Infrastructure Investment in Africa—Using Public Private Partnership as Vehicle

Hongyu Fu¹

ABSTRACT

African countries has adopted the Public Private Partnership as the main approach to realize the government function and provide social service as well as public infrastructure in recent year. Under the Belt and Road Initiative, Africa will witness the new boom in inward FDI investment from the Chinese private capital. With comparative analysis of African countries’ PPP legal systems, their useful experiences will be helpful for Chinese companies investing in Africa using PPP models, and will providing guidance for legislation in China.

Key words: African; Vehicle; Investment.

INTRODUCTION

Under the new epochal theme of peace, development, cooperation and mutual benefits, China has long upheld the foreign policy of “good-neighborliness, safe-neighborliness and rich-neighborliness”, adherent to the principle of peaceful rise. In recent years, China have proposed the initiative of “Silk Road Economic Belt” and “21st Century Maritime Silk Road” (hereafter referred to as “B&R Initiative”) to promote international cooperation on capacity and encourage Chinese funds to “go out”. Centering on policy coordination, facilities connectivity, unimpeded trade, financial integration and people-to-people bonding, the B&R Initiative seeks to coordinate with economic development strategies of countries along the Belt and Road and strengthen regional cooperation, among which the cooperation on infrastructure construction comes at the top priority, aiming at jointly pushing forward the construction of international trunk passageways, so as to form an infrastructure network connecting Europe, Asia and Africa.

Despite the underdeveloped economy and backward infrastructure, Africa, with its vast land and abundant resources, has huge scope and potential for investment. The Belt and Road Initiative provides an instructive framework for economic and financial cooperation between China and African countries, highly coupled to as well as aligning and coordinating the transnational project of “North-South Economic Development Corridor” in Africa, with an aim to realize “Agenda 2063”. The Initiative will definitely change the trade mode between China and African countries, and bring more funds, technology and human resources for African infrastructure development to accelerate the integration and modernization of African countries, while at the same time stimulating Chinese funds to “go out”. In January, 2015, China and Africa signed a Memorandum of Understanding on the promotion of infrastructure cooperation at the African Union headquarters, which facilitates the establishment of a long-term and profound framework for cooperation in the fields of railway, highway, regional

¹Hongyu Fu, Beijing Foreign Studies University, School of Law, Beijing, China, 100089
aviation networks and infrastructure industrialization in Africa (called “three networks and industrialization”).

**PPP MODEL’S MAJOR CHARACTERS**

**The advantages of PPP.** By virtue of its flexibility and tailored design, Public-Private Partnership (PPP) model could ideally combine either party’s advantages, namely private capital’s good management capability and technology and public government’s policy support, respectively, thus having been adopted in various infrastructure areas. In the implementation of PPP, risks concerning infrastructure investment, construction and operation etc. would be properly allocated among different parities in accordance with the general risk sharing principles. Nowadays PPP has been deemed as an extremely effective and efficient approach to compensating for the deficiency of direct financial investment in infrastructure by the government, improving the output efficiency of public goods and services, and creating greater social value and welfare.

**The wide application of PPP.** With the deeply exploration of PPP model in China, it is gradually replacing the traditional investment model where government financial input dominates the infrastructure investment, and it is assumed to become the major and crucial mode of infrastructure development in African countries. The successful implementation of PPP model relies on sound institutional and legal system, which clearly stipulates all parties’ rights and obligations so as to ensure the stability of the cooperation framework and enhance predictability of project returns. When applying PPP model to make infrastructure investment in Africa, one should take a profound analysis of host country’s PPP legal system and its enforcement to achieve wise and feasible solutions, avoiding any failure or loss caused by information asymmetry.

Furthermore, African countries, also as developing countries, have accumulated some useful experience in establishing and implementing PPP legal systems, which Chinese legislative officials could learn from.

**THE STATUS QUO OF PPP DEVELOPMENT IN AFRICA AND SUGGESTIONS FOR CHINESE INVESTORS**

**African countries’ PPP Development.** As African countries are accelerating their economic development, there is huge demand for infrastructure and public services, leaving enormous room for foreign investment. With the promotion by R&B Initiative, China and African countries further enhance their cooperation in a broader context. By making investment in African infrastructure and public services via PPP model, private capital in China can obtain big opportunity to enter the African capital market.

Though, Africa has only recently introduced and implemented PPP model, the legal system in this regard is being built at a high speed to fill in the gap. In the past six years, a succession of countries enacted laws and regulations on PPP, such as Zambia, Egypt, Tanzania, Kenya, Morocco, Uganda, and so on. Due to a relatively short history of PPP legislation in most African countries, they have drawn on many existing best practices at international level to polish their PPP law. With the guidance of standards set by international organizations like OECD, they have formulated their own legal framework for PPP, including the principles of being openness, fairness and transparency for public procurement, adopting competitive
bidding procedure, establishing effective communication between government and private capital, and providing alternative disputes resolution methods. Egypt’s PPP law, originally enacted in 2011, was amended in 2012 by introducing arbitration as one of the dispute resolution method, under which any disputes concerning PPP projects could be resort to the Cairo Regional Centre for International Commercial Arbitration.

**Suggestions for Foreign Investors.** With regard to Chinese investors planning investment in Africa, it is suggested referring to and observing African laws on PPP to better adjust themselves to the legal environment of investment destination. However, in practice, there is a huge gap between the legislation and implementation, which is an inherent problem in underdeveloped regions and makes investment much more complex. Thus, before decision-making, it is of great necessity to conduct prudent risk analysis and evaluation and have a complete picture of legal systems and status of implementation concerning PPP. Besides, the foreign investors should also have good knowledge about other local laws relating to the company, tax, labor, currency etc. The African countries may carry out strict access restriction based on their respect industry development. Investment may encounter different barrier when conducting specific application in different fields, and various investment structure and organization should be designed to legally bypass the obstacle to entry. The regulation of admittance is always connected favorable policy. The investors are suggested to make full use of the preferential treatments in tax, currency, financing and so on. The investors could take advantage of the international insurance to keep the risk under a reasonable level, the cost of which could be included in the proposal of PPP project design. In order to avoid unexpected loss, the project contract is the most important battlefield for the investors. They should try to argue for the best interests without prejudice to the project before the negotiating table and embody them in the terms and conditions of the final exquisite contracts.

**EXPERIENCE FOR IMPROVING CHINESE PPP LEGAL SYSTEM**

The following experience from African countries in establishing and implementing PPP legal system can be drawn upon:

1. **Integrate the legislation on PPP, further define the division of powers between different levels of government and departments and promote friendly interdepartmental cooperation so as to guarantee a legal and institutional basis for implementing PPP model.** The relevant legislation should be based on China’s own experience and the reality while at the same time taking consideration of the international best practices. The uniform and upper-hierarchy legislation would obviously help to coordinate inter-government and inter-department efforts and comprehensively improve the standard with respect to the professional competence of all levels of governments and relevant departments in dealing with PPP. In the process of legislation, full consideration should be given to the demand of private capital, relevant public and other stakeholders. The enforceability and feasibility of laws should be among the priorities with equipment of detailed rules and guidelines and specific punishment measures for illegal conducts. Meanwhile, legal system should spare some space for incentives to encourage the friendly cooperation between government and private capital, eventually serving economic development and public interests.

2. **Specify the institution and functions of PPP unit.** Laws should be enacted to stipulate that PPP unit enjoys the administrative status as a specialized inter-industry and inter-regional institution. The PPP unit’ lifecycle project management capacity should be elevated and special funds should be established and properly utilized to cover the operation expenditure of
PPP unit. Taking Nigeria for example, an official coordination institution Infrastructure Concession Regulatory Commission (ICRC) was set up with the enforcement of Infrastructure Concession Regulatory Commission Act, working as PPP unit. ICRC was responsible for the formulation of PPP policy and bidding procedure, the selection of potential projects and the dissemination of PPP policy and projects. At the same time, legislation should also outline the talent reserve system for specialist in PPP, to improve the professional competence and service level of government officials in participating in the PPP model.

3. Optimize communication and coordination system, and guarantee the public’ right to learn and the right of participation. In the stages of project design, procurement and implementation, suitable coordination mechanism between institutional bodies and the private capital should be put in place to strengthen information communication and optimize project design with the technological advantages of the private capital. In the meantime, it should be clarified in legislation that PPP carries the public attributes. Therefore, it is necessary to encourage public participation and set up public supervision mechanism. By this way the public could be supposed to correctly understand the concept of PPP and more easily perceive its advantages, which can decrease the chance of public resistance and push the project’s implementation instead.

CONCLUSIONS

China and African countries take the opportunity of the Road and Belt Initiative to forge and further their liaison in fields of infrastructure development. Enormous capital will flow into Africa for participation in this tremendous program, especially the private capital whose advanced technology and proficiency in management are greatly appreciated. Public-Private Partnership emerges as a brand-new approach to develop the infrastructure in Africa recently, offering the government a special tool to serve social benefits and public interests as well as meet the needs of comprehensive development. However, given the utter different situation of African countries, PPP investment in African could be rather complicated and PPP projects might face great risk. Foreign investors are expected to treat it with special caution in the lifecycle of projects. On the other hand, China can learn lesson from the African countries about the PPP legislation despite of their short history. As most African countries incorporate the international best practices in their newest legal system, China may better learn how to coordinate the international guidelines and standards with its own case so as to achieve the win-win outcome between government and private capital through the PPP form.

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