

# **Study on the PPP Mode Legal Support System Recommendations in the New Normal**

## **——From the Administrative Dispute Resolution Mechanism**

Yao Huang <sup>1</sup>

<sup>1</sup> Law School of Sichuan University, Chengdu, Sichuan, 610207

346591653@163.com

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**ABSTRACT:** Perfection new normal PPP model is to implement the relevant legal system, the party's eighteen Fourth Plenary Session presented comprehensively promote the rule of law and building a socialist country ruled by law the proper meaning of. In this paper, administrative dispute resolution mechanism PPP model as a starting point, an in-depth analysis of the existing legal problems in the system, based on the path to explore new ideas and construct normal PPP mode legal support system.

### **I. Introduction**

2013 Third Plenary Session of the Party's eighteen proposed "to allow participation of social capital investment in urban infrastructure and operations through franchising, etc." and "mixed ownership reform 'requirements. To this end, Development and Reform Commission, Ministry of Finance, People's Bank and other relevant ministries initiated a study to explore the work on PPP mode. 2014 eighteen Fourth Plenary Session of the "rule of law" as the theme, that "the rule of law is important and a good law is a prerequisite of good governance. Construction of Chinese Legal System of socialist characteristics and it must adhere to legislation first, to play a leading and pushing legislation action to improve the quality of legislation to seize this critical. "Thus, under the new normal PPP mode to improve relevant legal system is to implement the party's eighteen Fourth plenary session presented comprehensively promote the rule of law and building a socialist country under the rule of the proper meaning.

### **II. The Statement of Problem**

PPP model concept first proposed by the British is a natural consequence among the UK public sector and private sector relationships evolution. PPP (Public-Private Partnership) or "public-private partnerships or public-private partnerships," referring to the government and investors in a "risk-sharing investment cooperation + + revenue sharing" model project of cooperation in the construction and development. In our practice, PPP mode mainly for the franchise, the carrier is mainly a franchise agreement between the Government and the private sector. From the perspective of the legal point of view, PPP model is the public and private sectors together to provide public services to contract by a variety of networks based on a framework of voluntary contract is formed,

the main application object is the government bears the responsibility to provide suitable and market-oriented operation public services, infrastructure projects, including: municipal (gas, electricity, water, heating, sewage and garbage disposal), water conservancy (water remediation, water environment management, soil and water conservation), transport (roads, railways, airports, urban rail Transit) and environmental resources, ecological protection and public services (health, tourism, education and training, health, pension, etc.) and other projects.

### **III. The Current Situation of PPP Mode in Our Country**

China's current PPP model, mainly former Ministry of Construction in 2004 issued a "municipal public utility franchise management approach" (hereinafter referred to as "126 text") basis set up. June 1, 2015 the formal implementation of the "infrastructure and public utility franchise management approach" (hereinafter referred to as "Decree 25") is approved by the State Council agreed by the six ministries (Development and Reform Commission, Ministry of Finance, the Ministry of Housing, Ministry of Communications, Ministry of Water Resources and PBC) jointly released documents relating to PPP legislation is in effect the highest level.

### **IV. Administrative Dispute Resolution**

Administrative litigation has become an important line of defense for its fairness administrative dispute resolution. Administrative proceedings is final administrative disputes settlement mechanism, has the ultimate jurisdiction of the administrative proceedings, that dispute, any decision of the administrative law applicable administrative proceedings arising are final solution. Administrative disputes involving application of the law, after making administrative acts related administrative organs, if dissatisfied with the administrative counterpart, has the right to bring an administrative lawsuit. Once the administrative disputes court make a determination shall be final referee, any institution or individual is allowed to violate. Therefore, once the franchise agreement disputes PPP mode in administrative proceedings to review the judicial finality.

### **V. Learn from Foreign Experience**

#### *A. United Kingdom*

Back in the eighties, the British government began to solve the fiscal deterioration, inefficient service issues such efforts, most notably that is reinventing government and administrative reform measures they implemented sweeping through this series reform measures, the government will private capital, technology, management capability introduced in, the provision of public services in the framework of Partnership, in order to improve administrative efficiency and improve service quality. This series of measures implemented by the United Kingdom of Partnership gives broad space for development, and promote cooperation between the public and private sectors, and thus gave birth to the concept of Partnership in the modern sense.

#### *B. United States*

Behavior of Partnership in the United States can be traced to the economic development of this crisis period. 30s of last century, the United States broke out of the economic crisis, economic activity is facing many difficulties, which prompted the United States actively sought in the form of Partnership to complete administrative tasks, public-private partnerships began a large place in the fields of infrastructure USA water supply, transportation, etc. splendor. In the late nineteenth century, the United States conducted a series of socio-economic reform measures to promote its

economic take-off, but the corresponding terms of reference of the US government departments have also changed, the government is no longer a "pipe the least government." governments are increasingly advocated in its dealing with administrative affairs and a leading role in public affairs, social welfare category mainly by the government's handling. This led to the emergence of many problems, such as government agencies jumbled, increase fiscal spending and low administrative efficiency and so on.

## **VI. The Problems and Causes of PPP Mode Legal Support System in New Normal**

PPP mode under the legal support system problems are mainly in the following aspects:

First, it lacks legislation. Six ministries jointly issued the "25 orders" despite being agreed by the State Council ministries and regulations, but is still on the level and effectiveness of law for the protection of PPP projects is limited,

Second is the lack of competent authorities. Since the PPP project legal relationship is complex, involving a number of management units, China is no uniform administrations PPP projects, PPP projects leading to those policies, complex process, project decision-making and implementation inefficiencies. "Decree 25" It was six ministries jointly below, but the absence of other sectors associated with PPP projects undertaken PPP projects will affect, for example, the absence of land and resources, it will affect the land propulsion PPP projects plus new implementation of bundling mode .

Third, the process of dispute resolution mechanisms is not smooth. June 1, 2015 the formal implementation of the "25 orders" provisions when a dispute arises due to the specific administrative act of relief through administrative reconsideration or administrative litigation. But the new Administrative Procedure Law May 1, 2015 in force has "specific administrative act" was changed to "administrative action" and therefore 25 orders for the formulation of the specific administrative act is still not keep up with the pace of the new law. The new implementation of the "Administrative Procedure Law" Article 12, Article 11 and other provisions of the franchise agreement administrative contracts are administrative acts actionable. That is, the administrative relative person is not an administrative body according to the contract law to fulfill administrative obligations of the contract, can bring an administrative lawsuit. But no mention of the administrative authority by administrative contract counterparty fails to perform the contract or improper handling of the contract fulfillment.

## **VII. Recommendations of PPP Mode Legal Support System in Sound New Normal**

Since the PPP mode under franchise agreements in assessing their potential to release a series of processes embodied both "desirable" and "autonomy" and therefore should be based on characteristics of the administrative contract to decide on the rules of evidence in private law. If it is because a unilateral change in the executive enjoys excellent usufruct premise terminate the contract caused controversy because of the administrative body enjoys excellent benefits eligible position on the substance or on the burden of proof should be in accordance with the rules of administrative proceedings by the Chief authorities to present evidence on the legality of its administrative acts; if it is because the administrative counterpart does not fulfill the PPP, made the executive decision to denounce or to enforce the decision, the administrative counterpart for administrative proceedings, although only sue against the decision, but the court when judicial review, administrative review can be attached opposite party fails to perform administrative agreement whether the conduct of legitimate, then take the "who advocates, who burden of proof"

rules of evidence, administrative opposite party does not fulfill its agreement should bear the burden of proof.

For PPP mode executive unilateral disarmament, change the administrative contract or administrative contract litigation parties to the case because of the exercise of the right to administrative sanctions such as the right superior benefits arising willing to mediation, the court should be able to mediation, especially those belonging to the administrative contract the content of non-legal force provisions, such as those on contract term, the method of execution, remuneration, breach of contract and other court may conduct mediation. Mediation as an important means to solve disputes, in line with the administrative contract litigation to resolve legal disputes the basic functions and closed both the mediation of the court or the parties are significant savings in litigation costs, consistent with the procedural efficiency and the private economy, thus to introduce mediation mechanism in the administrative contract litigation is really necessary. In the PPP agreement should follow the voluntary dispute resolution, legal principles, not harm national interests, public interests and legal rights of others. Specifically, first, the parties should respect the referee choose mediation or dispute settlement rights; secondly eliminating interpretation of the parties were fully explain the risk of litigation that may exist, to guide the party of equality, voluntary resolution of disputes; conscientiously fulfill the final review of the mediation agreement confirm the responsibility to ensure that the contents of the mediation agreement does not violate the law.

State Council promulgated in 2007, "Chinese People's Governments Information Disclosure Ordinance" (hereinafter referred to as "" Ordinance ""), the "Regulations" provisions of Article VI of the General Part of explicit government obligation to timely and accurate disclosure of government information, while provisions the government should take the initiative to focus on open government based on a range of information, in Article XIII explicitly gives the public access to government information they need by way of application, the "regulations" Article 24 also clarified the government receive public government information after open application, should be promptly responded FOI. PPP legal system to ensure the competitiveness of the public services market, information about the project must be advertising that in order to compete in society more private-sector players in a broad enough range. If the applicant and the Government of the PPP project-related information and the government does not publicly disclosed, and the applicant comply with the relevant provisions of "People's Republic of China Government Information Disclosure Ordinance", that the executive government information disclosure work in the administrative violations of their legitimate rights and interests You may apply for administrative reconsideration or bring an administrative lawsuit.

## **VIII. Conclusion**

Through the PPP model of public-private cooperation in the areas of infrastructure construction can be a win-win situation to find an effective way. PPP's goal is to achieve social and economic maximize overall efficiency and it enhance public access to public service levels. Perfection new normal PPP model is to implement the relevant legal system, the party's eighteen Fourth Plenary Session presented comprehensively promote the rule of law and building a socialist country ruled by law the proper meaning of.

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