Risk Sharing of Political Force Majeure in PPP Projects in The Belt and Road

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Abstract. This paper identifies 12 political force majeure events through analysis the documents and literatures, and then classifies 8 key events. It is found that the risk allocation of most events is inconsistent by comparing and analyzing the risk allocation results of key events. This paper concludes that the risk allocation should be determined according to the specific circumstances on the basis of following the basic principles.

1. Introduction
With the further development of “the Belt and Road”, a large number of central enterprises, especially energy and infrastructure construction companies, go out as “private” and participate in the construction of more and more international PPP projects. However, new opportunities also bring new risks. Some countries along "the Belt and Road" have complicated political situation, religious diversity, and the prevalence of terrorism and extremism in some regions, which increase the political force majeure risks that PPP projects may encounter in the construction and operation process[1]. Through the analysis of the failure cases of some foreign PPP projects, it is found that the political force majeure risk has a high probability and serious harm. In recent years, one of the reasons that Chinese enterprises' overseas investment projects have not achieved high returns as expected, is the failure to effectively prevent and control risks[2]. Reasonable risk allocation can improve the risk control ability of Chinese enterprises and promote the success of projects. In view of this, in order to provide reference for international PPP projects, this paper studies the risk allocation of political force majeure in international PPP projects.

2. Analysis of political force majeure events
2.1 Identification of political force majeure events
Through the review of documents and literatures, this paper comprehensively identified the political force majeure events shown in Table 1.
### Table 1 Identification of political force majeure events

| Number | Event                                            | Source | Number | Event                                            | Source |
|--------|--------------------------------------------------|--------|--------|--------------------------------------------------|--------|
|        | P1: war or military conflict                     | √      | 7      | P7: export bans or related controls              | ——     |
| 1      | P2: government imposed expropriation and nationalization | √      |        | P8: civil strife or riot                          | √      |
| 2      | P3: ethnic and religious conflicts                | ——     | 9      | P9: state power changes frequently               | ——     |
| 3      | P4: terrorist activity                            | √      | 10     | P10: international or domestic organizations oppose| ——     |
| 4      | P5: foreign exchange control, exchange rate fluctuation | ——     | 11     | P11: government refused to grant permission       | ——     |
| 5      | P6: changes in laws and policies                  | √      | 12     | P12: other countries intervene                   | ——     |

#### 2.2 Classification of political force majeure events

In order to reduce the possibility of Chinese enterprises’ investment failure, it is necessary to classify the political force majeure events and give priority to the events which have the highest probability of occurrence and the most critical to the international PPP projects. It is worth noting that the higher the frequency of occurrence of the same event in relevant studies, the higher the degree of recognition, and the higher the probability of occurrence. The key events with high probability of occurrence and great correlation with international PPP projects, that should be paid close attention naturally. In view of this, the frequency of political force majeure events is taken as the horizontal axis and the project type as the vertical axis to partition political force majeure events, as shown in figure 1.

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**Figure 1** Classification of political force majeure events

It can be seen from fig. 1 that P6 is more likely to occur than P5 and P7. They may have a lower correlation with international PPP projects since these three events are extracted from relevant studies of general projects. Although P2 and P11 are less likely to occur, they are extracted from relevant studies on domestic PPP projects, so they have certain correlation with international PPP projects. P1, P4 and P8 are more likely to occur than P3, P9, P10 and P12, they have the highest correlation with international PPP projects as extracted from relevant studies on international PPP projects. Thus, in order to smoothly carry out the project and friendly cooperation between the two parties, the three
political force majeure events P1, P4 and P8 located at the top right in the coordinate area of fig. 1, which should be focused on in the contract or paid great attention to during the operation of the project when Chinese enterprises participate in international PPP projects; Although P6 is frequently mentioned in the research on political force majeure of general projects, it is still relatively key in international PPP projects after analysis. In addition, P3, P9, P10 and P12 need secondary attention, although they are not frequently studied, they are risks specially mentioned in international PPP projects. P2 and P11 are not frequently studied, and most of them are risks mentioned in related researches of domestic PPP projects. Some attention should be paid to them, if there is still enough resources and energy. However, P5 and P7 are not frequently studied and mentioned in general projects, ranking at the last level of all political force majeure events. In view of this, this paper will conduct follow-up research on the 8 political force majeure events, P1, P4, P8, P3, P9, P10, P12 and P6 above and to the right of the coordinate area in fig. 1.

3. Risk allocation of key political force majeure events

3.1 Risk-allocation results of key political force majeure events

In the actual situation, it is difficult to decide whether political force majeure events should be solely borne by the government or by both public and private parties, or by social capital as a commercial risk. The existing research seldom involves the risk allocation of political force majeure. For the risk allocation of force majeure, the relevant research mainly involves the government alone and both sides. Theoretically, most studies believe that the government is the main party to bear the force majeure risk. Because it has a relatively strong ability to bear and control force majeure and consider to encourage social capital to actively participate in PPP projects. In fact, such a practice of directly attributing the force majeure risk to the responsibility of one party violates the principle of fairness. According to the classification results of the above-mentioned political force majeure events, it can be seen that different events have different degrees of importance. For Chinese enterprises participating in international PPP projects, they should focus on the risk sharing of key events. This paper summarizes the risk allocation results of the political force majeure events involved in the relevant researches, as shown in Table 2.

| Number | Event                                      | Government commitment | Social capital commitment | Both side share |
|--------|--------------------------------------------|-----------------------|--------------------------|----------------|
| 1      | war or military conflict                    | [3]                   | ———                     | [4]            |
| 2      | terrorist activity                          | [5]                   | [6]                      | ———            |
| 3      | civil strife or riot                        | [7]                   | ———                     | [8]            |
| 4      | changes in laws and policies                | [9], [10]             | ———                     | ———            |
| 5      | ethnic and religious conflicts              | ———                   | [11]                     | [12]           |
| 6      | state power changes frequently             | [13], [14]            | ———                     | ———            |
| 7      | International or domestic organizations oppose | [1]                 | ———                     | [15]           |
| 8      | other countries intervene                   | [16]                  | ———                     | ———            |

The comparative analysis shows that the existing research is consistent in risk sharing for a few political force majeure events, but inconsistent in risk sharing for most political force majeure events. It can be seen from the above analysis that the risk allocation of most political force majeure events is not clear except for the political force majeure events directly related to the government. For political force majeure with high probability and severity in international PPP projects, disputes after the
occurrence of force majeure can be reduced if the subject of a certain risk can be specified in advance in the contract. In view of this, this study will analyze the inconsistent risk allocation of key political force majeure events.

3.2 Principle of risk sharing for political force majeure

Although relevant studies have not explained the inconsistent risk allocation of political force majeure events in international PPP projects, scholars have studied this phenomenon in domestic PPP projects. Such as Yongjian Ke\(^{17}\) finds that it was impossible to determine the imputation object for the risks of forced expropriation and nationalization by the government through the analysis and summary of PPP project cases from China, the statistical analysis results of questionnaire survey or expert interview and the analysis of risk sharing results of three reference PPP projects provided by government departments. Although some provisions of the project are expropriated by the government in violation of the central policy, the reason may be that the government officials in charge of the project violate the rules or the unequal treaties signed by social capital to take advantage of the government's insufficient understanding of the PPP project. In this case, the blame object of the risk should be determined according to the circumstances. As states in the PPP Contract Terms Guide, some are more easily controlled by the contracting government departments among all political force majeure events. The nature of these risks makes them unable to be borne by social capital. Therefore, the market practice is that the risks of these events are borne by the contracting government departments.

Therefore, it can be seen that there is no absolute principle to share the risk of political force majeure. The risk is divided according to the specific situation of the project, on the basis of the basic principle that the risk is allocated to the party with the most control ability or the most management ability. As a matter of fact, the risk allocation of PPP projects in one country cannot be simply applied to other countries due to the different political, economic and social environments. Similarly, risk allocation in one PPP project cannot be directly applied to another. Thus, there should be no fixed standard answer to the risk sharing of political force majeure, that is to say, the basic principle of risk sharing is unchanged, but the risk sharing scheme is different in different countries and projects, and the reasonable risk sharing scheme should depend on the specific situation. It is finds that the risk sharing of political force majeure is closely related to the host country environment through analysis. The government can foresee or control a certain political force majeure event to a large extent because of the unstable political situation and continuous conflicts. According to the basic principle of risk sharing, the risk is more borne by the government. For countries with relatively stable political situation, the risk of political force majeure should be shared by both parties on the basis of following the basic principles and proceeding from the actual situation, since the government cannot foresee or control the risk like social capital.

4. Summary

The proposal of "the Belt and Road" strategy is a historic opportunity for Chinese enterprises to "go out". As the political environment in the countries along the route is complex and changeable, Chinese enterprises can reasonably share the risks of political force majeure in the international PPP projects while seizing the opportunity to participate in them. This will be conducive to safeguarding the interests of enterprises and helping the Chinese government to promote the "the belt and road" strategy more smoothly. The conclusion shows that the risk allocation of political force majeure should be decided according to the specific situation on the basis of following the basic principle of risk sharing. In view of this, Chinese enterprises should comprehensively investigate the environment of the host country, and try to choose countries with low political force majeure risk and relatively stable political environment when participating in the infrastructure construction of countries along the "the Belt and Road". If the political situation in the country where the project is located is unstable and the environment is complex, a detailed risk sharing method should be stipulated in the contract terms as far as possible according to the specific situation of the host country and various political force majeure risks that may occur in the project. In addition, it can be improved the risk control ability of
Chinese enterprises by improving the force majeure insurance mechanism, developing a complete set of risk management plan and insurance overseas political insurance measures.

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