Definition:
- Way of delivering public infrastructure through procuring services rather than capital assets
- Public sector defines service requirement
- Private sector designs, finances, builds, operates, (usually transfers) the asset

Interest
- Alleviate budgetary constraints
- Expertise
- Transfer of risk
## PPP Risk Matrix

<table>
<thead>
<tr>
<th>Public procurement (building and/or operation)</th>
<th>Partnership agreement (building and/or operation)</th>
<th>BOT (building and operation)</th>
<th>Privatization (building and/or operation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public financing, public payment</td>
<td>Private financing, public payment</td>
<td>Private financing, private payment (users)</td>
<td>Private financing, private payment</td>
</tr>
<tr>
<td>Risks assumed by the private sector: construction risk</td>
<td>Risks assumed by the private sector: construction risk, performance risk</td>
<td>Risks assumed by the private sector: construction risk, performance risk, commercial risk</td>
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</tr>
<tr>
<td>Degree of control by the public authorities: very high</td>
<td>Degree of control by the public authorities: high</td>
<td>Degree of control by the public authorities: low</td>
<td>Degree of control by the public authorities: very low</td>
</tr>
</tbody>
</table>
. Definition:

- A stand alone project and a Special Purpose Company
- Non recourse MLT finance with high ratio debt/equity
- Lending based on project cash flows
- Lenders mainly rely on project contracts as project security

. Interest:

- Transfer of risk
- Lower the risk
- Lower the cost/increase the return on equity
An exemple of project finance structure

A favourable institutional framework

. An adapted legal and regulatory framework:

- complete (PPP, public domain, securities, investment and preinvestment protection)
- clear (directly or indirectly: assistance and/or binding opinions)
- encouraging competition (transparency and remedies) and the diffusion of ideas (the private sector may contribute to the definition of the needs of the public party)

. A public expertise:

- Prior identification of the needs (budgetary, financial, operational, expertise, risk management) and of the objectives
- Negotiating capacity (internal and external)
A bankable project

. A cash flow positive project:
  - Capacity to generate the cash flow necessary to repay the debt and constitute the necessary guarantees (even in a bad case scenario without jeopardising the continuity of operations)
  - Capacity for the sponsor to fund the equity needs of the project

. An experienced operator

. A mature technology

. A limited or covered political risk
• Objectives, royalties and performance targets

  • The public party's undertakings:
    - exclusivity,
    - occupation of the public domain,
    - permits and authorizations,
    - provision of essential utilities,
    - tax and customs regime,
    - payment obligation/offtake agreements/public subsidies,
    - right to distribute the proceeds ad to free convertibility, guarantee against expropriation,
    - reserving the rights of the lenders
. **Limitations to the private party's freedom of management:**

- approval of change of ownership,

- maintenance,

- insurance,

- approval of tariffs and possible IRR caps

. **Delimitation of the public party's rights:**

- right of approval of the works,

- statuts of the transfer of the assets at the end of the PPP,

- powers of control and of sanction
The PPP agreement (3)

. **Unforeseeable events**: Hardship, force majeure: (allocation of risks, consequences, compensation)

. **Public party caused changes**: change orders, change of law (conditions, consequences)

. **Change of operator/change of operator/step in right**

. **Refinancing** (conditions, consequences)

. **Early termination** (General interest and breach of contract: compensation mechanisms)

. **Applicable law** (impact on the PPP) and **settlement of disputes** (mediation/arbitration/investment protection)
Other major contracts: The main Financing documentation

. Loan agreement
  - cash waterfall and use of Insurance proceeds
  - financial and other covenants
  - step in right
  - acceleration

. Security documents: pledge/mortgage/assignment of proceeds/escrow accounts/completion guarantees

. Direct agreement with the government

. Political insurance (as the case may be): scope/duration/possible State counter guarantee
Other major contracts (may vary depending on each project):

. Construction Contract (EPC):
  - acceptance process
  - delays and penalties
  - performance guarantees
  - liability caps
  - insurance
  - force majeure

. Operation and Maintenance Contracts:
  - scope and conditions of intervention
  - performance guarantee
  - liability and insurance
  - duration and termination
Other major contracts (may vary depending on each project):

. **Offtake Contract:**

- tariffs
- take or pay obligation
- delivery conditions
- force majeure
- duration
- guarantees (state guarantees/political insurance)

. **Input Supply Contract:**

- tariffs
- take or pay obligation
- delivery conditions
- force majeure
- duration
Case study: a port BOT in West Africa

Presentation:

- Local and regional demand
- Solid sponsors
- Existing local competition
- Land belonging to various public entities
- Exploitation of the sand by local population
- Dredging necessary
- Energy limitations
- Perceived political risk
- Applicable legislation does not allow for step in rights
- Project to have significant employment and financial impact on the State's budget
Case study: a port BOT in West Africa

. Project structuring:

- Local SPV set up
- IFC led consortium of commercial Banks
- Sponsor's corporate guarantee for the construction period
- Tenders for subcontracting
- Throughput agreement with a financially solid shipping company
- Changes in the legal regime to allow for (i) the independent production of electricity by the port operator and (ii) the lender's step-in right
  - Dredging undertakings and agency agreement for the port operator to contract the dredging company on behalf of the public authorities
  - Environmental report carried out and compensation regime set up for the local populations prevented from exploiting the sand on the new port's site
  - Public land owned by several public entities contributed to the port operations by the sole Grantor
  - Determination of the tariffs by the Port operator but on the basis of principles preserving the competitiveness of the port within the region
  - Ruling by the tax authorities to ensure that specific tax and customs advantages open to the SPV may as well benefit the subcontractors