

CONTRACTUAL & RISK MANAGEMENT ARRANGEMENTS - PPPs

Expert Roundtable on Private-Public Partnerships
Amman

IMTIAZ HIZKIL
ISLAMIC DEVELOPMENT BANK
6 SEPTEMBER 2007

CONTRACTUAL ARRANGEMENTS IN PPPs

- Various Arrangements such as BOO, BOT, BTL, BTO, RLT, BRT ETC.
- NEED FOR RIGHT STRUCTURE FOR THE PARTICULAR PROJECT / SECTOR
 - FOR INSTANCE BOO / BOT ARE COMMON FOR POWER GENERATION PROJECTS

CONTRACTUAL STRUCTURE- TYPICAL AGREEMENTS

- Following Typical Agreements are signed by Project Company:
 - Concession Agreement – Host Government
 - Offtake Agreement – Purchaser
 - Raw Material Supply Agreement – Supplier
 - EPC Contract - Contractor
 - O&M Agreement - Operator
 - Insurance Agreement - Insurers
 - Equity Agreement - Shareholders
 - Debt Financing Agreement - Lenders

RISKS and MITIGANTS

- RISK
- Construction Risk
 - Construction Delays
 - Performance Shortfalls
- MITIGANT
- Fixed Price Dater Certain Contract with provisions for LDs, bonus
- Completion Guarantee from Contractor / Sponsors
- Warranties of Suppliers
- Insurance Policies

RISKS AND MITIGANTS

- Technology Risk
 - EPC Contract
 - Warranties
 - Independent Engineers Verification
- Counterparty Risk
- Contractor
 - Creditworthiness
 - Parent Company Guarantee

RISK & MITIGANTS

- Sponsors
 - Creditworthiness
 - Track Record
 - Equity Commitment / LC
- Operators
 - Creditworthiness
 - Track Record
 - Parent Company Guarantee

RISK & MITIGANTS

- Operating Risk
 - Long Term O&M Contract with incentives and bonus
 - Equipment Warranties
 - Additional Maintenance Contracts
 - O&M Reserve Accounts
 - Long Term contracts for raw materials

RISK AND MITIGANTS

- MARKET / OFFTAKE RISK
 - Bankable Feasibility Study
 - Market Assessment verification by Independent Consultant
 - Long Term Offtake contract with provision for LDs & bonus
 - Credit Worthiness of Off-taker
 - Payment performance guarantee by the Government

RISK AND MITIGANTS

- Political Risks
 - Concession Agreement to protect investment from actions such as change in law, FM, Expropriation
 - Government Guarantees for performance of state entities, provinces etc.

RISK & MITIGANTS

- Financial Risks

- Exchange convertibility
- Transferability of foreign exchange
- Exchange Rate Fluctuations
- Libor Fluctuations
- Inflation

- Central Bank Commitment
- Central Bank Commitment
- Off-take Agreement
- Currency SWAP Agreement
- Off-take Agreement

RISK & MITIGANTS

- Payment Risk to Lenders
- Strong Security Package
- Lien over Project Accounts
- Securities
- Provisions for Direct Agreements

RISK & MITIGANTS

- Payment Risk to Shareholders
- Legal Risk
- Strong Security Package
- Off-take Agreement
- Government Guarantees
- Due Diligence by Legal Counsels
- Acceptable Legal Framework within Country

Risk & Mitigants Summary

- Risks are allocated to party that can bear it in the most cost effective manner
- Construction period risk are high
- Risk is highest during project testing period prior to project acceptance
- Operating Period Risk are low to moderate

Summary

- PPP Structures are complex and lot of efforts need to select the right model
- Substantial Front End work need to be done by all parties prior to award of concession and Financial Close
- Long Transaction Completion Period and High Development Cost is to be Expected