



Completion Report

Project Number: 48007-001
Technical Assistance Number: 8717
June 2020

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

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TECHNICAL ASSISTANCE COMPLETION REPORT

TA Number, Country, and Name: TA 8717-PRC: Preparing a Concession Law for Infrastructure and Public Services		Amount Approved: \$400,000	
		Revised Amount: Not applicable	
Executing Agency: National Development and Reform Commission	Source of Funding: Technical Assistance Special Fund (TASF-other sources)	Amount Undisbursed: \$6,827.56	Amount Used: \$393,172.44
TA Approval Date: 16 September 2014	TA Signing Date: 9 October 2014	TA Completion Date	
		Original Date: 15 September 2016	Latest Revised Date: Not applicable
		Financial Closing Date: 6 December 2016	Number of Extensions: None
TA Type: Policy and advisory			

Description

Since the early 1990s, public-private partnership (PPPs) helped the Government of the People's Republic of China (PRC) to deliver public services more efficiently in transport and communication services, energy, water, wastewater treatment, and other social services. In November 2013, the Third Plenum of the 18th Central Committee of the Communist Party reinforced the broader importance of the private sector by emphasizing the need for the market to play a decisive role in the PRC's next stage of development. PPPs help to implement policy initiatives by bringing the private sector into the delivery of public services. The PRC adopted an incremental approach to the development of the legal and regulatory framework for PPPs; and over 40 regulatory instruments and best practice approaches to PPPs are in place. However, many regulatory instruments were sector or location-specific, and lower-order regulatory instruments prevail. In 2013, the State Council approved the preparation of a concession law for infrastructure and other public services. The law could strengthen the enabling environment for PPPs by providing a single, basic authorizing document that standardizes the approaches in preparing and implementing PPPs, both nationally and across sectors. It could lower the transaction costs faced by market participants, which facilitates PPP market development and encourages private sector investment by protecting their interests. It would also extend the PPP model into new areas of the economy, particularly the social sectors, thus broadening the range of PPPs. The law could also complement the new internal PPP units. In January 2015, the State Council designated the National Development and Reform Commission (NDRC) to lead the preparation of a concession law. The technical assistance (TA) design was to enhance legal framework for the promotion, development, and implementation of PPPs in PRC.

Expected Impact, Outcome, and Outputs

The impact was a strengthened enabling environment for PPPs. The outcome was improved legal framework for the promotion, development, and implementation of PPPs. The TA has four intended outputs: (i) stock-take of the lessons learned from the PRC and other countries with PPP laws and regulations, (ii) suggestions on the draft concession law, (iii) review of potential legal and regulatory amendments, and (iv) widely accessible publication targeted at senior decision makers.

Implementation Arrangements

The NDRC was the executing agency. The NDRC established a working group of relevant departments to guide the preparation of the concession law, and this group worked with the Asian Development Bank (ADB) to direct the TA consultant team. The implementing agency (IA) was the NDRC's Department of Laws and Regulations. The TA engaged two national consultants individually for a total of 7 person-months as a team leader and chief legal advisor and as a project coordinator. The TA also engaged two international consultants individually that included a legal advisor and a PPP advisor for a total of 2.5 months. The team leader's responsibilities included coordinating the TA outputs and the national resource persons provided inputs on specific topics as needed.

The NDRC coordinated with other government authorities, stakeholders and assigned counterpart staff to assist the consultants. The NDRC also coordinated the consultants' daily work, international and local consultations, workshops, and publications. Both NDRC and ADB planned and agreed on the conduct of activities (schedule of workshops, trainings, meetings, consultations); agenda; and the participants who should attend on each of the activities. Consultant

payment was upon NDRC's acceptance of research results and reports and ADB's confirmation. ADB staff assisted in the formulation of policy advice on the content of the concession law.

Conduct of Activities

The national team leader and chief legal advisor position was originally advertised in May 2014 and had three re-advertisements from June 2014 to April 2015. No qualified consultant was identified. The IA was consulted and preferred a highly experienced PPP advisor as team leader. Legal input was supplemented by national legal advisors engaged as resource persons and the two international consultants, all of whom have legal background. Variation of team leader's term of reference was conducted through a minor scope change in May 2015. National consultants conducted a survey regarding PPP market participants' opinions and experiences with existing regulatory instruments, and specifically their views on performance. NDRC and ADB organized three international workshops, held in May, June, and September 2015; and several consultation meetings per NDRC's needs. Participants from central government, financial experts, consultants, academia, and development partners joined the discussions. The workshops focused on the PRC's concession legislation development; British and French experiences; and international best practices and experience with infrastructure and utilities concession legislation. In July 2016, NDRC had an international study visit to France, Austria, and Belgium to assess their respective PPP legal framework and legislation experience. In March 2016, the consultants completed the final report. The report assessed the PRC's PPP sector status; reviewed the legal framework design, development, and amendment progress; and examined relevant PPP legislations. There were two rounds of comments submitted to NDRC on the "interim regulation on infrastructure and public franchise (draft for solicitation of comments)". The final workshop was held in Beijing on 5 September 2016.

Technical Assistance Assessment Ratings

Criterion	Assessment	Rating
Relevance	The TA is relevant as the intended outcome aligns with the PRC government's private sector promotion policies, and the ADB's country partnership strategy 2011–2015. The project design and results chain were sound and there was no design deficiency. TA design clearly corresponded to policy or advisory changes. TA rationale was well articulated.	Relevant
Effectiveness	The intended outcome and outputs were achieved. Assessment of the experience of other countries with national PPP laws and regulations and the PRC's experience with PPP regulations, well-prepared suggestions on the draft concession law, and large-scale consultations altogether helped the PRC government improve the legal environment.	Effective
Efficiency	The implementation was efficient. Consultants' recruitment was completed albeit initial difficulties in identifying a qualified team leader. The TA was completed as scheduled, fund was used within the budget. NDRC and ADB coordinated several workshops and consultations engaging relevant stakeholders for international experience sharing and draft PPP regulation review. The consultants' comments directly contributed to the NDRC's PPP legislation. The project was well managed to secure the delivery of project activities.	Efficient
Overall Assessment	This TA design and timing dovetailed perfectly with the PRC's PPP law preparation. Its rationale was clearly explained, and the choice of TA type was appropriate. Outputs were timely and high quality. ADB's assistance offered NDRC with the needed resources for the international experience review, market survey, and stakeholder consultation.	Successful
Sustainability	After the NDRC completed the "interim regulation on infrastructure and public franchise", the PRC government issued the Provisional Regulations on Public–Private Partnership in Infrastructure and Public Service (consultation version) for public comments in 2017. This marked a milestone in the PRC national legislation process. In 2018, ADB continued its assistance and approved another TA ^a to help the Ministry of Finance (MOF) to strengthen PPP-related fiscal management.	Likely sustainable

Lessons Learned and Recommendations

Implementation and/or delivery	ADB recruited top notch national PPP specialists with extensive PPP project design and implementation experience; and qualified international PPP law practitioners were engaged as consultants or resource persons to offer relevant international PPP legislation experience. NDRC highly valued ADB's assistance. Director general level
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	officials from the Legal Department participated in all international workshops and consultations. Having the right resources contributed to the success of this TA.
Stakeholder participation	Stakeholder consultation and surveys were conducted during TA implementation. Resource person mobilization and international law firms' participation helped the NDRC access market practitioners and international best practice.

Follow-up Actions

Because of various reasons, the PRC government has yet to issue the national PPP law. PPP is still important for the government to deliver quality infrastructure and better service. ADB sustained its support on PPP legal environment improvement through TAs, and helped the government develop three pilot elderly care sector PPPs after the TA completion.

^a ADB. 2018. *Technical Assistance to the People's Republic of China for Legislative Research on Public-Private Partnerships from the Perspective of National Fiscal Management*. Manila.

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DESIGN AND MONITORING FRAMEWORK

Impact Strengthened enabling environment for PPPs		
Results Chain	Performance Indicators with Targets and Baselines	Achievements
Outcome Improved legal framework for the promotion, development, and implementation of PPPs	Draft concession law presented to the State Council in 2015 (2013 baseline: none)	NDRC prepared an interim regulation on infrastructure and public franchise completed and presented to State Council in 2015.
Outputs 1. Stocktake of the lessons learned from the PRC and other countries with PPP laws and regulations 2. Suggestions on the draft concession law 3. Review of potential legal and regulatory amendments 4. Widely accessible publication targeted at senior decision makers	 1a. Assessment of the experience of other countries with national PPP laws and regulations and the PRC's experience with PPP regulations (by June 2015) 1b. A report on the international consultation on PPP laws and regulations in selected countries (by December 2015) 2a. A research or issues paper on key issues addressed by concession law (by September 2015) 2b. At least three short policy notes on priority issues prepared in the review of a draft concession law (June 2016) 3a. At least three meetings, consultations, or workshops with stakeholders led by NDRC (by June 2016) 4a. At least one publication published to support outreach (by September 2016)	 1a. Completed as scheduled. 1b. International experience report completed in August 2015. 2a. Three issues papers were prepared by September 2015. 2b. Based on workshop discussions, several policy notes were prepared by NDRC. 3a. NDRC organized three international workshops, held in May, June, and September 2015. NDRC organized three consultations with stakeholders respectively in February, June and September 2016. Additional online questionnaire to solicit comments on draft "interim regulation on infrastructure and public franchise" was conducted in April 2016. 4a. International workshop report was posted online and circulated to senior decision makers on June 2015. (https://www.adb.org/sites/default/files/project-document/173109/48007-001-dpta-01-zh.pdf)
Actual Key Activities with Milestones		
1. Observations on the lessons from the PRC and other countries with PPP laws and regulations 1.1 Lessons learned from the PPP regulatory instruments in the PRC (by March 2015) 1.2 Consultation led by NDRC with market participants (e.g., concessionaires, financiers, public partners, regulators) on their use of regulatory instruments and views on their performance (by March 2015) 1.3 Preparation of report assessing the performance of the regulatory instruments (by June 2015) 1.4 Lessons learned from the PPP laws and regulations used internationally (August 2015) 1.5 Review of international literature on the use of these laws and regulations, and views on their performance (by September 2015) 1.6 Preparation of a report on the implications for the PRC of the international experience (by September 2015) 1.7 International consultation in countries implementing PPP laws (by December 2015)		

2. Suggestions on the draft concession law

- 2.1 Consultation with the NDRC working group and the experts group on topics addressed in a research or issues paper (by March 2015)
- 2.2 Preparation of a research or issues paper on key issues addressed by a concession law (by September 2015)
- 2.3 Preparation, on an as needed basis, of at least three short policy notes on priority issues faced in the review of a draft concession law (by June 2016)

3. Dialogue on potential legal and regulatory amendments

- 3.1 Consultation with NDRC working group and the experts group of key discussion issues for meetings, consultations or workshops held with stakeholders (by March 2015)
- 3.2 Preparation of a timetable for meetings, consultations or workshops, including draft agendas and list of participants (by June 2015)
- 3.3 Three workshops were held in May, June and September 2015, and three NDRC- led consultations conducted by September 2015 with stakeholders.
- 3.4 Provision of logistics and administrative support to the experts group throughout the TA

4. Accessible publication targeted at senior decision makers

- 4.1 Preparation of at least one accessible publication to support TA outreach (Please refer to Activity 4.2)
- 4.2 Public release of the final report in September 2016

Actual Inputs

Asian Development Bank: \$393,172.44

Government: \$50,000 estimated in-kind contribution from the government in the form of meeting space, staff, other services to the consultants, assistance in arranging meetings with counterpart agencies, and other in-kind contributions.

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

Source: Asian Development Bank.

TECHNICAL ASSISTANCE COST

Table A2.1: Technical Assistance Cost by Activity
(\$'000)

Item	Amount	
	Original	Actual
1. Consultants	200.00	204.81
2. Training, seminars and/or conferences	145.00	155.05
3. Miscellaneous TA administration	15.00	33.31
4. Contingency	40.00	0.00
Total	400.00	393.17

Source: Asian Development Bank.

Table A2.2: Technical Assistance Cost by Fund
(\$'000)

Item	TASF
1. Original	400.00
2. Actual	393.17
3. Unused	6.83

TASF = Technical Assistance Special Fund.

Source: Asian Development Bank.