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Key Issues for a PPP Legal Framework

Public-Private
Partnerships in
Infrastructure (PPPI)
Workshop

Qingdao,
23-25 June, 2009

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Outline of Presentation

- The Importance of the Legal Framework
- Can the Government Entity Enter into a PPP Agreement
- Monitoring and Regulating the Project
- Procurement Processes

发言要点

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Outline of Presentation (cont.)

- Dispute Resolution
- Protecting the Project Revenues
- Lender Issues
- Foreign Investment Issues

发言要点 (接上)

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Outline of Presentation (cont.)

- Land Issues
- Taxation
- Labor Laws
- Summary

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The Importance of the Legal Framework

- PPP projects typically involve significant investment by the private sector, over a long period of time
- in a World Bank survey, investors said that “insufficient legal protection of investors” is their primary concern

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Can the Government Entity Enter into a PPP Agreement

- which ministry or local government entity is involved – which body will be empowered to enter into and implement the project?
- are there legal limitations on delegation to a private operator?

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Monitoring and Regulating the PPP Project

- which government entity will monitor the project?
- is there a regulator, or is one contemplated?
- if there is a regulator:
 - what are its powers?
 - can it override the PPP Agreement?

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Procurement Processes

- is the competitive bidding process fair, transparent and objective?
- are there conflicting procurement laws at the national, provincial and municipal levels?
- are the evaluation criteria set out clearly in the law?



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Procurement Processes (cont.)

- can the PPP Agreement be extended without a new competitive tender?
- what are the consequences of a breach of the procurement rules?

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Dispute Resolution

- sovereign immunity
- does PRC's court system satisfy the investors need for a fair, transparent and efficient dispute resolution mechanism?
- if not, is domestic or international arbitration a possibility?



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Dispute Resolution (cont.)

- are international arbitration awards recognized, and can they be enforced in PRC?
- other dispute resolution mechanisms – mediation, expert determination, etc.

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Protecting the Project Revenues

- tariff setting
- rules for billings and collections

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Lender Issues

- lender security
- insolvency arrangements
- the lender's rights to 'step-in', i.e. take over the project
- direct agreements between lenders and government entities

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Foreign Investment Issues

- restrictions on ownership of Chinese companies by foreign investors
- restrictions on currency conversions

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Land Issues

- limitations on private ownership of land
- expropriation of land owned by other parties
- planning permissions
- environmental impacts

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Labor Laws

- can public employees be transferred to a private operator?
- are employees subject to civil service terms and conditions?
- can employees be laid off to achieve operating efficiencies?

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Summary

- the legal framework is critically important to make PPPs successful
- property rights of the investor are especially significant
- a single law cannot establish the necessary framework – the issue is very complex



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