

7. PUBLIC PROCUREMENT and PUBLIC-PRIVATE PARTNERSHIPS – PART 1

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COVID 19: A new case of « Force majeure »

- One virus; a multidimensional “Force majeure”
- Creating multiple issues in PPPs, depending on:
 - The type of PPPs (users paid or public paid)
 - The fields/sectors (eg: IT v. Transports);
 - Phase of the contract (construction v. performance)
- Issues related to the performance of the PPP contract: rising costs (Suspension of performance; health requirements costs & rising price due to shortfall of supplies; fall of demand; debt)

PPP and the COVID crisis: Risks allocation?

- Looking for a balanced answer, taking into account:
- The Private partner situation AND the Public needs for the continuity of the Service operation
 - **Viability & sustainability of the contract?**
 - **On a short AND long term perspective?**



Are risks allocation definitive or adaptable in PPPs?

Based on different legal traditions, the PPP Guide offers a combination of solutions

UNCITRAL PPP Guide's answers to crisis:

- Anticipation of the unforeseen Crisis?
 - Anticipation of force majeure issue
 - Anticipation of Imprevision (hardship issues)
 - Anticipation of “Fait du Prince”: increase of costs due to specific new mandatory requirements by the Public Entity (Model provision 44. Compensation for specific changes in legislation & 33 (j) and (l)),
- Permanent Dialogue between the parties
- Adjustment

UNCITRAL PPP Guide: tools and solutions

Legal tools:

- Amendment, negotiation
- Extension of the duration of the PPP (Model provision 49)
- Termination by the Public entity (Model provisions 50 (a))
- Termination by the Private partner (Model provision 51 (b))
- Termination by either parties (Model provision 53)

Economics tools:

- short term help: requests for contract adjustment (model provision 45)
- long term help: request for contract amendment (Model provision 45)

FLEXIBILITY!!