

China's New Rules on Concession of Infrastructure Projects Welcoming Private Investment

June 2, 2015

PRACTICES Asia, Project Finance and Development, International

On April 21, 2015, the State Council of China (i.e. the central government) adopted the proposed draft of ***Administrative Measures on Concession of Infrastructure and Public Utilities Projects*** (the “***Infrastructure Measures*”). Four days later, the Infrastructure Measures were then jointly promulgated by the Chinese National Development and Reform Commission (NDRC), Ministry of Finance, Ministry of Housing and Urban-Rural Development, Ministry of Transport, Ministry of Water Resources and the People's Bank of China. The Infrastructure Measures are expected to enter into full force and effect commencing on June 1, 2015.**

General Background

In order to encourage private capital to participate in the establishment and management of infrastructure and public utilities projects through concession arrangements, also known as public-private partnerships (PPPs), the Infrastructure Measures seek to establish certain fundamental guidelines relating to various aspects of such PPPs. For example, the Infrastructure Measures address, among other things, the scope and types of permissible concession arrangements, the longest time period for such concession arrangements, the execution and performance of such concession agreements, dispute resolution, and the regulation and protection of public interest, in each case as described in more detail below.

According to a public speech delivered by the head of the NDRC’s legislature department, by promulgating the Infrastructure Measures, NDRC and the five other promulgating authorities aim to protect and stabilize the interests of private investors and expand their opportunities in Chinese infrastructure and utilities projects.

It should, however, be noted that even with the promulgation of the Infrastructure Measures, currently there is no clear statutory definition of PPPs or concessions under Chinese law. Indeed, some authorities in China (including NDRC) seem to hold the view that PPPs covered by the Infrastructure Measures could include either concession arrangements (where a private actor participates in infrastructure and public utilities projects largely as a partner to the governmental granting authority), or other approaches, such as where a governmental authority is largely procuring certain public services from particular private service providers who will simply be such authority’s agents in interfacing with the public. As such, in practice uncertainties may arise when the latter scenario arises and it is unclear whether such arrangement falls within the scope of the Infrastructure Measures or whether such arrangement is subject only to more general legislation such as the Chinese Contract Law. Unfortunately, the Infrastructure Measures, as drafted, do not resolve this vagueness and it may be some time before these issues are tested and such questions are resolved.

To read the full alert, click on the PDF linked below.

[Chinas-New-Rules-on-Concession-of-Infrastructure-Projects-Welcoming-Private-Investment.pdf](#)

For more information, please contact one of the lawyers listed below.