonstration hospital to be funded under the Additional Financing for the Fourth Health Sector Development Project; water, sanitation and heating services within the Southeast Gobi Urban and Border Town Development Project and the Ulaanbaatar Urban Services and Ger Areas Development Investment Programme; and logistics facilities within the Regional Logistics Development Project and the Regional Logistics Development II.8

12. ADB’s sovereign support needs to carefully target achievable results and be mindful of the potential to overload government agencies. Simple and quick PPPs probably provide the best option for consolidating a good practice PPP programme in Mongolia.

7 Support for transaction advisory services would be additional to the existing country program. Funds are available on a grant basis, but ideally would be recovered from successful PPP bidder. A mandate to provide such services and to recover costs would need to be agreed with the executing agency.
2. Policy Context

13. Mongolia’s legislative assembly (Ikh Khural) resolved to adopt a state policy on public-private partnership (PPP) in 2009. A Law on Concessions became effective in 2010 and has been amended on a number of occasions since then, with further changes under consideration. In 2011, a PPP unit was established in the State Property Committee (SPC). In 2012, following a change in the composition of the Government of Mongolia, responsibility for PPP was transferred to the Innovation and Public Private Partnership Department (IPPPD) in the newly established Ministry of Economic Development (MED).

14. The Government action plan for 2012–2016 commits to an enlarged role for PPPs and the Government has adopted a list of projects to be included in the concession list required to be compiled by the Law on Concession.

3. Assessment of the PPP Environment in Mongolia

15. A 2011 regional study of the enabling environment for PPPs ranked Mongolia in the nascent category of countries. The study, supported by ADB, noted that the enabling environment for PPPs was weakened by

(i) the absence of a completed PPP since 2001;
(ii) gaps in the legal and regulatory framework;
(iii) below-market prices for energy, water, and transport;
(iv) a lack of the expertise needed to design and implement PPPs; and
(v) underdeveloped capital markets.

16. The TA addresses issues identified in the EIU Infrascope study. The need for the TA project is supported by the fact that Mongolia has yet to deliver a major PPP project or to reach financial closure on a major PPP project.

4. Government Executing and Implementing Agency and PPP Project Team

17. MED is the executing agency and implementing agency for the TA. The IPPPD provides overall guidance to the TA and is responsible for coordination. The TA is supporting IPPPD in working closely with DPSP to integrate public investment planning and PPP project identification and to work with Ministries, agencies and local government to identify PPP opportunities.

18. The TA Report provides for engaging a team of international consultants for up to 12 person-months made up of a team leader and PPP institutional adviser, a PPP legal adviser, a capacity development adviser, and PPP expert(s). National consultants made up of a deputy team leader, a legal specialist, a capacity development specialist, and technical specialist(s) to be engaged for up to 51 person-months. A copy of the full Terms of Reference (TOR) is contained in the original TA paper.

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10 Economist Intelligence Unit 2011 Evaluating the Environment for Public–Private Partnership in Asia-Pacific: The 2011 Infrascope Economist Intelligence Unit Ltd. and ADB (March).
D. KEY ISSUES

1. **PPP Project Activity**

19. In 2011, the SPC issued a request for persons to express interest in being qualified to participate in a tender process for a build-operate-transfer (BOT) arrangement for a combined heat and power plant (CHP5) and in 2012 issued a request for proposals to qualified persons. As of November 2013, agreements with a preferred bidder have not been finalised. The entire process was prolonged for a variety of reasons that include the change of Government in mid-2012, transfer of PPP responsibility from SPC to IPPPD at MED later in 2012, changes in personnel involved with the process, a change in site location for the power plant during the course of the tender process, and a request to submit best and final offers in early 2013.

20. A number of other large concessions are under consideration. One of these is a $5.2 billion, 1,800 km rail concession which is intended to provide two new connections from the main coal mines to the People’s Republic China (PRC), with one route heading east and the other heading south. The concession will be awarded on a non-competitive basis to a joint venture between the government and private investors (foreign and domestic). International legal and financial advisers were appointed, and consultation with potential international investors is under way. Civil works on the short, southern section to the border with the PRC commenced in May 2013 using government funds. An open access regime is to apply that will allow for competition in the use of the line.

21. The 1,000 km Altanbulag–UB–Zamiin-Uud road concession - the (near) north-south road runs from the Russian border to Ulaan Baatar, and on to the border with the PRC. It is described as a new transport route between Europe and Asia, and has an estimated cost of $3.5 billion. A request for qualification for the northern and southern sections of the road was issued in August 2011, but interest was confined to the northern section. A concession for both sections was announced in July 2012 and in March 2013, the government issued a decree in March 2013 authorising MED to negotiate the concession agreement with a consortium that had initially expressed interest only in the northern section of the road.

22. The experience with these projects indicate that improvements in linking public investment planning and PPP projects, better PPP project cycle management and further developing the legal and regulatory framework are required.

2. **Learning by Doing**

23. There is limited experience in the public or private sector in Mongolia in designing and implementing a PPP programme, managing a PPP project management cycle, concluding negotiations and finalising agreements for an individual project, raising project finance, and contract and performance management of a PPP project.

24. MED staff are well educated but, given that PPPs are new in Mongolia, have limited experience with implementing a PPP programme and processing PPP projects. Training in Mongolia and abroad has helped to improve the base of knowledge on PPP. This TA and the earlier ADB TA projects have provided training and support for training has also been provided by other donor and development agencies.
25. Other Ministries and government agencies that should be proposing projects for PPP lack capacity and experience in project analysis and understanding of when PPP may provide a better outcome than traditional public procurement.

26. There is a shortage of Mongolian project analysis, project finance, legal and financial expertise and experience in the private sector.

27. Training and workshops on PPP have helped create a basic level of understanding but they are not a substitute for active involvement in projects, where learning by doing allows individuals to gain experience and helps build institutional memory on PPP issues and implementation. For example, the exposure and experience gained in the course of developing and tendering CHP5 is helpful in identifying issues to be addressed in the legal and institutional framework. The process of working on projects shows where improvements can be made to accelerate delivery of PPP facilities and services.

28. The MED, Ministry of Finance, Ministries and agencies responsible for delivering facilities and services, local government, including Ulaan Baatar City Council, must agree on clear roles and responsibilities and working relationships in identifying and implementing a PPP programme and individual PPP projects. There must be efficient and shared use of the limited number of people that have PPP and sharing of experience.

29. The TA will work with MED to develop this systematic approach to who does what in PPP throughout the public investment planning and PPP project cycle management processes. The TA will focus on the enabling environment and systems which require technical solutions while recognising that Mongolia needs to evolve its own approach to leadership and decision-making in the PPP process. The emphasis is on practical examples and application to issues and projects that exist in Mongolia. Providing training on PPP to individuals is necessary, it is not sufficient to build a sustainable PPP system in Mongolia that is embedded in institutions and that is sufficiently robust to survive changes in personnel.

30. Mongolia is moving towards decentralisation of decision-making to local government but the budget-making process and allocation of funds need to be changed to make this effective. There needs to be certainty and clarity regarding the responsibilities of national government and Ulaan Baatar City in project identification, project screening and at all stages of the PPP project cycle. It may be desirable to produce a cooperation and coordination agreement to support this.

31. A small number of large and small projects in a variety of activities at national and local government levels need to be identified to be used as pilot exercises that permit learning by doing. The TA will work with MED and other agencies to identify these projects and the resources required to manage the projects through the PPP project cycle. This work should be linked to the public investment planning process and lead on to project screening and project appraisal to build up a PPP project pipeline to be implemented on a multi-year basis.

32. Projects mooted for PPP include: education - school construction and maintenance, rail projects, demonstration hospital, government buildings construction and maintenance, high tech, free trade and special economic zones, elderly people homes, social housing. Facilities and services at the level of national government and local government need to be assessed to identify PPP projects that can provide early results. The TA will help apply PPP project screening.
3. Public Investment Planning and PPP Project Pipeline

33. The TA is seeking to promote awareness of the importance of a streamlined interface between identifying individual PPP projects to be included in the list of projects approved by the Government, public investment planning, capital budgeting, affordability and fiscal risk assessment. While the Budget Law is intended to integrate PPP projects into the budget-making process, there is an absence of implementing regulations to make integration effective. For example, should the Budget Law treat a guarantee by Government of payment for services provided in a concession or PPP arrangement as a debt guarantee or a contingent liability with each having different reporting and other requirements and approvals? A comprehensive system of accounting for PPP will need to be addressed over a long-term time horizon. For now the focus should be on generating projects with reasonable prospects of success to be processed through the PPP project cycle.

34. The Development Policy and Strategic Planning (DPSP) Department in the MED is to consolidate investment and planning functions and streamline and coordinate medium-term and long-term strategic planning. DPSP and IPPPD in MED and Ministry of Finance need to develop good working relationships and clear allocation of responsibilities to have a coherent system implementing PPP, public investment planning and capital budgeting.

4. Legal and Regulatory Framework for PPP

35. The legal and regulatory framework for PPP refers to more than the Law on Concession. It includes a wide range of laws and regulations that are related to PPP including public investment planning, fiscal impact, investment and operating PPP facilities and services, project finance, investors and lenders rights, and monitoring PPP performance. The Mongolia Law on Investment, Budget Law, Civil Code and other laws on secured transactions, land law and sector laws need to be considered in a PPP context. SPC resolutions were adopted in 2010.11

36. The legal and regulatory framework will be assessed from the standpoint of national government, local government, private sector and lenders.

37. The TA has compiled a comprehensive database of English language translations of Mongolia laws and regulations and these are being reviewed to propose recommendations for improving the legal and regulatory framework.

38. Presentations have been made to the staff of IPPPD within the Ministry of Economic Development (MED) on subjects that include:

   — legal terminology, phrases and terms found in legal and financing documents for a concession arrangement;
   — the inter-relationship between risk allocation, the treatment of events of default, different types of force majeure, insurance, termination, compensation and other means of dealing with risks in PPP;

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11 Interim methodology to conduct cost-benefit analysis of concession proposals SPC Resolution No 153 2010; Competitive selection procedures for issuing concession rights Government Resolution No 177 2010; List of potential concession projects of some state properties Government Resolution No 198 2010; Sample documents of initial selection processes for issuing concession rights SPC Resolution No 342 2010; Sample documents of competitive selection processes for issuing concession rights SPC Resolution No 342 2010; Procedures for evaluating proposals SPC Resolution No 342 2010.
why and how these matters need to be considered at the project identification and project screening stage of the PPP project cycle and should not be left to be considered towards the end of the cycle;

— the need to develop standardised clauses for inclusion in PPP agreements.

39. While PPP agreements for major projects will be written in English as required by international lenders, a common and consistent Mongolian language glossary containing of the main phrases and terms in PPP project agreements, project financing documents and information memoranda is being compiled during the course of the TA project.

E. TA IMPLEMENTATION

5. Mobilisation

40. Consultants were procured on the basis of individual selection in accordance with ADB’s Guidelines on the Use of Consultants. The project commenced in March 2013 with the recruitment of the Deputy Team Leader, Bailikhuu Dambachultem and Capacity Development Specialist, Unurtsetseg Ulaankhuu. The Team Leader and PPP Institutional Specialist Philip Kelly and a national legal adviser Maizorig were engaged in April 2013. The international PPP Legal Adviser was engaged in September 2013.

6. Key Activities to Date

41. An inception workshop was held in May 2013 attended by representatives from various Ministries and agencies. Presentations were made by Bekhbat Sodnom Director General of IPPPD at MED, Craig Sugden Principal Public-Private Partnership Specialist Public Management, Financial Sector and Regional Cooperation Division East Asia Department, ADB, TA Team Leader and PPP Institutional Specialist Philip Kelly, Deputy Team Leader D. Bailikhuu and Denzel Hankinson from TA 7355.

42. Meetings have been held with DPSD in MED, Ministries including Energy, Education and Health, Ulaan Baatar City Council, ADB staff in Ulaan Baatar with responsibility for investment and infrastructure sectors.

43. A close working relationship has been developed with IPPPD Director General and staff members and the TA personnel have been formed into a cohesive team.

44. Discussions have taken place with Japanese International Cooperation Agency (JICA) and on how to optimise donor coordination in supporting PPP in Mongolia.

45. The TA is emphasising learning by doing rather than individual training in the use of resources. IPPPD has resources available for training and capacity development from World Bank and other sources. It was decided to conserve the resources under the international capacity development adviser and focus on providing support to IPPD in how to carry out specific activities e.g. managing the PPP project cycle. There is a need for the TA to further consider how its activities can be integrated with support to be provided by the Japan International Cooperation Agency and others.
## F. APPENDIX: UPDATE OF TA STATUS

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<tr>
<th>Link between Activities and Milestones in TAR and Main subjects to be addressed</th>
<th>Tasks</th>
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<tr>
<td>Public Investment Planning and PPP Project Pipeline Screen priority projects to identify projects suited to inclusion in a PPP project pipeline Integration of PPP planning and public investment planning process Activities and Milestones 2.1 Prepare an assessment of existing planning processes (by month 3) 2.2 Develop operational guidelines for the integration of PPP and public investment planning processes (by month 6) 2.3 Update procedures for coordination with line ministries on PPPs (by month 6) 2.4 Update the PPP screening checklist to allow for integration into the public investment planning process (by month 9) 2.5 Support adoption of improved operational guidelines and procedures (throughout the TA) 2.6 Carry out awareness campaigns with line ministries and other government stakeholders of an integrated PPP and public investment planning process (throughout the TA) Assess the capacity of MED staff to facilitate PPPs, and identify knowledge gaps and capacity weaknesses (by month 3)</td>
<td>Identify list of pilot projects for learning by doing and commence work on these with IPPPD staff Review existing concession list, list of projects being proposed for inclusion in public investment plan, list of projects at Ulaan Baatar City Council and apply initial screening criteria to determine if the project is suited to be admitted to the PPP project cycle Provide advice and assistance and document on how public investment planning and PPP should be integrated in a way that is suited to Mongolia and how integration should be implemented</td>
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<td>Strengthening the legal and regulatory framework for PPPs Activities and milestones 1.1 Review legal and regulatory amendments recommended under previous development partner assistance, identifying amendments made to date and those still to be made (by month 6) 1.2 Draft amendments to the Concessions Law and other relevant legislation based on the review of previous work and feedback from private and public stakeholders, including a recommended time line for implementation (by month 12) 1.3 Support the implementation of legislative amendments (throughout the TA) 1.4 Support the IPPPP Department in raising understanding and acceptance of the need to strengthen the legal and regulatory framework (throughout the TA)</td>
<td>Review all laws, regulations and agreements that affect PPP programme and projects at all stages of the PPP project cycle, including the relationship between public investment planning and PPP, PPP and budget affordability, PPP at central and local government Recommend improvements to the legal and regulatory framework for PPP implementation and for integration of PPP and public investment planning and PPP and budgets Draft changes to laws and regulations and obtain support for submission to Cabinet and</td>
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<td>Link between Activities and Milestones in TAR and Main subjects to be addressed</td>
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<td>where necessary to Ilkh Khural Provide PPP project cycle procedures and obtain support for implementation</td>
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<td>By mid February 2014</td>
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<td>Learning by doing</td>
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<tr>
<td>On-going implementation of the PPP project cycle procedures and PPP manual with TA support</td>
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<td>Preparation of knowledge products including short policy and technical notes / build on PPP handbook provided in TA</td>
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<td>Support identification of priority PPPs suitable for a pre-screening assessment (by month 3)</td>
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<td>On-going</td>
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<td>Link between Activities and Milestones in TAR and Main subjects to be addressed</td>
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<td>including development partners (by month 24)</td>
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<tr>
<td><strong>3.6 Prepare an independent update of the Asian Infrascope benchmarking index and learning tool (as required, by month 24)</strong></td>
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