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Achieving Transparency and Accountability in the Renegotiation of Public-Private Partnership Contracts

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As a result of the COVID-19 pandemic, many Public-Private Partnership (PPP) projects are under severe stress, and there is a strong likelihood that this will eventually result in project companies asking governments to renegotiate the contracts. If, in fact, governments are faced with large numbers of such renegotiation requests over the course of the next few months, this will put an enormous burden on capacity-constrained line ministries and fiscal authorities – particularly if governments want to ensure that such renegotiations are carried out in a transparent and accountable manner, and preserve the ‘value for money’ of the projects.

This was one of the key messages in a webinar presentation delivered to ADB staff on November 4, 2020, on the subject of [Achieving Transparency and Accountability in the Renegotiation of Public-Private Partnership Contracts](#).

The presentation began with a definition of “renegotiation” – which involves a change to the original terms of a PPP contract, as opposed to a mere adjustment that takes place pursuant to provisions in the contract. The presentation then discussed the prevalence of PPP renegotiations, using data from the Global Infrastructure Hub’s 2018 report on *Managing PPP Contracts After Financial Close*¹.

It was noted that, globally, the highest number of renegotiations in the last 15 years have taken place in Latin America – but that renegotiations were also frequently occurring in Asia, particularly in the South Asian region. Overall, in a representative sample of PPP projects which reached financial close during the period from 2005 through 2015, it was found that one-third of the original contracts had been renegotiated. And the evidence suggests that the true prevalence of renegotiation may be even higher, given that many of the projects in the sample group are still ongoing. It was also noted that PPP renegotiations are particularly common in the transport and water sectors, and that requests for renegotiation have come from both the private sector and from government.

The presentation then discussed issues and concerns arising from renegotiations, with the key point being that, in a renegotiation, the ‘competitive tension’ that was present during the procurement phase no longer exists – in that a renegotiation takes place directly between the government and the existing project company, and there are no other ‘bidders’ present. This makes it difficult for a government to ensure that the renegotiated transaction still achieves ‘value for money’ for the government and for the members of the public using the infrastructure facilities.

To illustrate the problems that can arise if a renegotiation is not well-handled by a government, two examples of ‘renegotiation failures’ were presented – namely Portugal’s Vasco da Gama Bridge Project, where a government-initiated renegotiation led to a significant restructuring of the transaction in favour of the project company; and the notorious Oderbrecht renegotiations in Latin America, where the Oderbrecht construction company

¹ Global Infrastructure Hub (2018) *Managing PPP Contracts After Financial Close* <https://managingppp.gihub.org/>.

systematically won PPP contracts by submitting very low-priced bids, and then bribed the officials responsible for the subsequent renegotiations of those contracts.

The main part of the presentation was a detailed 'case study' of a successful renegotiation carried out by the state government of Victoria, in Australia, in regard to the Melbourne train/tram franchises. The presentation discussed the financial models and other tools and methodologies used by that government to ensure that the renegotiations preserved 'value for money', in a way that was transparent and fully accountable.

This was followed by a discussion of nine "Proposals" on how governments should handle PPP renegotiations, as set out in the above-noted Global Infrastructure Hub report.

Finally, the presentation dealt with the issue of PPP renegotiations that have arisen, and that may yet arise, from the current pandemic. This involved a discussion of the policies currently being followed in the United Kingdom and various countries in continental Europe, as well as a reference to the proactive steps being taken by the Government of the Philippines.

Due, in part, to the consultations now ongoing between governments and PPP project companies in many countries, we have not yet seen a 'tsunami' of renegotiation requests. However, as indicated above, a large number of such requests may be forthcoming during the next few months. Accordingly, governments should act now to put in place the necessary governance arrangements to handle multiple PPP renegotiations arising from the pandemic, to ensure that those renegotiations are handled transparently and successfully.