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PPP in Moldova: legal developments, risks and opportunities

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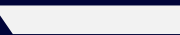
Content

A. PPP legal framework in Moldova

B. How to mitigate potential Project Risks ?

A. The potential PPP projects identified in Moldova

B. Conclusion



PPP Legal Framework



Establishment

- PPP institutional requirements

Article 2 of the PPP Law of Moldova provides that all public legal entities may be subjects of the PPP Law.

- Right to do PPP in specific sectors

it is clear from Article 17 of the Law that a PPP can be granted in respect to any work, public service or function of the Contracting Authority.

PPP Legal Framework



Procurement

- **Tender:** The PPP Law of Moldova (Articles 25 to 32) stipulates that all PPP contracts are awarded through a tender process without any exception.
- **Selection:** Articles 3 to 6 provide that the selection process should be based on the principles of balance, effective competition, freedom to enter into contracts, and cooperation. On the selection of the private party, Articles 27 to 30 provide that it be selected by a Commission appointed by the Contracting Authority.
- **Unsolicited proposals:** Article 29(5) stipulates that documents pertaining to non-successful bidders are to be kept for a period of 3 years. The PPP Law does not provide a framework for unsolicited proposals.

PPP Legal Framework



Operation

- Government support and guarantees
- Repatriation of profits
- Project agreement: mandatory clauses
- Tariff setting and tariff control
- Security interests

Article 34(3) of the PPP Law of Moldova specifically precludes the private party from creating security interests or other valuable guarantees over the object of the PPP without prior consent of the contracting authority

PPP Legal Framework



Adjustment

- Step-in right for lenders
- Expropriation/nationalization and compensation
- Termination of the project agreement and compensation

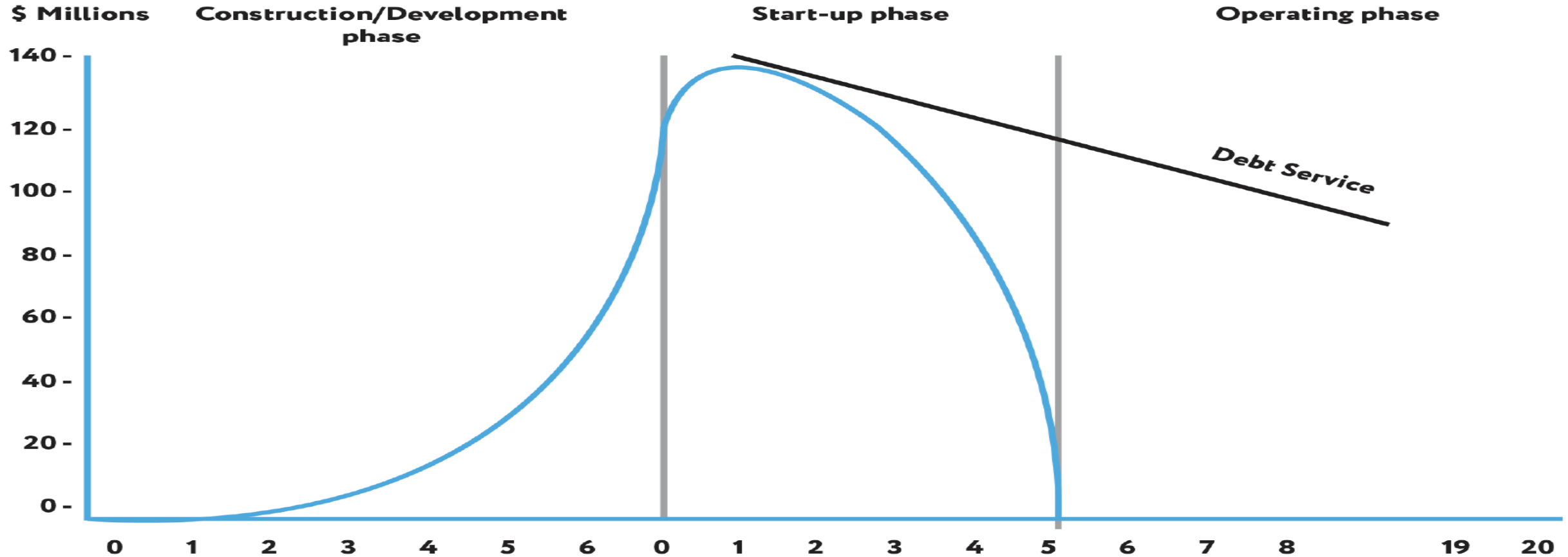
Article 23 of the PPP Law of Moldova provides that compensation shall be paid by the defaulting party.

- Dispute resolution

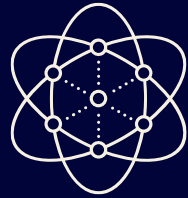
Article 36(2) of the PPP Law of Moldova provides for international arbitration

Project financing risks can be divided into three time frames in which the elements of credit exposure assume different characteristics:

- construction and development phase;
- start-up phase;
- operating phase.



PPP Risks

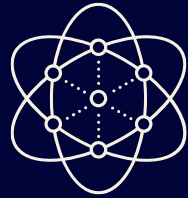


How to mitigate ?

POLITICAL RISK:

- Assurances against expropriation or nationalisation might be sought, with accompanying guarantees;
- National bank undertakings to ensure the continuing availability of foreign exchange should be obtained, if possible;
- If the project generates “hard” currency, for example, through sales contracts, it might be possible for the lenders to collect, control and, if necessary, retain cash flows offshore;

PPP Risks

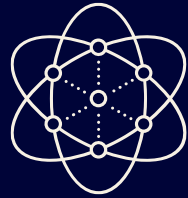


How to mitigate ?

POLITICAL RISK:

- Licenses granted to the project sponsors should be checked/clarified with the issuing authorities if they are ambiguous; perhaps the lenders' interests can be noted in some way to ensure that they are advised in advance of any proposals to modify, renew or revoke the license or lenders might seek commitments to enable the licence to be transferred to them in the event of the failure of the project company;

PPP Risks

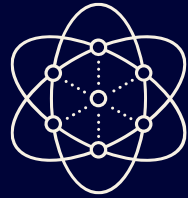


How to mitigate ?

▪ **CONSTRUCTION AND DEVELOPMENT RISK :**

- ensuring project company enters into binding and enforceable long-term fixed price contracts for supplies, energy, transportation with credit-worthy counterparties;
- ensuring that the project establishes its own supply sources and connecting infrastructure;
- requiring performance bonds and completion guarantees from suppliers, contractors etc. (which are assigned to the lenders);
- taking out commercial insurance and securing export credit guarantee support.

PPP Risks

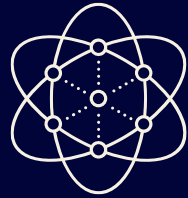


How to mitigate ?

MARKET AND OPERATING RISK:

- long-term take-or-pay contracts or throughput agreements, etc. can minimise the operating risk by guaranteeing a market for the product at a price tailored to cover operating expenses and to service and retire the debt

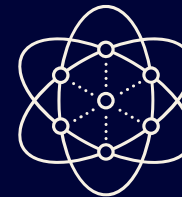
PPP Risks



How to mitigate ?

▪ ENVIRONMENTAL RISKS:

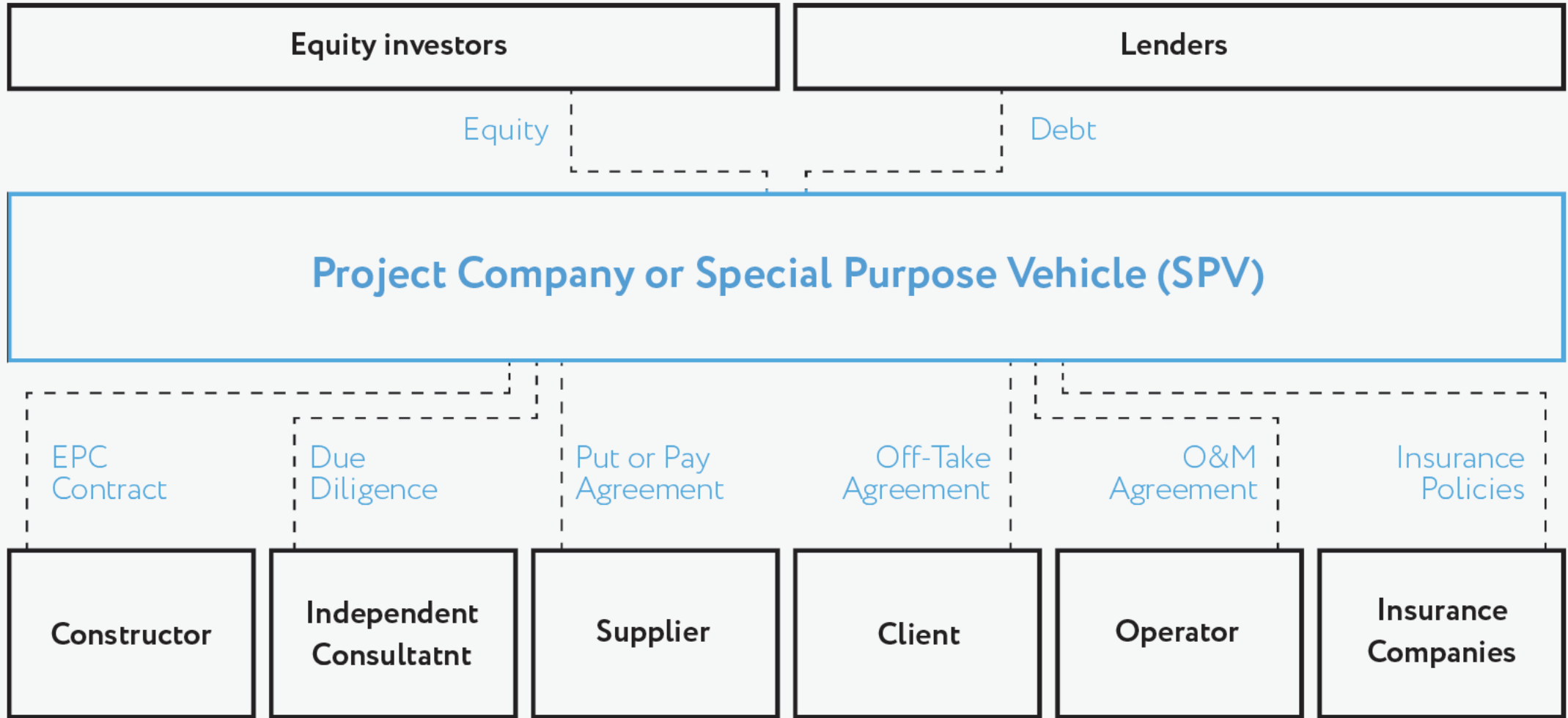
- Satisfaction with the environmental position (e.g. by way of an expert report) should be a condition precedent to making finance available;
- Documentation should contain representations, warranties and covenants on the borrower's part to ensure that the borrower focuses on these issues and complies with all applicable regulations and recommended practices;



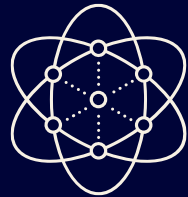
The potential PPP projects identified in Moldova

Opportunities

- new road for the south of the country;
- by-pass for Chisinau;
- maintenance of existing roads;
- railway wagon repair plant in Basarabeasca;
- redevelopment of inner-cities bus stations;
- trolley buses in towns and cities;
- redevelopment of Balti airport;
- Information Technology Park in Chisinau;
- residential and commercial accommodation planned by the Ministry of Defence.

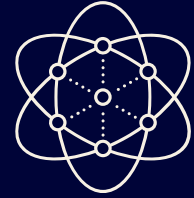


EXPERIENCE



MOLDOVA

- Our lawyers have **20 years of substantial experience in PPP** and Project Finance, which offers comprehensive legal advice for stakeholders in infrastructure projects implemented jointly by the public sector and private firms as public private partnerships (PPP).
- Our clients include private-sector investors/sponsors, banks and financial institutions.
- PPP projects are highly complex in legal terms. Accordingly, our advisory teams comprise lawyers from a wide range of legal disciplines, such as public law, public procurement law, construction law, corporate law, banking and finance law, employment law and tax law.



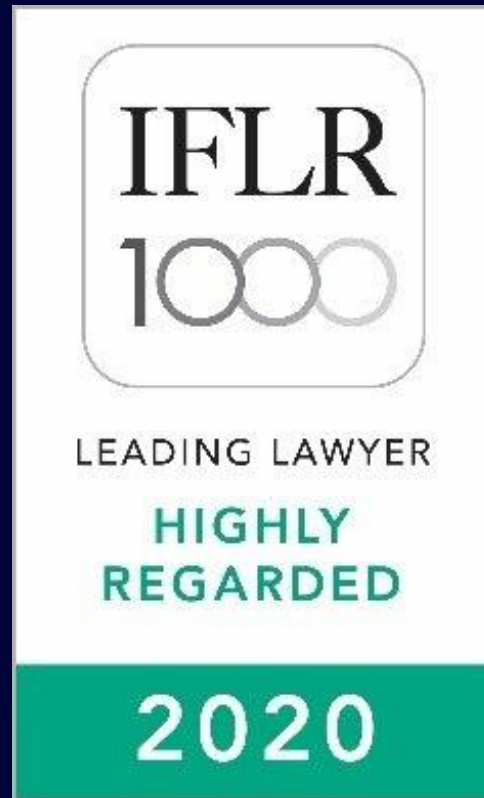
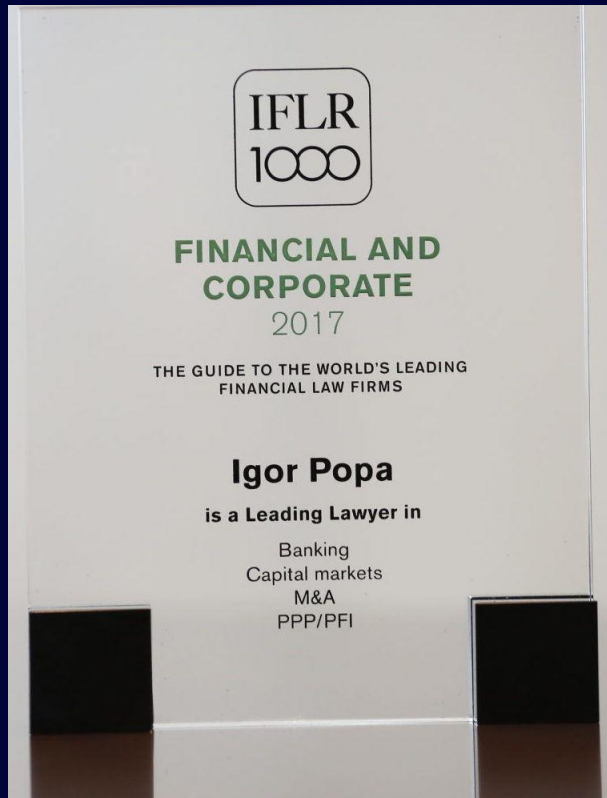
How can we help you ?

MOLDOVA

Our core activities in the area of public private partnerships are:

- Advice on designing projects with regard to the legal framework
- Preparatory work and advising on invitations to tender and procurement procedures
- Drafting and negotiating project and finance agreements
- Sector expertise, particularly in relation to PPP projects involving infrastructure, construction and telecommunications.

AWARDS





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THANK YOU!

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