KEY LEGAL AND REGULATORY HURDLES
IN INFRASTRUCTURE & PPP PROJECTS

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OVERVIEW OF THE PPP SPACE IN INDIA

- PPP in India is about 15 years old
- India is one of the most experienced countries in PPP
- PPP is a widely used model in the Infrastructure development sector
- World Bank report in 2011 ranked India as the largest market for PPPs in the developing world. India alone accounted for over half of the total investments in new PPP projects in developing countries in 2011, when it implemented 43 projects which attracted total investment of $20 billion. Not all PPPs have, however, been successful
- Several problems have been encountered during different stages of a project - as a result project developers are reluctant to bid
- Various PPP infrastructure projects have not been able to get off the ground and attain financial closure because they have not been deemed bankable.
HURDLES IN PPP PROJECTS

- No PPP specific legislation in India
  - Some state governments like Gujarat have specific PPP legislations, however, the central legislation is still in draft form

- Lack of uniform policies, guidelines and procedures for PPP projects
  - Planning commission, Ministry of Finance, DEA, CAG, CVC, various ministries, statutory entities like NHAI, and state governments

- PPP procurement process has often been slow and expensive for both the public and the private sector
  - This has lead to increasing costs and has reduced value for money for the taxpayer
HURDLES IN PPP PROJECTS

- **Lack of standardized documentation**
  - Inappropriate risks have been transferred to the private sector resulting in a higher risk premium being charged to the public sector
  - Contracts have been insufficiently flexible so making alterations to reflect changing requirements have been difficult

- **Land Acquisition**
  - New Land Acquisition, Rehabilitation and Resettlement Act, 2013 - ‘Public purpose’ not well defined;
  - Onerous requirement of obtaining consent from 80% of landowners for a project
HURDLES IN PPP PROJECTS

- **Restriction in infrastructure finance regulations**
  - Liquidity constraint due to lending limits, asset liability mismatch
  - ECB Guidelines
  - Barriers to accessing the debt capital markets for project financing
  - Pension and insurance regulations limiting investments

- **Legal and regulatory uncertainties and shifting environment**
  - Inconsistencies in legislations and policies
    - Exit policy - change in control vs change in ownership
    - Land and Labour laws
    - Stamp Duty
  - Uncertainties in tariff and user fee determination
Multiplicity of approvals due to multiple authorities
- Tedious and complex processes; law and order problems

Long drawn legal disputes between concessionaire and authority
- Dispute between DMRC and the Reliance Infra subsidiary, DAMEPL on the Delhi Airport Express Line Project

Challenge by rejected bidder(s) against wrongful award of project
- Tata Cellular v. Union of India – award to Bharti Cellular in Delhi and BPL in Mumbai upheld; and Reliance Airport Developers v. AAI – award to consortium led by GMR and GVK for development of Delhi and Mumbai airports upheld
Centralised procurement and use of trained bureaucrats

- One of the most frequent suggestions is for the greater centralisation and improved professionalism of PPP procurement process
- International examples of centralised procurement units in countries such as Canada are examples that India should follow

Comprehensive suite of new standard documentation

- Flexible provisions to cater to changing requirements in infrastructure projects with long concession periods
- Appropriate risk allocation - greater retention and management of certain risks by the public sector
SUGGESTED SOLUTIONS

- Streamlining the process of approvals and authorisations
  - Co-ordinated single window clearance
  - Better co-ordination between Centre and State Governments

- Amend relevant legislations, policies and regulations to help facilitate infrastructure projects

- Hasten the dispute resolution process by setting up special courts and dispute redressal systems

- Coordinate effort required from the Government of India, Reserve Bank of India, SEBI, IRDA to make India’s bond capital markets vibrant and relax infrastructure financing norms.
THANK YOU

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