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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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Edited by

Jeffrey Delmon

Victoria Rigby Delmon



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Summary of Contents

Preface	xliii
Acknowledgements	xlvi
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 Machado Martins Costa & Fabrizio de Oliveira Sasdelli</i>	
Felsberg, Pedretti, Manrich e Aídar Advogados e Consultores Legais	

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

Hwuason & Lehman, Lee & Xu

Chapter 7

Egypt

Egypt – 1

Ahmed El Sharkawy & Salma Shams El-Din

Sharkawy & Sarhan Law Firm

Chapter 8

India

India – 1

Cyril Shroff & Alice George

Amarchand & Mangaldas & Suresh A. Shroff & Co.

Chapter 9

Nigeria

Nigeria – 1

Adedolapo Akinrele, Zelda Odidison & Jumoke Onigbogi

F.O. Akinrele & Co.

Chapter 10

Romania

Romania – 1

Luminița Popa, Iuliana Craiciu & Marius Bârlădeanu

Musat & Asociatii Attorneys at Law

Chapter 11

Russia

Russia – 1

Andrei Baev, Alexander Dolgov, Veronika Kondruseva & Elena Shishmariova

Allen & Overy LLP

SUMMARY OF CONTENTS

Chapter 12

South Korea

Young Kyun Cho & Seong Soo Kim

Kim & Chang

South Korea – 1

Chapter 13

Tanzania

Wilbert Basilius Kapinga, Joy Hadji Alliy & Nasra Hassan

Mkono & Co.

Tanzania – 1

Chapter 14

Turkey

H. Tolga Danişman, Itir Sevim-Çiftçi, Hakki Gedik, M. Kemal Mamak & Senem İşmen

Hergüner Bilgen Özeke Attorney Partnership

Turkey – 1

Chapter 15

Uganda

Joseph B. Luswata, Nicholas Ecimu, Julius Ojok, Munanura Andrew Kamuteera & Brenda Judith Kyokwijuka

Sebalu & Lule Advocates and Legal Consultant

Uganda – 1

Chapter 16

United Arab Emirates

David Wadham & Mhairi Main Garcia

Ashurst Middle East

United Arab Emirates – 1

Chapter 17

United States

Allan T. Marks & Eric F. Silverman
with contributions from
Alexander K. Borisoff, Caroline Conway, Henry T. Scott & Amy E. Turner

Milbank, Tweed, Hadley & McCloy LLP

United States – 1

List of Country Codes

Country Codes – 1

Index

Index – 1

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

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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 2004 PPI data base and other sources).

PREFACE

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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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.

Table of Contents

Preface	xliii
Acknowledgments	xliv
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 a 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	17
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	27
8.3.1.	Nature of Subordination	28
8.3.2.	Mezzanine Financing	28
8.3.3.	Form of Mezzanine Contributions	28
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	30
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

TABLE OF CONTENTS

7.	Government Support	11
8.	Sovereign Immunity	11
9.	Dispute Resolution	12
10.	Regulatory and Statutory Duties	13
11.	Collecting Tariffs from Consumers	13
12.	Penalties, Sanctions and Bonuses	15
13.	Trusts, Agency and Other Legal Relationships	15
14.	Taking Security and Insolvency	16
15.	Currency	17
16.	Expropriation	18
17.	Employment	19
18.	Choice of Law	20

Country Reports

Chapter 4

Brazil

Brazil – 1

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Andréa Machado Martins Costa & Fabrizio de Oliveira Sasdelli*

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1.	Overview of Public-Private Partnerships in Brazil	5
1.1.	Market Context	5
1.2.	Legal Context	6
2.	Local Legal Issues	7
2.1.	Procurement Restrictions	7
2.1.1.	Grantor Restrictions	7
2.1.2.	Procurement Enforcement	8
2.1.2.1.	Sponsored Concessions	9
2.1.2.2.	Administrative Concession	9
2.1.3.	Grantee Restrictions	10
2.2.	Third Party Rights to Challenge a Project	11
2.3.	Ultra Vires	13
2.4.	Corporate Law	13
2.4.1.	Availability of Limited Liability Entities	13
2.4.2.	Limited Liability Entity Formation	14
2.4.3.	Registration and Licensing Requirements	15
2.4.4.	Central Bank Restrictions and Approvals	15
2.4.5.	Other Restrictions on Foreign Participation	16

TABLE OF CONTENTS

2.4.6.	Capitalization Restrictions	16
2.4.7.	Translation and Notarization	16
2.4.8.	Taxation of Corporate Entities	17
2.4.9.	Corporate Governance	18
2.4.10.	Classes of Shares	18
2.4.11.	Government Shareholders	19
2.4.12.	Issues of New Shares	19
2.4.13.	Rights to Elect Directors and Managers	19
2.4.14.	Allocation of Authority	20
2.4.15.	Shareholder Participation in Decisions	21
2.4.16.	Protection of Minority Shareholders	23
2.4.17.	Limits on Exit Options for Shareholders	25
2.5.	Licenses and Permits	26
2.6.	Assets	27
2.6.1.	Project Company Rights Over Land and Other Assets	27
2.6.2.	Licensing of Rights Over Assets	27
2.6.3.	Liabilities	27
2.6.4.	Transfer of Assets	28
2.7.	Government Support	29
2.8.	Sovereign Immunity	29
2.9.	Dispute Resolution	30
2.10.	Regulatory and Statutory Duties	32
2.11.	Collecting Tariffs from Consumers	33
2.12.	Penalties, Sanctions and Bonuses	34
2.13.	Trusts, Agency and Other Legal Relationships	35
2.14.	Taking Security and Insolvency	36
2.15.	Currency	40
2.16.	Expropriation	43
2.17.	Employment	43
2.18.	Choice of Law	45

Chapter 5

Chile

Chile – 1

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1.	Overview of Public-Private Partnerships in Chile	3
1.1.	Market Context	3
1.2.	Legal Context	4

TABLE OF CONTENTS

2.	Local Legal Issues	5
2.1.	Procurement Restrictions	6
2.2.	Third Party Rights to Challenge a Project	7
2.3.	Ultra Vires	8
2.4.	Corporate Law	8
2.5.	Licenses and Permits	9
2.6.	Assets	9
2.7.	Government Support	10
2.7.1.	Guaranteed Minimum Revenue in the Public Works Concession (GMR)	11
2.7.2.	GMR: An Obligation for the State	12
2.8.	Sovereign Immunity	12
2.9.	Dispute Resolution	13
2.10.	Regulatory and Statutory Duties	13
2.11.	Collecting Tariffs from Consumers	15
2.12.	Penalties, Sanctions and Bonuses	16
2.13.	Trusts, Agency and Other Legal Relationships	17
2.14.	Taking Security and Insolvency	18
2.14.1.	Liquidation of the Concession's Assets	18
2.14.2.	Factual Continuity of the Line of Business	19
2.15.	Currency	20
2.16.	Expropriation	20
2.17.	Employment	21
2.18.	Choice of Law	21

Chapter 6

China

China – 1

Matthew McKee & Aldo Settimio Boni de Nobili

Hwuason & Lehman, Lee & Xu

1.	Overview of Public-Private Partnerships in China	5
1.1.	Market Context	5
1.2.	Legal Context	5
2.	Local Legal Issues	6
2.1.	Procurement Restrictions	6
2.1.1.	Legal Framework	6
2.1.1.1.	The Invitation to Bid	7
2.1.1.2.	The Tender Process	9
2.1.1.3.	Securities	10