



Public Private Partnerships and Performance Based Infrastructure

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About Milbank

- Global law firm with offices in New York, Los Angeles, Washington, D.C., London, Frankfurt, Munich, Hong Kong, Singapore, Tokyo and Beijing
- Over 100 Project Finance lawyers globally specializing in infrastructure, power & energy, oil & gas, mining & minerals, and telecommunications & space
- U.S. and English law capability
- Lawyers fluent in over 20 languages

Milbank's Infrastructure Capabilities

- Advised on many of the largest infrastructure projects worldwide across a spectrum of industries – toll roads, bridges, highways, ports and airports
- Ranked in Tier 1 among law firms for Transportation Infrastructure (*Chambers USA*, 2005, 2006, 2007 and 2008)
- Recipient of numerous “Deal of the Year” awards, including:
 - **North America Infrastructure Deal of the Year 2007** from *Project Finance* for the Trans Bay Cable Project
 - **Project Finance Deal of the Year 2007** from *LatinLawyer* for the Intersur Toll Road Financing
 - **Project Finance Deal of the Year 2006** from *IFLR* for the Pocahontas Parkway Financing

Drivers for Public Private Partnerships

- Increased infrastructure demands for mobility needs, economic growth, and quality of service
- Stressed government budgets and limited debt capacity for public agencies
- Availability of private capital to be invested in public infrastructure (including equity) as an increasingly mature asset class
- Public policy incentives: tax attributes of projects, enabling statutes, risk sharing

Ingredients for a Successful Program

- Clearly defined goals
- Transparency
- Predictability
- Aligned public and private interests

Risk Transfer

- In performance-based infrastructure projects, public sector can shift risks to the private sector while retaining ownership and control of the asset
- Contractual framework creates accountability and standards for safe and reliable design and operation
- Flexibility along spectrum of potential risk transfer depending on commercial and governmental priorities, project economics, and innovative deal structures

Optionality in Risk Transfer to Private Sector

	SR-125/ South Bay Expressway	Chicago Skyway Toll Road	Pocahontas Parkway	Port of Miami Access Tunnel
<i>Greenfield or Brownfield</i>	Greenfield	Brownfield	Brownfield plus Expansion	Greenfield
<i>Construction Risk</i>	Yes	No	Partial	Yes
<i>Operating Risk</i>	Yes	Yes	Yes	Yes
<i>Traffic and Revenue Risk</i>	Yes	Yes	Yes	No
<i>Government Availability Payments</i>	No	No	No	Yes
<i>Payment to Government</i>	Excess profit sharing	Upfront payment	No	No

State of the Market

- Wide range of models internationally for public or private delivery of transportation services
- Regulatory uncertainty and lack of enabling legislation
- Fiscal constraints encourage national, regional and local governments to consider PPPs as an alternative method for procurement of critical facilities and services
- Impact of credit crunch on liquidity for projects is partly offset by attractiveness of infrastructure as a maturing asset class with stable cash flows and an inflation hedge
- Uncertainty as to future policies linking transport projects to other priorities: environment, land use and energy

For Further Information



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