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CHINA: PPP OPPORTUNITIES OPEN UP MARKET FOR FOREIGN CONTRACTORS

By Geoffrey Chan

Public-Private Partnerships (“PPP”) are becoming a common model for infrastructure development in China. It enables cooperation between the government and enterprises, utilizing social capital for projects including water conservancy, transportation, environmental protection, etc. On 25 May 2015, China’s National Development and Reform Commission (“NDRC”) announced 1,043 PPP projects with a potential investment approaching RMB two trillion (over £200 billion)¹. This has opened up an appealing market for foreign consortiums, including UK construction companies.

In the past two years, the State Council, the NDRC, the Ministry of Finance (“MOF”) and other central authorities published a series of regulations and policies regarding the reform of investment and construction of these projects to promote the PPP model. The key regulations governing PPP projects are:-

- *The Regulation on Infrastructure and Public Utility Concessions* (the “**Concession Regulations**”) which came into force on 1 June 2015. It allows investment projects to operate for a typical term of 30 years or more (if they are very large scale projects). It is targeting companies which take a long term view on operating in China, and companies with a short term view on returns may not find it suitable. The regulations do not allow the

government to guarantee fixed investment returns. In a way, this is a positive step as the partnership has no mandatory profit ceilings. Yet foreign contractors will have to conduct effective due diligence and evaluate their business models to ensure that their long term returns are achievable.

- The MOF and the NDRC issued several guidelines for implementation of PPP projects, such as the *Circular on Issuing the Operation Guidelines on the PPP Model (For Trial Implementation)* and the *Guiding Opinions on Carrying Out the PPP*. These guidelines shed light on how the public sector intends to carry out the PPPs.
- The MOF and the NDRC further issued the *Guidelines on Contracts for PPP Projects* and the *Guidelines on General Contracts for PPP Projects* respectively to establish a standard contractual form which can be adopted by participants.

Foreign Contractors may participate in a PPP project as a private investor and/or a contractor. Article 3 of the Concession Regulations suggests that a foreign investor may not need to incorporate a project company in the PRC to enter into the contract and undertake the project. However, one should approach this with caution as there may be difficulties for non-PRC companies to acquire any land rights necessary for the



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¹ http://www.chinadaily.com.cn/business/2015-05/25/content_20813680.htm

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project; to import plant and equipment; and to deal with tax issues. Furthermore, the fact that the project is a concession will not exempt it from any other foreign investment regulations already in force.

If a foreign contractor would like to work on PPP projects, it must set up a construction company in China (a wholly foreign owned construction enterprise **“WFOE”**) or a foreign invested construction enterprises **“FICE”**) (i.e. Sino-foreign construction joint venture). It must obtain the requisite skill qualification certificate **“SQ Certificate”**).

The approval procedures for PPP projects are very detailed in China and the regulations contain different (sometimes conflicting) policy constraints.

Article 22 of the new Concession Regulations imposes an obligation of the relevant regulatory entities to simplify formalities and shorten the time period required for planning and site selection, land usage, and project approval, etc.

Since the idea of PPPs has only recently been transplanted to China, foreign contractors should be aware of local customs which play an important role in how these projects will be run which will in turn have an effect on how successful they are. The local authorities may not act in the same way as those in UK. It is therefore helpful to have a seasoned advisor to provide guiding advice at various stages of the project.

PPPs in China do create many opportunities for investment and the potential market is of such a magnitude that it will be hard to ignore. With the right due diligence, business modeling and an informed awareness of local practices, they can be very successful and profitable.

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