

Continuity of Public Service and  
Contract Amendment in Covid-19  
Response and Recovery: UNCITRAL  
PPP Model Legislative Provision(with  
its Enactment Guide) and the Chinese  
Laws

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# Continuity of Public Service

- UNCITRAL Model Provisions Article 33 and 43
- China: Measures for the Administration of Concession for Infrastructure and Public Utilities Article 47, Article 52

# Cost increase and Change of Condition

- the cost increase (or revenue loss) due to health measures (less passengers per wagon, distribution of masks, disinfecting equipment etc.)
- No vehicle tolls: 17 Feb till 6 May, to encourage self-driving
- approaches:
  - Changing (variation) orders/price adjustments-i.e. modification below a certain threshold or clearly defined in the terms of the contract.
  - Force majeure,
  - Changes in condition: When the change of economic or financial equilibrium renders the performance of those obligations financially hazardous compared to what was originally foreseen at the time that the PPP contract was concluded

# Changes in Conditions: UNCITRAL PPP Model Legislative Provision(with its Enactment Guide)

- Model provision 45. Amendment of the PPP contract
  - Article 45 of the Model Provision is devised to address primarily long-term cumulative cost increases, typically caused by deteriorating economic conditions or government action.

# Contract Amendment under the Chinese Laws and practice

- Contract changes lightly regulated under the previous Contract Law and the Government Contract Law without “changes in condition” provision
- **Changes in Condition:** Civil Code of the People's Republic of China( to be effective on 01-01-2021)
- Notice by the Supreme People’s Court of Issuing the Guiding Opinions (Part I) on Several Issues of Properly Hearing **Civil Cases concerning the COVID-19 Pandemic** (Issued on 04-16-2020)
- Notice of Beijing Municipal Housing and Urban-Rural Construction Commission on issuing the "Guiding Opinions on Project Cost and Timeline Adjustment **Affected by the Covid-19**". (2020.03.03)

# Possible Benefit of the Approach Taken in the UNCITRAL Model Legislative Provisions

- New provision on contract amendment under Changes in Condition in the Chinese law is in line with UNCITRAL Provisions,
- But Qualifications imposed on such changes under the UNCITRAL Model Provision.
  - Article 45(5):The contracting authority may not accept any amendment or modification to the PPP contract of the type referred to in paragraph 2 that would render the contract **substantially different in character from the one initially concluded.**
- **No similar qualifications under the current Chinese laws, but hopefully this will be enacted in future China legislations, either in Government procurement law or PPP law.**