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- Development of private sector's participation on public facilities
- Guides and rules for promotion of PPPs
- Illustrative Example on Statutory Frameworks
- Forecasted demand for public facilities
- Possible challenges in implementation of PPPs
- Ways for establishing a proper PPPs system

Reform on Provisions of Public Services and Reasons for PPPs

1. Inadequate investment in public facilities – demand and supply dilemma
 - China undergoes a high rate of urbanization
 - 20 million or 1.4% increase in urban population each year
 - Urbanization rate is at around 40% in 2003
 - If the urbanization rate is between 30 and 70%, this is still a period of high demand for basic public infrastructures
 - Great demand for investment in public facilities and services

Reform on Provisions of Public Services and Reasons for PPPs

1. Inadequate investment in public facilities (Cont'd)
 - Current standard of public facilities need substantial improvement
 - Cities with water supply – 86%
 - Cities with sewage treatment – 42%
 - Road area coverage ratio – 8.6%, compared with international norm of not less than 20%

Reform on Provisions of Public Services and Reasons for PPPs

1. Inadequate investment in public facilities (Cont'd)
 - Expenditure in public facilities and services only accounts for a small portion of the total gross domestic product (GDP)
 - In the period of 1985 – 0.8%
 - In the period of 1995 – 1.7%
 - In 2003 – 3.82%
 - Need for greater capital investment in public facilities in order to meet the society need

Reform on Provisions of Public Services and Reasons for PPPs

2. Limited funding sources and inadequate private investment
 - Main source of investment in public facilities heavily relies on the Government funding
 - In 2002, the total investment in public facilities was 315 billion
 - 30% from the government
 - 30% from the stated owned bank
 - 20% from facility charge
 - Remaining 20% from stock and debt market

Reform on Provisions of Public Services and Reasons for PPPs

2. Limited funding sources and inadequate private investment (Cont'd)
 - The Government remains the main source of investment, mingling its roles in enterprises and giving rise to monopoly on provision of public facilities.
 - With the speedy growth in urbanization, reliance on government expenditure is insufficient to make things happen.
 - The Government should widen the funding sources, particularly from the private sector.

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Reform on Provisions of Public Services and Reasons for PPPs

3. Slow reform of state-owned enterprises leads to poor provisions of public services
 - High proportion of state-owned enterprises coupled with their irrational management system and lack of market competition and social responsible all result in inefficient use of capital.
 - In 2003, 80% of public transportation companies in 66 cities and 60% of water supply companies in 89 cities were operated at lose.
 - There is a huge potential for improvement of efficiency for the provision of public facilities and services by the private sector.

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Development of Private Sector's Participation on Public Facilities

- Before 1980s, nearly all companies were owned by the Central or Local Governments.
- Since the 1990s, some Local Governments have resorted to the private sector on the provision of public facilities.
- After ten years' "experimental" experience, it has built up a foundation for privatization of public facilities in a larger scale.
- Since 2000, PPPs have become one of the Government's strategies on the provision of public facilities and services.

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Development of Private Sector's Participation on Public Facilities

1. Reform of state-owned enterprises by establishing modern company management structure and system
 - Company Law is introduced and some state-owned enterprises are re-structured as limited liability companies.
2. Provision of public facilities is no longer monopolized by state-owned enterprises and market competition exists
3. With an open market for public facilities, it attracts wider sources of private investment for speeding up the urban development

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Development of Private Sector's Participation on Public Facilities

4. Market mechanism becomes maturity, and Government has started to strengthen its monitoring and control system on public facilities provided by the private sector.
5. There is more market competition from the local and foreign investors fighting for the market share.
6. These private companies start to expend their business into other regional areas.

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Guides and Rules for Promotion of PPPs

- Since 2000, the Government has introduced a series of policies, guides and rules related to the provisions of the public facilities and services by the private sector.
- The Ministry of Construction issued the
 - "Opinions on Acceleration of Privatization Process of Public Facilities" 《關於加快市政公用行業市場化進程的意見》 in December 2002
 - "Rules on Management of Franchised Operation of Public Facilities" 《市政公用事業特許經營管理辦法》 in May 2003

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Guides and Rules for Promotion of PPPs

- Based on the above Central Government directives, local Governments have started to establish rules governing the scope, procedures and relevant details for opening up the market of public facilities.
 - The Beijing Government issued the "Rules for the Franchised Operation of Basic Urban Facilities" 《城市基礎設施特許經營辦法》 in October 2003
 - The Shenzhen Government issued the "Rules for the Franchised Operation of Public Facilities" 《公用事業特許經營辦法》 in May 2003

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Guides and Rules for Promotion of PPPs

- The above rules lay down important steps as to how the policy direction turns into practices on the privatization of public facilities.
- It touches on such issues as
 - how to use the franchised operation in the provisions of public facilities and/or services;
 - How to deal with the property ownership of newly constructed infrastructures/facilities;
 - How to determine the period of franchised operation;
 - Whether the franchised operator needs to pay for any fees for the right of operation;

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Guides and Rules for Promotion of PPPs

- How to deal with the property after expiry of the franchised period;
- How to reform the existing state-owned enterprises in line with the franchised operators, particularly on the relevant service charge/fee
- How to set a reasonable fee to balance with the investor's return on investment;
- How to set up a subsidy mechanism where necessary;
- How the Government exercises an effective control on the quality of public facilities and services; so on and so forth
- The Government has to find out workable solutions to the above issues.

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Guides and Rules for Promotion of PPPs

- In 2004, the Ministry of Construction also issued a "Sample Document for the Franchised Operation of Urban Water Supply, Gas Supply and Waste Disposal" 《城市供水、管道燃氣、城市生活垃圾處理特許經營協定示範文本》 for providing more details about the whole franchised arrangement of public facilities.
- It only sets out some principles in details; both parties can negotiate the detailed contents of the franchise agreement according to the actual circumstances.

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Illustrative Example on Statutory Frameworks

The "Regulations for Franchised Operation of Beijing Basic Urban Facilities" 《北京市城市基礎設施特許經營條例》 is effective from 1st March 2006.

總則

第一條 為了規範本市城市基礎設施特許經營活動，擴大融資管道，保障社會公共利益和公共安全，保證公共產品和服務的品質，保護特許經營者的合法權益，根據有關法律、法規，制定本條例。

第三條 下列城市基礎設施項目可以實施特許經營：

- (一) 供水、供氣、供熱；
- (二) 污水和固體廢物處理；
- (三) 城市軌道交通和其他；
- (四) 市人民政府確定的其他城市基礎設施。

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Illustrative Example on Statutory Frameworks

第四條 城市基礎設施特許經營可以採取下列方式：

- (一) 在一定期限內，城市基礎設施項目由特許經營者投資建設、運營，期限屆滿無償移交回政府；
- (二) 在一定期限內，城市基礎設施由政府移交特許經營者運營，期限屆滿無償移交回政府；
- (三) 市人民政府同意的其他方式。

第六條 市發展改革部門負責本市城基礎設施特許經營的總體規劃、綜合平衡、協調和監督。

規劃、土地、建設、環保、財政、審計、監察等相關行政部門在各自職責範圍內依法履行監督管理職責。

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Illustrative Example on Statutory Frameworks

特許經營權的授予

第九條 城市基礎設施特許經營項目確定後，實施機關應當擬定**實施方案**。城市基礎設施特許經營項目實施方案應當包括下列內容：

- (一)項目名稱；
- (二)專案的實施機關；
- (三)特許經營者應當具備的條件及選擇方式；
- (四)專案基本經濟技術指標；
- (五)選址和其他規劃條件；
- (六)特許經營權條款及特許經營期限；
- (七)投資回報和價格的測算；
- (八)特許經營權使用費及其減免；
- (九)保障措施；
- (十)其他政府承諾。

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Illustrative Example on Statutory Frameworks

第十一條 實施機關按照實施方案，通過**招標等公平競爭方式**確定特許經營者並與之簽訂特許經營協議。

第十二條 特許經營協議應當包括下列內容：

- (一)專案名稱、內容；
- (二)特許經營方式、區域、範圍、期限；
- (三)是否成立項目公司以及項目公司的經營範圍、註冊資本、股東**出資方式**、**出資比例**、**股權轉讓**等；
- (四)產品或者服務的**數量**、**品質**和**標準**；
- (五)投融資期限和方式；
- (六)投資**回報方式**以及確定、**調整機制**；

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Illustrative Example on Statutory Frameworks

- (七)特許經營權**使用費**及其**減免**；
- (八)特許經營者的**權利**和**義務**；
- (九) **履約擔保**；
- (十)特許經營期內的**風險分擔**；
- (十一)政府承諾和保障；
- (十二) **應急預案**；
- (十三)特許經營期滿後，專案移交的方式、程式；
- (十四) **違約責任**；
- (十五) **爭議解決**方式；
- (十六)需要約定的其他事項。

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Illustrative Example on Statutory Frameworks

第十三條 特許經營協議中約定的特許經營期限根據行業特點、經營規模、經營方式等因素確定，但最長不得超過**三十年**。

第十五條 特許經營協議可以約定特許經營者通過下列方式取得**回報**：

- (一)對提供的公共產品或者服務**收費**；
- (二)政府授予與城市基礎設施相關的**其他開發經營權益**；
- (三)政府給予相應**補貼**；
- (四)市人民政府同意的其他方式。

第二十三條 特許經營者向公眾提供產品或者服務的價格應當執行由價格主管部門制定的**政府定價**或者**政府指導價**。

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Illustrative Example on Statutory Frameworks

監督管理

第三十五條 特許經營期限內，有關行政主管部門應當按照各自職責對特許經營專案進行**檢查**、**評估**、**審計**，對特許經營者違反法律、法規、規章規定的行為予以糾正並依法處理。

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Forecasted Demand for Public Facilities and Services

- In 2003, investment in the public facilities by the private sector amounted to about 475 billion.
 - 32 billion from foreign investment
 - 444 billion from local investment
- It is equivalent to 28% of the total fixed asset investment and 0.58% of the total gross domestic product (GDP).
- It is estimated that in the coming 10 to 15 years, the fixed asset investment would be around 585 billion per year.

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Possible Challenges in Implementation of PPPs

- Since PPP is relatively new to Government officials, private investors and consumers, there is an apparent lack of knowledge and experience on the commercial, technical, legal and political aspects of PPP.
- Even with foreign investors who have substantial overseas experience in PPP, and because China has only opened its market for a relatively short period of time, they also cannot understand all relevant practices and procedures.

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Possible Challenges in Implementation of PPPs

- There is too much emphasis on attracting investment from the private sector and too little attention to market competition.
 - The main objective of PPPs is to make use of market competition so as to ensure effective use of resources in the provision of public facilities and services.
 - However, some Local Governments place much emphasis on attracting private investments even by offering more favorable terms than the normal national status “國民待遇”.

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Possible Challenges in Implementation of PPPs

- PPPs are treated as a privatization of public facilities/services, focusing on short-term return without the spirit of long-term partnership.
 - In order to maintain a high return on investment, both government and private investor try to charge a high fee for the provided services as well as assigning land use without paying any charge “無償劃撥土地”.
 - The financial risk and burden are shifted to the public who faces a high price for the public services without the corresponding increase in service quality.

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Possible Challenges in Implementation of PPPs

- There is inadequate knowledge about PPPs, particularly in respect of commercial, technical, legal and policy issues.
 - Both the Government and private investor chase for financial returns.
 - There is no proper risk assessment.
 - Parties make their decisions not based on thorough and objective technical and financial analyses.
 - When problem arises, parties look for opportunities to escape from responsibility.

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Possible Challenges in Implementation of PPPs

- In most cities, there are no detailed guides and laws governing the provision of public facilities and services by the private sector.
 - China is not based on the “common law” principles.
 - Under the China’s Administrative Laws 《行政許可法》, there is a general “Government Procurement Regulations” 《政府採購法》.
 - Unfortunately, this procurement regulation is not specifically concerned with the procurement of many aspects involved in a complex PPP project.

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Possible Challenges in Implementation of PPPs

- There is lack of administrative framework for PPP projects.
 - Amongst various government departments, it is not clear which department has an authority to negotiate and sign a contract.
 - It is quite unpredictable whether the promise given by an appointed government representative is enforceable.
 - Thus, some overseas investors insist on the passing of the relevant rules or regulations for a PPP project to assure that the signed agreement will be enforceable.

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Possible Challenges in Implementation of PPPs

- Other problems at the operational level.
- In order to attract foreign investment, some local governments promise more than they could do “重承諾，輕踐行”.
- When the Government changes, they may find possible ways to terminate those agreement which is found to be unfair or unreasonable.
- The price control system is not perfect.
- The public also finds no effective channel to voice its opinion on the PPP projects.
- If there is a dispute, whether it is resolved under the administrative law and contract law is not clear.

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Ways for Establishing a Proper PPPs System

- The Government should generally follow some good international PPP practices.
- The Government should thoroughly consider all parties' interests before making a decision on a PPP project.
- A flexible, independent, transparent, accountable and professional monitoring system, with the appropriate authority, should be built in any PPP project.
- A proper judiciary system for dispute resolution is important to ensure private sector's investment in capital intensive PPP projects.

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