Jeffrey Delmon and Victoria Rigby Delmon (eds)

International Project Finance and PPPs

A Legal Guide to Key Growth Markets

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Victoria Rigby Delmon is Senior Counsel at the World Bank and advises on the legal, regulatory and commercial issues related to sector reform and private participation in infrastructure in the transport, water and sanitation and solid waste sectors. Prior to joining the World Bank, Victoria spent thirteen years in London, Frankfurt and Paris advising on water and sanitation and transport projects, water regulation and highly structured bond financing and restructuring of water companies, as well as corporate and commercial law, in developing and developed countries, as in-house international counsel to the utility company Veolia Environnement and at the law firm of Freshfields Bruckhaus Deringer. Victoria is an English lawyer, speaks French and German and holds an MA in Law from Oxford. She is a visiting fellow at the International Law Institute in Washington DC and has taught on a joint program of Kings' College London and the University of Singapore. At the World Bank Victoria has project managed the development of the joint World Bank/PPIAF initiative PPP in Infrastructure Resource Center for Contracts, Laws and Regulation <www.worldbank.org/pppiresource>.

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

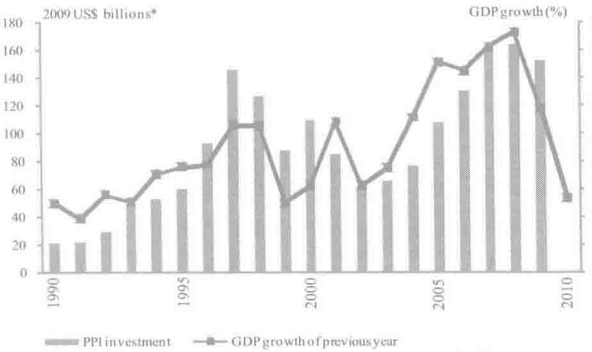
1. 'Infrastructure at the Crossroads: Lessons learned from 20 years of World Bank experience', World Bank (2006); Infrastructure and the World Bank: A progress report, World Bank (2005).
2. Willoughby, Infrastructure and the Millennium Development Goals, 2 Oct. 2004. For further discussion of the importance 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).

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 GPD in 2005 to 0.56% in 2009 and the annualized PPI investment from 0.24% to 0.35%.

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.

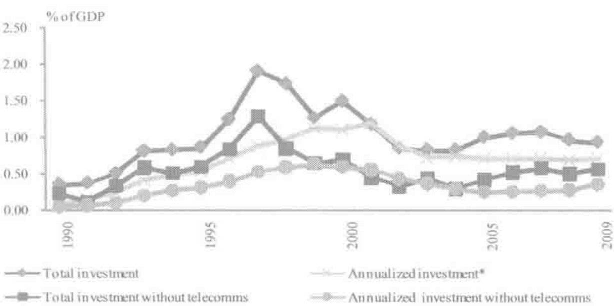
Figure 1. Investment in PPI Projects and GDP Growth in Developing Countries, 1990–2009



Source: World Bank and PPIAF, PPI Project database.

* Adjusted by US CPI.
** Forecast.

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



*Annualized data include only investment in physical assets and was anualized using a 5 year horizon for capital expenditure, except for telecommunications which includes annual investment.
Total PPI investment includes payments to the government.

Source: The World Bank and PPIAF, PPI Database

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 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).

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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.

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