Assessing, Allocating and Avoiding Risks in PPPs: Recommendations contained in the UNCITRAL Legislative Guide on PPPs
Project Risks and Risk Allocation

• Recommendations contained in the expanded Chapter II on “Project planning and preparation”

• Guide emphasizes the importance of negotiation between the parties to allocate the various risks of the project

• Countries may wish to provide legislative or regulatory guidance on the parameters to take into account when allocating risks
Adequate risk allocation is key for:

- Reducing project costs
- Ensuring the successful implementation of the project
Overview of main categories of project risks

• Project disruption caused by events outside the control of the parties
• Political risk
• Construction and operation risks
• Commercial risk
• Exchange rate and Financial risks
Guidelines on Risk Allocation

Risk to be contractually allocated to the party who is best suited to assess, control, manage and bear the risk; i.e. party who has

• Best access to hedging instruments; or
• Greatest ability to diversify the risk; or
• Greatest ability to mitigate the risk at the lowest cost, especially the technical risk
Practice can differ:

- Political considerations motivated by the public interest in the project or other factors

- Financial ability of the party to bear the risk, should it occurs, leads to paramount consideration given to the financial strength of the parties
Allocation of risk in practice as explained in the Guide (1)

Private partner

- Development and operation of the infrastructure
  - Design and construction
  - Performance...

Contracting authority

- Adequacy of technical specifications given during bidding process
- Political risk
  - Price control
  - Expropriation...
Allocation of risk in practice as explained in the Guide (2)

- Distribution of risk between the private partner and the contracting authority is not always self-evident
  - Financial aspects of the PPP contract (such as interest rate / inflation risk vs. price control)
  - Extraneous events outside of the control of the parties (war, civil disturbance) may be subject to special arrangements + commercial insurance
  - Some sectors require specific allocation of risks (energy) or the sharing of the risk between the private partner and the contracting authority (water treatment)
Guarantees offered by stakeholders may alter the risk allocation

- Allow for risk mitigation and risk reduction, such as MIGA’s guarantees:
  - Transfer restrictions
  - Expropriation
  - Breach of contract
  - War and civil disturbance
  - Non-honoring of financial obligations (MIGA)
Where to get more information

  • One-stop-shop for legal texts in the 6 official UN-languages

• [uncitral@un.org](mailto:uncitral@un.org)
  • Email us when you have specific queries

• THANK YOU!