PPP Risk Matrices and PPP Contractual Provisions Workshop

Monday, 31 May 2016, 2:30pm to 6:00pm
Venue: OECD Conference Centre - Paris

The Global Infrastructure Hub (GI Hub), the Monetary Authority of Singapore (MAS) and the Organisation for Economic Co-operation and Development (OECD) are jointly hosting a second Workshop, with senior executives and infrastructure professionals, to discuss the GI Hub's Second Draft Report on Annotated PPP Risk Allocation Matrices, 2016 Edition (available on 23 May). During the workshop, the first draft of the World Bank Report on Recommended PPP Contractual Provisions, 2016 edition (similarly available on 23 May), will also be discussed, with latest OECD relevant work for the G20. It is our pleasure to invite you to join us for this important discussion.

The GI Hub, based in Sydney, Australia, is an organisation established by the G20 group of nations to foster innovative approaches to global infrastructure development. One of the GI Hub's key mandates is to promote 'leading practices' for quality infrastructure investments, including the preparation and dissemination of guidance materials in respect of project identification, preparation and procurement.

As part of its 'leading practices' mandate, the GI Hub is developing a set of annotated risk allocation matrices for public-private partnership (PPP) transactions, in a variety of sectors. Risk allocation is at the centre of every PPP transaction, and a deep understanding of the risk allocation arrangements is a precondition to the drafting of every PPP agreement.

The GI Hub has engaged Norton Rose Fulbright, a global law firm, to prepare the Report on Annotated PPP Risk Allocation Matrices, 2016 Edition (the PPP Risk Matrices Report), with matrices showing the allocation of risks as between the public and private sectors in typical PPP transactions, along with related information on mitigative measures and typical government support arrangements. Separate matrices are being developed for 12 designated types of projects within the transport, energy and water and sanitation sectors. The 12 sectors are:

Transport Sector

- a new toll road project, developed as a Design, Build, Finance and Operate (DBFO) transaction;
- a new airport project, developed as a DBFO transaction;
- a new municipal light rail project, developed as a DBFO transaction;
- an intercity railway project involving an existing railway, developed as a Rehabilitate-Operate-Transfer (ROT) transaction; and
- a container port project involving an existing port facility, also developed as a ROT transaction.

Energy Sector

- a new photovoltaic power generation project, developed as a Build-Own-Operate (BOO) transaction, where the power is being sold to a state-owned single buyer;
- a new large-scale (greater than 100 MW) hydroelectric power project, developed as a Build-Own-Operate-Transfer (BOOT) transaction, where the power is being sold to a state-owned single buyer;
- a new power transmission project, developed as a BOOT transaction; and
- a natural gas distribution project involving an existing distribution for an existing utility, developed as a ROT transaction, in a situation where the wholesale supplier of natural gas is a state-owned entity and where natural gas tariffs are set by a regulator.

Water and Sanitation Sectors

- a new water desalination project, developed as a BOOT transaction, where the desalinated water is being sold to a state-owned single buyer;
- a water distribution project involving an existing distribution for an existing utility, developed as a ROT transaction, in a situation where the wholesale supplier of water is a state-owned entity and where water tariffs are set under the terms of the Concession Agreement; and
- a solid waste collection, disposal, landfill and recycling project, developed as a BOT transaction.

In parallel to the work on the Risk Matrices Report, the World Bank Group (WBG), with the support of the international law firm of Allen & Overy, is currently developing the Report on Recommended PPP Contractual Provisions, 2016 Edition (the PPP Contractual Provisions Report) which follows up on its previous 2015 edition. The latter was produced against the backdrop that, whilst recognizing it is not possible to have universally-accepted language for every provision in a PPP agreement (given the variety of PPP transactions and the different legal, regulatory, financial and institutional frameworks in every country), there might, nevertheless, be merit in fostering greater understanding of certain important contractual provisions typically found in virtually every PPP contract. Conceivably, this would, in turn, also contribute to reducing the costs in regard to and accelerating the process of preparing and finalizing PPP contracts

In response to the industry feedback received on the contents of the 2015 edition, the PPP Contractual Provisions Report essentially presents (i) additional material and/or alternative recommended language in regard to countries with different levels of PPP transactional experience and/or different types of legal systems, (ii) commentary as to which alternatives/options reflect a rather lender-friendly or government-friendly approach, as well as (iii) ample commentary to link the recommended provisions to the principles of risk allocation (including the contents of the PPP Risk Matrices Report).

Under the current G20 Chinese presidency, the OECD is leading a dedicated G20 work stream on exploring diversified financing approaches and fostering private financing for infrastructure (including the role of equity for infrastructure, engaging institutional investors and development of infrastructure as an asset class) This work is looking at the roles of financial intermediaries in the development phases of infrastructure, and identify opportunities where nonbank private capital may play a role in financing infrastructure across multiple stages of projects. As different types of private investors are willing to take on different types of risks, risk allocation is a crucial factor in determining the pool of willing investors and the cost of capital for the public sector. New and alternative funding and financing models can potentially align public and private sector interests in infrastructure provision and management (from PPPs to RAB contracts)[1].

ABOUT THE WORKSHOP

The Workshop will discuss both the above-mentioned second draft version of this PPP Risk Matrices Report, the draft PPP Contractual Provisions Report and the OECD work currently developed for the G20. This discussion will be used by Norton Rose Fulbright and Allen & Overy to prepare the respective next draft of each document. The Worksop will be conducted on the basis of 'Chatham House Rules', whereby a summary of the meeting will be prepared, and distributed to all attendees, without any attribution of specific comments to individual participants.

We would greatly appreciate if you could confirm your participation as soon as possible by reply to Caroline Thompson, OECD Secretariat, caroline.thompson@oecd.org

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1 See also work from the G20/OECD Taskforce on Institutional investors and Long Term Investment Financing www.oecd.org/finance/lti and OECD Network of Senior Infrastructure and PPP Officials http://www.oecd.org/gov/budgeting/ppp.htm