

Moving Transport PPPs in Asia, a Regulatory Perspective

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Overview

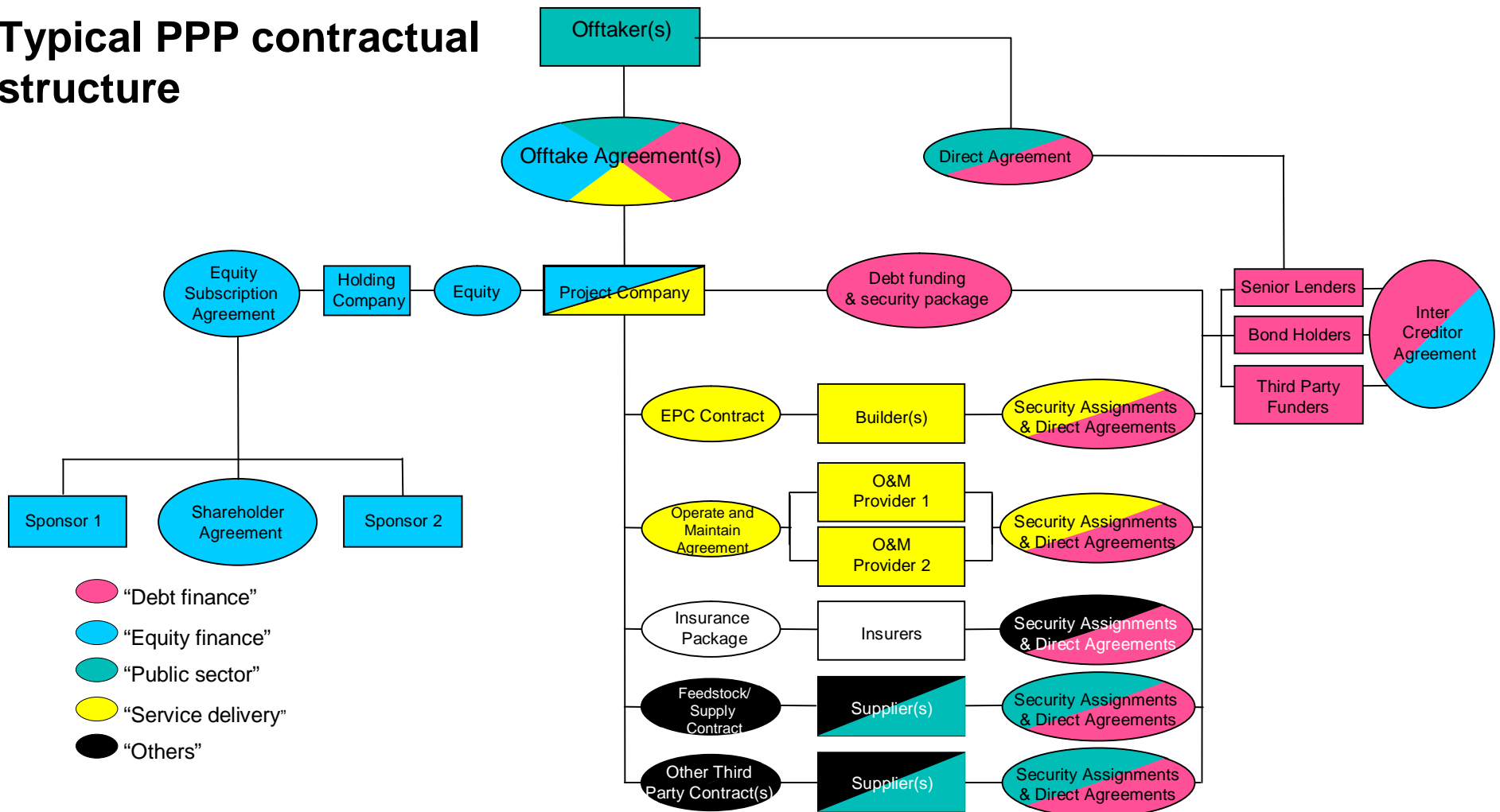
- Introduction and background
- Procurement and general regulatory frameworks
- Concerns arising from sub-sovereign/municipal risks
- Key long term political/project risks
- The way forward

Introduction and background

- Emerging markets represent diverse and individual jurisdictions
- Some jurisdictions are divided further into regional/municipal departments
- Most emerging markets require significant transport infrastructure development but lack the financial resources and knowledge capacity to implement the developments
- Devolution of responsibility to regions/ municipalities for transport infrastructure development represents a further unique challenge in terms of securing investment and financing at a sub-sovereign level

Introduction and background

Typical PPP contractual structure



Procurement and general regulatory frameworks

- The “comfort level” offered by the jurisdiction as a whole in terms of its legal and regulatory framework
- Independence and competence of judiciary in enforcement of laws and contractual obligations
- Proper and organised devolution of infrastructure development responsibility to municipal governments
- No ambiguity in powers of municipalities to carry out infrastructure development
- Impact of procurement laws and regulations on municipalities

Sub-sovereign/municipal risk

- The constitutional position of the municipality in question
- A separate 'quasi-corporate' entity independent from the sovereign government
- An entity capable of contracting, suing and being sued in its own name
- Can the entity be made bankrupt and what would be the legal obligations of the sovereign government in this instance?
- Can sub-sovereign risk be mitigated with a sovereign government guarantee or similar?

Long term political/project risk

- The constitutional position of the municipality changing over time
- The municipality not honouring its contractual commitments (arising from political pressures/change in government)
- The sovereign government not honouring its commitment of support to the municipality
- The role of multilateral development banks and political risk guarantees

The way forward

- Infrastructure development requirements in emerging markets are too great and sovereign governments cannot bear this risk on their own i.e. municipalities have to take on some of this responsibility
- The key is the political and administrative will needed to push through and follow through with the challenges
- Governments, investors and financiers all need to recognise the importance of properly structured projects, including sub-sovereign projects

The way forward (cont'd)

- Sovereign support is essential as the initial projects develop but this may be slowly reduced as confidence in these markets grow

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