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

HARNESSING
OPPORTUNITIES
and
OVERCOMING
CHALLENGES

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**



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Adequate risk allocation is key for :

- **Reducing project costs**
- **Ensuring the successful implementation of the project**



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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**



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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)



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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)**



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Where to get more information

- <http://www.uncitral.un.org>
 - One-stop-shop for legal texts in the 6 official UN-languages
- uncitral@un.org
 - Email us when you have specific queries
- **THANK YOU !**



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