

PUBLIC PRIVATE PARTNERSHIPS (PPPs):

A General Overview



Moscow

March 2014

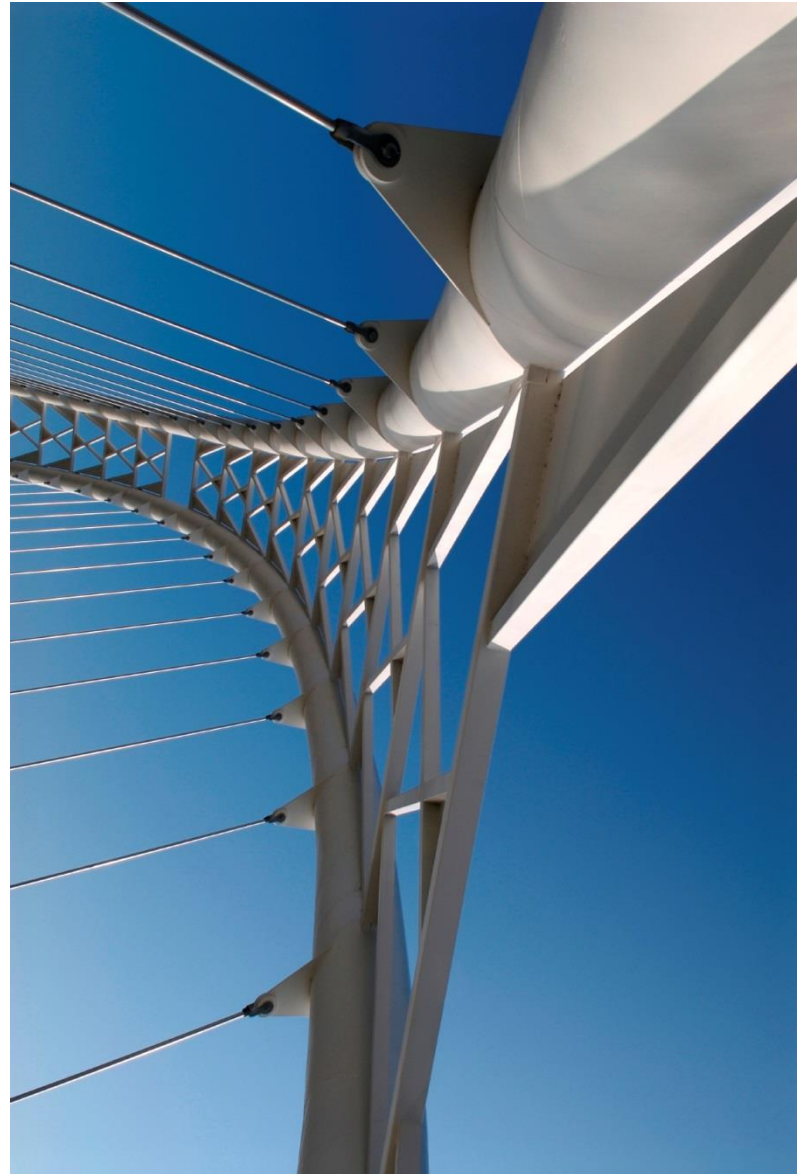


PPP: Aims

- > Private Finance/ Capital Investment
- > Innovation
- > Financial Benefits (Value for Money/ Risk Transfer)
- > Private Sector Experience

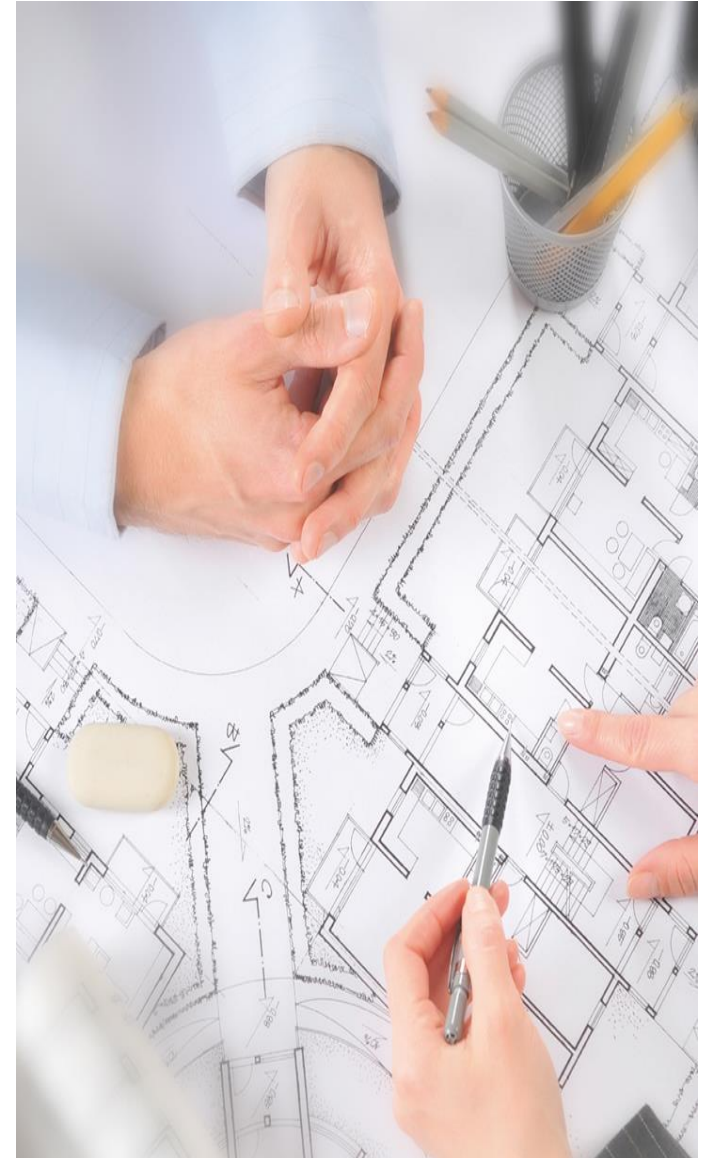
PPP: Drivers

- > Contract Management
- > Capital Investment
- > Financial Benefits
- > Innovation



PPP: Guidance & Documentation

- > PPP Units in Central Government and Individual Departments
- > Standardisation of Documentation
- > Accounting Guidance
 - off balance sheet treatment



PPP: Key Parties

Project Sponsors

- > Usually have equity investment in the project.
- > May be privately owned/ owned by a government entity.
- > Usually carry out the project through an SPV, the project company.

Project Company

- > Typically a limited liability company, incorporated in the host country of the project.
- > typically borrows most of the funds required for the development and owns the assets (or has a leasehold or similar interest in them).

Government

- > A government (or a quasi-governmental body or other owner of the site where the project will take place) is typically, together with the project sponsor, a key instigator of the project.

Operator

- > Manages and operates the project on behalf of the borrower/ Project Company.

PPP: Key Parties (continued)

Lenders

- > Sources of Debt (including guarantees or "insurance" of debt funding)
 - Governments.
 - Multilateral financiers (for example, the EBRD or IFC).
 - Commercial lenders (domestic/overseas either alone/syndicates).
 - Bonds
 - Subordinated debt providers (for example, the project sponsor or other project company investors).
- > Often a combination of funding sources forms is used.

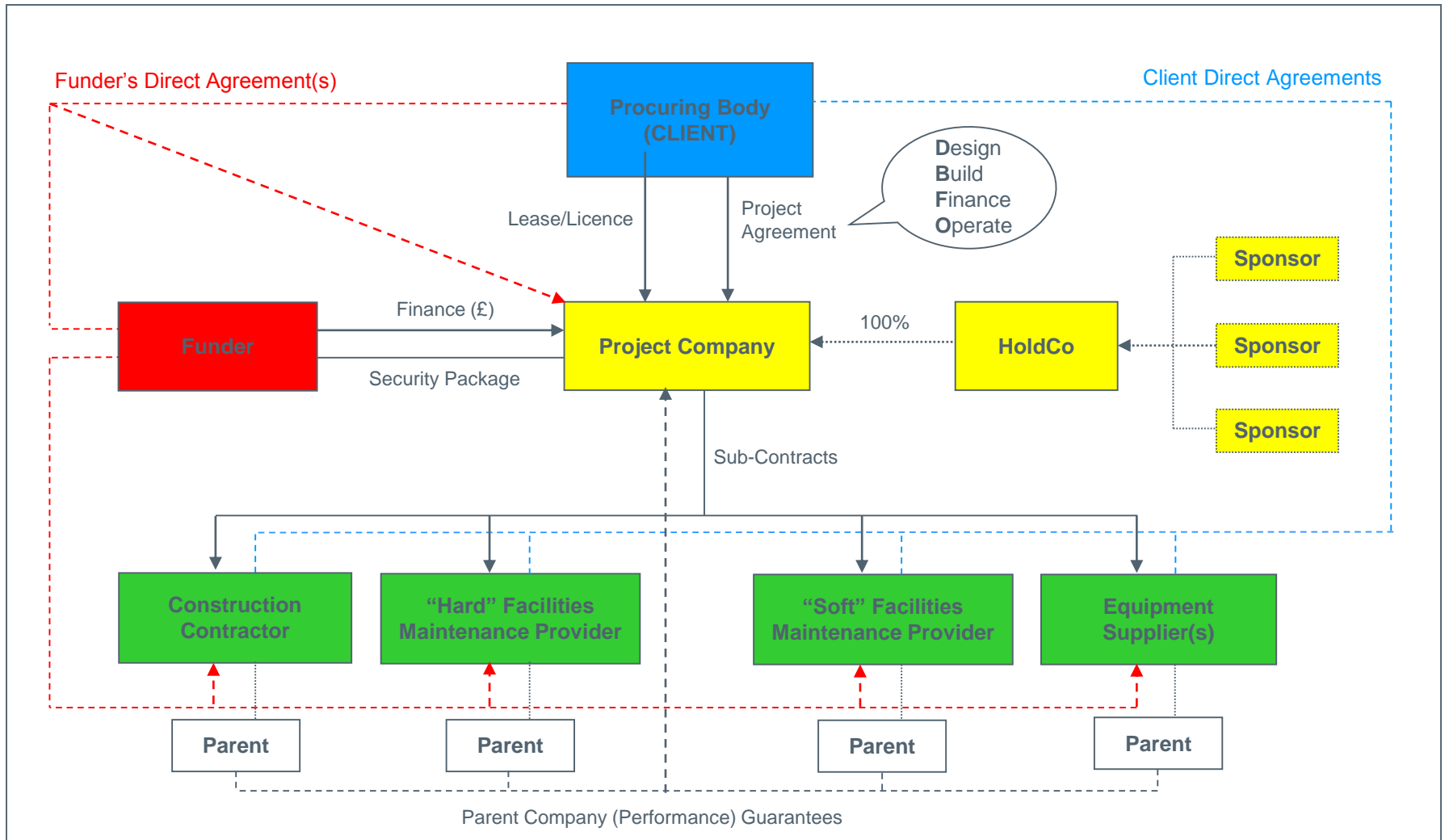
Contractors and Subcontractors

- > Various contractors and subcontractors carry out the construction of the project on behalf of the project company.
- > Specialist subcontractors and engineers.

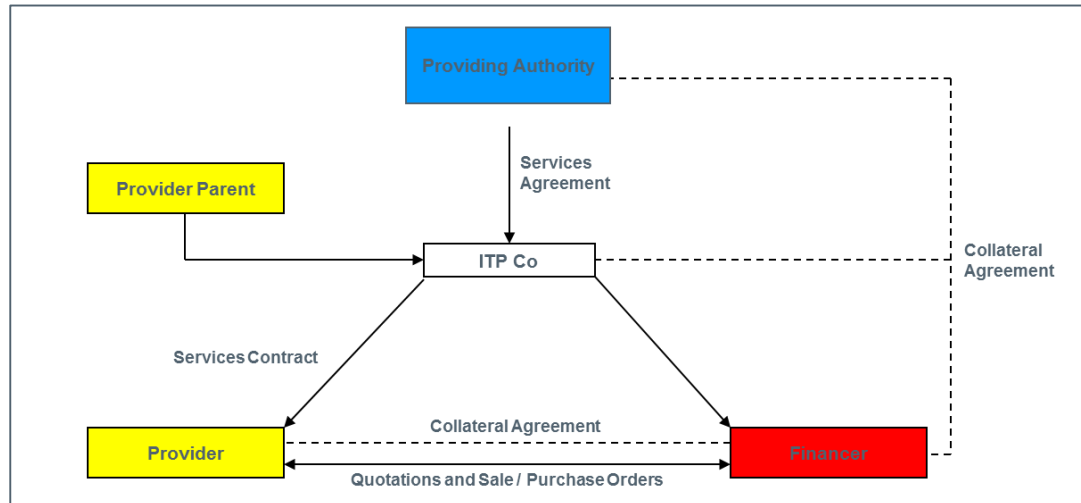
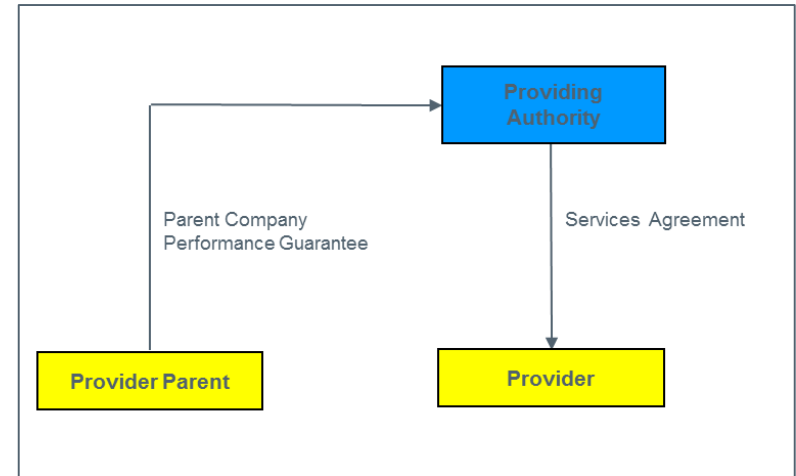
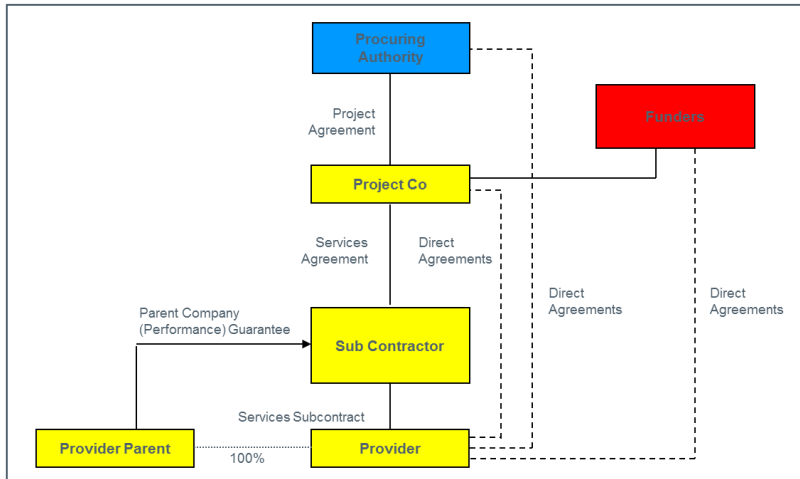
Insurers

- > Critical to project finance transactions.
- > May provide cover to Lenders (and other project parties) for the project's exposure to **typical insured risks** (e.g. physical damage, third-party liability) and to **more specialist risk** areas (e.g. political risk, business interruption, start-up delay and environmental risk).

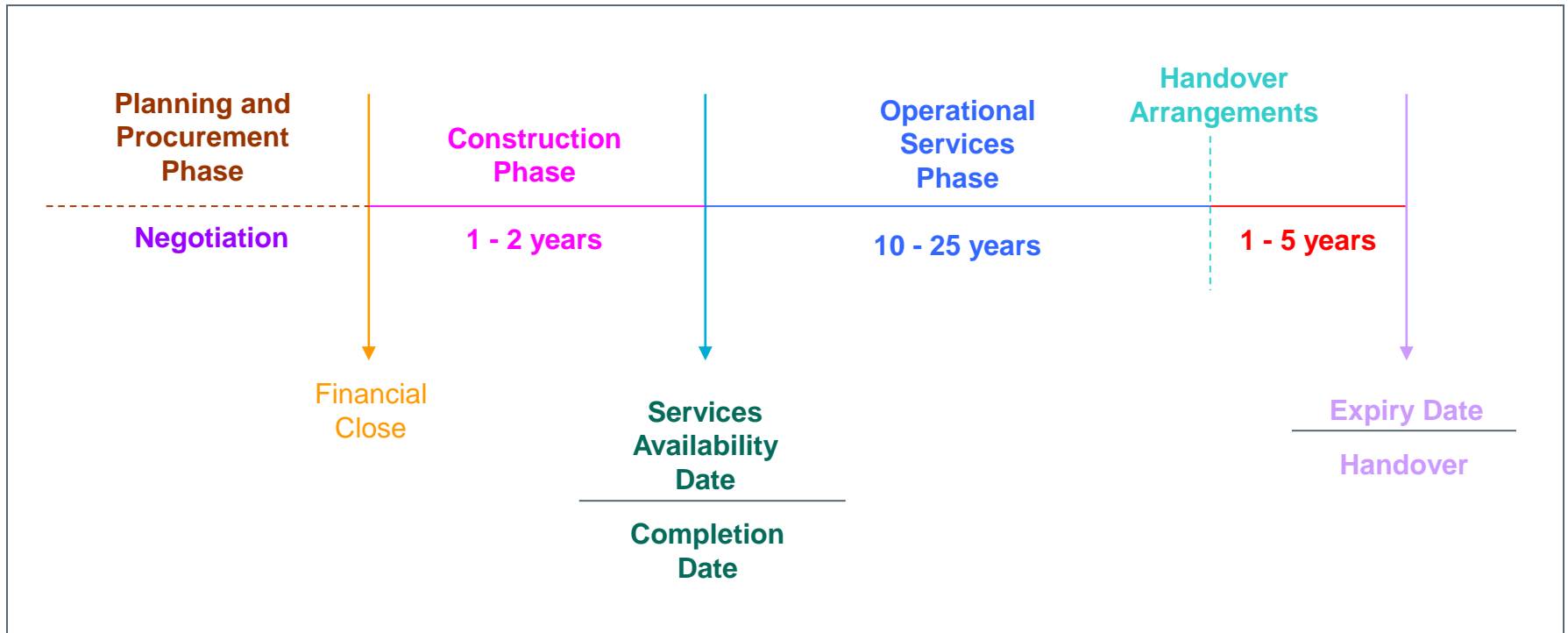
PPP: Typical Contract / Project Structure (DBFO)



PPP: Additional Contract/Project Structures



PPP: Typical Project Timeline



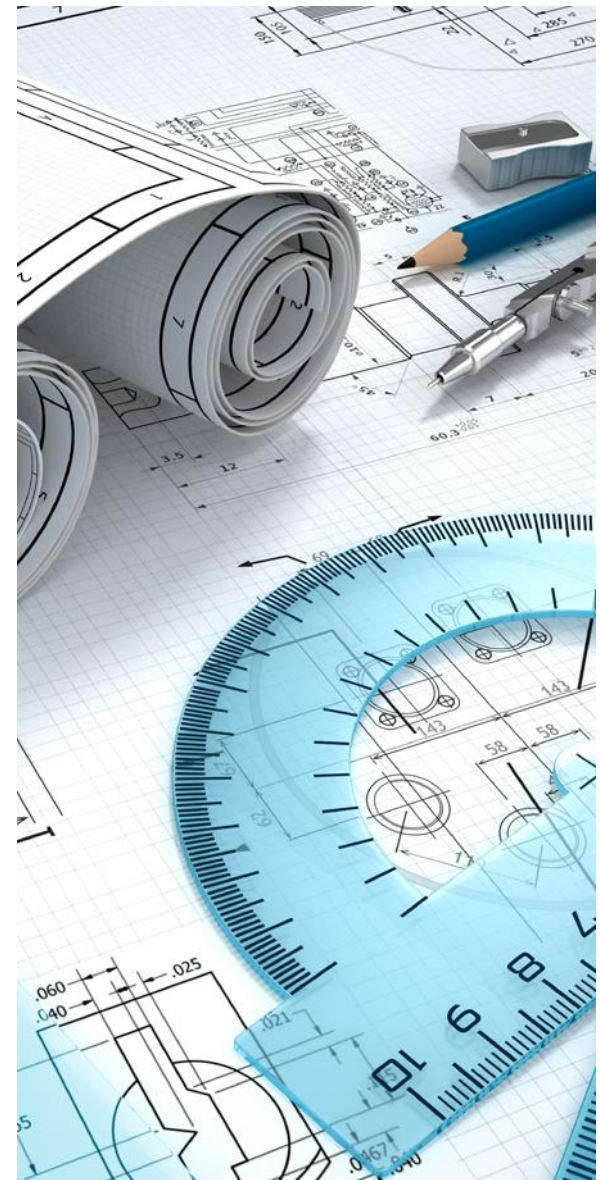
PPP: Procurement Process

For Works or Services

- > Type of Contract
 - Public Works
 - Public Services
 - Public Supplies

Procedures

- > Different types of Competitive Process:
 - Open
 - Restricted
 - Negotiated
 - Competitive Dialogue



Foreign Investors - Objectives

Foreign investors are generally keen to make sure:

- they are dealing with the **correct counterparty**, who has the **appropriate authorisation** from central government and is duly authorised to deal.
- the **requirements are well thought through** and initial **market analysis** has been conducted.
- that any competitive exercise is a **free and fair process**. In particular, making sure all parties are given the right documentation and information.
- understanding each party's **requirements/objectives**.
- there is **certainty** in relation to the **contractual process** including, but not limited to:
 - documentation (project, funding, construction, sub-contracts etc)
 - output and input requirements
 - payment mechanism
 - performance requirements
 - insurance arrangements
 - supervisory events/change in law
 - termination and compensation
 - limits on liability
 - divest agreements/government step-in
 - transaction models
 - proper apportionment of risk/controls matrix

Foreign Investor - Objectives (continued)

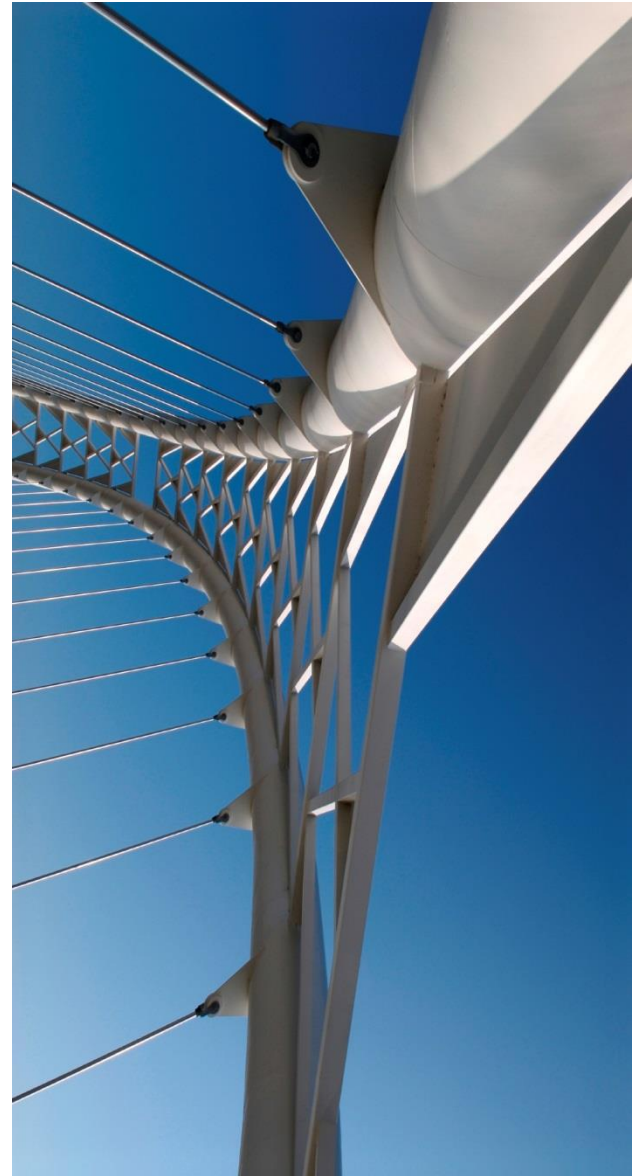
Foreign investors are generally looking for:

- **Availability of funding** and appropriate security
 - Project debt
 - Equity/sponsor funds
 - Capital markets
 - Hybrids
 - "BANKABILITY".
- A **fair taxation** system:
 - Double taxation
 - Extraction of profits
 - Freedom of movement for goods and people
(please note offset arrangements)
- Certainty/ **favourable arrangements** in relation to **customs and duties**.



PPP: Terminology

The following are terms commonly used in a PPP context



Terminology

- > "**Awarding Authority**" the public sector body (department, agency, constitutional institution, etc.) which is procuring a service through the project.
- > "**Benchmarking**" a procedure for testing whether the standard and price of services is consistent with the market standard (if any), without any formal competitive tendering.
- > "**BLT**" (**build–lease–transfer**). Under BLT a private entity builds a complete project and leases it to the government
- > "**BOT**" (**build–operate–transfer**) In the BOT framework a third party, for example the public administration, delegates to a private sector entity to design and build infrastructure and to operate and maintain these facilities for a certain period. During which it will have the responsibility to raise the finance for the project and is entitled to retain all revenues generated by the project and is the owner of the regarded facility. The facility will be then transferred to the public administration at the end of the agreement.
- > "**BOOT**" (**build–own–operate–transfer**) A BOOT structure differs from BOT in that the private entity owns the works. During the concession period the private company owns and operates the facility with the prime goal to recover the costs of investment and maintenance while trying to achieve a higher margin on project.
- > "**Change Procedures**" procedures in the project agreement for effecting variations (both mandatory and voluntary) to the physical facilities or the level or scope of services.
- > "**Compliance Bid**" a bid which meets the awarding authority's stipulated requirements. An awarding authority may reserve the right to refuse to evaluate and reject a bid that is not compliant.
- > "**Concession Agreement**" see Project Agreement.
- > "**Consortium/Consortium Members**" the group of participants who have come together for the purpose of tendering for a particular project.

Terminology (continued)

- > "**Contract Term**" the period over which the project company is engaged by the awarding authority, comprising the construction period and the operating period.
- > "**Construction Period**" the period of the design and construction/refurbishment of the facilities which are the subject of the project.
- > "**DBFO**" (**design–build–finance–operate**) a project delivery method very similar to BOOT except that there is no actual ownership transfer. Moreover, the contractor assumes the risk of financing until the end of the contract period. The owner then assumes the responsibility for maintenance and operation.
- > "**Debt Funders**" (or Lenders) the providers of debt finance to a project. In this context, the term is used to cover the provision of third-party debt finance including bank debt and bond finance (other than sub-ordinated debt provided by the sponsors as a substitute for equity).
- > "**Delay Events**" specified events excusing the project company from breach of its obligations and which entitle it to additional time to perform and often entitle it to compensation (where compensation is payable, these may be referred to as compensation events).
- > "**Direct Agreements**" agreements between the initial parties to a contract entered into by the project company and one or more additional parties giving the additional party or parties the opportunity to step in to the contracts in place of the project company.
- > "**Equity Funders**" the investors who subscribe for equity in the project company or provide quasi-equity in the form of subordinated debt.
- > "**Feasibility Study**" a business case prepared by the awarding authority to establish the need for the project, its outline parameters and scope, and which assesses its affordability and value for money. If approved, it will lead to the commencement of the tender process.
- > "**Funders**" collectively, the debt funders and the equity funders.

Terminology (continued)

- > **ITT** an invitation to tender (by submitting priced bids) issued to tenderers by an awarding authority.
- > **"Operating Company"** the company engaged by the project company to operate and maintain the facilities which are the subject of the project.
- > **"Output Specification"** the specification upon which tenders are invited to bid which sets out the awarding authority's requirements in non-prescriptive terms, leaving the tenderers with the responsibility for determining how to deliver those requirements.
- > **"PFI"** Private Finance Initiative. A UK initiative which was implemented, with variations, in other parts of the world and which describes a method of providing funds for major capital investments where private firms are contracted to complete and manage public projects. Under a private finance initiative, the private company, instead of the government, handles the up-front costs. The project is then leased to the public, and the government authority makes annual payments to the private company.
- > **"PPP"** a contractual arrangement between a public and private sector entity from which flows a provision of a service or the performance of a departmental function in accordance with an output based specification for a specified, significant period of time. It furthermore involves a substantial transfer of all forms of project life cycle risk to the private sector. The public sector retains a significant role in the partnership project either as the main purchaser of the services provided or as the main enabler of the project.
- > **Prequalification** the process by which an awarding authority selects a limited number of tenderers from those who have submitted an expression of interest in response to a request.
- > **"Project Agreement"** the principal agreement between the awarding authority and the project company governing the project. Sometimes this agreement is referred to as the 'Concession Agreement'.
- > **"Operating Company"** the company engaged by the project company to operate and maintain the facilities which are the subject of the project.

Terminology (continued)

- > "**Output Specification**" the specification upon which tenders are invited to bid which sets out the awarding authority's requirements in non-prescriptive terms, leaving the tenderers with the responsibility for determining how to deliver those requirements.
- > "**Preferred Tenderer**" the tenderer selected by the awarding authority to be awarded the PPP contract.
- > "**Private**" a Non-Government private sector entity, this typically also includes financiers etc.
- > "**Project Agreement**" the principal agreement between the awarding authority and the project company governing the project. Sometimes this agreement is referred to as the 'Concession Agreement'.
- > "**Project Company**" the company established by the preferred tenderer to be the contracting vehicle for a project.
- > "**PSC or Public Sector Comparator**" a benchmark used in the course of procurement against which the value for money of tenders is assessed by the awarding authority. It represents a notional cost estimate of the project based on the assumption that the facilities and services that are the subject of the project are acquired through conventional funding with the awarding authority retaining managerial responsibility and exposure to risk.
- > "**Public**" a Government or Quasi-Government body.
- > "**Relief**" specified events excusing the project company from breach of its obligations but which do not entitle it to additional time or compensation.
- > "**Reference Bid**" a bid which is submitted on the basis of (and complies with) certain prescribed requirements of the awarding authority

Terminology (continued)

- > "**Service Level Specification**" the specification (typically scheduled to the project agreement) setting out the standard to which the service must be delivered, often accompanied by an agreed performance monitoring regime.
- > "**Sponsors** or **Project Sponsors**" the private sector participants developing a project.
- > "**SPV**" special purpose vehicle. The project company established by the sponsors which has as its sole purpose the delivery of a project.
- > "**Tenderers**" the consortia engaged in tendering for the award of a PPP contract. They may be referred to as 'bidders'
- > "**Umbrella Term**" any arrangement/joint venture between public and private sectors
 - Corporate Vehicles
 - Contractual Joint Ventures
 - Hybrids
- > "**Unavailability**" the test for determining deductions from the unitary payment by reference to standards for the provision of the facility (as opposed to the standard of associated services).
- > "**Unitary Payment**" the payment by the awarding authority to the project company for the provision of the facility that is the subject of the project and associated services
- > "**Vfm**" value for money in relation to a project means that the partnership agreement results in a net benefit to the awarding authority, defined in terms of cost, price, quality, quantity, or risk transfer, or a combination thereof.

Conclusions – Questions and Answers



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