

Jeffrey Delmon and Victoria Rigby Delmon (eds)

International Project Finance and PPPs

*A Legal Guide to
Key Growth Markets*

2012



Wolters Kluwer
Law & Business

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Edited by

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Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-3675-6

This title is available on www.kluwerlawonline.com

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Printed and Bound by CPI Group (UK) Ltd, CRO 4 YY.

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Preface

Poor infrastructure impedes a nation's economic growth and international competitiveness.¹ Insufficient infrastructure also represents a major cause of loss of quality of life, illness and death.² This raises infrastructure services from a good investment to a moral and economic imperative. In order to stimulate growth and reduce poverty, it is essential to improve the supply, quality and affordability of infrastructure services. The unmet demands are huge, and investments have not matched demand.³

Despite increasing private investments, public funding still accounts for the largest share of infrastructure finance in developing countries (about 70%, through budget allocations and retained earnings of state-owned enterprises).⁴ Public funding is not sufficient, though, to close the gap between infrastructure needs and available funds. The private sector is financing about 20% and official development agencies – bi- or multi-lateral – are funding 10%.⁵ There is little reasonable prospect to significantly increase public or donor financing of infrastructure, so infrastructure development will have to rely more heavily on private financial markets to leverage and mobilize capital.

Public-private partnerships (PPPs) offer opportunities to attract new sources of private financing and management while maintaining a public presence in ownership and strategic policy-setting. Developing countries are also investing significant resources and government attention to reform their infrastructure sectors and improve the efficiency of infrastructure procurement and management, often through private participation. These

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1. 'Infrastructure at the Crossroads: Lessons learned from 20 years of World Bank experience', World Bank (2006); Infrastructure and the World Bank: A progress report, World Bank (2005).
 2. Willoughby, Infrastructure and the Millennium Development Goals, 2 Oct. 2004. For further discussion of the importance of infrastructure to economic growth, social cohesion, quality of life, education, health, social development, environmental management, mobilization of private investment and job creation, please see <www.worldbank.org>.
 3. 'Sustainable Infrastructure Action Plan FY 09-11', World Bank (2008).
 4. Dailami, World Bank, 2003. Infrastructure and the World Bank: A progress report (2005).
 5. World Bank staff preliminary estimates (based on 2011 PPI data base and other sources).

PREFACE

partnerships can leverage public funds and offer advantages of contracting with well-qualified private enterprises to manage and deliver infrastructure services. More importantly, PPP projects help mobilize competition to drive down project cost and improve innovation. They are not panaceas and they require clear goals and objectives, good public leadership, and strong government institutional capacities for effective implementation. Experience has demonstrated that the best way to attract more private capital into infrastructure is to provide a sustainable and credible policy and regulatory framework. Risk allocation – balanced in line with rewards – between the public and private partners is key to the success of these partnerships.⁶

There has been renewed interest in private sector participation in infrastructure in developing countries since the onset of the Global Financial Crisis. After experiencing a significant slowdown in 1999–2004, annual investment commitments in infrastructure projects with private participation more than doubled between 2004 and 2009, reaching their highest level ever in 2008 before the global credit freeze (Figure 1). Between 2004 and 2008, more than 110 developing countries implemented new PPI projects in infrastructure. The investment growth was highly correlated with the rapid overall economic growth experienced in low- and middle-income countries. Thus, total investment in PPI as a share of GDP fell from 1% in 2005 to 0.9% in 2009, while annualized PPI investment on expansion and modernization remained around 0.7% of GDP in that period (Figure 2).⁷ Best available estimates, based on PPI database figures, suggest the following: on an annualized basis, it can be inferred that PPI investment contributed between 15% and 20% of total investment in infrastructure in 2005–2009, a share similar to that of the previous five years (but 30% lower than the share in 1995–1999). The bulk of this private investment was directed to telecommunications. If this sector is excluded, total investment in PPP would have grown from 0.41% of the GDP in 2005 to 0.56% in 2009 and the annualized PPI investment from 0.24% to 0.35%.

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6. Delmon & Juan, *Euromoney Infrastructure Finance Book 2008*, Ch. 10: The Role of Development Banks in Infrastructure Finance, World Bank Views.
 7. PPP investment includes investment in physical infrastructure and payments to the government for the right to providing the infrastructure services. It records total project investment in the year of financial closure.

Figure 1. Investment in PPI Projects and GDP Growth in Developing Countries, 1990–2009

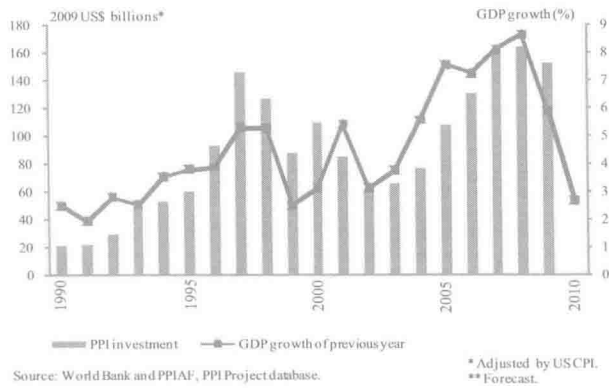
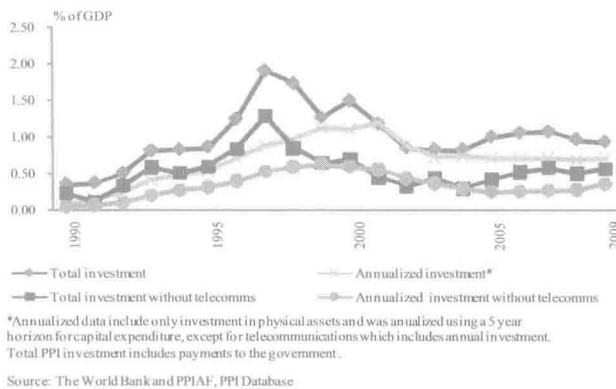


Figure 2. Investment commitments in infrastructure projects with Private Participation as a Share of GDP, Total and in Physical Assets, 1990–2009



This book provides an overview of the laws and regulations in key frontier countries applicable to project financing and PPP projects. The first two chapters provide a brief description of PPP (Chapter 1) and project or limited-recourse financing (Chapter 2). Chapter 3 provides a summary of the legal issues relevant to PPP and project finance. Chapters 4 and following

PREFACE

provide an overview of law applicable to PPP and project finance in key jurisdictions.

For further discussion of PPP and project finance, see Delmon, *Private Sector Investment in infrastructure: Project Finance, PPP projects and Risk*, 2nd edn (2009).

Acknowledgements

The editors would like to thank the team at Kluwer International, who were fantastically supportive, in particular Simon Bellamy, and Newgen for putting it all together.

And most importantly, to Alex and Natasha.

The findings, interpretations, and conclusions expressed herein are those of the author and should not be attributed in any manner to the World Bank, their affiliated organizations, or to the members of their Board of Executive Directors or the countries they represent. This text does not constitute legal advice, and does not substitute for obtaining competent legal counsel (readers are advised to seek the same) when addressing any of the issues discussed in this text.

Summary of Contents

Preface	xlvi
Acknowledgements	li
General Reports	
Chapter 1	
Introduction to Public-Private Partnerships	Introduction to PPPs – 1
Chapter 2	
Introduction to Project Finance	Introduction to Project Finance – 1
Chapter 3	
Local Legal Issues	Local Legal Issues – 1
Country Reports	
Chapter 4	
Brazil	Brazil – 1
<i>Thomas Benes Felsberg, Maria da Graça de Brito Vianna Pedretti, Andréa de Sousa Machado, Felsberg, Pedretti e Mannrich Advogados e Consultores Legais</i>	

SUMMARY OF CONTENTS

Chapter 5

Chile

Chile – 1

F. Patricia Núñez, F. Sebastián Quijada & Carolina Benito Kelley

Núñez, Muñoz & Cía. Ltda. Abogados

Chapter 6

China

China – 1

Matthew McKee & Aldo Settimio Boni de Nobili

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Chapter 7

Egypt

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Chapter 8

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India – 1

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Amarchand & Mangaldas & Suresh A. Shroff & Co.

Chapter 9

Indonesia

Indonesia – 1

Emir Kusumaatmadja, Justin M. Patrick & Suci Modjo

Mochtar Karuwin Komar

Chapter 10

Nigeria

Nigeria – 1

Adedolapo Akinrele, Zelda Odidison & Jumoke Onigbogi

F.O. Akinrele & Co.

Chapter 11

Romania

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Chapter 12

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Chapter 13

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South Korea – 1

Young Kyun Cho & Seong Soo Kim

Kim & Chang

Chapter 14

Tanzania

Tanzania – 1

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Nasra Hassan*

Mkono & Co.

Chapter 15

Turkey

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Chapter 16

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Chapter 17

United Arab Emirates

United Arab Emirates – 1

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SUMMARY OF CONTENTS

Chapter 18	
United States	United States – 1
<i>Allan T. Marks & Eric F. Silverman</i>	
<i>with contributions from</i>	
<i>Alexander K. Borisoff, Caroline Conway,</i>	
<i>Henry T. Scott & Amy E. Turner</i>	
Milbank, Tweed, Hadley & McCloy LLP	
 Chapter 19	
Vietnam	Vietnam – 1
<i>David Harrison & Bui Thanh Tien</i>	
Freshfields Bruckhaus Deringer, Vietnam	
 List of Country Codes	Country Codes – 1
 Index	Index – 1

Table of Contents

Preface	xlvi
Acknowledgements	li
General Reports	
Chapter 1	
Introduction to Public-Private Partnerships	Introduction to PPPs – 1
1. What is PPP?	3
2. The Main Features of PPP	5
2.1. Partnership between the Parties	5
2.2. Efficient Allocation of Risks	5
2.3. Method of Procurement	6
3. Typical Forms of PPP Arrangement	6
3.1. Management Contract and Operation and Maintenance Contract	7
3.2. Circumstances When Management and Operation and Maintenance Contracts Might Be Used	8
3.3. Leases/Affermages	9
3.4. Circumstances When Affermages/Leases Might Be Appropriate	10
3.5. Concessions/BOTs/DBOs	10
3.6. Circumstances When Concessions/BOTs/DBOs Might Be Appropriate	12

TABLE OF CONTENTS

4.	Why Governments Choose to Use PPPs	12
5.	Questions Governments Might Need to Consider before Choosing Private Sector over Public Sector Delivery	13
5.1.	Identify the Business Need	13
5.2.	Appraise Options	14
5.3.	Develop a Business Case	15
6.	Institutional Mechanisms and Legal and Financial Enabling Environment	15
6.1.	PPP Units	16
6.2.	Government Coordinating Committee	18
6.3.	Government Risk Management	18
6.4.	Grantor Project Management Team	19
6.5.	Government Incentives to Adopt PPP	19
6.6.	Legal Context	19
6.7.	Financial Climate	20
7.	Institutional Mechanisms for Implementation of the Project	21
7.1.	Grantor Monitoring and Implementation of Project	21
7.2.	Regulatory Bodies	22
7.3.	Contract Renegotiation	22

Chapter 2

Introduction to Project Finance Introduction to Project Finance – 1

1.	Off-Balance Sheet	3
2.	Limited Recourse and Sponsor Support	4
3.	Taking Security	6
4.	Financial Ratios	9
4.1.	Debt-Equity (D:E) Ratio	9
4.2.	Loan Life Cover Ratio	10
4.3.	Debt Service Cover Ratio	10
4.4.	Rate of Return	11
5.	Certainty of Revenue Stream	13
6.	Public Sector Support	14
7.	The Project Process	16
7.1.	The Construction Stage	16
7.2.	The Operation Stage	18
7.3.	Drawdown Schedule	21
7.4.	Repayment and Pre-Payment	21
7.5.	Refinancing	22
7.6.	Repayment Schedule	22
8.	Terms of Financing	23
8.1.	Equity Contributions	23
8.2.	Debt Contributions	24

TABLE OF CONTENTS

8.2.1.	The Relative Benefits of Different Lenders	24
8.2.2.	Syndication	25
8.2.3.	Shari'a Financing	26
8.2.4.	Bank Guarantee	26
8.2.5.	Bond Financing	26
8.3.	Mezzanine/Subordinated Contributions	28
8.3.1.	Nature of Subordination	28
8.3.2.	Mezzanine Financing	28
8.3.3.	Form of Mezzanine Contributions	29
8.3.4.	Reasons for Mezzanine Finance	29
8.4.	Conditions Precedent	29
8.4.1.	Commercial and Legal Arrangements	30
8.4.2.	Financial Ratios and Covenants	30
8.4.3.	Security Package	30
8.5.	Hedging and Futures Contracts	31
8.6.	Shareholder Support	31
8.7.	Step-in	32
8.7.1.	Cure Rights	32
8.7.2.	Step-in Rights	33
8.7.3.	Novation	33
8.8.	Warranties, Undertakings and Representations	33
8.9.	Use of Insurance	34
8.10.	Intercreditor Issues and Security Trustee	35
8.11.	Lenders' Technical Adviser	36
8.12.	Termination Compensation	36
9.	Other Risk Issues Relevant to Financing	37
9.1.	Completion	37
9.2.	Force Majeure and Change in Law	38
9.3.	Political Risk	38
9.4.	Environmental Risk	39
9.5.	Currency Exchange Risk	39
9.6.	Interest-Rate Risk	40
9.7.	Social Risk	40

Chapter 3

Local Legal Issues

Local Legal Issues – 1

1.	Procurement Restrictions	3
2.	Third Party Rights to Challenge a Project	4
3.	Ultra Vires	5
4.	Corporate Law	6
5.	Licenses and Permits	8
6.	Assets	9
7.	Government Support	11