



Public Private Partnerships:
Construction Law Certificate Course
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Outline

1. Introduction to P3s
2. Factors in Assessing P3s as a Delivery Vehicle
3. Procuring P3s
4. The DBFM/O Model
5. Financing Public Private Partnerships
6. Introduction to Risk Allocation

Outline

7. Risk Allocation – Specific Types of Risks in the Construction and Operation of Public Assets and Services
8. Payment Mechanisms
9. Variations and Change Orders
10. Project Default and Termination
11. Dispute Resolution

Introduction to P3s

- Infrastructure Deficit, history and traditional government procurement
- Genesis and Evolution of P3s
 - Other countries
 - Early Canadian experience
- Definition of a P3
 - Outsourcing and privatization distinguished
 - Risk allocation and sharing
 - Private sector financing

Factors in Assessing P3s as a Delivery Vehicle

- Nature of the asset or service
- Expertise
- Value for money
- Risk identification and assessment

Procuring P3s

- Legal framework
- Fairness/accountability
- Encouraging innovation
- Output specifications not detailed design

The DBFM/O Model

- Project structure
- Standard agreements
- Standard terms

Introduction to Risk Allocation

- DBFM is a “bundle” of risks to be allocated
- Optimal risk allocation to achieve value for money
- Overview of typical project risks

Financing Public Private Partnerships

- The concept of limited recourse financing
- What risk is a lender signing up for?
- Typical PPP lending approaches
- Risk mitigation for lenders and financial parties
- Equity contribution requirements
- Direct agreements between lenders and public sector entities
- Direct agreements between lenders and key subcontractors
- Role of the Lenders' Technical Advisor and Insurance Advisor
- Lenders as risk sharing partners after the deal is closed
- Consent rights to changes and variations

Risk Allocation – Specific Types of Risks in the Construction and Operation of Public Assets and Services

- Technical risk
- Construction risk
- Operating risk
- Revenue risk
- Financial risks
- *Force Majeure* risk
- Regulatory/political risks
- Environmental risks

Payment Mechanism

- Types of payments
- Performance monitoring and accountability
- Marketing test, benchmarking
- Utilities adjustments – gainshare/painshare
- Inflation adjustment

Variations and Change Orders

- Changes/variations during construction phase
- Changes/variations during operating phase
- Compensation for changes and variations

Project Default and Termination

- Termination by public sector entity
- Termination by private sector entity
- Compensation on termination

Dispute Resolution

- Mediation and arbitration and public accountability
- Continuing operation



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