Standardised PPP Provisions: Risk Matrix

PRIVATE SECTOR DRAFT – 3A

[May 2003]

Categories	Description	Mitigation	Allocation
Technology risk	The possibility that (i) the technical inputs for the outsourced institutional function may fail to deliver the required output specifications, or (ii) technological improvements may render the technology inputs in the outsourced institutional function out-of-date ("technology refresh or obsolescence risk").	Obligation on Private Party to refresh technology as required from time to time to meet the output specifications. Penalty Deductions for failure to meet output specifications.	Private Party.
Latent defect risk	The possibility of loss or damage arising from latent defects in the Facilities included in the Project Assets.	Wherever possible, the design and construction of the Facilities required for a Project must be performed or procured by the Private Party. If, however, the Project involves the take-over by the Private Party of existing Facilities, then the Private Party must undertake a thorough due diligence of these Facilities to uncover defects before the Signature Date. The procedure for and cost of the remediation of such discovered defects can then be pre-agreed. Reporting obligation on Private Party to promptly disclose discovered defects.	If the Private Party (or any of its subcontractors) designs and constructs the Facilities, the Private Party. If not, then the Institution, but only if there is no or insufficient insurances available to mitigate this risk and if the Institution's liability is capped (subject to VFM considerations).
Completion risks	The possibility that the design, procurement, construction and commissioning of the Facilities required for the Project may be (i) delayed so that the delivery of the Services included in the Project cannot commence at the envisaged start-up date, or (ii) delayed, unless greater expenditure is incurred to keep the Project to the envisaged start-up date, or (iii) delayed because of variations.	Special insurance (delay in start-up insurance). Liquidated damages, construction bonds and other appropriate security from the Private Party to achieve completion, unless caused by the Institution. Relief Event.	Private Party, unless delay caused by Institution (including, Institution variations).

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Design risk	The possibility that the Private Party's design may not achieve the required output specifications.	Clear output specifications. Design warranty. Patent and latent defect liability. Consultation with and review by Institution (but review must not lead to input specifications by Institution). Independent Expert appointment to resolve disputes on expedited basis.	Private Party.
Cost over-run risk	Possibility that during the design and construction phase, the actual Project costs will exceed Projected Project costs.	Fixed price construction contracts. Contingency provisions. Standby debt facilities / additional equity commitments (Shareholder and other funder commitments); provided that these commitments are made upfront and therefore anticipated in the base case Financial Model. However, if the Project is not performing as anticipated in the base case Financial Model, then (to effect a rescue of the Project) these commitments may be implemented, but the prior approval of the Institution is required if such commitments will increase its liabilities on termination.	Private Party.
Planning risk	The possibility that the implementation of the Project fails to comply with applicable planning law or any planning approval, or that a detailed planning approval cannot be obtained or, if obtained, can only be implemented at greater cost than Projected.	The Institution must identify at the feasibility phase any planning approvals that can be obtained by the Institution before the detailed designs for the Project are finalised (e.g. any re-zoning and land-use consents). These approvals must then be obtained before the Project is put to tender.	In relation to any non-design and construction specific planning approval, the Institution. In relation to any design or construction specific planning approval, the Private Party

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		The Private Party must identify before the Signature Date all planning approvals that are required for the Project having regard to the specific design inputs proposed by the Private Party. The Private Party must make adequate provision in its construction Works programme for such approvals. Relief Event.	
Environmental risk	This includes not only the possibility of liability for losses caused by environmental damage (i) arising from construction or operating activities (see operating risk) during the Project Term, but also (ii) arising from pre-Project Term activities whether undertaken by the Institution or a third party and not attributable to the activities of the Private Party or its subcontractors.	Thorough due diligence on pre-existing environmental conditions. Indemnity for pre-existing environmental conditions, limited by a cap (subject to VFM considerations). Remediation works to remedy pre-existing environmental damage as a specific Project deliverable. Independent monitoring of remediation works. Special Insurance.	In relation to (i), the Private Party. In relation to (ii), the Institution, but only if there is no or insufficient insurances available to mitigate this risk and if the Institution's liability is capped (subject to VFM considerations)
Availability risk	The possibility that the Services to be provided by the Private Party are less than required to meet the output specifications of the Institution.	Clear output specifications. Performance monitoring. Penalty regime.	Private Party.
Market, demand or volume risk	The possibility that the demand for the Services generated by the Project may be less than projected (whether for example because the need for the Services ceases or decreases, or because of competitors entering into the relevant market, or because of consumer opposition to the outsourcing of the Services).	In a Unitary Payment type PPP, the Unitary Payment must be paid based on availability (not actual usage by the Institution).	In relation to a Unitary Payment funded Project, the Institution. In relation to a revenue-generating Project, the Private Party.

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Supply, input or resource risk	The possibility of a failure in the supply of the inputs (particularly, resources such as natural gas or coal) required for the operation of the Project including non-supply or deficiencies in the quantity and quality of available supplies.	Supply contracts for supply of total Project requirements, such as take and pay contracts.	Private Party unless the inputs are supplied by the Institution.
Utilities supply risk	The possibility that the utilities (e.g. electricity, gas and water) required for the construction and/or operation of the Project may not be available.	Emergency back-up facilities, e.g. generators. Emergency supply contracts. Special insurance.	Private Party unless the utilities are supplied by the Institution and such supplies are not covered by the special insurance.
Insolvency and outside creditor risk	The possibility of the insolvency of the Private Party or any of its Shareholders.	SPV structure to ring-fence Project. Security over necessary Project Assets. Limitations on debts and other funding commitments of the Private Party including any outside the Project. Reporting obligations in respect of any litigation; financial information; disputes with creditors. Substitution of Private Party in terms of Direct Agreement.	Private Party.
Sub-contractor risk	The risk of subcontractor defaults or insolvency. This risk may arise at the construction and/or operations phases of the Project.	Subcontractors must have expertise, experience and contractual responsibility for their performance obligations. Substitution of subcontractors. Due diligence by the Institution must include review of first tier subcontracts to confirm that pass through of risks down to the first tier subcontractors and their subcontractors is provided for in the Project subcontracts.	Private Party.

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Operating risk (technology, environmental, cost and management)	Any factors impacting on the operating requirements of the Project (including projected operating expenditure and skills requirements, e.g. labour disputes, employee competence, employee fraud, technology failure, environmental incidents and any failure to obtain, maintain and comply with necessary operating permits).	Clear output specifications. Penalty regime and performance monitoring. Adequate O&M contract. Substitution rights. Security and special insurance.	Private Party.
Maintenance risk	The possibility that (i) the cost of maintaining assets in required condition may vary from the Projected maintenance costs, or (ii) the agreed maintenance programme is not followed.	As above.	Private Party.
Force Majeure (act of God) risks	This may overlap with operating risk or completion risk, and includes certain unexpected factors out of the control of the Project participants (whether natural or "man-made"), which may affect the construction or operation of the Project.	Define "Force Majeure" narrowly to exclude risks that can be insured against or are dealt with more adequately by other mechanisms such as Relief Events or Compensation Events. Relief and Compensation Events. Termination.	If risks are insurable not Force Majeure and risk allocated to Private Party. If risks are not insurable, then risk is shared insofar as Institution may pay some compensation.
Political risk	The possibility of action by any government authority that materially and adversely affects the completion and/or operation of a Project, or the expected return on investment of the Private Party's funders. This risk overlaps with some financial risks (e.g. tax rate change risk) and other risks such as operating risk.	Limit risk to Changes in Law and to expropriation, nationalisation or privatisation (collectively, "expropriating actions") of the Institution, services or assets of the Private Party. Distinguish between General and Discriminatory Changes in Law. In relation to Discriminatory Changes in Law, termination by Private Party with compensation.	In relation to Discriminatory Changes in Law and expropriating actions, the Institution. In relation to General Changes in Law, the Private Party.

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Regulatory risk	The possibility that the approvals required from government authorities for the Project will not be obtained (other than planning and environmental approvals, which elsewhere herein, are specifically dealt with, see planning risk and environmental risk).	Legal scan undertaken to be by the Institution at the feasibility phase of the Project to identify all such approvals. Implementation by the Institution of an inter-governmental liaison process with the responsible government authorities before the procurement phase. Due Diligence by Private Party to identify approvals its requires for its operating requirements If permitted under applicable law, obtain all such approvals before the Signature Date.	If any such approvals (other than those relating to Private Party's operating requirements) can be obtained before the Signature Date, the Institution. In relation to the Private Party's operating requirements, the Private Party.
Currency or exchange rate risk	The possibility that exchange rate fluctuations will impact on the envisaged costs of imported inputs required for the construction or operations phase of the Project.	Hedging instruments (e.g. swaps).	Private Party.
Interest rate risk	These are factors affecting the availability and cost of funds.	Hedging instruments. Fixed rate loans	Private Party.
Tax rate change risk	The possibility that changes in applicable tax rates (income tax rate, VAT) or new taxes may decrease the Project party's anticipated return.	Termination by Private Party with compensation for tax increases or new taxes arising from Discriminatory Changes in Law.	In relation to tax increases or new taxes arising from General Changes in Law, Private Party. In relation to tax increases or new taxes arising from Discriminatory Changes in Law, the Institution.
Inflation risk	The possibility that the actual inflation rate will exceed the Projected inflation rate. This risk is more apparent during the operations phase of the Project.	Index linked adjustment to Unitary Payments or user charges. However, index-linking not blanket, but only to specified input items.	Shared between the Private Party and the Institution in relation to specified input items.

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Insurance risk	The possibility (i) that any insurable risks may become uninsurable in the course of the Project Term or (ii) of substantial increases in the rates at which insurance premia are calculated.	At the option of the Institution, self-insurance by the Institution or, if the uninsurable event occurs, then termination of the Agreement with compensation to the Private Party. Reserves.	In relation to (i), if the Private Party caused the uninsurability (or, even if it did not, the Private Party cannot show that similar businesses would stop operating without the insurance in question), then the Private Party bears the risk. If this test fails, then the risk is shared between the Private Party and the Institution. In relation to (ii), the Private Party (save if caused by Institution variations).
Residual value risk	The risk that the Project Assets at termination or expiry of the Agreement will not be in the prescribed condition for handback to the Institution.	Obligations on Private Party to maintain and repair. Audit towards the end of Project Term. Security by the Private Party in favour of the Institution, e.g. final condition bond, or deduction from Unitary Payment. Reinstatement obligations on Private Party.	Private Party.