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*Jeffrey Delmon and Victoria Rigby Delmon (eds)*

# International Project Finance and PPPs

## *A Legal Guide to Key Growth Markets*

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Law & Business

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Edited by

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*Jeffrey Delmon* advises on transactional, financial and policy issues associated with infrastructure finance and private participation in infrastructure, in transport, telecoms, power and water and sanitation, at the World Bank. Prior to joining the World Bank, Jeff spent eleven years in Paris and London advising on infrastructure and project finance in developed and developing countries at the law firms of Allen & Overy and Freshfields, including a secondment to the UK Department for International Development. He has lectured for a variety of graduate programs, including at Oxford, Georgetown, King's College, London and the National University of Singapore, on private sector investment and financing of infrastructure. His recent books include *Partenariats Public-Privé dans Le Secteur des Infrastructures: Guide Pratique à l'intention des Décideurs* (2010) (also available in Russian) and *Private Sector Investment in Infrastructure: Project Finance, PPP Projects and Risk* (Kluwer and World Bank 2009).

## *Victoria Rigby Delmon*

*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>.

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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 alternatives 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 partnerships can

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 2004 PPI data base and other sources).

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]

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 edition 2009).

6. Delmon and Juan, Euromoney Infrastructure Finance Book 2008, Chapter 10: The Role of Development Banks in Infrastructure Finance, World Bank Views.

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